

Western Australia

Labour Relations Reform Act 2002

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No. 20 of 2002

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Labour Relations Reform Act 2002

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Western Australia

Labour Relations Reform Act 2002

No. 20 of 2002

An Act to —

- **amend the *Industrial Relations Act 1979*;**
- **amend the *Workplace Agreements Act 1993* to provide for the phasing out and expiry of that Act;**
- **amend the *Minimum Conditions of Employment Act 1993*; and**
- **make consequential amendments to other written laws, and for related purposes.**

[Assented to 8 July 2002]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Labour Relations Reform Act 2002*.

2. Commencement

- (1) Subject to subsections (3) and (4), this Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- (3) Section 111(6) of this Act comes into operation on the day on which it receives the Royal Assent.
- (4) Part 3 Division 3 and sections 108 and 113 come into operation on the expiry of the *Workplace Agreements Act 1993* as provided for by section 4A of that Act.

3. The Act amended

The amendments in this Act are to the *Industrial Relations Act 1979** unless otherwise indicated.

[* *Reprinted as at 4 February 2000.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 213, and Act No. 10 of 2001.]

Part 2 — Amendments to provide for employer-employee agreements

Division 1 — Principal amendments to the *Industrial Relations Act 1979*

4. Part VID inserted

Before Part VII the following Part is inserted —

“

Part VID — Employer-employee agreements

Division 1 — Preliminary

97U. Interpretation

(1) In this Part, unless the contrary intention appears —

“**award**”, except in section 97UG(2)(c), Division 6
Subdivision 1 and sections 97YA(1)(a) and
97YB(2)(a), includes —

- (a) an industrial agreement or order of the
Commission under this Act; and
- (b) an award under the *Coal Industry Tribunal
of Western Australia Act 1992*, including any
order under that Act and any agreement that
comes within section 12(4) or 17(1) of that
Act;

“**bargaining agent**” means a person appointed as a
bargaining agent under section 97UJ;

“**cancellation agreement**” means an agreement under
section 97UV(1);

“**EEA dispute provisions**” means the provisions
included in an EEA for the purposes of
section 97UN;

“employment services for persons with disabilities”

means employment services —

- (a) that are provided for persons with disabilities who are eligible for the Supported Wage System; and
- (b) for which, at the relevant time, financial assistance has been granted under the *Disability Services Act 1986* of the Commonwealth;

“existing employee” means an employee —

- (a) who signs; or
- (b) on whose behalf a representative signs, an EEA after commencing the employment to which the EEA relates;

“new employee” means an employee —

- (a) who signs; or
- (b) on whose behalf a representative signs, an EEA before, or at the time of, the commencement of the employment to which the EEA relates;

“no-disadvantage test” means the no-disadvantage test provided for by Division 6 Subdivision 1;

“party”, in relation to an EEA —

- (a) means the employer or employee; and
- (b) in the provisions mentioned in subsection (4), if the employee is a represented person, also means his or her representative;

“regulations” means regulations made by the Governor under section 97YJ;

“relevant industrial authority” means —

- (a) where the EEA relates to employment as a Government officer to whom Part IIA Division 2 applies, the Commission constituted by a Public Service Arbitrator under that Division;
- (b) where the EEA relates to employment as a railway officer to whom Part IIA Division 3 applies, the Commission constituted by the Railways Classification Board under that Division; and
- (c) subject to paragraphs (a) and (b), the Commission constituted by a Commissioner;

“section 97UM signatory” means a person who has signed an EEA for the purposes of section 97UM(2);

“supported wage provisions” means provisions that enable an employer to pay an employee with a disability a wage that is related to the employee’s productive capacity;

“Supported Wage System” means the scheme established by the Commonwealth Government to promote the employment of persons whose productive capacity is reduced because of a disability.

- (2) References in this Part to **“employer”** and **“employee”** include, where the context so requires, a person who will be an employer or employee if a proposed EEA takes effect.
- (3) Subsection (2) is not to be taken as showing that the terms “employer” and “employee”, as defined in section 7(1), do not also include a prospective employer and a prospective employee for the purposes

of other provisions of this Act, including without limitation the definition of “industrial matter”.

- (4) The provisions referred to in paragraph (b) of the definition of “party” in subsection (1) are sections 29(1a), 97UJ(4), 97UK(2), 97UL(3), 97UP, 97UY(1), 97VC, 97VD(2), 97VF(1), 97VG, 97VM(2), 97VN(2), 97VP(3), 97WG(1), 97WK(1) and (2) and 97WP(2).

Division 2 — The making of an EEA

97UA. Employer and employee may make an EEA

A single employer and a single employee may make an agreement, called an employer-employee agreement, that deals with any industrial matter.

97UB. EEA may deal with post-employment matters

- (1) An EEA may deal with rights and obligations that are to take effect after the termination of employment between the persons who, before the termination, were the employer and the employee.
- (2) The provisions of this Act and of the EEA concerned apply in relation to the rights and obligations referred to in subsection (1) even though the employment has terminated.

97UC. Other provisions about making an EEA

- (1) An EEA may be made before the commencement of the employment.
- (2) The ability of an employer and employee to make an EEA extends to any employment referred to in section 3(1).

- (3) The matters that may be dealt with in EEAs made with certain categories of employees are subject to the restrictions in —
 - (a) section 99(2) of the *Public Sector Management Act 1994*; and
 - (b) section 16(4a) of the *Port Authorities Act 1999*.

97UD. Making of EEA by person with a mental disability

- (1) An EEA may be made for a represented person as an employee by the person's representative.
- (2) The EEA is to be made in the name of the represented person as an employee but is to be signed on his or her behalf by the representative.
- (3) An EEA so made has effect as if —
 - (a) it were made by the represented person; and
 - (b) the represented person were of full legal capacity.

97UE. Effect of EEA

- (1) An EEA, while it has effect, operates to prevent from extending to the employee any award that would otherwise do so, including an award that comes into operation after the EEA takes effect.
- (2) An EEA, while it has effect, does not displace any contract of employment between an employer and an employee, but the EEA has effect —
 - (a) as if it formed part of that contract; and
 - (b) regardless of the provisions of that contract.
- (3) The provisions of an EEA have effect subject to section 5 of the MCE Act.

97UF. EEA not to be made while industrial agreement in operation

- (1) An EEA in respect of the employment of an employee cannot be made —
- (a) during the term of an industrial agreement that extends to that employee; or
 - (b) during any period when such an agreement is continued in force by section 41(6).

- (2) For the purposes of subsection (1), an EEA is to be regarded as made when it has been signed by —
- (a) the employer; and
 - (b) the employee or, where applicable, his or her representative,

and, if section 97UM applies to the EEA, when it has also been signed by a section 97UM signatory.

- (3) Subsection (1) does not apply to an EEA if —
- (a) the industrial agreement concerned does not contain supported wage provisions; and
 - (b) employment under the EEA has been arranged through an entity that provides employment services for persons with disabilities.

- (4) In this section —

“industrial agreement” includes any agreement that comes within section 12(4) or 17(1) of the *Coal Industry Tribunal of Western Australia Act 1992*.

97UG. Documents and information to be given to employee before EEA signed

- (1) An employer must not make an EEA with an employee unless he or she has given a copy of certain documents —
- (a) to the employee; or

- (b) if the employee is a represented person, to his or her representative.
- (2) The documents are —
- (a) the proposed EEA;
 - (b) the information statement prescribed under section 97UI; and
 - (c) any —
 - (i) award; or
 - (ii) relevant order as defined in section 97VR,
that will extend to the employee if the EEA does not take effect.
- (3) It is sufficient for the purposes of subsections (1) and (2)(c)(i) if the employer gives a document —
- (a) containing a summary of the award approved by the Registrar for the purposes of this section; and
 - (b) having a statement at the head of the document to the effect that it is a summary of the award so approved.
- (4) The documents must be given under subsection (1) —
- (a) in the case of a new employee, not less than 5 days before the EEA is signed by the employee or his or her representative, as the case may be; or
 - (b) in the case of an existing employee, not less than 14 days before the EEA is so signed.
- (5) An employer must also comply with any regulations prescribing requirements for the giving of information or documents to an employee before an EEA is made.

- (6) A contravention of subsection (1) or (5) is not an offence but will, under Schedule 4 clause 1(1)(d), prevent the EEA from being in order for registration.
- (7) In subsections (2)(c)(i) and (3) —
“award” includes —
 - (a) an enterprise order; and
 - (b) an award under the *Coal Industry Tribunal of Western Australia Act 1992*.

97UH. Application of section 97UG if draft EEA amended

If —

- (a) an employer has complied with section 97UG in relation to a proposed EEA; and
- (b) the proposed EEA is later amended, whether once or more than once, before it is signed —
 - (i) by the employee or his or her representative; and
 - (ii) if section 97UM applies to the EEA, by a section 97UM signatory,

the employer is not required to comply with that section again in relation to the proposed EEA unless the employee in writing requests him or her to do so.

97UI. EEA information statement

- (1) The Registrar is to prescribe, by order published in the *Gazette*, a form of information statement that is to be given to employees under section 97UG(2)(b).
- (2) The form must include information about the following matters —
 - (a) the effect of section 97UE;
 - (b) the employee’s rights under section 97UJ in relation to bargaining agents;

- (c) the requirements of sections 97XZ, 97Y, 97YA, 97YB and 97YF; and
 - (d) the commencement and expiry of an EEA as provided for by sections 97UQ, 97UR and 97US.
- (3) The form may contain other information that the Registrar considers should be included.

97UJ. Bargaining agents

- (1) An employer or employee may, by instrument in writing, appoint a person to be his or her bargaining agent —
- (a) for the negotiation and making of an EEA;
 - (b) in connection with the registration of an EEA;
 - (c) for the negotiation and making of a cancellation agreement; or
 - (d) for the purpose of acting for him or her in connection with any question, dispute or difficulty that has arisen or may arise out of or in the course of the employment.
- (2) Any person may be appointed as a bargaining agent, including an organization or association that is registered under Part II Division 4.
- (3) An appointment of a bargaining agent may be terminated at any time by notice of termination given in writing to the agent.
- (4) A copy of an instrument of appointment or a notice of termination must be given to the other party.
- (5) For the purposes of section 77A of the *Legal Practitioners Act 1893* a bargaining agent is authorised —
- (a) to appear for a party in proceedings as mentioned in section 97WJ; and

- (b) to provide advice and other services in performing the functions referred to in subsection (1).
- (6) Subject to section 112A(1a)(c)(i), subsection (1)(d) does not affect the requirement of that section that only a person who is registered under that section may appear as an agent under section 31, 81E or 91.

97UK. Prohibited conduct relating to bargaining agents

- (1) An employer or employee or a representative must not refuse to recognise a bargaining agent of the other party if section 97UJ(4) has been complied with.
- (2) An employer or employee or a representative must not coerce or induce, or attempt to coerce or induce, the other party —
 - (a) to appoint, or not to appoint, a particular person as a bargaining agent; or
 - (b) to terminate the appointment of a bargaining agent.
- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

Division 3 — Form and content of EEA

97UL. Formalities

- (1) An EEA must —
 - (a) be in writing;
 - (b) name the employer and employee who are parties to it;
 - (c) specify whether the employment to which it relates is full-time, part-time or casual; and

- (d) be signed by —
 - (i) the employer; and
 - (ii) the employee, or where applicable, his or her representative.
- (2) An EEA may be signed on behalf of a body corporate by an authorised officer, and need not be made under its seal.
- (3) The signature of —
 - (a) the employer; and
 - (b) the employee or, where applicable, his or her representative,

must be witnessed by a person who has reached 18 years of age and is not a party to the EEA.

97UM. Additional formalities for EEA made with employee under 18

- (1) This section applies to an EEA made with a person as the employee who —
 - (a) is under 18 years of age; and
 - (b) is not a represented person.
- (2) For the purposes of this Act or any other law, the EEA can only have effect if after it has been signed by the employee it is also signed —
 - (a) by a person who is legally responsible for the day to day care and welfare of the employee; or
 - (b) in circumstances prescribed by the regulations, by a person who belongs to a class of persons so prescribed.
- (3) The signature of a person who signs an EEA under subsection (2) must be witnessed by a person who has reached 18 years of age and is not a party to the EEA.

- (4) Subject to subsections (2) and (3), an EEA to which this section applies binds the employee as if he or she were of full age.

97UN. EEA must provide for resolution of disputes

- (1) An EEA must include provisions for the resolution of any question, dispute or difficulty that arises out of or in the course of the employment.
- (2) EEA dispute provisions cannot confer jurisdiction on an arbitrator, including a relevant industrial authority acting under a provision mentioned in section 97UP, to enforce an EEA by making an order or determination that an industrial magistrate's court may make under section 83.
- (3) EEA dispute provisions have effect subject to Division 8.
- (4) The regulations may prescribe model provisions as a guide to the kind of provisions that may be inserted in an EEA for the purposes of subsection (1).
- (5) An EEA that sets out the model provisions in the way provided for by the regulations is to be taken to comply with subsection (1).

97UO. What must be included in EEA dispute provisions

- (1) EEA dispute provisions must, if section 97UP does not apply —
 - (a) provide for —
 - (i) the referral to a single arbitrator of any question, dispute or difficulty that arises out of or in the course of the employment; and
 - (ii) the manner in which the referral is to be made;

- (b) provide for the appointment of an arbitrator by —
 - (i) naming the arbitrator, and if desired any alternate arbitrator; or
 - (ii) setting out how an arbitrator is to be appointed;and
 - (c) specify the means for making any new appointment that may be required.
- (2) EEA dispute provisions must, including where section 97UP applies —
- (a) require the parties to confer together and make a genuine attempt to settle any question, dispute or difficulty that arises out of or in the course of the employment;
 - (b) comply with any requirement of the regulations that specifies any step, series of steps or process that is to be part of the EEA dispute provisions;
 - (c) comply with any requirement of the regulations that limits the time that the EEA dispute provisions may allow for —
 - (i) doing any act;
 - (ii) taking any step or series of steps; or
 - (iii) completing any process,specified in the regulations; and
 - (d) specify how any costs of an arbitration are to be borne, which provision cannot make an employee liable for more than the share of those costs that is prescribed by the regulations at the time when the EEA is made.

97UP. Industrial authority may be specified as arbitrator

EEA dispute provisions may provide for a party to refer to the relevant industrial authority, for arbitration in accordance with section 97WI, any question, dispute or difficulty that arises out of or in the course of the employment.

Division 4 — Commencement, duration and variation

97UQ. Commencement of EEA for new employee

- (1) An EEA made with a new employee may take effect before it is registered under Division 5, but under section 97UZ will automatically terminate if it is not lodged for registration as mentioned in that section.
- (2) An EEA referred to in subsection (1) takes effect on —
 - (a) the day on which the employment commences; or
 - (b) a later day provided for in the EEA.

97UR. Commencement of EEA for existing employee

- (1) An EEA made with an existing employee does not have effect unless it is registered under Division 5.
- (2) An EEA referred to in subsection (1) takes effect on —
 - (a) the day after the day on which it is registered under Division 5; or
 - (b) a later day provided for in the EEA.

97US. Expiry

- (1) An EEA must provide for the day on which it expires which cannot be more than 3 years from and including the day on which it takes effect under section 97UQ or 97UR.

- (2) The expiry of an EEA does not of itself terminate the contract of employment between the employer and the employee.

97UT. Employment conditions on expiry of EEA

- (1) On the expiry of an EEA —
- (a) any relevant award provisions extend to the employee unless a new EEA then takes effect; and
 - (b) to the extent that paragraph (a) does not apply, the employment of the employee becomes subject to a contract of employment containing the same provisions as those of the EEA that has expired other than —
 - (i) the provision specifying the term of the EEA; and
 - (ii) the EEA dispute provisions.
- (2) A contract referred to in subsection (1)(b) —
- (a) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee; and
 - (b) has effect regardless of the provisions of any contract of employment referred to in section 97UE(2) between the employer and the employee.

97UU. No power to vary an EEA

- (1) The parties to an EEA cannot vary the provisions of the EEA once it has been signed by —
- (a) the employer; and

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(b) the employee or, where applicable, his or her representative,

or, if section 97UM applies to the EEA, once it has been signed by the employer, the employee and the section 97UM signatory.

- (2) Subsection (1) applies even though the EEA has not taken effect.
- (3) However, subsection (1) does not affect the provisions of —
 - (a) section 97UV relating to the cancellation of an EEA; or
 - (b) sections 97VE and 97VO relating to the revision of an EEA so that it is in order for registration.

97UV. Cancellation of EEA

- (1) The parties to an EEA may at any time make an agreement in writing cancelling the EEA with effect on and from a specified day.
- (2) Section 97UT applies on the cancellation of an EEA that has taken effect as if the EEA had expired.

97UW. Termination of contract of employment

The termination of the contract of employment of an employee terminates an EEA that applies to the employment.

Division 5 — Registration of EEAs

Subdivision 1 — Preliminary

97UX. Delegation by Registrar

- (1) The Registrar may delegate to an officer of the Commission the performance of a function of the Registrar under this Division, other than this power of delegation.
- (2) A delegation —
 - (a) must be made by instrument in writing; and
 - (b) may be either general or as otherwise provided by the instrument.
- (3) An officer of the Commission performing a function under this Division is to be taken to do so in accordance with the terms of a delegation under this section, unless the contrary is shown.
- (4) A function performed by an officer of the Commission as a delegate of the Registrar is to be taken to be performed by the Registrar.

Subdivision 2 — Registration

97UY. Lodgment for registration

- (1) A party to an EEA may, in accordance with the regulations, lodge it with the Registrar for registration.
- (2) An EEA must be lodged not later than the end of the period beginning with the day of execution and ending with the 21st day after that day.
- (3) The Registrar is not to accept an EEA for registration if —
 - (a) it is presented for lodgment after the end of the period referred to in subsection (2); or

- (b) any provision of the regulations relating to lodgment has not been complied with.
- (4) The Registrar must issue to a person who has duly lodged an EEA under this section a receipt showing the day of lodgment.
- (5) The receipt must be issued within 7 days after the day of lodgment.
- (6) In subsection (2) —
“day of execution” means —
 - (a) the day on which the EEA was signed by —
 - (i) the employer;
 - (ii) the employee or, where applicable, his or her representative; and
 - (iii) if section 97UM applies, the section 97UM signatory;
 - or
 - (b) if they signed on different days, the latest of those days.

97UZ. Failure to lodge EEA made with new employee

If an EEA made with a new employee —

- (a) has taken effect; but
- (b) is not lodged for registration within the period allowed by section 97UY(2),

it ceases to have effect for the purposes of this Part immediately after the expiry of that period.

97V. Recovery of money

- (1) Where section 97UZ applies, either party may, subject to subsection (2), recover from the other any amount which, if the EEA had not taken effect, he or she —
 - (a) would have been entitled to receive; or

(b) would not have been required to pay,

as the case may be, in respect of the period allowed by section 97UY(2) for lodgment.

- (2) The entitlement of an employee is to be determined for the purposes of subsection (1) as if any relevant award provision extended to and bound the employer and the employee during the period referred to in that subsection.
- (3) An amount referred to in subsection (1) may be recovered by action in an industrial magistrate's court.

97VA. Employment conditions of new employee if EEA not lodged for registration within allowed period

- (1) If an EEA ceases to have effect under section 97UZ —
 - (a) any relevant award provisions extend to the employee; or
 - (b) if there are no such provisions, his or her employment becomes subject to a contract of employment containing the same provisions as those of the EEA that was not lodged for registration within the allowed period, other than —
 - (i) the provision specifying the term of the EEA; and
 - (ii) the EEA dispute provisions.
- (2) A contract referred to in subsection (1)(b) —
 - (a) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee; and
 - (b) has effect regardless of the provisions of any contract of employment referred to in section 97UE(2) between the employer and the employee.

97VB. Registrar to be satisfied that EEA in order for registration

Where an EEA is lodged under section 97UY, the Registrar must satisfy himself or herself that it is in order for registration as required by the provisions of Schedule 4.

97VC. Powers conferred on Registrar

- (1) The Registrar may —
 - (a) meet with the parties; and
 - (b) otherwise obtain information in any way that the Registrar thinks appropriate,for the purposes of section 97VB.
- (2) A meeting may be held with the parties together or separately, and a party may be represented at a meeting by a bargaining agent.
- (3) A party to an EEA that has been lodged for registration, or his or her bargaining agent, may make written submissions to the Registrar for the purposes of section 97VB.
- (4) For the purposes of performing the function in section 97VB the Registrar, or a delegate of the Registrar, is an authorised person within the meaning of that term in Schedule 5.
- (5) In this section —
“**party**” includes a section 97UM signatory.

97VD. Registrar to notify parties of certain deficiencies in EEA

- (1) This section applies where the Registrar is not satisfied that an EEA is in order for registration for one or more of the following reasons —
 - (a) it does not comply with section 97UL, 97UN or 97US;
 - (b) it does not pass the no-disadvantage test;
 - (c) it purports to provide for a condition of employment that is less favourable to the employee than a minimum condition of employment under the MCE Act.
- (2) Where this section applies the Registrar must give notice in writing to the parties setting out —
 - (a) the deficiencies in the EEA that, in his or her opinion, will make it necessary for the Registrar to refuse to register it; and
 - (b) the terms of subsection (1) of section 97VE and the period within which the parties may comply with that subsection.

97VE. Parties may correct deficiencies

- (1) If a notice is given to the parties under section 97VD they may, in accordance with the regulations, lodge a revised EEA with the Registrar within the time specified in the notice.
- (2) A revised EEA so lodged is to be treated as if it were an EEA duly lodged under section 97UY.
- (3) Section 97VD does not apply to a revised EEA lodged under subsection (1).

- (4) If —
- (a) the Registrar has given a notice under section 97VD; but
 - (b) a revised EEA is not lodged in accordance with subsection (1),

the Registrar must determine under section 97VG that registration of the EEA is refused.

97VF. Registration

- (1) If the Registrar is satisfied that an EEA is in order for registration, the Registrar must —
- (a) register the EEA; and
 - (b) give to each party notice in writing of the registration and of the day on which it occurred, not later than 7 days after that day.
- (2) The Registrar is not to register an EEA before the 14th day after the day on which it was lodged under section 97UY.

97VG. Refusal of registration

If the Registrar is not satisfied that an EEA is in order for registration, the Registrar must —

- (a) determine that registration is refused; and
- (b) within 7 days after making that determination, give to each party a notice in writing of the refusal and of the reasons for it.

97VH. When refusal has effect

- (1) A refusal of registration comes into force —
- (a) on the expiry of the period of 14 days allowed by section 97VM(2) for the bringing of an

appeal against the refusal without an appeal being duly brought; or

- (b) if an appeal is duly brought, on the failure of the appeal.

- (2) For the purpose of subsection (1)(b) an appeal fails if —

- (a) the refusal of registration is confirmed under section 97VP(2); or
- (b) the appeal is withdrawn or is dismissed by the relevant industrial authority for want of prosecution.

97VI. Cessation of EEA for new employee where registration refused

If an EEA made with a new employee —

- (a) has taken effect; but
- (b) is refused registration under section 97VG,

the EEA ceases to have effect for the purposes of this Part as from the day on which the refusal comes into force under section 97VH.

97VJ. Recovery of money

- (1) Where section 97VI applies either party may, subject to subsection (2), recover from the other any amount which, if the EEA had not taken effect, he or she —
 - (a) would have been entitled to receive; or
 - (b) would not have been required to pay,

as the case may be, in respect of the period between the day when the EEA took effect and the day on which the refusal of registration came into force.

- (2) The entitlement of an employee is to be determined for the purposes of subsection (1) as if any relevant award

provision extended to and bound the employer and the employee during the period referred to in that subsection.

- (3) An amount referred to in subsection (1) may be recovered by action in an industrial magistrate's court.

97VK. Employment conditions of new employee if registration refused

- (1) If an EEA ceases to have effect under section 97VI —
- (a) any relevant award provisions extend to the employee; or
 - (b) if there are no such provisions, his or her employment becomes subject to a contract of employment containing the same provisions as those of the EEA that was refused registration, other than —
 - (i) the provision specifying the term of the EEA; and
 - (ii) the EEA dispute provisions.
- (2) A contract referred to in subsection (1)(b) —
- (a) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee; and
 - (b) has effect regardless of the provisions of any contract of employment referred to in section 97UE(2) between the employer and the employee.

97VL. Registrar to provide copy

- (1) The Registrar must give a copy of an EEA that is registered —
- (a) to the employer and the employee; and

- (b) where applicable, to the employee's representative.
- (2) The Registrar must comply with subsection (1) not later than 7 days after the day on which the EEA is registered —
 - (a) under section 97VF; or
 - (b) by order of a relevant industrial authority under section 97VP(2)(b).

Subdivision 3 — Appeal against refusal of registration

97VM. Appeal against refusal of registration

- (1) The employer or the employee under an EEA may appeal to the relevant industrial authority against a refusal by the Registrar to register the EEA.
- (2) An appeal must be brought within 14 days after the day on which the party received notice of the refusal under section 97VG.
- (3) The time limit specified in subsection (2) cannot be extended under section 27(1)(n).

97VN. Relevant industrial authority to notify parties of certain deficiencies in EEA

- (1) This section applies on an appeal against a refusal by the Registrar to register an EEA for one or more of the following reasons —
 - (a) it does not comply with section 97UL, 97UN or 97US;
 - (b) it does not pass the no-disadvantage test;
 - (c) it purports to provide for a condition of employment that is less favourable to the employee than a minimum condition of employment under the MCE Act.

- (2) Where this section applies the relevant industrial authority may give notice in writing to the parties setting out —
- (a) the deficiencies in the EEA that, in the opinion of that authority, make it necessary for registration to be refused; and
 - (b) the terms of subsection (1) of section 97VO and the period within which the parties may comply with that subsection.

97VO. Parties may make corrections

- (1) If a notice is given to the parties under section 97VN they may, in accordance with the regulations, lodge a revised EEA with the relevant industrial authority within the time specified in the notice.
- (2) If —
- (a) a revised EEA is so lodged; and
 - (b) the relevant industrial authority is satisfied that it is in order for registration,
- the authority may cause it to be registered by disposing of the appeal in the manner provided for by section 97VP(2)(b)(i).
- (3) If —
- (a) the relevant industrial authority has given a notice under section 97VN; but
 - (b) a revised EEA is not lodged in accordance with subsection (1),

the authority must dispose of the appeal in the manner provided for by section 97VP(2)(a).

97VP. Determination of appeal

- (1) In determining an appeal the relevant industrial authority is not limited to the material that was before the Registrar, but may inform itself in such manner as it thinks fit.
- (2) On the determination of an appeal the relevant industrial authority may —
 - (a) confirm the refusal of registration; or
 - (b) set aside the refusal and —
 - (i) order the Registrar to register the EEA; or
 - (ii) remit the matter to the Registrar for reconsideration with any direction or recommendation the relevant industrial authority thinks fit.
- (3) The relevant industrial authority must give the parties notice in writing of its determination within 7 days after it is made.

97VQ. Proceedings under this Subdivision

- (1) The Commission may make regulations under section 113 providing for the practice and procedure to be followed for the purposes of appeals under this Subdivision.
- (2) Subject to subsection (1), the relevant industrial authority may exercise such of the powers set out in sections 27, 28 and 33 as the authority considers it necessary or expedient to exercise for the purposes of an appeal under this Subdivision.

Division 6 — No-disadvantage test

Subdivision 1 — Definition

97VR. Definitions

In this Subdivision —

“**award**” includes an award under the *Coal Industry Tribunal of Western Australia Act 1992*;

“**comparable award**”, in relation to an employee, means an award or awards regulating the terms and conditions of employment of employees engaged in the same kind of work as the employee;

“**relevant order**” means any order under this Act that is prescribed by the regulations for the purposes of section 97VS.

97VS. No-disadvantage test defined

- (1) For the purposes of Schedule 4 clause 1(1)(e), an EEA passes the no-disadvantage test if it does not disadvantage the employee in relation to the terms and conditions of his or her employment.
- (2) An EEA disadvantages an employee as mentioned in subsection (1) only if its provisions result, on balance, in a reduction in the overall entitlements of the employee under —
 - (a) an award; or
 - (b) a relevant order,to which this subsection applies.
- (3) Despite subsection (2), an EEA is to be taken to disadvantage the employee as mentioned in subsection (1) if —
 - (a) it confers on the employer a power to change any term or condition of the employment without the consent of the employee; and

(b) the employer could exercise the power in a way that would result, on balance, in a reduction in the overall entitlements of the employee referred to in subsection (2).

(4) Subsection (2) applies to —

- (a) an award; or
- (b) a relevant order,

that the Registrar determines, whether under section 97VT or otherwise, would otherwise extend to the employee.

(5) If the Registrar is satisfied that there is no award that would otherwise extend to the employee, subsection (2) applies to —

- (a) any award, including an award under the Commonwealth Act, that the Registrar determines, whether under section 97VT or otherwise, to be a comparable award; and
- (b) a relevant order.

(6) If —

- (a) the Registrar is not able to determine an award for the purposes of subsection (4) or (5); or
- (b) section 97VT(2)(b) applies,

the EEA is to be taken not to disadvantage the employee in relation to the terms and conditions of his or her employment.

Note: By virtue of section 5(2) of the *Minimum Conditions of Employment Act 1993* a provision of an employer-employee agreement is of no effect if it is less favourable to the employee than a minimum condition of employment under that Act.

97VT. Determination of award, comparable award or relevant order by Registrar

- (1) If an employer —
 - (a) proposes to enter into an EEA; but
 - (b) is unsure which award, comparable award or relevant order will be relevant to the employment for the purposes of section 97VS,

the employer may apply in writing to the Registrar for the making of a determination of that matter.
- (2) Upon such an application being made the Registrar must —
 - (a) determine which award, comparable award or relevant order will be relevant for the purposes of section 97VS; or
 - (b) determine that there is no such award, comparable award or relevant order.
- (3) A determination under subsection (2) is binding on the Registrar for the purposes of section 97VS if the EEA concerned is lodged for registration under Division 5, unless the Registrar considers that the circumstances existing at the time when the determination was made have changed in a material way.

97VU. All entitlements to be considered

In comparing the entitlements of an employee under an EEA to the entitlements that would be provided to the employee under —

- (a) an award or a comparable award; or

(b) a relevant order,

the Registrar must take into account all relevant benefits whether in the form of money or otherwise.

97VV. Particular provision for case where Supported Wage System applies

An EEA does not disadvantage an employee in relation to his or her employment by reason only of a reduction of the employee's wages if —

- (a) the employee is eligible for the Supported Wage System; and
- (b) the EEA provides for the payment of wages to the employee at a rate that is not less than the rate set in accordance with that System for persons of a class that includes the employee.

Subdivision 2 — Principles to be followed in application of no-disadvantage test

97VW. Definition

In this Subdivision —

“**Commission**” means the Commission in Court Session.

97VX. Commission to establish principles and guidelines

- (1) The Commission must prepare an instrument setting out the principles and guidelines that are to be followed by the Registrar in determining whether an EEA passes the no-disadvantage test.
- (2) The instrument must not be inconsistent with this Part.
- (3) Section 43(7), (8) and (9) of the *Interpretation Act 1984* apply to the instrument as if it were subsidiary legislation.

- (4) Subject to section 97W, the Commission may amend the instrument or revoke it and substitute another instrument for it.
- (5) The Commission must cause the instrument, and any amendment or substituted instrument, to be published in the *Industrial Gazette* and —
 - (a) in a newspaper circulating throughout the State; or
 - (b) on an internet website maintained by the Commission.

97VY. Registrar and Commission to give effect to instrument

The provisions of an instrument under section 97VX are to be complied with —

- (a) by the Registrar and officers of the Commission in making determinations for the purposes of paragraph (e) of Schedule 4 clause 1(1); and
- (b) by the relevant industrial authority in the determination of an appeal under section 97VP, so far as it relates to a determination under that paragraph.

97VZ. Minister and certain bodies may seek amendment

- (1) The Minister or a peak industrial body may at any time apply to the Commission to have the instrument under section 97VX —
 - (a) amended so that it makes provision to the effect set out in the application; or
 - (b) replaced by a new instrument that makes provision to the effect set out in the application.
- (2) If an application is so made the Commission may —
 - (a) exercise its powers under section 97VX(4); or

(b) decline to do so.

(3) In subsection (1) —

“**peak industrial body**” means the Council, the Chamber and the Mines and Metals Association.

97W. Requirement for public comment

Before the Commission exercises any power in section 97VX(4), whether on an application under section 97VZ or otherwise, it must call for public comment in accordance with section 97WA.

97WA. Public comment on amendment or substitute instrument

(1) Where this section applies the Commission must make available for public comment a draft (“**the exposure draft**”) of —

- (a) any proposed amendment to the instrument under section 97VX; or
- (b) the instrument that is proposed to be substituted for that instrument,

as the case may be.

(2) The Commission must —

- (a) cause a notice giving a general description of the exposure draft to be published in a daily newspaper circulating throughout the State; and
- (b) include in the notice the following information —
 - (i) the places at which a copy of the exposure draft may be obtained;
 - (ii) a statement that written submissions on the exposure draft may be made to the Commission by any person within a specified period; and

- (iii) the address to which the submissions may be delivered or posted.
- (3) The period specified under subsection (2)(b)(ii) must be not less than 30 days after notice has been published under subsection (2)(a).
- (4) The Commission must have regard to any submission made in accordance with the notice.

Division 7 — Register

97WB. Definition

- (1) In this Division —
 - “**protected information**” means —
 - (a) the name of the employee under an EEA;
 - (b) the provisions of an EEA, or any particular provision, declared under section 97WE to be exempt from the operation of section 97WD(1); and
 - (c) the address of the employee under an EEA.
- (2) In subsection (1)(a) and (b) —
 - “**EEA**” does not include an EEA that is made with a person who is an employee within the meaning in the *Public Sector Management Act 1994*.

97WC. Register

- (1) The Registrar must keep a register for the purposes of Division 5.
- (2) The register —
 - (a) must record particulars of every EEA that is registered under Division 5; and
 - (b) may do so in a form and manner determined by the Registrar.

- (3) The Registrar may determine that the register is to be in the form of information stored on a computer.

97WD. Inspection of register

- (1) The Registrar must allow any person, on payment of the fee (if any) prescribed by the regulations, to inspect an EEA registered under Division 5.
- (2) Subsection (1) does not include the inspection of protected information.

97WE. Commission may exempt an EEA from inspection

- (1) The Commission may, by order —
 - (a) exempt the provisions of an EEA, or any particular provision, from the operation of section 97WD(1); or
 - (b) vary an order so made,if it considers that it is in the public interest to do so.
- (2) An order under subsection (1) may be revoked by the Commission if it considers that the continuation of the order is no longer in the public interest.
- (3) The powers of the Commission under this section are exercisable on application made by a party to the EEA concerned.
- (4) This section does not apply to an EEA that is made with a person who is an employee within the meaning in the *Public Sector Management Act 1994*.

97WF. Protected information not to be disclosed

- (1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of protected information obtained in the course of performing functions under this Part except —
 - (a) in the course of performing those functions;

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- (b) as required or allowed by this Act or any other written law;
- (c) for the purpose of proceedings in a court;
- (d) with the written authority of the employer or employee to whom the protected information relates; or
- (e) in other circumstances prescribed by the regulations.

Penalty: \$5 000.

- (2) Subsection (1) applies to a person who —
 - (a) holds or has held office as the Registrar or a Deputy Registrar; or
 - (b) otherwise is or has been an officer of the Commission.

97WG. Certified copies

- (1) The Registrar or a Deputy Registrar may, on payment of the fee (if any) prescribed by the regulations, issue to a party or a section 97UM signatory to an EEA that is registered under Division 5 a certified copy of the EEA.
- (2) In all courts and proceedings a certified copy so issued is evidence of the EEA of which it is a copy.
- (3) A document that purports to be a certified copy of an EEA issued by the Registrar or a Deputy Registrar is to be taken to be such a copy unless the contrary is proved.

Division 8 — Disputes

97WH. Definitions

In this Division —

“arbitrator” means —

- (a) an arbitrator appointed by or under EEA dispute provisions; or
- (b) where a provision made under section 97UP applies, a relevant industrial authority;

“dispute” means a question, dispute or difficulty that has arisen out of or in the course of employment under an EEA.

97WI. Arbitration jurisdiction of relevant industrial authority

- (1) A relevant industrial authority has jurisdiction to deal with and determine any dispute that is referred to the authority for arbitration under a provision of the kind mentioned in section 97UP that is included in EEA dispute provisions.
- (2) In conducting an arbitration the relevant industrial authority —
 - (a) must comply with the provisions of the EEA concerned; and
 - (b) may exercise powers under this Act, other than this Division, only to the extent that the authority is empowered by the provisions of the EEA to do so.

97WJ. Representation

An employer or an employee may be represented by his or her bargaining agent in connection with a

dispute, including in proceedings before an arbitrator under EEA dispute provisions.

97WK. Referral to relevant industrial authority where delay alleged in dispute resolution

- (1) This section applies if —
 - (a) a dispute has arisen (“**the original dispute**”); and
 - (b) a party to the EEA concerned alleges that the other party has failed to comply with any time limit included in the EEA dispute provisions under section 97UO(2)(c).
- (2) The party who alleges the non-compliance may refer the allegation to the relevant industrial authority.
- (3) A referral under subsection (2) operates —
 - (a) as a bar to the referral of the original dispute to arbitration; or
 - (b) as a stay of any arbitration proceedings that have been commenced in respect of that dispute,unless the referral is dismissed under subsection (6) or is sooner withdrawn.
- (4) If the relevant industrial authority is satisfied that the allegation is proved it must enter on and complete an arbitration of the original dispute in place of any other arbitrator provided for by, or that could be or has been appointed under, the EEA dispute provisions.
- (5) The relevant industrial authority —
 - (a) has jurisdiction to act under subsection (4) despite the EEA dispute provisions; and

- (b) when doing so has the same powers and duties in respect of the original dispute as an arbitrator acting under those provisions would have had.
- (6) If the relevant industrial authority is not satisfied that the allegation is proved —
 - (a) the authority must order that the matter be dismissed; and
 - (b) the EEA dispute provisions have effect as if there had been no referral under this section.

97WL. Several disputes may be subject of one arbitration

- (1) This section applies where —
 - (a) 2 or more employees have a dispute with the same employer;
 - (b) the issues involved are substantially the same or similar in each case; and
 - (c) the EEA dispute provisions in each EEA are substantially the same.
- (2) The employees may agree in writing that, subject to the approval of the arbitrator, all matters are to be heard and determined at the same time in one arbitration proceeding.
- (3) An agreement under subsection (2) must be made before an arbitrator has entered on the arbitration.
- (4) Subject to the approval mentioned in subsection (2), the employer must ensure that effect is given to the agreement, so long as it remains in force.

97WM. Power of arbitrator to obtain information

An arbitrator acting under EEA dispute provisions is an authorised person within the meaning of that term in Schedule 5.

97WN. Orders and determinations of arbitrators

- (1) This section applies where —
 - (a) a dispute has been referred to an arbitrator under EEA dispute provisions; or
 - (b) a relevant industrial authority is acting under section 97WK(4).
- (2) The powers conferred by this section are subject to the limitations that they do not empower an arbitrator —
 - (a) to enforce an EEA by making any order or determination that an industrial magistrate's court may make under section 83; or
 - (b) to make an order or determination that is in conflict, or is inconsistent, with the EEA or the contract of employment concerned.
- (3) An arbitrator may —
 - (a) make one or more of the orders or determinations described in subsection (4); or
 - (b) refuse to make any order or determination if he or she considers that —
 - (i) the referral was vexatious; or
 - (ii) the subject matter of the dispute is lacking in substance.
- (4) An arbitrator may —
 - (a) determine the meaning or effect of the EEA concerned;
 - (b) order a party —
 - (i) to do a specified thing; or
 - (ii) cease any specified activity;

or

- (c) make any other order or determination that he or she considers necessary or expedient to resolve the dispute.
- (5) If there is any conflict or inconsistency between the provisions of subsections (3) or (4) on the one hand and those of the EEA or the contract of employment concerned on the other, the latter prevail.

97WO. Further provisions about orders and determinations

An order or determination of an arbitrator —

- (a) must be in writing and accompanied by the reasons for its making;
- (b) is final and not subject to appeal; and
- (c) must be complied with by the employer and the employee unless they agree in writing not to give effect to it.

97WP. Enforcement of orders and determinations

- (1) An order or determination referred to in section 97WN(4)(b) and (c) made by an arbitrator that is a relevant industrial authority is enforceable under section 83.
- (2) Where an order or determination referred to in section 97WN(4)(b) and (c) is made by an arbitrator that is not a relevant industrial authority, the arbitrator must, at the request of a party and in accordance with any requirements of the regulations, lodge a copy of the order or determination with the Commission.
- (3) An order or determination lodged under subsection (2) is enforceable under section 83 as if it were an order of the Commission.

97WQ. Industrial magistrate's court not bound by interpretations of EEA

In any proceedings under section 83 for the enforcement of a provision of an EEA, an industrial magistrate's court is not bound by a determination of the meaning or effect of the provision made by an arbitrator under the EEA dispute provisions.

Division 9 — EEAs for persons with mental disabilities

Subdivision 1 — Preliminary

97WR. Definitions

In this Division —

“applicant” means the person who has made an application under section 97WV or 97XM;

“Guardianship and Administration Board” or **“Board”** means the Board established by section 5 of the *Guardianship and Administration Act 1990*;

“medical practitioner” means a person registered under the *Medical Act 1894*;

“mental disability” includes —

- (a) an intellectual disability;
- (b) a psychiatric condition;
- (c) an acquired brain injury; or
- (d) dementia;

“person with a mental disability” means the person with a mental disability who has made an application under section 97WV or 97XM, or on whose behalf such an application has been made;

“proposed representative” has the meaning given by section 97WV(3) or 97XM(3), as the case may be;

“revocation order” has the meaning given by section 97XI(1).

97WS. Relationship of this Division to *Guardianship and Administration Act 1990*

- (1) An order cannot be made under section 97WZ or 97XN approving a representative of a person if a guardianship order is in force under which there is appointed —
 - (a) a plenary guardian of the person; or
 - (b) a limited guardian of the person in whom are vested functions that are conferred on a representative by sections 97UD and 97XD.
- (2) The making of a guardianship order in respect of a person automatically revokes an order under section 97WZ or 97XN approving a representative of the person if under the guardianship order there is appointed —
 - (a) a plenary guardian of the person; or
 - (b) a limited guardian of the person in whom are vested functions that are conferred on a representative by sections 97UD and 97XD.
- (3) The revocation of an order by operation of subsection (2) does not affect anything done in good faith by the representative concerned before he or she received notice of the revocation.
- (4) In this section and in section 97WU the expressions **“guardianship order”**, **“plenary guardian”** and **“limited guardian”** have the same meanings as they have in the *Guardianship and Administration Act 1990*.

97WT. Registrar to notify Board of applications and orders for approval of representative

- (1) The Registrar must give the Guardianship and Administration Board notice in writing of every —
 - (a) application that is made under section 97WV or 97XM; and
 - (b) order that is made under section 97WZ or 97XN.
- (2) A notice under subsection (1)(a) must identify —
 - (a) the person with a mental disability to whom the application relates; and
 - (b) the proposed representative.
- (3) A notice under subsection (1)(b) must identify —
 - (a) the represented person; and
 - (b) the representative,to whom the order relates.
- (4) The Registrar must not dispose of an application under section 97WV or 97XM until the Board has given the Registrar the information required by section 97WU.

97WU. Board to notify Registrar of relevant guardianship orders

- (1) Where the Board receives a notice under section 97WT it must —
 - (a) inform the Registrar in writing whether or not there is any relevant guardianship order in force in respect of the person with a mental disability or the represented person, as the case may be; and
 - (b) if there is such an order in force, provide the Registrar with particulars of it.

- (2) A guardianship order is relevant for the purposes of subsection (1) if it appoints —
 - (a) a plenary guardian; or
 - (b) a limited guardian in whom are vested functions that are conferred on a representative by sections 97UD and 97XD.
- (3) Where the Board —
 - (a) has received notice under section 97WT of an order made under section 97WZ or 97XN; and
 - (b) subsequently makes a guardianship order in respect of the represented person concerned that, by operation of section 97WS(2), automatically revokes the order referred to in paragraph (a),

it must give the Registrar notice in writing of the guardianship order so made.
- (4) The Registrar must give to the representative and the employer concerned notice in writing of the revocation referred to in subsection (3).

Subdivision 2 — Approval of person to act on behalf of person with a mental disability

97WV. Application for approval

- (1) This section applies to a person —
 - (a) who has the prospect of being employed by an employer under an EEA; but
 - (b) who is in general incapable, because of a mental disability, of making reasonable decisions on matters pertaining to an employer-employee relationship.

- (2) An application may be made to the Registrar by or on behalf of a person to whom this section applies for an order approving a person to act on his or her behalf in relation to —
 - (a) the making of an EEA as provided by section 97UD; and
 - (b) the matters referred to in section 97XD(1) in connection with an EEA so made.
- (3) The person sought to be approved (“**the proposed representative**”) must be one who satisfies the requirements of section 97WY.

97WW. Requirements for application

- (1) An application under section 97WV must be made —
 - (a) in the form prescribed under section 97WX; and
 - (b) in accordance with the regulations.
- (2) The proposed representative may be the applicant.
- (3) An application must be accompanied by a certificate in respect of the person with a mental disability —
 - (a) in the form prescribed under section 97WX; and
 - (b) duly completed by a person who is stated in the form to be a medical practitioner.
- (4) The applicant must also provide such information and evidence as the Registrar may request in writing.

97WX. Forms to be prescribed

- (1) The Registrar is to prescribe, by order published in the *Gazette*, the forms that are to be used for the purposes of section 97WW.
- (2) The form of application must include provision for the proposed representative to signify his or her consent to the application.

- (3) The form of certificate must be designed to show that, in the opinion of a medical practitioner, the person with a mental disability is in general incapable, because of the disability, of making reasonable decisions on matters pertaining to an employer-employee relationship.

97WY. Who may be approved as a representative

- (1) A person may be approved under section 97WZ or 97XN only if he or she —
 - (a) is the spouse of the person with a mental disability;
 - (b) is closely associated with the person with a mental disability and has reached 18 years of age; or
 - (c) belongs to a class of persons that is prescribed by the regulations.
- (2) For the purposes of subsection (1)(b), a person is closely associated with the person with a mental disability if, and only if, the first-mentioned person —
 - (a) regularly provides or arranges for domestic services and support to; or
 - (b) maintains a close personal relationship with, the person with a mental disability.
- (3) It is immaterial for the purposes of subsection (2) whether or not the person is related in any way to the person with a mental disability.

97WZ. Approval of representative

- (1) Where an application is made under section 97WV, the Registrar must make an order approving the proposed representative if he or she is satisfied that —
 - (a) the application is not one that is prohibited by section 97WS(1);

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- (b) section 97WW has been complied with; and
 - (c) the proposed representative —
 - (i) satisfies the requirements of section 97WY; and
 - (ii) consents to the application.
- (2) The Registrar is to rely on the certificate given under section 97WW(3) and it is not his or her function to be satisfied —
- (a) that the person with a mental disability is a person to whom section 97WV applies; or
 - (b) that the certificate has been correctly given.
- (3) The Registrar must give notice in writing of the making of an order under subsection (1) within 7 days after it is made to —
- (a) the represented person, the applicant (if he or she was not the represented person) and the representative; and
 - (b) the Guardianship and Administration Board.

97X. Effect of order

An order under section 97WZ authorises the person approved by the order (“**the representative**”), so long as the order remains in force, to act on behalf of the person with a mental disability (“**the represented person**”) in relation to —

- (a) the making of one or more EEAs under section 97UD; and
- (b) the matters referred to in section 97XD(1).

97XA. Refusal of approval

If the Registrar is not satisfied as mentioned in section 97WZ(1) he or she must —

- (a) refuse to make an order under that section; and

- (b) within 7 days after doing so give the applicant and the proposed representative notice in writing of the refusal, including a statement of the reasons for it.

97XB. Appeal against refusal of approval

- (1) If the Registrar refuses to make an order under section 97WZ the person with a mental disability, or a person acting on his or her behalf, may appeal to the Commission against the refusal.
- (2) An appeal must be brought within 14 days after the day on which the applicant received notice of the refusal under section 97XA.

97XC. Determination of appeal

- (1) An appeal to the Commission under section 97XB must be heard and determined by a Commissioner.
- (2) In determining an appeal the Commission is not limited to the material that was before the Registrar, but may inform itself in such manner as it thinks fit.
- (3) On the determination of an appeal the Commission may —
 - (a) confirm the refusal to make an order;
 - (b) quash the Registrar's determination and make an order approving the proposed representative;
or
 - (c) remit the matter to the Registrar for reconsideration with any direction or recommendation the Commission thinks fit.
- (4) The Commission must give the appellant and the proposed representative notice in writing of its determination within 7 days after it is made.

Subdivision 3 — Functions of representative

97XD. Functions

- (1) In addition to his or her functions under section 97UD, a representative —
 - (a) may act on behalf of the represented person in relation to the operation and enforcement of an EEA; and
 - (b) in particular, may perform any function described in subsection (2) on behalf of the represented person.
- (2) The functions referred to in subsection (1)(b) are —
 - (a) to make a request under section 97UH;
 - (b) to appoint, or terminate the appointment of, a bargaining agent under section 97UJ;
 - (c) to make a cancellation agreement;
 - (d) to make and lodge a revised EEA under section 97VE(1) or 97VO(1);
 - (e) to recover any amount referred to in section 97V or 97VJ;
 - (f) to bring an appeal under section 97VM;
 - (g) to make an application referred to in section 97WE(3);
 - (h) to give a written authority for the purposes of section 97WF(1)(d);
 - (i) to act on behalf of the represented person for the purpose of carrying out any EEA dispute provision;
 - (j) to make a referral under section 97WK(2); and
 - (k) to refer a matter to the Commission as mentioned in section 29(1a).

97XE. Effect of acts of representative

The performance of a function referred to in section 97XD by a representative has effect as if —

- (a) it were the performance of the represented person; and
- (b) the represented person were of full legal capacity.

97XF. Duties of representative

- (1) In performing the functions referred to in section 97XD a representative is to act according to his or her opinion of the best interests of the represented person.
- (2) Without limiting subsection (1), a representative acts in the best interests of the represented person if he or she acts as far as possible —
 - (a) as an advocate of the represented person in relation to any EEA;
 - (b) in such a way as to encourage the represented person to become capable of making reasonable decisions on matters pertaining to an employer-employee relationship;
 - (c) in such a way as to protect the represented person from abuse or exploitation in employment; and
 - (d) in consultation with, and taking into account the wishes of, the represented person.
- (3) A failure of a representative to observe the duty mentioned in subsection (1) does not give rise to any liability on the part of the representative, but this does not affect the operation of —
 - (a) Subdivision 4; or
 - (b) any other written law.

**Subdivision 4 — Termination of representative's
authority to act**

97XG. Duration of order approving representative

An order under section 97WZ(1) or 97XN(1) remains in force until —

- (a) the representative resigns in accordance with section 97XH; or
- (b) the order is revoked —
 - (i) by operation of section 97WS(2); or
 - (ii) by an order (“**a revocation order**”) made under section 97XK.

97XH. Resignation of representative

- (1) A representative may give notice in writing to the Registrar of his or her wish to resign from the position of representative.
- (2) Where notice is so given the Registrar must approve the resignation.
- (3) The resignation has effect —
 - (a) on the day on which notice in writing of the approval is given to the representative by the Registrar; or
 - (b) on a later day specified by the Registrar in that notice.

97XI. Application to Board for revocation order

- (1) An application may be made to the Guardianship and Administration Board, in accordance with the regulations, for an order (“**a revocation order**”) revoking an order under section 97WZ(1) or 97XN(1).

- (2) The application may be made by —
 - (a) the represented person or a person acting on his or her behalf; or
 - (b) any other person who satisfies the Board that he or she has a sufficient interest in the application.
- (3) The application may only be made on one or more of the following grounds —
 - (a) that the represented person is no longer a person to whom section 97WV(1)(b) applies;
 - (b) that the representative has failed to act in the best interests of the represented person;
 - (c) that it is for some other reason no longer in the interests of the represented person for the representative to act on his or her behalf.

97XJ. Opportunity to be heard

- (1) The representative must be given a reasonable opportunity to be heard on an application for a revocation order.
- (2) The represented person, or another person acting on his or her behalf, must be given a reasonable opportunity to be heard if an application for a revocation order is made other than by or on behalf of the represented person.

97XK. Board may make revocation order

- (1) Where an application is made to it under section 97XI, the Board must make a revocation order if it is satisfied that —
 - (a) the grounds on which the application is made have been established; or

- (b) it is for some other reason no longer in the interests of the represented person for the representative to act on his or her behalf.
- (2) Where the Board makes a revocation order it may also exercise the power conferred on the Registrar by subsection (1) of section 97XN if it is satisfied as to the matters set out in each of the paragraphs of that subsection, other than paragraph (c).
- (3) If the Board is not satisfied as mentioned in subsection (1) it must order that the application is refused.
- (4) The executive officer of the Board must give notice in writing to the Registrar of the determination of the Board.
- (5) An order under subsection (1) or (2) takes effect —
 - (a) on the day on which notice of the order is given to the representative; or
 - (b) on a later day specified in the order.

97XL. Application of *Guardianship and Administration Act 1990* for purposes of section 97XK

- (1) The following provisions of the *Guardianship and Administration Act 1990* apply for the purposes of section 97XK, with all necessary changes, in the same way as they apply for the purposes of that Act —
 - (a) sections 113 and 114 and Schedule 1 Part B, other than clause 13;
 - (b) clause 13(2) and (3) of Schedule 1 Part B, but subject to section 97XJ of this Act.
- (2) Part 3 Divisions 2A, 3 and 4 of the *Guardianship and Administration Act 1990* do not apply to a determination of the Board under section 97XK.

Subdivision 5 — Approval of new representative

97XM. Application for new approval where representative dies or approval is revoked

- (1) This section applies where —
 - (a) a representative dies; or
 - (b) the approval of a representative is revoked under subsection (1) of section 97XK without a new representative being approved under subsection (2) of that section.
- (2) An application may be made to the Registrar by or on behalf of the person who immediately before the death or revocation was the represented person for an order approving a person to act in place of the representative who has died or whose approval has been revoked.
- (3) The person sought to be approved (“**the proposed representative**”) must be one who satisfies the requirements of section 97WY.
- (4) The application must be made —
 - (a) in the form prescribed under subsection (6); and
 - (b) in accordance with the regulations.
- (5) The proposed representative may be the applicant.
- (6) The Registrar is to prescribe, by order published in the *Gazette*, the form of application that is to be used for the purposes of subsection (2).
- (7) The form must include provision for the proposed representative to signify his or her consent to the application.
- (8) The applicant must also provide such information and evidence as the Registrar may request in writing.

97XN. Approval of representative

- (1) Where an application is made under section 97XM, the Registrar must make an order approving the proposed representative if he or she is satisfied that —
 - (a) the circumstances mentioned in subsection (1)(a) or (b) of that section apply;
 - (b) the application is not one that is prohibited by section 97WS(1);
 - (c) section 97XM(4) has been complied with; and
 - (d) the proposed representative —
 - (i) satisfies the requirements of section 97WY; and
 - (ii) consents to the application.
- (2) The Registrar must give notice in writing of an order within 7 days after it is made to —
 - (a) the represented person, the applicant (if he or she was not the represented person) and the representative; and
 - (b) the Guardianship and Administration Board.

97XO. Effect of order

An order under section 97XN authorises the person approved by the order (“**the representative**”), so long as the order remains in force, to act on behalf of the person with a mental disability (“**the represented person**”) in relation to —

- (a) the making of one or more EEAs under section 97UD; and
- (b) the matters referred to in section 97XD(1).

97XP. Refusal of approval

If the Registrar is not satisfied as mentioned in section 97XN(1) he or she must —

- (a) refuse to make an order under that section; and
- (b) within 7 days after doing so give the applicant and the proposed representative notice in writing of the refusal, including a statement of the reasons for it.

97XQ. Appeal against refusal of approval

Sections 97XB and 97XC apply where the Registrar refuses to make an order under section 97XN in the same way as they apply to a refusal of approval under section 97XA.

Subdivision 6 — Miscellaneous

97XR. Powers of Registrar

For the purpose of determining an application under section 97WV or 97XM, the Registrar may —

- (a) meet with the persons who are concerned in the application; and
- (b) otherwise obtain information in any way that the Registrar thinks appropriate.

97XS. EEA not affected by revocation of order or vacancy in position of representative

An EEA to which a represented person is a party is not affected by —

- (a) the operation of section 97WS(2); or
- (b) the fact that the position of representative is vacant because of —
 - (i) the making of a revocation order; or

- (ii) the resignation or death of the representative.

97XT. Register

- (1) The Registrar must keep a register for the purposes of this Division.
- (2) The register —
 - (a) must record particulars of every order that is made under section 97WZ or 97XN; and
 - (b) may do so in a form and manner determined by the Registrar.
- (3) The Registrar may determine that the register is to be in the form of information stored on a computer.
- (4) Subject to any restriction on inspection imposed by the regulations, the Registrar must allow any person to inspect the register on payment of the prescribed fee, if any.

97XU. Certified copies

- (1) The Registrar or a Deputy Registrar may, on payment of the fee (if any) prescribed by the regulations, issue to any person a certified copy of an entry in the register kept under section 97XT.
- (2) In all courts and proceedings a certified copy so issued is evidence of the matters to which it relates.
- (3) A document that purports to be a certified copy of an entry in the register issued by the Registrar or a Deputy Registrar is to be taken to be such a copy unless the contrary is proved.

97XV. Information not to be disclosed

- (1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of information obtained in the course of performing functions under this Division except —
- (a) in the course of performing those functions;
 - (b) as required or allowed by this Act or any other written law;
 - (c) for the purpose of proceedings in a court;
 - (d) with the written authority of each person to whom the information relates; or
 - (e) in other circumstances prescribed by the regulations.

Penalty: \$5 000.

- (2) Subsection (1) applies to a person who —
- (a) holds or has held office as the Registrar or a Deputy Registrar; or
 - (b) otherwise is or has been an officer of the Commission.

97XW. Proceedings under this Division

- (1) The Commission may make regulations under section 113 providing for the practice and procedure to be followed for the purposes of —
- (a) an application under section 97WV, 97XI or 97XM; and
 - (b) an appeal under section 97XB or 97XQ.
- (2) Provision made under subsection (1)(a) must not be inconsistent with the provisions that have effect under section 97XL(1).

- (3) Subject to subsection (1)(b), the Commission may exercise such of the powers set out in sections 27, 28 and 33 as the Commission considers it is necessary or expedient to exercise for the purposes of an appeal under section 97XB or 97XQ.

Division 10 — Certain conduct prohibited

97XX. Purpose of this Division

The purpose of this Division is to ensure, as far as possible, that employees are given —

- (a) a genuine choice as to their employment arrangements; and
- (b) sufficient information to enable them to make informed choices about those arrangements.

97XY. Enforcement of prohibitions in this Division

A contravention of section 97XZ, 97Y, 97YB, 97YD, 97YE or 97YF is not an offence but those sections —

- (a) are civil penalty provisions for the purposes of section 83E; and
- (b) in the case of sections 97YB and 97YF, are also enforceable under sections 97YC and 97YG respectively.

97XZ. Making employment, transfer or promotion conditional on EEA being entered into

- (1) Except as provided by section 97YA, a person must not —
- (a) offer a person —
 - (i) employment; or
 - (ii) a promotion or transfer in employment;
- or

- (b) intimate to a person that he or she will be —
 - (i) employed; or
 - (ii) promoted or transferred in employment,

only if the person agrees to the employment or the continued employment, as the case may be, being under an EEA to be entered into.

- (2) Except as provided by section 97YA, a person must not —

- (a) offer a represented person —
 - (i) employment; or
 - (ii) a promotion or transfer in employment;or
- (b) intimate to the representative of a represented person that the represented person will be —
 - (i) employed; or
 - (ii) promoted or transferred in employment,

only if the representative agrees to the employment or the continued employment, as the case may be, being under an EEA to be entered into.

97Y. Certain advertising

A person must not advertise the availability of employment in terms that show an intention that any employment relationship is to be under an EEA and not otherwise.

97YA. Exception to sections 97XZ and 97YB

- (1) Section 97XZ(1) or (2) or 97YB does not apply to an offer of employment made, or an intimation of employment given, that would otherwise come within that provision if —
 - (a) there is no award, enterprise order or industrial agreement containing supported wage provisions that extends to the employee; and
 - (b) the employment is being arranged through an entity that provides employment services for persons with disabilities.
- (2) In any proceedings under this Act it is for the person who made the offer or gave the intimation to satisfy the industrial magistrate's court that the exception in subsection (1) applies to the offer or intimation.
- (3) In this section and section 97YB —
“award” includes an award under the *Coal Industry Tribunal of Western Australia Act 1992*.

97YB. Employer offering EEA to give choice as to employment arrangements

- (1) This section applies where —
 - (a) a person offers —
 - (i) to employ a person; or
 - (ii) to promote or transfer an employee,in terms that the prospective or continued employment, as the case may be, is to be under an EEA to be entered into; and
 - (b) the offer does not come within the exception in section 97YA.

- (2) Where this section applies the person must also offer the employee the choice of the employment or continued employment being —
 - (a) under any relevant award or enterprise order;
or
 - (b) if there is no such award or enterprise order, under a contract of employment containing the same provisions as those of the proposed EEA other than —
 - (i) the provision specifying the term of the EEA; and
 - (ii) the EEA dispute provisions.
- (3) An offer required by subsection (2) must be made at the same time and in the same way as the offer referred to in subsection (1).

97YC. Order for compliance with section 97YB

- (1) If an industrial magistrate's court determines under section 83E that a person has contravened subsection (2) of section 97YB, the court may order the person to offer the employee the choices set out in that subsection.
- (2) It does not matter for the purposes of subsection (1) whether or not the employee agreed to the employment or continued employment being under the proposed EEA.
- (3) The court may make an order under this section in addition to imposing a penalty under section 83E.
- (4) A person must comply with an order made against him or her under this section.
Penalty: \$5 000 and a daily penalty of \$500.

97YD. Threats and intimidation

- (1) A person must not by threats or intimidation persuade or attempt to persuade another person to enter into, or not to enter into —
 - (a) an EEA;
 - (b) an EEA that contains or does not contain particular provisions; or
 - (c) a cancellation agreement.
- (2) A person must not intimidate an employee, or threaten injury or harm to the person or property of an employee, because the employee is or is not a party to —
 - (a) an EEA;
 - (b) an EEA that contains or does not contain particular provisions; or
 - (c) a cancellation agreement.
- (3) A person must not intimidate a representative, or threaten injury or harm to the person or property of a representative, because the represented person is or is not a party to —
 - (a) an EEA;
 - (b) an EEA that contains or does not contain particular provisions; or
 - (c) a cancellation agreement.

97YE. Misinformation

A person must not make or give to another person any misleading statement or information with intent to persuade that other person to enter into, or not to enter into —

- (a) an EEA;

- (b) an EEA that contains or does not contain particular provisions; or
- (c) a cancellation agreement.

97YF. Dismissal or detriment because of refusal to make or cancel EEA

An employer must not —

- (a) dismiss an employee;
- (b) alter an employee's position to his or her disadvantage;
- (c) refuse to promote or transfer an employee; or
- (d) otherwise injure an employee in relation to his or her employment,

for the reason, or for reasons that include the reason, that the employee, or where applicable the representative of a represented person, has refused to enter into —

- (e) an EEA;
- (f) an EEA that contains or does not contain particular provisions; or
- (g) a cancellation agreement.

97YG. Employee's remedy for breach of section 97YF

- (1) If under section 83E an industrial magistrate's court determines that an employer has contravened section 97YF in relation to a person who is or was an employee, the court may make an order under this section.
- (2) The court may order the employer —
 - (a) to reinstate the person if he or she was dismissed from employment; or

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(b) subject to subsection (5), to pay to the person compensation for any loss or injury suffered as a result of the contravention,

or to do both of those things.

- (3) The court may make an order under this section in addition to imposing a penalty under section 83E.
- (4) A person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.
- (5) The court does not have jurisdiction under subsection (2) to order that there be paid —
- (a) to an employee who has been dismissed, any amount exceeding 6 months' remuneration of the employee; and
 - (b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.
- (6) For the purposes of subsection (5)(a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.
- (7) A person must comply with an order made against him or her under this section.

Penalty: \$5 000 and a daily penalty of \$500.

97YH. Burden of proof

In any proceedings for a contravention of section 97YF, if it is proved that an employer took any course of action mentioned in that section against or in relation to an employee after the employee, or where applicable the representative of a represented person, refused to enter into —

- (a) an EEA;

- (b) an EEA that contains or does not contain particular provisions; or
- (c) a cancellation agreement,

it is for the employer to prove that he or she took that course of action for some reason other than because the employee or representative refused to enter into any EEA or cancellation agreement, as the case may be.

Division 11 — General

97YI. Review of Divisions 5, 6 and 7

- (1) The Commission in Court Session, as required by subsection (2), is to —
 - (a) carry out a review of the operation and effectiveness of Divisions 5, 6 and 7, including Schedules 4 and 5; and
 - (b) submit a report based on the review to the Minister with any recommendation it thinks fit to make.
- (2) A review is to be carried out —
 - (a) as soon as is practicable after the expiry of 12 months beginning with the day on which section 4 of the *Labour Relations Reform Act 2002* comes into operation; and
 - (b) at such other times as the Minister may in writing request.

97YJ. Regulations

The Governor may make any regulation that is required or permitted to be made, or necessary or convenient, for the purposes of this Part.

”.

5. Schedules 4 and 5 inserted

At the end of the Act the following Schedules are inserted —

“

Schedule 4 — Registration requirements for EEAs

[s. 97VB]

1. When EEA is in order for registration

- (1) An EEA is in order for registration if —
- (a) section 97UF(1) does not apply to it;
 - (b) it complies with sections 97UL, 97UN and 97US;
 - (c) if section 97UM applies, it has been signed in accordance with, and by a person who meets the requirements of, section 97UM(2);
 - (d) the employer has complied with section 97UG;
 - (e) it passes the no-disadvantage test;
 - (f) it does not purport to provide for a condition of employment that is less favourable to the employee than a minimum condition of employment under the *MCE Act*;

Note: If a provision of an employer-employee agreement is less favourable as mentioned in paragraph (f) it is of no effect by virtue of section 5(2) of the *Minimum Conditions of Employment Act 1993*.

- (g) in relation to the making of the EEA, the employer did not —
 - (i) offer employment to the employee; or
 - (ii) intimate to the employee that he or she would be employed,only if he or she agreed to the employment being under an EEA;
- (h) in relation to the making of the EEA, the employer did not —
 - (i) offer the employee a transfer or promotion in his or her employment; or

- (ii) intimate to the employee that he or she would be transferred or promoted, only if he or she agreed to the employment being under an EEA;
 - (i) each party appears to understand his or her rights and obligations under the EEA;
 - (j) no party or a representative was persuaded by threats or intimidation to enter into the EEA; and
 - (k) each party genuinely wishes to have the EEA registered.
- (2) Subclause (1)(g) does not apply to an offer of employment made, or an intimation of employment given, that would otherwise come within that provision if —
 - (a) there is no award or industrial agreement containing supported wage provisions that extends to the employee; and
 - (b) the employment was arranged through an entity that provides employment services for persons with disabilities.
- (3) In subclause (1)(i) and (k) —
 - “party” means —
 - (a) the employer and the employee; or
 - (b) if the employee is a represented person, the employer and the representative.

Schedule 5 — Powers to obtain information, and related provisions

[s. 97VC(4), 97WM]

1. Powers to obtain information

An authorised person may —

- (a) by notice in writing require the attendance of any person at a place and time specified in the notice;

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- (b) by notice in writing require any person to produce at a place and time specified in the notice any book, document or record that is in the possession or under the control of that person;
- (c) inspect any book, document or record produced and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents;
- (d) require any person to take an oath or make an affirmation and may administer an oath or affirmation to any person;
- (e) require any person to answer any question put to that person;
- (f) take statements and receive affidavits;
- (g) enter any relevant workplace.

2. Obstruction

A person must not hinder or obstruct an authorised person in the exercise of any power conferred by this Schedule.

Penalty: \$2 000.

3. False statements

A person must not make a statement or give an answer to an authorised person if the first-mentioned person knows that the statement or answer is false or misleading in a material particular.

Penalty: \$2 000.

4. Failure to comply with notice

- (1) A person must not, without lawful excuse, refuse or fail —
 - (a) to attend; or
 - (b) to produce a book, document or record,

as required by a notice under clause 1.

Penalty: \$2 000.

- (2) A person must not, without lawful excuse, refuse or fail —
- (a) to be sworn or make an affirmation; or
 - (b) to answer a question,
- when required to do so under clause 1.
Penalty: \$2 000.

5. Legal professional privilege

Nothing in this Schedule prevents a person from refusing to answer a question or produce a book, document or record because the answer would relate to, or the book, document or record contains, information in respect of which the person claims legal professional privilege.

6. Incriminating answers or documents

- (1) It is not a lawful excuse for the purposes of clause 4 for a person to refuse to answer a question or produce a book, document or record on the grounds that the answer or the book, document or record might tend to incriminate the person, or make the person liable to a penalty.
- (2) Despite subclause (1), an answer given or any statement made for the purposes of clause 4 is not, except in proceedings under clause 2, 3 or 4, admissible in evidence in any civil or criminal proceedings against the person giving the answer or making the statement.

”.

**Division 2 — Amendments to the *Industrial Relations Act 1979*
consequential on Division 1**

6. Section 7 amended

- (1) Section 7(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“employer-employee agreement” or **“EEA”** means
an employer-employee agreement provided for by
section 97UA;

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“representative” has the meaning given by
section 97X or 97XO;

“represented person” has the meaning given by
section 97X or 97XO;

(2) After section 7(4) the following subsection is inserted in the
appropriate numerical position —

“

(7) Notes in this Act are provided to assist understanding
and do not form part of the Act.

”

”

7. Section 29 amended

After section 29(1) the following subsection is inserted —

“

(1a) A party to an employer-employee agreement has the
right to refer to the Commission constituted by a
Commissioner where the Commission so constituted is
the relevant industrial authority under Part VID —

(a) any question, dispute or difficulty that the
Commission as so constituted has jurisdiction
to determine under section 97WI; or

(b) an allegation referred to in section 97WK(2).

”

8. Section 49 amended

After section 49(2a) the following subsection is inserted —

“

(2b) An appeal does not lie under this section from a
determination —

(a) of a relevant industrial authority —

(i) under section 97VP; or

(ii) in an arbitration under any EEA dispute
provision of the kind referred to in
section 97UP;

- or
- (b) of the Commission under section 97XC or 97XQ.

”.

9. Section 80E amended

After section 80E(2) the following subsections are inserted —

“

- (3) An Arbitrator also has the jurisdiction conferred on an Arbitrator as a relevant industrial authority by —
- (a) Part VID Division 5 Subdivision 3;
 - (b) section 97WI; and
 - (c) section 97WK.
- (4) The jurisdiction referred to in subsection (3) is to be exercised in accordance with the relevant provisions of Part VID, and the provisions of —
- (a) subsection (6); and
 - (b) section 80G,

do not apply to the exercise of any such jurisdiction by an Arbitrator.

”.

10. Section 80F amended

After section 80F(3) the following subsection is inserted —

“

- (4) A Government officer who is an employee under an employer-employee agreement may refer to an Arbitrator where an Arbitrator is the relevant industrial authority under Part VID —
- (a) any question, dispute or difficulty that an Arbitrator has jurisdiction to determine under section 97WI; and

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(b) an allegation referred to in section 97WK(2).

”.

11. Section 80R amended

After section 80R(2b) the following subsections are inserted —

“

(2c) The Board also has the jurisdiction conferred on it as a relevant industrial authority by —

(a) Part VID Division 5 Subdivision 3;

(b) section 97WI; and

(c) section 97WK.

(2d) The jurisdiction referred to in subsection (2c) is to be exercised in accordance with the relevant provisions of Part VID, and the provisions of —

(a) subsection (3); and

(b) section 80W,

do not apply to the exercise of any such jurisdiction by the Board.

”.

12. Section 80S amended

After section 80S(2) the following subsection is inserted —

“

(3) A railway officer who is an employee under an employer-employee agreement may refer to the Board where the Board is the relevant industrial authority under Part VID —

(a) any question, dispute or difficulty that the Board has jurisdiction to determine under section 97WI; and

(b) an allegation referred to in section 97WK(2).

”.

13. Section 81A amended

Section 81A is amended by inserting before “110” —

“ 97V(3), 97VJ(3), 97YC, 97YG, ”.

14. Section 81CA amended

Section 81CA(1) is amended in the definition of “general jurisdiction”, in paragraph (a), by inserting before “110” —

“ 97V(3), 97VJ(3), 97YC, 97YG, ”.

15. Section 103 amended

Section 103(3) is amended, in the definition of “breach”, by inserting after “industrial agreement,” —

“ employer-employee agreement, ”.

**Division 3 — Amendments to other Acts consequential
on Division 1**

**16. *Coal Industry Tribunal of Western Australia Act 1992*
amended**

Section 3A of the *Coal Industry Tribunal of Western Australia Act 1992** is amended by inserting after “1993” —

“ and Part VID of the *Industrial Relations Act 1979* ”.

[* *Act No. 37 of 1992.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 65-6.]

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Division 3 Amendments to other Acts consequential on Division 1

s. 17

17. Conservation and Land Management Act 1984 amended

Section 20(5) of the *Conservation and Land Management Act 1984** is amended by inserting after “1993” —

“ , Part VID of the *Industrial Relations Act 1979* ”.

[* Reprinted as at 26 March 1999.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 75.]

18. Forest Products Act 2000 amended

Section 39(4) of the *Forest Products Act 2000** is amended by inserting after “1993” —

“ , Part VID of the *Industrial Relations Act 1979* ”.

[* Act No. 34 of 2000.

For subsequent amendments see Act No. 10 of 2001.]

19. Grain Marketing Act 1975 amended

- (1) The amendments in this section are to the *Grain Marketing Act 1975**.

[* Reprinted as at 19 November 1999.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 188, and Act No. 10 of 2001.]

- (2) Section 17 is amended as follows:

- (a) by inserting before “Subject to any” the subsection designation “(1)”;
- (b) by deleting “the *Minimum Conditions of Employment Act 1993* and *Workplace Agreements Act 1993*” and inserting instead —
“ relevant written laws ”.

(3) At the end of section 17 the following subsection is inserted —

“

(2) In subsection (1) —

“**relevant written laws**” means —

- (a) Part VID of the *Industrial Relations Act 1979*;
- (b) the *Minimum Conditions of Employment Act 1993*; and
- (c) the *Workplace Agreements Act 1993*.

”.

20. Long Service Leave Act 1958 amended

Section 4(3)(b) of the *Long Service Leave Act 1958** is amended by inserting after “workplace agreement” —

“

, an employer-employee agreement under Part VID of the *Industrial Relations Act 1979*

”.

[* Reprinted as approved 11 July 1974.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 265-6.]

21. Marketing of Potatoes Act 1946 amended

(1) The amendments in this section are to the *Marketing of Potatoes Act 1946**.

[* Reprinted as at 7 January 2000.

For subsequent amendments see Act No. 10 of 2001.]

(2) Section 18(1) is amended by deleting “applicable order, award or agreement under the *Industrial Relations Act 1979* or any workplace agreement in force under the *Workplace Agreements Act 1993*” and inserting instead —

“ relevant instrument ”.

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Division 3 Amendments to other Acts consequential on Division 1

s. 22

(3) After section 18(1) the following subsection is inserted —

“

(1a) In subsection (1) —

“relevant instrument” means —

- (a) an applicable order, award or industrial agreement under the *Industrial Relations Act 1979* or an employer-employee agreement under Part VID of that Act; or
- (b) a workplace agreement under the *Workplace Agreements Act 1993*.

”.

22. Minimum Conditions of Employment Act 1993 amended

(1) The amendments in this section are to the *Minimum Conditions of Employment Act 1993**.

[* Reprinted as at 4 June 1997.]

(2) Section 3(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

“employer-employee agreement” means an employer-employee agreement under Part VID of the *IR Act*;

”.

(3) Section 5(1) is amended as follows:

(a) by inserting after paragraph (a) the following paragraph —

“ (aa) in any employer-employee agreement; ”;

(b) in paragraph (c), by inserting after “agreement” —

“ , an employer-employee agreement ”.

- (4) Section 5(2) is amended by inserting after “agreement, an” —
“ employer-employee agreement, an ”.
- (5) After section 7(a) following paragraph is inserted —
“
(aa) where the condition is implied in an employer-employee agreement, under section 83 of the *IR Act*;
”.
- (6) Section 32 is amended, in the definition of “continuous service” in paragraph (b), by inserting after “agreement, an” —
“ employer-employee agreement, an ”.
- (7) Each provision specified in the Table to this subsection is amended by inserting after “workplace agreement” —
“ , employer-employee agreement ”.

Table

s. 17B(1)	s. 18(1)
s. 17C(1)(d)	s. 18(2)
s. 17D(1)(b)	s. 39(b)
s. 17D(2)	s. 44(1)

23. *Port Authorities Act 1999* amended

- (1) Section 16(4)(a)(iv) and (b) of the *Port Authorities Act 1999** are amended by inserting after “99” —
“ (1) ”.
- (2) After section 16(4) of the *Port Authorities Act 1999** the following subsection is inserted —
“
(4a) A matter referred to in subsection (4) cannot be varied or affected by an employer-employee agreement made under Part VID of the *Industrial Relations Act 1979*.
”.

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s. 24

- (3) After section 16(5) of the *Port Authorities Act 1999** the following subsection is inserted —

“

- (6) Nothing in this section other than subsection (4a) affects the operation of Part VID of the *Industrial Relations Act 1979*.

”.

[* *Act No. 22 of 1999.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 353, and Acts Nos. 43 of 2000 and 10 of 2001.]

24. Public and Bank Holidays Act 1972 amended

Section 3 of the *Public and Bank Holidays Act 1972** is amended as follows:

- (a) by deleting “or of”;
- (b) by inserting after “1993” —

“

or an employer-employee agreement under Part VID of the *Industrial Relations Act 1979*

”.

[* *Act No. 63 of 1972.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 361.]

25. Public Sector Management Act 1994 amended

- (1) The amendments in this section are to the *Public Sector Management Act 1994**.

[* *Reprinted as at 9 February 2001.*

For subsequent amendments see Acts Nos. 43 and 53 of 2000.]

(2) Section 29(1)(h)(i) is amended as follows:

- (a) by deleting “or of”;
- (b) by inserting after “1993” —

“

or of an employer-employee agreement
under Part VID of the *Industrial
Relations Act 1979*

”.

(3) Section 30(d) is amended as follows:

- (a) by deleting “or any” and inserting instead —
“ , any ”;
- (b) by inserting after “1993” —

“

or of an employer-employee agreement under
Part VID of the *Industrial Relations Act 1979*

”.

(4) Section 53(1) is amended as follows:

- (a) by deleting “or any” and inserting instead —
“ , any ”;
- (b) by inserting after “1993” —

“

or of an employer-employee agreement under Part VID
of the *Industrial Relations Act 1979*

”.

(5) Section 64(1) is amended as follows:

- (a) by deleting “or any” and inserting instead —
“ , any ”;
- (b) by inserting after “1993” —

“

or of an employer-employee agreement under Part VID
of the *Industrial Relations Act 1979*

”.

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- (6) Section 99 is amended by inserting before “There are” the subsection designation “(1)”.
- (7) At the end of section 99 the following subsection is inserted —
- “
- (2) A matter referred to in subsection (1) cannot be varied or affected by an employer-employee agreement made under Part VID of the *Industrial Relations Act 1979*.
- ”.

26. Zoological Parks Authority Act 2001 amended

Section 25(4) of the *Zoological Parks Authority Act 2001** is amended by inserting after “1993” —

“ , Part VID of the *Industrial Relations Act 1979* ”.

[* Act No. 24 of 2001.]

27. Inserting reference to “Part VID of the *Industrial Relations Act 1979*” in various Acts

Each provision specified in the Table to this section is amended by inserting after “1993” —

“ or Part VID of the *Industrial Relations Act 1979* ”.

Table

<i>Botanic Gardens and Parks Authority Act 1998</i>	s. 24(3)
<i>Curriculum Council Act 1997</i>	s. 21(4)
<i>Electricity Corporation Act 1994</i>	s. 15(4)
<i>Fire and Emergency Services Authority of Western Australia Act 1998</i>	s. 20(3)
<i>School Education Act 1999</i>	s. 236(5)
<i>Transport Co-ordination Act 1966</i>	s. 8(3a)
<i>Water and Rivers Commission Act 1995</i>	s. 23(4)
<i>Water Corporation Act 1995</i>	s. 15(4)
<i>Western Australian Treasury Corporation Act 1986</i>	s. 8B(4)

Part 3 — Amendments to *Workplace Agreements Act 1993*, transitional provisions and consequential amendments to other Acts

Division 1 — Amendments to *Workplace Agreements Act 1993*

28. The Act amended

The amendments in this Division are to the *Workplace Agreements Act 1993**.

[* Reprinted as at 4 August 1997.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 504.]

29. Long title replaced

The long title is repealed and the following long title is inserted instead —

“

An Act to make provision after the commencement of section 31 of the *Labour Relations Reform Act 2002* —

- **for employers and employees to be no longer empowered to make the employment agreements that were authorised by this Act as in force before that commencement;**
 - **for the times when existing agreements automatically terminate;**
 - **for the effect and enforcement of existing agreements until their termination; and**
 - **for the expiry of the Act at a time when all agreements have terminated,**
- and for related purposes.**

”.

30. Section 3 amended

Section 3 is amended as follows:

- (a) by deleting the definitions of “Commissioner” and “Public Service Act”;
- (b) by inserting in the appropriate alphabetical positions the following definitions —

“

“**Commission**” has the same meaning as it has in the *Industrial Relations Act 1979*;

“**designated day**” means the day on which section 31 of the *Labour Relations Reform Act 2002* comes into operation;

“**Registrar**” and “**Deputy Registrar**” have the same meanings as they have in the *Industrial Relations Act 1979*;

“**repealed**”, in relation to a section of a particular number, means the section in this Act of that number repealed by a provision of Part 3 Division 1 of the *Labour Relations Reform Act 2002*;

”.

31. Part 1A inserted

After section 4 the following Part is inserted —

“

Part 1A — Phasing out and expiry of Act

4A. Expiry of Act

This Act expires at the end of one year commencing with the designated day.

4B. Further workplace agreements cannot be made

On and after the designated day a workplace agreement cannot be made for the purposes of this Act.

4C. Limit on duration of agreements registered on or after 22 March 2001

- (1) This section applies to a workplace agreement that —
 - (a) was registered on or after 22 March 2001; and
 - (b) has effect immediately before the designated day.
- (2) The agreement ceases to have effect —
 - (a) at the end of 6 months beginning with the designated day;
 - (b) on the day on which the parties have agreed that it is to cease to have effect, being a day provided for —
 - (i) by the agreement; or
 - (ii) by agreement between the parties under section 24(1);or
 - (c) on a day on which section 14(1) or 43(4) becomes applicable to the agreement,

whichever happens first.

4D. Limit on duration of arrangements under repealed section 19(4)(b)

- (1) This section applies to an arrangement under repealed section 19(4)(b) that has effect immediately before the designated day.
- (2) The arrangement has effect according to its terms despite the repeal of section 19.

- (3) The arrangement ceases to have effect —
- (a) at the end of 6 months beginning with the designated day;
 - (b) on the day on which the parties agree in writing that the arrangement is to cease to have effect; or
 - (c) on the termination of the employee's contract of employment,

whichever happens first.

4E. Termination of unregistered individual workplace agreements

- (1) This section applies to an individual workplace agreement that was signed by the parties to it but that immediately before the designated day —
- (a) had not been lodged for registration under repealed section 29 or made ineffective by repealed section 27; or
 - (b) if lodged for registration, had not been registered under repealed section 31.
- (2) The agreement ceases to have effect on the designated day.

4F. Limit on duration of agreements not covered by section 4C or 4E

- (1) This section applies to any workplace agreement that —
- (a) has effect immediately before the designated day; and
 - (b) does not come within section 4C or 4E.

- (2) The agreement ceases to have effect —
- (a) at the end of one year beginning with the designated day;
 - (b) on the day on which the parties have agreed that it is to cease to have effect, being a day provided for —
 - (i) by the agreement; or
 - (ii) by agreement between the parties under section 24(1);
- or
- (c) on a day on which section 14(1) or 43(4) becomes applicable to the agreement,
- whichever happens first.

4G. Termination of effect of agreement under repealed section 23(1)

- (1) This section applies to an agreement under repealed section 23(1) that was signed by the parties to it but that immediately before the designated day —
- (a) had not been lodged for registration under repealed section 29 or made ineffective by repealed section 27; or
 - (b) if lodged for registration, had not been registered under repealed section 31.
- (2) On the designated day —
- (a) the agreement ceases to have effect; and
 - (b) the employee ceases to be a party to the collective workplace agreement concerned.
- (3) The reference in subsection (1) to an agreement under repealed section 23(1) includes an agreement under that section as applied by repealed section 40J.

4H. Employment conditions if workplace agreement or arrangement terminated or employee ceases to be a party

- (1) This section applies where —
 - (a) a workplace agreement or an arrangement under repealed section 19(4)(b) ceases to have effect as provided by section 4C, 4D, 4E or 4F; or
 - (b) an employee ceases to be a party to a collective workplace agreement as provided by section 4G.
- (2) The employment of an employee becomes subject to a contract of employment under this section.
- (3) If —
 - (a) the workplace agreement that ceased to have effect was an individual workplace agreement; or
 - (b) the arrangement under repealed section 19(4)(b) that ceased to have effect followed on the expiry of an individual workplace agreement,

the contract of employment is one containing —

- (c) the same provisions as those of the workplace agreement or arrangement that has ceased to have effect, other than the provisions implied by section 18; and
- (d) if the employee had an existing contract of employment relating to the workplace agreement or arrangement, the provisions of that contract.

- (4) If —
- (a) the workplace agreement that ceased to have effect was a collective workplace agreement; or
 - (b) the arrangement under repealed section 19(4)(b) that ceased to have effect followed on the expiry of a collective workplace agreement,
- the contract of employment is an individual contract —
- (c) applying to the employee such of the provisions of the collective workplace agreement or arrangement that has ceased to have effect, other than the provisions implied by section 18, as were applicable to the employee; and
 - (d) containing, in addition, the provisions of the existing contract of employment that the employee had relating to the workplace agreement or arrangement.
- (5) A contract of employment referred to in subsection (3) or (4) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee.
- (6) Despite subsection (2) the employer and the employee are bound by —
- (a) any award that extends to them; or
 - (b) any employer-employee agreement under Part VID of the *Industrial Relations Act 1979* to which they are parties.
- (7) Where subsection (6)(a) applies, the award ordinary rate of pay (howsoever described in the award) shall, for the purposes of the award only, be the rate of pay as prescribed in the award and not that prescribed in the contract of employment.

- (8) Where subsection (6)(a) applies, nothing in this section or in any other enactment or law requires an employer to pay an employee more than the greater of —
- (a) the employee's entitlement arising under the contract of employment; or
 - (b) the employee's entitlement arising under the relevant award,
- whichever is the greater when assessed on a yearly basis.
- (9) This section does not apply to —
- (a) a workplace agreement that was registered under repealed section 40I; or
 - (b) an arrangement under repealed section 19(4)(b) that followed on the expiry of such a workplace agreement.

Note: For the position when an agreement or arrangement referred to in subsection (9) ceases to have effect, see section 152 of the *Workplace Relations Act 1996* of the Commonwealth.

4I. Rights, obligations and proceedings not affected by termination of agreement or arrangement

The termination of a workplace agreement or an arrangement under repealed section 19(4)(b) by operation of this Division does not affect —

- (a) any —
 - (i) right or entitlement that accrued; or
 - (ii) obligation or liability that was incurred, under the agreement or arrangement before the termination; or
- (b) any proceedings or remedy in respect of anything referred to in paragraph (a).

4J. This Part to prevail

This Part has effect despite any provision of this Act or a workplace agreement or any other agreement or arrangement.

”.

32. Section 8 replaced

Section 8 is repealed and the following section is inserted instead —

“

8. Effect of addition of employee as party

- (1) Where an employee under a contract of employment was added as a party to a collective workplace agreement under the repealed provision no award, whether existing or future, applies to —
- (a) that contract of employment; or
 - (b) the employer or the employee as a party to that contract,

so long as the workplace agreement remains in force.

- (2) In subsection (1) —

“**the repealed provision**” means subsection (1) of repealed section 23, including that subsection as applied by section 40J.

”.

33. Section 9 replaced

Section 9 is repealed and the following section is inserted instead —

“

9. Making of collective workplace agreement

Before the designated day a workplace agreement could be entered into between an employer and all or some of the employer’s employees.

”.

34. Section 10 amended

Section 10(1) is repealed and the following subsection is inserted instead —

“

- (1) Before the designated day a workplace agreement could be entered into between an employer and one of the employer’s employees.

”.

35. Section 11 repealed

Section 11 is repealed.

36. Section 12 amended

Section 12(1) is amended as follows:

- (a) in paragraph (a), by deleting “sections 14(1) and 32;” and inserting instead —
“ section 14(1); and ”;
- (b) by deleting the semicolon in paragraph (b) and “and” after it and inserting a full stop instead;
- (c) by deleting paragraph (c).

37. Section 15 amended

- (1) Section 15(1) is repealed and the following subsection is inserted instead —

“

- (1) The employer, the employees or any employee are entitled to be represented by a bargaining agent in connection with the operation of a workplace agreement.

”.

- (2) Section 15(3) is amended as follows:
- (a) in paragraph (a), by inserting after the semicolon —
“ and ”;
 - (b) in paragraph (b), by deleting the semicolon and “and”
after it and inserting a full stop instead;
 - (c) by deleting paragraph (c).
- (3) Section 15(8) is repealed.

38. Section 16 repealed

Section 16 is repealed.

39. Section 18 amended

Section 18(2) is repealed.

40. Sections 19 and 20 repealed

Sections 19 and 20 are repealed.

41. Section 21 amended

Section 21(3) is repealed.

42. Section 23 repealed

Section 23 is repealed.

43. Section 24 amended

Section 24(2), (3) and (4) are repealed and the following subsection is inserted instead —

“ (2) A workplace agreement cannot be amended. ”.

44. Section 25 repealed

Section 25 is repealed.

45. Part 2 Division 4 heading amended

The heading to Part 2 Division 4 is amended by deleting “Registration” and inserting instead —

“ *Register* ”.

46. Sections 26 and 27 repealed

Sections 26 and 27 are repealed.

47. Section 28 amended

- (1) Section 28(1) is repealed and the following subsection is inserted instead —

“

- (1) The Registrar is to keep a register of workplace agreements and the other agreements that were registered under this Division as in force immediately before the commencement of section 47 of the *Labour Relations Reform Act 2002*.

”.

- (2) Section 28(2) is amended by deleting “Commissioner” and inserting instead —

“ Registrar ”.

48. Sections 29 to 38 repealed

Sections 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 are repealed.

49. Section 39 amended

- (1) Section 39(1) is amended by deleting “lodged with or registered by the Commissioner” and inserting instead —

“ to which this subsection applies ”.

(2) After section 39(1) the following subsection is inserted —

“

(1a) Subsection (1) applies to an agreement that immediately before the designated day had been lodged or registered under Part 2 Division 4 or under section 40F or 40I.

”.

(3) Section 39(2)(c) is amended by deleting “, other than the Western Australian Industrial Relations Commission”.

(4) Section 39(4) is repealed and the following subsection is inserted instead —

“

(4) Subsection (2) applies to a person who —

(a) has held office as the Commissioner under repealed section 82 or has been a member of the Commissioner’s staff or a consultant under repealed section 90; or

(b) holds or has held office as the Registrar or a Deputy Registrar, or otherwise is or has been an officer of the Commission.

”.

50. Section 40 amended

Section 40 is amended as follows:

(a) by deleting “has been lodged with or registered by the Commissioner” and inserting instead —

“

immediately before the designated day had been lodged or registered under Part 2 Division 4 or under section 40F or 40I

”;

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- (b) in paragraph (b) by deleting “Commissioner” in both places where it appears and inserting instead —
“ Registrar ”.

51. Part 2A repealed

Part 2A is repealed.

52. Section 44 amended

Section 44(2) is amended by deleting “a workplace agreement or other agreement under this Act” and inserting instead —

“ an agreement under section 24(1) ”.

53. Section 45 amended

Section 45(1) is amended by deleting “the Public Service Act (including regulations under that Act)” and inserting instead —

“ section 99 of the *Public Sector Management Act 1994* ”.

54. Section 48 amended

Section 48(2)(c) is deleted and the following paragraph is inserted instead —

“

- (c) an officer of the Commission authorised in writing by the Registrar.

”.

55. Part 5 Division 1 heading amended

The heading to Part 5 Division 1 is amended by deleting “in industrial magistrate’s court”.

56. Section 49 amended

Section 49 is amended by deleting the definition of “workplace agreement” and inserting instead the following definition —

“

“**workplace agreement**” is to be taken to include —

- (a) a contract of employment that is governed by a workplace agreement; and
- (b) a contract of employment referred to in section 4H(3) or (4).

”.

57. Section 50 amended

Section 50(2) is repealed.

58. Section 51 replaced

Section 51 is repealed and the following section is inserted instead —

“

51. Unfair dismissal

- (1) This section applies if a person who was a party to a workplace agreement as an employee claims that he or she has been unfairly dismissed from employment in breach of the provision implied in the agreement by section 18.
- (2) The person may refer the claim to the Commission in accordance with section 29(1)(b)(i) of the *Industrial Relations Act 1979*, and that Act is to apply in all respects to the claim and all matters, including appeal rights, relating to or arising from the claim.
- (3) For the avoidance of doubt it is declared that the meaning of the expression “**unfairly dismissed**” in —
 - (a) subsection (1) of this section; and

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(b) repealed section 51(1),

when read with the definition of “unfair” in section 49,
is the same as the meaning of the expression “harshly,
oppressively or unfairly dismissed” in
section 29(1)(b)(i) of the *Industrial Relations Act 1979*.

”.

59. Section 52 repealed

Section 52 is repealed.

60. Section 55 amended

Section 55(b) is amended by inserting after “1979” —

“

or in the circumstances provided for by
section 94 of the *Labour Relations Reform
Act 2002*

”.

61. Section 56 amended

Section 56(2) is repealed.

62. Section 57 amended

(1) Section 57(1) is amended as follows:

- (a) by deleting paragraph (b);
- (b) by deleting paragraph (c)(ii);
- (c) in paragraph (d) —
 - (i) by deleting “unfairly, or”; and
 - (ii) in subparagraph (ii), by deleting “unfair dismissal or the”.

(2) Section 57(2)(b) is deleted.

(3) Section 57(4) is amended by deleting “or by the unfair dismissal, as the case may be”.

63. Section 58 replaced

Section 58 is repealed and the following section is inserted instead —

“

58. Monetary limit on jurisdiction

- (1) The court does not have jurisdiction under section 57(1)(c) or (d) or (4) to order the payment of an amount exceeding the prescribed amount.
- (2) For the purposes of subsection (1) the prescribed amount is \$5 000 or some other amount fixed by the regulations.

”.

64. Section 60 amended

Section 60 is amended as follows:

- (a) by deleting “Commissioner” and inserting instead —
“ Registrar ”;
- (b) in paragraph (b), by inserting after “under” —
“ repealed ”;
- (c) by inserting after “registered under” —
“ repealed ”.

65. Section 61 amended

Section 61(1) is amended by deleting “this Division” and inserting instead —

“ section 50 ”.

66. Section 66 amended

Section 66 is amended by deleting “a workplace agreement or an agreement under section 23(1) or” and inserting instead —

“ an agreement under section ”.

67. Section 67 amended

Section 67(2) is repealed and the following subsection is inserted instead —

“

(2) A person, not being duly authorised under section 15 to represent an employer or employees in any dealings about the operation of a collective workplace agreement must not interfere in or obstruct the dealings.

”.

68. Section 73 repealed

Section 73 is repealed.

69. Parts 6 and 7 repealed

Parts 6 and 7 are repealed.

70. Section 101 repealed

Section 101 is repealed.

71. Section 101A amended

(1) Section 101A(1)(b) is amended by deleting “37 or”.

(2) Section 101A(3)(e) is amended by deleting “37 or”.

72. Schedule 2 repealed

Schedule 2 is repealed.

**Division 2 — Transitional provisions for amendments to the
Workplace Agreements Act 1993 made by Division 1**

Subdivision 1 — Preliminary

73. Definitions

- (1) In this Division —
“**principal Act**” means the *Workplace Agreements Act 1993*.
- (2) Terms used in this Division have the same meanings as they have in the principal Act.

74. Interpretation Act 1984 not affected

The provisions of this Division do not affect the application of the *Interpretation Act 1984*, so far as it is consistent with those provisions, to the amendments made by this Part.

Subdivision 2 — Agreements under principal Act

75. Saving of addition of parties under section 23

- (1) The repeal of section 23 of the principal Act by section 42 does not affect the addition of an employee as a party to a collective workplace agreement that occurred before the repeal by operation of an agreement under the repealed section.
- (2) Subsection (1) does not limit the operation of section 4G.

76. Provision for unregistered collective workplace agreements

- (1) This section applies to a collective workplace agreement, including an agreement made for the purposes of repealed Part 2A of the principal Act, that was signed by the parties to it but that immediately before the designated day —
 - (a) had not been lodged for registration under repealed section 29; or

- (b) if lodged, had not been registered under repealed section 31 or 32, or refused registration.
- (2) The repeal effected by section 48 makes the agreement incapable of being lodged or registered, as the case may be.
- (3) The repeal of section 26(1) of the principal Act by section 46 does not operate to give any force or effect to a collective workplace agreement that has not been registered.

77. Saving for unregistered agreements under section 24(1)

- (1) This section applies to an agreement under section 24(1) of the principal Act that was signed by the parties to it but that immediately before the designated day —
 - (a) had not been lodged for registration under repealed section 29; or
 - (b) if lodged, had not been registered under repealed section 31 or refused registration.
- (2) The agreement has effect according to its terms despite the fact that it is not registered.
- (3) If the commencement of the agreement is expressed in terms that depend on it being registered, the agreement has effect on and after the designated day.

Subdivision 3 — Registration

78. Registrar to take possession of register, documents and records

- (1) As soon as is practicable after the commencement of section 47 the Registrar is to take possession of —
 - (a) the register kept for the purposes of section 28 of the principal Act; and

(b) all documents and records relating to the register, including information stored or recorded by means of a computer.

(2) A person in possession or control of any thing referred to in subsection (1), or premises on which it is kept, must comply with any reasonable request that the Registrar makes for the purpose of carrying out that subsection.

79. Registration not affected by repeal

The repeal of —

- (a) sections 31 and 32 of the principal Act by section 48; and
- (b) sections 40I and 40J of the principal Act by section 51,

does not, after the repeal, affect the force and effect that any agreement had immediately before the repeal as an agreement registered under the principal Act.

80. Continuation of status as excluded party

The repeal of section 32(4) of the principal Act by section 48 does not, after the repeal, affect the status that a person had immediately before the repeal as an excluded party under that subsection, including the exclusion of the person from the operation of section 12(1)(a) of the principal Act.

81. Review under section 34 discontinued

A review under section 34 of the principal Act that is in progress immediately before the repeal of that section by section 48 is automatically discontinued by the repeal.

82. Appeal under section 35 discontinued

An appeal under section 35 of the principal Act that has been commenced but not completed before the repeal of that section by section 48 is automatically discontinued by the repeal.

Subdivision 4 — Remedies and offences

83. Recovery of amounts where section 4E or 4G applies

- (1) This section applies if an individual workplace agreement or an agreement under repealed section 23(1) ceases to have effect under section 4E or 4G of the principal Act.
- (2) Either party to the agreement may recover from the other any amount which, if the agreement had not taken effect, he or she —
 - (a) would have been entitled to receive; or
 - (b) would not have been required to pay,as the case may be, in respect of the period when the agreement had effect.
- (3) The entitlement of an employee is to be determined for the purposes of subsection (2)(a) as if any relevant award provision applied to the employer and the employee during the period concerned.
- (4) An amount referred to in subsection (2) is recoverable in accordance with section 85.

84. Proceedings in progress under repealed section 51

- (1) An action under section 51 of the principal Act that —
 - (a) was commenced in an industrial magistrate's court; and
 - (b) immediately before the commencement of section 57 had not been finally determined,may be continued and dealt with by that court as if Part 5 Division 1 of the principal Act had not been amended by this Part.
- (2) The continued jurisdiction of an industrial magistrate's court under subsection (1) is to be treated as general jurisdiction of

the court for the purposes of section 81CA of the *Industrial Relations Act 1979*.

- (3) An appeal or further appeal may be brought under repealed section 61 of the principal Act by a party to proceedings referred to in subsection (1) as if the repeal had not occurred.

85. Amounts may be recovered under repealed section 52

- (1) A person may, despite the repeal of section 52 of the principal Act by section 59, bring an action under the repealed section for the recovery of an amount referred to in —
- (a) that section; or
 - (b) section 83 of this Act,

and for that purpose Part 5 Division 1 applies as if it had not been amended by this Part.

- (2) The jurisdiction of an industrial magistrate's court under subsection (1) is to be treated as general jurisdiction of the court for the purposes of section 81CA of the *Industrial Relations Act 1979*.

86. Proceedings for offences

- (1) Proceedings for an offence against section 67(2) of the principal Act that were commenced before the amendment of that section by section 67 may be continued as if the amendment had not been made.
- (2) Proceedings for an offence against section 67(2) of the principal Act may be brought in respect of an act or omission that occurred before the amendment of that section by section 67 as if the amendment had not been made.
- (3) Proceedings for an offence against section 68(1), 68(2), 69 or 70(1) that were commenced before the amendment of section 66 of the principal Act by section 66 may be continued as if the amendment had not been made.

- (4) Proceedings for an offence against section 68(1), 68(2), 69 or 70(1) may be brought in respect of an act or omission that occurred before the amendment of section 66 of the principal Act by section 66 as if the amendment had not been made.
- (5) A person may be punished on conviction for an offence in proceedings referred to in subsection (1), (2), (3) or (4) despite section 11 of *The Criminal Code*.

Subdivision 5 — Provisions relating to the Commissioner

87. Definitions

In this Subdivision —

“**commencement day**” means the day on which section 69 comes into operation;

“**Commissioner**” means the official appointed under repealed section 82 of the principal Act.

88. References to Commissioner in agreements and instruments

On and after the commencement day agreements and instruments —

- (a) to which the Commissioner is a party; or
- (b) which contain a reference to the Commissioner,

have effect, by operation of this section, as if —

- (c) the Registrar were substituted for the Commissioner as a party to the agreement or instrument; and
- (d) any reference to the Commissioner were, unless the context otherwise requires, a reference to the Registrar.

89. Proceedings and remedies

On and after the commencement day —

- (a) the Registrar is a party to any proceedings by or against the Commissioner commenced before that day; and

- (b) any proceedings or remedy that might have been commenced by, or available against or to, the Commissioner may be commenced by, and are available against or to, the Registrar.

90. Other things in progress

- (1) Any act, matter or thing done, or omitted to be done, before the commencement day by, to or in respect of the Commissioner is to be taken to have been done or omitted by, to or in respect of the Registrar.
- (2) Subsection (1) applies only to the extent that the act, matter or thing has any force, effect or significance after the commencement day.

91. Annual report for part of year

- (1) The Commissioner is to report as required by section 66 of the *Financial Administration and Audit Act 1985* for the period from the preceding 1 July to the commencement day, and Part II Division 14 of that Act applies as if that period were a full financial year.
- (2) Despite section 69, the Commissioner continues in office so far as is necessary for the purposes of subsection (1).

92. Completion of things commenced

Anything commenced to be done by the Commissioner under the principal Act before the commencement day may be continued by the Registrar so far as the doing of that thing is within the functions of the Registrar after that day.

Subdivision 6 — Miscellaneous

93. Offender may be punished despite repeal of section 25

Despite section 11 of *The Criminal Code*, a person may be punished after the commencement of section 44 for an offence against repealed section 25 of the principal Act.

94. Tribunal's arbitration function under repealed section 40E(b)

- (1) This section applies to a workplace agreement that —
 - (a) is in force immediately before the commencement of section 51; and
 - (b) provides for the appointment of the Tribunal under repealed section 40E of the principal Act as an arbitrator in relation to disputes that arise about the meaning or effect of the agreement.
- (2) The workplace agreement is to be taken to provide for such disputes to be referred to the Commission for determination.
- (3) Regulations made for the purposes of section 7F(5)(c) of the *Industrial Relations Act 1979* apply to the practice and procedure for the referral and determination of a dispute to which this section applies in place of the provisions in that behalf contained in the workplace agreement.

95. Immunity not affected

The repeal of Part 6 of the principal Act by section 69 does not affect any immunity that a person had under that Part in respect of an act, matter or thing done before the repeal.

96. Offshore application not affected

An agreement authorised by section 101 of the principal Act is not affected by the repeal of that section by section 70.

97. Powers in relation to transitional provisions

- (1) If there is no sufficient provision in this Division for dealing with a transitional matter the Governor may make that provision by regulations.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —
 - (a) of this Division; or
 - (b) of the *Interpretation Act 1984* as it applies to the amendments made by this Part,the Governor may by regulations —
 - (c) modify that provision to remove the anomaly; and
 - (d) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Regulations under this section in relation to an amendment made to the principal Act by this Part may be made so as to have effect from the commencement of that amendment.
- (4) To the extent that a provision of any such regulations has effect on a day that is earlier than the day of their publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.
- (5) In subsection (1) —

“transitional matter” means a matter or thing necessary or convenient to give effect to the transition from the principal Act, as in force before the commencement of any provision of this Part, to the principal Act as in force after that commencement.

**Division 3 — Transitional provisions for the expiry of the
*Workplace Agreements Act 1993***

98. Definitions

- (1) In this Division —
“**the Act**” means the *Workplace Agreements Act 1993*.
- (2) Terms used in this Division have the same meanings as they had in the Act immediately before its expiry.

99. *Interpretation Act 1984* not affected

The provisions of this Division do not affect the application of sections 37 and 39 of the *Interpretation Act 1984*, so far as they are consistent with those provisions, in relation to the expiry of the Act.

100. Effect of certain provisions preserved

The provisions of section 4H and Part 2 Division 4 of the Act are to be regarded as continuing to have effect after the expiry of the Act as if they had not expired.

101. Offences under expired Act

Without otherwise limiting the operation of section 37(1)(e) of the *Interpretation Act 1984*, a person who commits an offence against the Act before it expires may be punished after it expires to the same extent as the person could have been punished immediately before the expiry.

102. Application of enforcement provisions

- (1) On the expiry of the Act, Part 5 Division 1 is to be taken to continue in force to the extent necessary for the purpose of —
 - (a) enforcing —
 - (i) any right or entitlement that accrued; or
 - (ii) any obligation or liability that was incurred,

- under a workplace agreement before the expiry; and
 - (b) bringing an appeal against a decision of an industrial magistrate's court under that Division as so continued.
- (2) The continued jurisdiction of an industrial magistrate's court under subsection (1) is to be treated as general jurisdiction of the court for the purposes of section 81CA of the *Industrial Relations Act 1979*.
- (3) Section 84(1)(b) of the *Industrial Relations Act 1979* has effect for the purposes of this section as if it had not been repealed by section 113(4).

103. Keeping of records

A person who was an employer under the Act must ensure that after the expiry of the Act all records required to be kept by section 47 of the Act, as in force immediately before the expiry, are —

- (a) kept —
 - (i) in a legible form and using indelible material; or
 - (ii) in electronic form that is capable of being reproduced in a legible printed format; and
- (b) retained —
 - (i) in the case of entries relating to long service leave, during the employment of the employee and for not less than 7 years after the termination of that employment; and
 - (ii) in the case of any other entry, for not less than 7 years after it is made.

Penalty: \$5 000.

104. Access to records

- (1) A person who is required to keep records under section 103 relating to a former employee must, on request in writing by a relevant person —

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- (a) produce the records to the relevant person; and
- (b) let him or her inspect them.

Penalty: \$5 000.

- (2) Relevant persons are —
 - (a) the former employee concerned;
 - (b) a person authorized in writing by the former employee; and
 - (c) an officer of the Commission authorized in writing by the Registrar.
- (3) The duty under subsection (1) —
 - (a) continues so long as the records concerned are required to be kept under section 103; and
 - (b) includes the further duties to let the relevant person —
 - (i) for the purpose of inspecting the records, enter premises of the person who is required to keep them; and
 - (ii) take copies of or extracts from the records; and
 - (c) must be complied with not later than 14 days after the request for inspection is received.

105. Consequential amendment of other laws

- (1) The Governor may make regulations having effect after the expiry of the Act amending a written law for the purpose of making that law consistent with the fact that the Act has expired.
- (2) An amendment under subsection (1) may —
 - (a) delete from a written law a provision that relates solely to the Act; and
 - (b) make changes to a provision to ensure that the omission of provisions relating to the Act does not result in an

anomaly in the grammar or formal expression of the provision.

- (3) Any provision of regulations made under this section may be expressed to have effect from a time that is earlier than the day on which the regulations are published in the *Gazette*.
- (4) To the extent that a provision has effect as mentioned in subsection (3), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of that publication.

106. Powers in relation to transitional provisions

- (1) If there is no sufficient provision in this Division for dealing with a transitional matter after the expiry of the Act the Governor may make that provision by regulations.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —
 - (a) of this Division; or
 - (b) of section 37 of the *Interpretation Act 1984* as applied by section 39 of that Act,

the Governor may, on the recommendation of the Minister, by regulations —

- (c) modify that provision to remove the anomaly; and
 - (d) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Any provision of regulations made under this section may be expressed to have effect from a time that is earlier than the day on which the regulations are published in the *Gazette*.

- (4) To the extent that a provision has effect as mentioned in subsection (3), the provision does not operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of that publication.
- (5) In subsection (1) —
- “transitional matter”** means a matter or thing necessary or convenient to give effect to the transition from the Act being in force to the Act having expired.

Division 4 — Consequential amendments and related transitional provisions

107. *Coal Industry Tribunal of Western Australia Act 1992* amended

Section 3B(1) of the *Coal Industry Tribunal of Western Australia Act 1992** is amended by deleting “within the meaning in section 32(2) of that Act” and inserting instead —

“ referred to in section 80 of the *Labour Relations Reform Act 2002*

”.

[* *Act No. 37 of 1992.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 65-6.]

108. Further amendment to the *Coal Industry Tribunal of Western Australia Act 1992* as from the expiry of the *Workplace Agreements Act 1993*

Sections 3A, 3B and 3C of the *Coal Industry Tribunal of Western Australia Act 1992* are repealed.

109. Constitution Acts Amendment Act 1899 amended

Schedule V Part 1 Division 2 to the *Constitution Acts Amendment Act 1899** is amended by deleting the item “Commissioner of Workplace Agreements appointed under the *Workplace Agreements Act 1993*”.

[* *Reprinted as at 8 June 2001.*

For subsequent amendments see Acts Nos. 2 and 76 of 2000 and 12 of 2001.]

110. Financial Administration and Audit Act 1985 amended

Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by deleting the item “Commissioner of Workplace Agreements”.

[* *Reprinted as at 24 November 2000.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 157, and Act No. 10 of 2001.]

111. Industrial Relations Act 1979 amended

- (1) Section 7AA is amended by deleting “, within the meaning in section 32(2) of the *Workplace Agreements Act 1993*,” and inserting instead —

“

referred to in section 80 of the *Labour Relations Reform Act 2002*

”.

- (2) Section 7D(1) is amended as follows:

- (a) by deleting paragraph (a);
(b) in paragraph (b) by deleting “that Act” and inserting instead —

“ the *Workplace Agreements Act 1993* ”.

- (3) Section 7D(2) is repealed.

- (4) Section 7G is repealed.

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- (5) Section 7H(c)(i) is amended by deleting “or 7G”.
- (6) Section 26A is repealed.

112. Transitional provisions relating to section 111(4)

- (1) A claim that —
 - (a) was referred to the Industrial Relations Commission under section 7G of the *Industrial Relations Act 1979* before the commencement of section 111(4); and
 - (b) immediately before that commencement had not been finally determined,

may be dealt with by the Commission as if section 7G had not been repealed.

- (2) A provision of the kind described in subsection (1)(b) of section 7G of the *Industrial Relations Act 1979* that, immediately before the commencement of section 111(4), has effect in relation to a claim referred to in subsection (1)(a) of that section ceases to have effect after that commencement.
- (3) If a person wishes to refer to the Commission a claim mentioned in subsection (2) he or she may do so under section 51 of the *Workplace Agreements Act 1993*.

113. Further amendments to the *Industrial Relations Act 1979* as from the expiry of the *Workplace Agreements Act 1993* and transitional provision

- (1) Part 1A is repealed.
- (2) Section 81AA(a) and (b) are deleted.
- (3) Section 81CA(1) is amended as follows:
 - (a) in the definition of “general jurisdiction” —
 - (i) by inserting after paragraph (a) —
“ or ”; and

- (ii) by deleting paragraph (c) and “or” after paragraph (b);
 - (b) in the definition of “prosecution jurisdiction” by deleting paragraph (b).
- (4) Section 84(1) is amended by deleting the portion of the subsection after “it” and inserting instead —
“ by section 96J. ”.
- (5) Schedule 1 is amended in item 2 as follows:
 - (a) in paragraph (f) by deleting the comma and inserting a full stop;
 - (b) by deleting from “but this item” to the end of the item.
- (6) A question or dispute that —
 - (a) was referred to the Industrial Relations Commission under section 7F of the *Industrial Relations Act 1979* before the commencement of subsection (1); and
 - (b) immediately before that commencement had not been finally determined,may be dealt with by the Commission as if section 7F had not been repealed.

Part 4 — Amendments about awards

114. Section 6 amended

After section 6(c) the following paragraph is inserted —

“

- (ca) to provide a system of fair wages and conditions of employment;

”.

115. Section 29A amended

(1) After section 29A(1) the following subsections are inserted —

“

(1a) In this section —

“**area and scope provisions**” means the parts of an award or industrial agreement that relate to the area of operation and scope of the award or industrial agreement.

(1b) Subject to subsection (2a) —

- (a) area and scope provisions of a proposed award or industrial agreement; and
- (b) proposed variations to the area and scope provisions of an existing award or industrial agreement,

shall be published in the required manner.

”.

(2) Section 29A(2) is amended by deleting “, or the variation of the area of operation or the scope of an award or industrial agreement, or the registration of an industrial agreement, the Commission shall not hear the claim or application until those parts of the proposed award, variation or industrial agreement

that relate to area of operation or scope have been published in the *Industrial Gazette*” and inserting instead —

“

or the registration of an industrial agreement, or the variation of the area and scope provisions of an existing award or agreement, the Commission shall not hear the claim or application until the area and scope provisions of the proposed award or industrial agreement have, or the proposed variation has, been published in the required manner

”.

(3) Section 29A(2a) is amended as follows:

(a) by deleting “those parts of the proposed award or industrial agreement that relate to area of operation and scope” and inserting instead —

“

the area and scope provisions of the proposed award or industrial agreement

”;

(b) by deleting paragraph (c) and “or” after it and inserting instead —

“

(c) need not be published in the *Industrial Gazette*;
or

”.

(4) After section 29A(2b) the following subsection is inserted —

“

(2c) The area and scope provisions of an award may be amended under section 40A without the proposed variation having been published in the required manner.

”.

- (5) Section 29A(3) is amended by deleting “(1)” and inserting instead —

“ (2) ”.

116. Part II Division 2A heading and section 36A inserted

Before section 37 the following heading and section are inserted —

“

Division 2A — Awards

36A. Application for award coverage for non-award employees

- (1) In any proceedings in which the Commission is considering the making of an award (“**the new award**”) that extends to employees to whom no award currently extends (“**the employees**”), the onus is on any party opposing the making of the new award to show that it would not be in the public interest.
- (2) The Commission may make an interim award that extends to the employees pending the making of the new award.
- (3) An interim award may be made if the Commission considers —
- (a) that it would provide a fair basis for the application of the no-disadvantage test provided for by Part VID Division 6 Subdivision 1;
 - (b) that it would protect the existing wages and conditions of employment of the employees until the new award is made; or
 - (c) that it would be appropriate for any other reason.

”.

117. Section 38 amended and a savings provision

- (1) Section 38(3) is repealed and the following subsections are inserted instead —

“

- (3) Where an employer who is added as a named party to an award under subsection (2) is, at the time of that addition, engaged in an industry to which the award did not previously apply and the scope of the award is varied by virtue of that addition, the variation shall for the purposes of section 37(1) be expressly limited to that industry.
- (4) An employer is not to be added as a named party to an award under subsection (2) if that addition would have the effect of extending the award to employees to whom another award already extends.

”.

- (2) If an employer was added as a named party to an award under former section 38(3) before the commencement day, the scope of that award is not varied by reason only of the coming into operation of subsection (1).
- (3) In this section —
- “**commencement day**” means the day on which subsection (1) comes into operation;
- “**former section 38(3)**” means section 38(3) of the *Industrial Relations Act 1979* as it was in effect immediately before the commencement day.

118. Sections 40A and 40B inserted

After section 40 the following sections are inserted —

“

40A. Incorporation of industrial agreement provisions into awards by consent

- (1) If —
- (a) an award extends to employees to whom an industrial agreement extends;
 - (b) a named party to the award who is also a party to the agreement applies to the Commission for the incorporation of some or all of the provisions of the agreement into the award; and
 - (c) each other party to the agreement consents to the incorporation of those provisions into the award,

the Commission shall by order vary the award by incorporating those provisions of the agreement into the award, but the variation shall be expressly limited to the employees and employers to whom the agreement extends.

- (2) This section does not limit the operation of section 40 and that section applies to any application or order made under this section.

40B. Power to vary awards to reflect statutory and other requirements, to promote efficiency and to facilitate implementation

- (1) The Commission, of its own motion, may by order at any time vary an award for any one or more of the following purposes —
- (a) to ensure that the award does not contain wages that are less than the minimum award wage as ordered by the Commission under section 51;

- (b) to ensure that the award does not contain conditions of employment that are less favourable than those provided by the MCE Act;
 - (c) to ensure that the award does not contain provisions that discriminate against an employee on any ground on which discrimination in work is unlawful under the *Equal Opportunity Act 1984*;
 - (d) to ensure that the award does not contain provisions that are obsolete or need updating;
 - (e) to ensure that the award is consistent with the facilitation of the efficient organization and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises.
- (2) The Commission shall not make an order under this section until it has given notice to the named parties to the award and the Council, the Chamber, the Mines and Metals Association and the Minister and afforded them an opportunity to be heard in relation to the proposed variations.
- (3) The Commission shall cause a copy of an order made under this section to be —
- (a) given to the named parties to the award and to the Council, the Chamber, the Mines and Metals Association and the Minister; and
 - (b) published in the required manner.
- (4) Section 39 applies to and in relation to an order made under this section —
- (a) as if the reference in section 39(3) to the date on which an application was lodged in the Commission were a reference to the date on

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which notice was first given under subsection (2); and

(b) with such other modifications as are necessary.

(5) This section does not prevent or affect the making of an application under section 40 to vary an award for a purpose mentioned in subsection (1).

”.

119. Part II Division 2C, 2D and 2E headings inserted and Part II Division 2A heading deleted

(1) Before section 44 the following heading is inserted —

“

Division 2C — Holding of compulsory conferences

”.

(2) Before section 46 the following heading is inserted —

“

Division 2D — Miscellaneous provisions relating to awards, orders and agreements

”.

(3) Before section 49 the following heading is inserted —

“ **Division 2E — Appeals to the Full Bench** ”.

(4) The heading before section 49A is deleted.

120. Sections 49A and 49C repealed and inserted as sections 48A and 48B

Sections 49A and 49C are repealed and the same sections are inserted after section 48 with the section designations “**48A.**” and “**48B.**”, respectively.

121. Consequential amendments to section 22A, 25, 80G and 80W

- (1) Section 22A is amended by inserting after “this Division” —
“ and Divisions 2A to 2G ”.
- (2) Section 25(1) is amended by inserting after “this Division” —
“ and Divisions 2A to 2G ”.
- (3) Section 25(2) is repealed and the following subsection is inserted instead —
“
(2) Subsection (1) —
 - (a) has effect subject to any provision of this Division or Division 2A to 2G under which the Commission is to be constituted in a particular way; and
 - (b) does not affect the operation of Part IIC.”.
- (4) Section 80G(1) is amended by deleting “Division 2 of Part II” and inserting instead —
“ Part II Divisions 2 to 2G ”.
- (5) Section 80W(1) is amended by deleting “Division 2 and Division 2A of Part II” and inserting instead —
“ Part II Divisions 2 to 2G ”.

Part 5 — Amendments about the Industrial Relations Commission and the Industrial Appeal Court

122. Section 27 amended

After section 27(1)(h) the following paragraphs are inserted —

“

- (ha) determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceedings and require that the cases be presented within the respective periods;
- (hb) require evidence or argument to be presented in writing, and decide the matters on which it will hear oral evidence or argument;

”.

123. Section 32A inserted

After section 32 the following section is inserted —

“

32A. Conciliation and arbitration functions of Commission to be unlimited

- (1) The functions of the Commission under this Act as to the resolution of matters by conciliation (“**conciliation functions**”) and the determination of matters by arbitration (“**arbitration functions**”) —
 - (a) are to and may be performed at any time and from time to time as and when their performance is necessary or expedient; and
 - (b) are not limited by any other provision of this Act.
- (2) Without limiting subsection (1), nothing in this Act prevents the performance of conciliation functions

merely because arbitration functions are being or have been performed.

”.

124. Section 34 amended

- (1) Section 34(3) is amended by deleting “otherwise.” and inserting instead —

“

otherwise —

- (a) on any ground relating to jurisdiction; or
- (b) on any other ground.

”.

- (2) Section 34(4) is amended by deleting “court on any account whatsoever.” and inserting instead —

“

court —

- (a) on any ground relating to jurisdiction; or
- (b) on any other ground.

”.

125. Section 49 amended

After section 49(6) the following subsection is inserted —

“

- (6a) The Full Bench is not to remit a case to the Commission under subsection (5)(c) unless it considers that it is unable to make its own decision on the merits of the case because of lack of evidence or for other good reason.

”.

126. Section 90 amended

- (1) Section 90(1) is repealed and the following subsection is inserted instead —

“

- (1) Subject to this section, an appeal lies to the Court in the manner prescribed from any decision of the President, the Full Bench, or the Commission in Court Session —
- (a) on the ground that the decision is in excess of jurisdiction in that the matter the subject of the decision is not on an industrial matter;
 - (b) erroneous in law in that there has been an error in the construction or interpretation of any Act, regulation, award, industrial agreement or order in the course of making the decision appealed against; or
 - (c) on the ground that the appellant has been denied the right to be heard,

but upon no other ground.

”.

- (2) After section 90(3) the following subsection is inserted —

“

- (3a) If any ground of the appeal is made out but the Court is satisfied that no injustice has been suffered by the appellant or a person who is a member of or represented by the appellant, the Court shall confirm the decision the subject of appeal unless it considers that there is good reason not to do so.

”.

**Part 6 — Amendments about industrial agreements
and good faith bargaining**

127. Section 6 amended

- (1) Section 6(a) is amended by inserting after “industry” —
“ and in enterprises within industry ”.
- (2) After section 6(a) the following paragraphs are inserted —
“
- (aa) to provide for rights and obligations in relation to good faith bargaining;
 - (ab) to promote the principles of freedom of association and the right to organize;
 - (ac) to promote equal remuneration for men and women for work of equal value;
 - (ad) to promote collective bargaining and to establish the primacy of collective agreements over individual agreements;
 - (ae) to ensure all agreements registered under this Act provide for fair terms and conditions of employment;
 - (af) to facilitate the efficient organization and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises;
 - (ag) to encourage employers, employees and organizations to reach agreements appropriate to the needs of enterprises within industry and the employees in those enterprises;

”.

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128. Section 7 amended

- (1) Section 7(1) is amended by inserting in the appropriate alphabetical position —

“

“**enterprise order**” has the meaning given by section 42I(1);

”;

- (2) After section 7(4) the following subsection is inserted —

“

- (5) In this Act —

- (a) a reference to an industrial matter includes a reference to a matter relating to bargaining in good faith for an industrial agreement; and
- (b) a reference to jurisdiction to inquire into and deal with an industrial matter includes a reference to jurisdiction to assist parties to bargain for an industrial agreement.

”.

129. Section 26 amended

Section 26(1)(d) is amended as follows:

- (a) in subparagraph (v) by deleting the full stop and inserting a semicolon instead;
- (b) by inserting after subparagraph (v) the following subparagraphs —

“

- (vi) the need to facilitate the efficient organization and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises;

- (vii) the need to encourage employers, employees and organizations to reach agreements appropriate to the needs of enterprises and the employees in those enterprises.

”.

130. Part II Division 2B heading and section 40C inserted

Before section 41 the following Division heading and section are inserted —

“

Division 2B — Industrial agreements

40C. Interpretation

In this Division —

“**initiating party**”, in relation to a proposed industrial agreement, means the party that initiated the bargaining for the agreement under section 42(1);

“**negotiating party**”, in relation to a proposed industrial agreement, means —

- (a) the initiating party; and
- (b) a person who notifies the initiating party under section 42A(1) that that person will bargain for the industrial agreement;

“**prescribed period**” has the meaning given by section 42A(1) and includes any extension of that period ordered by the Commission.

”.

131. Section 41 amended

- (1) After section 41(1) the following subsections are inserted —

“

- (1a) An agreement may apply to a single enterprise or more than a single enterprise.

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- (1b) For the purposes of subsection (1a) an agreement applies to more than a single enterprise if it applies to —
- (a) more than one business, project or undertaking; or
 - (b) the activities carried on by more than one public authority.

”.

- (2) After section 41(7) the following subsections are inserted —

“

- (8) When a new industrial agreement is made and registered, or an award or enterprise order is made, in substitution for an industrial agreement (“**the first agreement**”), the first agreement is taken to be cancelled, except to the extent that the new industrial agreement, award or order saves the provisions of the first agreement.
- (9) To the extent that an industrial agreement is contrary to or inconsistent with an award, the industrial agreement prevails unless the agreement expressly provides otherwise.

”.

132. Section 41A replaced

Section 41A is repealed and the following section is inserted instead —

“

41A. Registration of industrial agreement

- (1) The Commission shall not under section 41 register an agreement as an industrial agreement unless the agreement —
- (a) specifies a nominal expiry date that is no later than 3 years after the date on which the agreement will come into operation;

- (b) includes any provision specified in relation to that agreement by an order referred to in section 42G; and
 - (c) includes an estimate of the number of employees who will be bound by the agreement upon registration.
- (2) The Commission shall not under section 41 register an agreement as an industrial agreement to which an organization or association of employees is a party, unless the employees who will be bound by the agreement upon registration are members of, or eligible to be members of, that organization or association.

”.

133. Sections 42 to 42M inserted

After section 41A the following sections are inserted —

“

42. Initiation of bargaining for industrial agreement

- (1) Bargaining for an industrial agreement may be initiated by an organization or association of employees, an employer or an organization or association of employers giving to an intended party to the agreement a written notice that complies with subsection (3).
- (2) A notice under subsection (1) is not to be given to an organization or association of employers unless that organization or association has given written consent to being given such notice.
- (3) A notice complies with this subsection if it is accompanied by particulars of —
 - (a) the types of employment to be covered by the agreement;
 - (b) the area in which the agreement is to operate;

- (c) the intended parties to the agreement; and
 - (d) any other matter prescribed by regulations made by the Governor under section 42M.
- (4) If there is no applicable industrial agreement or enterprise order in force, bargaining may be initiated under subsection (1) at any time.
 - (5) If there is an applicable industrial agreement or an applicable enterprise order in force, bargaining must not be initiated under subsection (1) earlier than 90 days before the nominal expiry date of the agreement or order.
 - (6) Where bargaining is initiated under subsection (1) with more than one intended party to the agreement, all the negotiating parties are to bargain together unless the Commission, on the application of a negotiating party, directs that that negotiating party may negotiate separately with the initiating party.
 - (7) Nothing in this section prevents or limits a person from bargaining for an industrial agreement when bargaining has not been initiated under subsection (1).
 - (8) In subsection (5) —
“nominal expiry date” means the date specified in the agreement or enterprise order as the date on which the agreement or enterprise order expires.

42A. Response to initiation of bargaining

- (1) A person to whom a notice is given under section 42(1) may notify the initiating party within 21 days of receiving the notice (the **“prescribed period”**) as to whether that person will, or will not, bargain for an industrial agreement.

- (2) The Commission may by order, on application by a person to whom a notice is given under section 42(1), extend by no more than 7 days the period within which that person may respond under subsection (1).
- (3) The Commission may make an order under subsection (2) although an application for the order was not made until after the expiration of the prescribed period.
- (4) An order under subsection (2) may be made subject to such conditions as the Commission thinks fit.
- (5) An application under subsection (2) operates —
 - (a) as a bar to an application for an enterprise order by a negotiating party; and
 - (b) as a stay of any application for an enterprise order that has been made by a negotiating party,until the application under subsection (2) is determined or withdrawn.
- (6) Bargaining between negotiating parties for an industrial agreement is initiated when the negotiating party to whom the notice is given notifies the initiating party under subsection (1) that that negotiating party will bargain.

42B. Good faith bargaining for industrial agreement

- (1) When bargaining for an industrial agreement, a negotiating party shall bargain in good faith.
- (2) Without limiting the meaning of the expression, **“bargaining in good faith”** by negotiating parties includes doing the following things —
 - (a) stating their position on matters at issue, and explaining that position;

- (b) meeting at reasonable times, intervals and places for the purpose of conducting face-to-face bargaining;
 - (c) disclosing relevant and necessary information for bargaining;
 - (d) acting honestly and openly, which includes not capriciously adding or withdrawing items for bargaining;
 - (e) recognising bargaining agents;
 - (f) providing reasonable facilities to representatives of organizations and associations of employees necessary for them to carry out their functions;
 - (g) bargaining genuinely and dedicating sufficient resources to ensure this occurs;
 - (h) adhering to agreed outcomes and commitments made by the parties.
- (3) The Commission may, having regard to the circumstances in which the industrial action occurs, determine that engaging in industrial action is a breach of the duty to bargain in good faith.
- (4) For the purposes of this section, a person is a bargaining agent if —
- (a) that person has been appointed in writing by a negotiating party to an agreement as a bargaining agent of that party in relation to the agreement;
 - (b) a copy of the appointment has been provided to the other negotiating party to the agreement; and
 - (c) the appointment has not been terminated.

- (5) An appointment of a bargaining agent may be terminated at any time by notice of termination given by the negotiating party who appointed the agent in writing to the agent.
- (6) A copy of a notice of termination must be given to each other negotiating party.
- (7) For the purposes of section 77A of the *Legal Practitioners Act 1893* a bargaining agent is authorised to provide advice and other services in relation to bargaining for an industrial agreement.
- (8) Nothing in this section affects the requirement of section 112A that only a person who is registered under that section may appear as an agent under section 31, 81E or 91.

42C. Code of good faith

- (1) The Commission may make a code of good faith to provide guidance about the application of the duty of good faith under section 42B in relation to bargaining for an industrial agreement —
 - (a) generally; or
 - (b) in relation to particular types of situations.
- (2) The code shall not be inconsistent with this Division.
- (3) Section 43(7), (8) and (9) of the *Interpretation Act 1984* apply to the code as if it were subsidiary legislation.
- (4) The Commission may amend or revoke the code or revoke it and substitute another code for it.
- (5) The Commission shall cause the code, and any amendment or substituted code or any revocation of a

code, to be published in the *Industrial Gazette* for public information.

- (6) In this section —
“**Commission**” means the Commission in Court Session.

42D. Duty of good faith does not require concluded industrial agreement

The duty of good faith in section 42B does not require a negotiating party —

- (a) to agree on any matter for inclusion in, or exclusion from, an industrial agreement; or
- (b) to enter into an industrial agreement.

42E. Conciliation and arbitration to assist bargaining

- (1) To assist parties to bargain for an industrial agreement, the Commission may exercise its powers as if it were endeavouring to resolve an industrial matter.
- (2) Without limiting subsection (1) the Commission may make orders and give directions for the purpose of —
 - (a) ensuring that the negotiating parties bargain in good faith; and
 - (b) otherwise facilitating bargaining in good faith by negotiating parties.
- (3) In particular, the Commission may order for the purposes of subsection (2) that a negotiating party do, or refrain from doing, any particular thing.

42F. Restriction on Commission’s power in relation to industrial agreements

Except as provided in section 42G, the Commission must not give any direction or make any order or

declaration requiring, or having the effect of requiring, a negotiating party to enter into an industrial agreement or to include any matter in, or exclude any matter from, an industrial agreement.

42G. Parties may agree to Commission making orders as to terms of agreement

- (1) This section applies where —
 - (a) negotiating parties have reached agreement on some, but not all, of the provisions of a proposed agreement;
 - (b) an application is made to the Commission for registration of the agreement as an industrial agreement, the agreement to include any further provisions specified by an order referred to in subsection (2); and
 - (c) an application is made to the Commission by the negotiating parties for an order as to specified matters on which agreement has not been reached.
- (2) When registering the agreement, the Commission may order that the agreement include provisions specified by the Commission.
- (3) An order referred to in subsection (2) may only be made in relation to matters specified by the negotiating parties in an application referred to in subsection (1)(c).
- (4) In deciding the terms of an order the Commission may have regard to any matter it considers relevant.
- (5) When an order referred to in subsection (2) is made, the provisions specified by the Commission are, by force of this section, included in the agreement registered by the Commission.

- (6) Despite section 49, no appeal lies from an order referred to in subsection (2).

42H. Commission may declare that bargaining has ended

- (1) If, on the application of a negotiating party, the Commission constituted by a single Commissioner determines that —
- (a) the applicant has bargained in good faith;
 - (b) bargaining between the applicant and another negotiating party has failed; and
 - (c) there is no reasonable prospect of the negotiating parties reaching an agreement,
- the Commission may declare that the bargaining has ended between those negotiating parties.
- (2) Despite section 49, no appeal lies from a declaration under subsection (1).

42I. Commission may make enterprise orders

- (1) If —
- (a) the Commission declares under section 42H that bargaining has ended between negotiating parties; or
 - (b) the person to whom a notice is given under section 42(1) does not respond to the notice within the prescribed period or responds with a refusal to bargain,

the Commission may, upon an application under subsection (2), make an order (an “**enterprise order**”) —

- (c) providing for any matter that might otherwise be provided for in an industrial agreement to which the negotiating parties referred to in

paragraph (a), or the initiating party and the person referred to in paragraph (b), were parties, irrespective of the provisions of any award, order or industrial agreement already in force; and

- (d) that the Commission considers is fair and reasonable in all of the circumstances.

(2) An application for an enterprise order may be made —

(a) where subsection (1)(a) applies —

- (i) if the negotiating party in respect of whom the declaration was made is not an organization or association of employers, by the negotiating party; and
- (ii) if the negotiating party in respect of whom the declaration was made is an organization or association of employers, by an employer who is a member of the negotiating party;

and

(b) where subsection (1)(b) applies —

- (i) if the initiating party is not an organization or association of employers, by the initiating party;
- (ii) if the initiating party is an organization or association of employers, by an employer who is a member of the initiating party.

(3) An application for an enterprise order may be made —

- (a) where subsection (1)(a) applies, within 21 days after the making of the declaration; and
- (b) where subsection (1)(b) applies, within 21 days after the end of the prescribed period.

- (4) Without limiting section 32A, the Commission may exercise its powers of conciliation in relation to a matter even if an application for an enterprise order has been made in relation to the same matter.

42J. Effect of enterprise order

- (1) An enterprise order extends to and binds —
 - (a) all employees who are employed —
 - (i) in any calling mentioned in the enterprise order in the industry or industries to which the enterprise order applies; and
 - (ii) by the employer specified in the order under subsection (5)(a);
 - and
 - (b) the employer specified in the order under subsection (5)(a),and no other employee or employer, and its scope is to be expressly so limited in the enterprise order.
- (2) An enterprise order operates in the area specified in the order.
- (3) To the extent that an enterprise order is in conflict with an award or industrial agreement, the enterprise order prevails.
- (4) An enterprise order is enforceable under section 83 as if the order were an award and any organization or association who is specified in the order under subsection (5) were a named party to the award.
- (5) The Commission is to specify in the enterprise order —
 - (a) the employer to whom the enterprise order extends and who is bound by the enterprise order; and

- (b) any organization or association of employees that is a relevant negotiating party or person referred to in section 42I(1)(b), as the case requires.
- (6) The employer specified under subsection (5)(a) is to be —
 - (a) the applicant for the enterprise order; or
 - (b) if the applicant for the enterprise order was an organization or association of employees —
 - (i) the negotiating party;
 - (ii) the person referred to in section 42I(1)(b);
 - (iii) the member of an organization or association of employers that is a negotiating party; or
 - (iv) the member of an organization or association of employers that is a person referred to in section 42I(1)(b),
specified in the application for the enterprise order.

42K. Term of enterprise order

- (1) Subject to this section, an enterprise order operates for the term specified in the order.
- (2) An enterprise order must provide for the day on which it expires which cannot be more than 2 years from and including the day on which it comes into operation.
- (3) An enterprise order is not to be varied by the Commission unless all of the persons specified in the order under section 42J(5) consent to the variation.

- (4) The Commission is not to make an award or another enterprise order in substitution for an enterprise order unless the term of the enterprise order has expired.
- (5) The Commission is not to register an industrial agreement in substitution for an enterprise order unless —
 - (a) the application to the Commission to register the industrial agreement is made by each of the persons specified in the order under section 42J(5); or
 - (b) the term of the enterprise order has expired.
- (6) The Commission is not to cancel an enterprise order unless an industrial agreement has been registered, or an award or order has been made, in substitution for that enterprise order.
- (7) Despite the expiry of an enterprise order, the enterprise order continues in force in respect of all the persons specified in the order under section 42J(5) until a new industrial agreement, enterprise order or an award, in substitution for the enterprise order, has been made or registered as the case requires.

42L. When bargaining ends

Bargaining initiated under section 42(1) ends —

- (a) in relation to negotiating parties who make an agreement, when that agreement is made; and
- (b) in relation to negotiating parties specified in a declaration under section 42H, when that declaration is made.

42M. Regulations

- (1) The Governor may make regulations prescribing any matter that is necessary or convenient to be prescribed for giving effect to the purposes of this Division.
- (2) Without limiting subsection (1) the Governor may make regulations for any of the purposes set out in section 113(1) to give effect to the purposes of this Division.
- (3) If there is any conflict or inconsistency between a regulation made by the Governor and a regulation made under section 113(1), the regulation made by the Governor prevails to the extent of the conflict or inconsistency.

”.

134. Section 84A amended

Section 84A(1)(a) is amended by inserting after “other than section” —

“ 42B(1), ”.

135. Section 93 amended

Section 93(5) is amended by inserting after “of the Commission” —

“

, including copies of all cancelled industrial agreements

”.

136. Section 112A amended

(1) Section 112A(1) is amended as follows:

- (a) in paragraph (b) by deleting “matters,” and inserting instead —

“ matters. ”;

- (b) by deleting all of the words after paragraph (b).
- (2) After subsection (1) the following subsection is inserted —
 - “
 - (1a) Despite subsection (1), a reference to carrying on business as an industrial agent does not include —
 - (a) carrying on business by an organization, the Council, the Chamber or the Mines and Metals Association;
 - (b) carrying on business as a person who acts as a bargaining agent within the meaning of section 42B(4); or
 - (c) carrying on business as a person who —
 - (i) appears in proceedings as provided by section 97WJ; or
 - (ii) provides advice or other services in relation to industrial matters, in the capacity of a bargaining agent under section 97UJ.

”.

Part 7 — Amendments about unfair dismissal and employment issues

137. Section 23 amended

Section 23(3)(h) is deleted and the following paragraph is inserted instead —

“

- (h) on a claim of harsh, oppressive or unfair dismissal —
 - (i) in the case of an application under section 44, make any order except an order that is authorised by section 23A or 44; and
 - (ii) in any other case, make any order except an order that is authorised by section 23A.

”.

138. Section 23A replaced by sections 23A and 23B and transitional provision

- (1) Section 23A is repealed and the following sections are inserted instead —

“

23A. Powers of Commission on claims of unfair dismissal

- (1) The Commission may make an order under this section if the Commission determines that the dismissal of an employee was harsh, oppressive or unfair.
- (2) In determining whether the dismissal of an employee was harsh, oppressive or unfair the Commission shall have regard to whether the employee —
 - (a) at the time of the dismissal, was employed for a period of probation agreed between the

- employer and employee in writing or otherwise; and
- (b) had been so employed for a period of less than 3 months.
- (3) The Commission may order the employer to reinstate the employee to the employee's former position on conditions at least as favourable as the conditions on which the employee was employed immediately before dismissal.
- (4) If the Commission considers that reinstatement would be impracticable, the Commission may order the employer to re-employ the employee in another position that the Commission considers —
- (a) the employer has available; and
- (b) is suitable.
- (5) The Commission may, in addition to making an order under subsection (3) or (4), make either or both of the following orders —
- (a) an order it considers necessary to maintain the continuity of the employee's employment;
- (b) an order to the employer to pay to the employee the remuneration lost, or likely to have been lost, by the employee because of the dismissal.
- (6) If, and only if, the Commission considers reinstatement or re-employment would be impracticable, the Commission may, subject to subsections (7) and (8), order the employer to pay to the employee an amount of compensation for loss or injury caused by the dismissal.

- (7) In deciding an amount of compensation for the purposes of making an order under subsection (6), the Commission is to have regard to —
 - (a) the efforts (if any) of the employer and employee to mitigate the loss suffered by the employee as a result of the dismissal;
 - (b) any redress the employee has obtained under another enactment where the evidence necessary to establish the claim for that redress is also the evidence necessary to establish the claim before the Commission; and
 - (c) any other matter that the Commission considers relevant.
- (8) The amount ordered to be paid under subsection (6) is not to exceed 6 months' remuneration of the employee.
- (9) For the purposes of subsection (8) the Commission may calculate the amount on the basis of an average rate received by the employee during any relevant period of employment.
- (10) For the avoidance of doubt, an order under subsection (6) may permit the employer concerned to pay the compensation required in instalments specified in the order.
- (11) An order under this section may require that it be complied with within a specified time.
- (12) The Commission may make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this section.

23B. Power to prevent external interference with employment issues

(1) In this section —

“employment claim” means a claim made to the Commission in which any of the following is an issue —

- (a) the refusal or failure of an employer to employ a person (**“the affected person”**);
- (b) an employer’s employment or transfer of an employee to work at a particular place or site, or refusal or failure to employ or transfer an employee to work at a particular place or site;
- (c) the reinstatement or re-employment of an employee who has been dismissed by an employer;

“third party”, in relation to an employment claim, means any person, other than the employer on whom a copy of the claim has been served.

(2) The Commission may, if it considers it necessary to do so in the interests of equity, good conscience and the substantial merits of an employment claim, order a third party to refrain from preventing, hindering or interfering with, or doing anything that would have the effect of preventing, hindering or interfering with —

- (a) the employment of the affected person;
- (b) the employment or transfer of the employee to work at a particular place or site; or
- (c) the reinstatement or re-employment of the employee.

- (3) Subsection (2) is not to be taken as limiting the persons in respect of whom the Commission can make other orders under this Act.

”.

- (2) Notwithstanding subsection (1), section 23A of the *Industrial Relations Act 1979* as in force immediately before the coming into operation of this section continues to operate in respect of any claim made under that section before the coming into operation of this section.

139. Section 29 amended

- (1) Section 29(1)(b)(ii) is amended by deleting “service” and inserting instead —

“ employment ”.

- (2) Section 29(2) is repealed and the following subsections are inserted instead —

“

- (2) Subject to subsection (3), a referral under subsection (1)(b)(i) is to be made not later than 28 days after the day on which the employee’s employment is terminated.

- (3) The Commission may accept a referral by an employee under subsection (1)(b)(i) that is out of time if the Commission considers that it would be unfair not to do so.

”.

140. Section 29AA inserted and a transitional provision

- (1) After section 29 the following section is inserted —

“

29AA. Certain claims not to be determined

- (1) Subject to subsection (2), the Commission must not determine a claim of harsh, oppressive or unfair dismissal from employment if the dismissed employee has lodged an application with the Australian Commission for relief in respect of the termination of that employment.
- (2) Despite subsection (1) the Commission may determine the claim if the application to the Australian Commission is —
 - (a) withdrawn; or
 - (b) rejected or dismissed on the ground that it is not within the jurisdiction of the Australian Commission to determine the application.
- (3) The Commission must not determine a claim of harsh, oppressive or unfair dismissal from employment if —
 - (a) an industrial instrument does not apply to the employment of the employee; and
 - (b) the employee's contract of employment provides for a salary exceeding the prescribed amount.
- (4) The Commission must not determine a claim that an employee has not been allowed by his or her employer a benefit to which the employee is entitled under a contract of employment if —
 - (a) an industrial instrument does not apply to the employment of the employee; and

- (b) the employee's contract of employment provides for a salary exceeding the prescribed amount.

- (5) In this section —

“industrial instrument” means —

- (a) an award;
- (b) an order of the Commission under this Act that is not an order prescribed by regulations made by the Governor for the purposes of this section;
- (c) an industrial agreement;
- (d) an employer-employee agreement; or
- (e) a workplace agreement;

“prescribed amount” means —

- (a) \$90 000 per annum; or
- (b) the salary specified, or worked out in a manner specified, in regulations made by the Governor for the purposes of this section.

”.

- (2) Section 29AA of the *Industrial Relations Act 1979* as inserted by this section does not apply to or in respect of a claim made before the coming into operation of this section.

141. Section 44 amended and a transitional provision

- (1) Section 44(6)(bb) is deleted and the following paragraph is inserted instead —

“

- (bb) with respect to industrial matters —
 - (i) give any direction or make any order or declaration which the Commission is otherwise authorised to give or make under this Act; and

- (ii) without limiting paragraph (ba) or subparagraph (i) of this paragraph, in the case of a claim of harsh, oppressive or unfair dismissal of an employee, make any interim order the Commission thinks appropriate in the circumstances pending resolution of the claim;

”.

- (2) Section 44(6)(bb) of the *Industrial Relations Act 1979* as inserted by this section does not apply to or in respect of a claim made before the coming into operation of this section.

Part 8 — Amendments about right of entry, record keeping and inspection of records

142. Section 7 amended

Section 7(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“employment record” means a record kept under section 49D;

“premises” includes any land, building, structure, mine, mine working, aircraft, ship or other vessel, vehicle and place, and any part of it;

“record” means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the assistance of some electronic, electrical, mechanical, chemical or other machine or process is required to convey the information or meaning;

”.

143. Section 23 amended

Section 23(3)(c) is amended as follows:

- (a) by inserting “or” after subparagraph (i);
- (b) by deleting “or” after subparagraph (ii);
- (c) by deleting subparagraph (iii).

144. Section 41 amended

Section 41(2) is amended by deleting “section 41A” and inserting instead —

“ sections 41A and 49N ”.

145. Sections 49AB and 49B repealed

Sections 49AB and 49B are repealed.

146. Part II Divisions 2F and 2G inserted and a transitional provision

(1) Before Part II Division 3 the following Divisions are inserted —

“

**Division 2F — Keeping of and access to
employment records**

49D. Keeping of employment records

- (1) Subsection (2) applies to an employee during any period when an industrial instrument applies to his or her employment.
- (2) An employer must ensure that details are recorded of —
 - (a) the employee’s name and, if the employee is under 21 years of age, his or her date of birth;
 - (b) any industrial instrument that applies;
 - (c) the date on which the employee commenced employment with the employer;
 - (d) for each day —
 - (i) the time at which the employee started and finished work;

- (ii) the period or periods for which the employee was paid; and
 - (iii) details of work breaks including meal breaks;
 - (e) for each pay period —
 - (i) the employee's designation;
 - (ii) the gross and net amounts paid to the employee under the industrial instrument; and
 - (iii) all deductions and the reasons for them;
 - (f) all leave taken by the employee, whether paid, partly paid or unpaid;
 - (g) the information necessary for the calculation of the entitlement to, and payment for long service leave under the *Long Service Leave Act 1958*, the *Construction Industry Portable Paid Long Service Leave Act 1985* or the industrial instrument;
 - (h) any other information in respect of the employee required under the industrial instrument to be recorded; and
 - (i) any information, not otherwise covered by this subsection, that is necessary to show that the remuneration and benefits received by the employee comply with the industrial instrument.
- (3) The employer must ensure that —
- (a) the employment records are kept in accordance with regulations made by the Governor;
 - (b) each entry in relation to long service leave is retained —
 - (i) during the employment of the employee; and

- (ii) for not less than 7 years after the employment terminates;
 - and
 - (c) each other entry is retained for not less than 7 years after it is made.
- (4) In this section —
- “industrial instrument”** means —
- (a) an award;
 - (b) an order of the Commission under this Act;
 - (c) an industrial agreement; or
 - (d) an employer-employee agreement.

49E. Access to employment records

- (1) An employer, on written request by a relevant person, must —
 - (a) produce to the person the employment records relating to an employee; and
 - (b) let the person inspect the employment records.
- (2) The duty placed on an employer by subsection (1) —
 - (a) continues so long as the records are required to be kept under section 49D(3);
 - (b) is not affected by the fact that the employee is no longer employed by the employer or that the industrial instrument no longer applies to him or her;
 - (c) includes the further duties —
 - (i) to let the relevant person enter premises of the employer for the purpose of inspecting the records; and
 - (ii) to let the relevant person take copies of or extracts from the records;

and

- (d) must be complied with not later than —
 - (i) at the end of the next pay period after the request is received; or
 - (ii) the seventh day after the day on which the request was made to the employer.
- (3) Nothing in this section limits or otherwise affects the powers of an Industrial Inspector in relation to the inspection of employment records.
- (4) In this section —
 - “relevant person”** means —
 - (a) the employee concerned;
 - (b) if the employee is a represented person, his or her representative;
 - (c) a person authorised in writing by the employee; and
 - (d) an officer referred to in section 93 authorised in writing by the Registrar.

49F. Enforcement of this Division

A contravention of section 49D(2), 49D(3) or 49E(1) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

Division 2G — Right of entry and inspection by authorised representatives

49G. Interpretation

In this Division —

“authorised representative” means a person who holds an authority in force under this Division;

“relevant employee”, when used in connection with the exercise of a power by an authorised representative of an organization, means an employee who is a member of the organization or who is eligible to become a member of the organization.

49H. Right of entry for discussions with employees

- (1) An authorised representative of an organization may enter, during working hours, any premises where relevant employees work, for the purpose of holding discussions at the premises with any of the relevant employees who wish to participate in those discussions.
- (2) If an award, order or industrial agreement that extends to the relevant employees makes provision as to entry onto premises by an authorised representative and —
 - (a) does not require notice to be given by the representative; or
 - (b) requires a specified period of notice to be given by the representative,

the authorised representative is not required to give notice under this section.

- (3) If subsection (2) does not apply, the authorised representative is not entitled to exercise a power conferred by this section unless the authorised representative has given the employer of the employees concerned at least 24 hours’ written notice.

49I. Right of entry to investigate breaches

- (1) An authorised representative of an organization may enter, during working hours, any premises where relevant employees work, for the purpose of

investigating any suspected breach of this Act, the *Long Service Leave Act 1958*, the MCE Act, the *Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994* or an award, order, industrial agreement or employer-employee agreement that applies to any such employee.

- (2) For the purpose of investigating any such suspected breach, the authorised representative may —
 - (a) subject to subsections (3) and (6), require the employer to produce for the representative's inspection, during working hours at the employer's premises or at any mutually convenient time and place, any employment records of employees or other documents, other than workplace agreements, kept by the employer that are related to the suspected breach;
 - (b) make copies of the entries in the employment records or documents related to the suspected breach; and
 - (c) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach.
- (3) The authorised representative is not entitled to require an employer to produce an employment record of an employee if the employee —
 - (a) is a party to an employer-employee agreement; and
 - (b) has made a written request to the employer that the record not be available for inspection by an authorised representative.
- (4) A written request under subsection (3)(b) —

- (a) may be withdrawn by written notice given by the employee to the employer; and
 - (b) has effect until it is so withdrawn.
- (5) An authorised representative is not entitled to exercise a power conferred by this section for the purpose of investigating a suspected breach of an employer-employee agreement to which a relevant employee is a party unless the authorised representative is authorised in writing by that relevant employee to carry out the investigation.
- (6) An authorised representative is not entitled to require the production of employment records or other documents unless, before exercising the power, the authorised representative has given the employer concerned —
 - (a) if the records or other documents are kept on the employer's premises, at least 24 hours' written notice; or
 - (b) if the records or other documents are kept elsewhere, at least 48 hours' written notice.
- (7) The Commission may, on the ex parte application of an authorised representative, waive the requirement to give the employer concerned notice of an intended exercise of a power under subsection (6) if the Commission is satisfied that to give such notice would defeat the purpose for which the power is intended to be exercised.
- (8) If the requirement for notice is waived under subsection (7) —
 - (a) the Commission must give the authorised representative a certificate authorising the exercise of the power without notice; and

- (b) the authorised representative must, after entering the premises and before requiring the production of the records or documents, give the person who is apparently in charge of the premises the certificate or a copy of the certificate.

49J. Provisions as to authorities issued to representatives

- (1) The Registrar, on application by the secretary of an organization of employees to issue an authority for the purposes of this Division to a person nominated by the secretary in the application, must issue the authority.
- (2) The Registrar must not issue an authority for the purposes of this Division to a person who has held an authority under this Division that has been revoked under subsection (5) unless the Commission in Court Session on application by any person has ordered that the authority be so issued.
- (3) A person to whom an authority is issued is an authorised representative of the organization on whose behalf the application for the authority was made.
- (4) The authority remains in force unless it is revoked or suspended under this section.
- (5) The Commission constituted by a Commissioner may, by order, on application by any person, revoke, or suspend for a period determined by the Commission, the authority if satisfied that the person to whom it was issued has —
 - (a) acted in an improper manner in the exercise of any power conferred on the person by this Division; or
 - (b) intentionally and unduly hindered an employer or employees during their working time.

- (6) The Registrar may, on application by the secretary of the organization of employees on whose behalf the application for the authority was made, revoke the authority.
- (7) An application for the revocation of an authority under subsection (5) is to set out the grounds on which the application is made.
- (8) Despite section 49 —
 - (a) no appeal lies from a decision of the Commission under subsection (2); and
 - (b) section 49(2a) does not apply to an appeal from a decision under subsection (5).
- (9) A person to whom an authority has been issued under this section must, within 14 days after the revocation of the authority, return the authority to the Registrar.

49K. No entry to premises used for habitation

An authorised representative does not have authority under this Division to enter any part of the premises of an employer that is principally used for habitation by the employer and his or her household.

49L. Authority must be shown on request

- (1) If —
 - (a) a person proposes to enter, or is on, premises in accordance with section 49H or 49I; and
 - (b) the occupier requests the person to show his or her authority,

the person is not entitled under that section to enter or remain on the premises unless he or she shows the occupier the authority in force under this Division.

- (2) In this section —

“occupier” includes a person in charge of the premises.

49M. Conduct giving rise to civil penalties

- (1) The occupier of premises must not refuse, or intentionally and unduly delay, entry to the premises by a person entitled to enter the premises under section 49H or 49I.
- (2) A person must not intentionally and unduly hinder or obstruct an authorised representative in the exercise of the powers conferred by this Division.
- (3) A person must not purport to exercise the powers of an authorised representative under this Division if the person is not the holder of a current authority issued by the Registrar under this Division.

49N. Power of Commission restricted

- (1) The Commission does not have jurisdiction to make an award or order or register an agreement conferring, or making provision for the exercise of, powers of entry and inspection that are additional to, or inconsistent with, the powers of entry and inspection under Division 2F and this Division and the provisions as to the exercise of those powers.
- (2) Nothing in subsection (1) prevents or limits the Commission from specifying in an award or order, or registering an agreement that specifies, the period of notice required to be given by an authorised representative to an employer before entering premises where relevant employees work.
- (3) To the extent that the provisions of an award, order or industrial agreement, whether made or registered before or after the coming into operation of section 146

of the *Labour Relations Reform Act 2002*, confer or make provision for the exercise of powers of entry and inspection that are additional to, or inconsistent with, the powers of entry and inspection under Division 2F and this Division or the provisions as to the exercise of those powers, those provisions have no effect.

49O. Enforcement of this Division

A contravention of section 49J(9) or 49M(1), (2) or (3) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

”.

- (2) A provision of an award, order or industrial agreement made or registered before the coming into operation of subsection (1) does not cease to have effect by reason of the operation of section 49N(3), as inserted by subsection (1), until 28 days after the coming into operation of subsection (1).

147. Section 98 amended

Section 98(7) is repealed.

148. Section 102 amended

Section 102(1)(a) is amended by deleting “as defined by section 98(7)”.

Part 9 — Amendments about procedure and enforcement

149. Section 7 amended

Section 7(1) is amended by inserting in the appropriate alphabetical position —

“

“**civil penalty provision**” means a provision of this Act that is specified to be a civil penalty provision for the purposes of section 83E;

”.

150. Section 22B inserted

After section 22A the following section is inserted —

“

22B. Commission to act with due speed

In the performance of its functions the Commission is to act with as much speed as the requirements of this Act and a proper consideration of the matter before it permit.

”.

151. Section 44 amended

After section 44(12c) the following subsections are inserted —

“

- (12d) As soon as is practicable after giving or making a direction, order or declaration orally under this section, the Commission shall —
- (a) reduce the direction, order or declaration to writing; and
 - (b) make the text of the direction, order or declaration available to the parties bound by the

order or to which the direction or declaration applies.

- (12e) Subsection (12d) does not apply to an order or declaration to which section 35 applies.

”.

152. Section 70 amended and a transitional provision

- (1) After section 70(2) the following subsection is inserted —

“

- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

”.

- (2) Despite subsection (1), section 70 of the *Industrial Relations Act 1979* as in force immediately before the coming into operation of this section continues to operate in respect of any proceedings commenced before the coming into operation of this section.

153. Section 80L amended

Section 80L(1) is amended by inserting after “sections” the following —

“ 22B, ”.

154. Section 82 amended

Section 82(3) is repealed and the following subsection is inserted instead —

“

- (3) Subsection (2) does not apply to the enforcement of —
(a) a civil penalty provision; or

- (b) a provision of this Act, if a contravention of or failure to comply with the provision constitutes an offence against this Act.

”.

155. Section 83 repealed and sections 83, 83A, 83B and 83C inserted instead and transitional provisions

- (1) Section 83 is repealed and the following sections are inserted instead —

“

83. Enforcement of certain instruments

- (1) Subject to this Act, where a person contravenes or fails to comply with a provision of an instrument to which this section applies any of the following may apply in the prescribed manner to an industrial magistrate’s court for the enforcement of the provision —

- (a) the Registrar or a Deputy Registrar;
- (b) an Industrial Inspector;
- (c) in the case of an award or industrial agreement, any organization or association named as a party to it;
- (d) in the case of an award, industrial agreement or order, an employer bound by it;
- (e) any person on his or her own behalf who is a party to the instrument or to whom it applies;
- (f) if an employee under an employer-employee agreement is a represented person, a representative acting on his or her behalf.

- (2) In this section —

“instrument to which this section applies” means —

- (a) an award;
- (b) an industrial agreement;

- (c) an employer-employee agreement; and
 - (d) an order made by the Commission, other than an order made under section 23A, 32, 44(6) or 66.
- (3) An application for the enforcement of an instrument to which this section applies shall not be made otherwise than under subsection (1).
- (4) On the hearing of an application under subsection (1) the industrial magistrate's court may, by order —
 - (a) if the contravention or failure to comply is proved —
 - (i) issue a caution; or
 - (ii) impose such penalty as the industrial magistrate's court thinks just but not exceeding \$2 000 in the case of an employer, organization or association and \$500 in any other case;
 - or
 - (b) dismiss the application.
- (5) If a contravention or failure to comply with a provision of an instrument to which this section applies is proved against a person as mentioned in subsection (4) the industrial magistrate's court may, in addition to imposing a penalty under that subsection, make an order against the person for the purpose of preventing any further contravention or failure to comply with the provision.
- (6) An order under subsection (5) —
 - (a) may be made subject to any terms and conditions the court thinks appropriate; and
 - (b) may be revoked at any time.

- (7) An interim order may be made under subsection (5) pending final determination of an application under subsection (1).
- (8) A person shall comply with an order made against him or her under subsection (5).
Penalty: \$5 000 and a daily penalty of \$500.

83A. Underpayment of employee

- (1) Where in any proceedings brought under section 83(1) against an employer it appears to the industrial magistrate's court that an employee of that employer has not been paid by that employer the amount which the employee was entitled to be paid under an instrument to which that section applies the industrial magistrate's court shall, subject to subsection (2), order that employer to pay to that employee the amount by which the employee has been underpaid.
- (2) An order may only be made under subsection (1) —
 - (a) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings; or
 - (b) if the employer concerned appears to the industrial magistrate's court, or has been found under section 83E, to have contravened section 102(1)(a) or (b) by reason of having failed —
 - (i) to produce or exhibit a record relevant to the proceedings;
 - (ii) to allow such a record to be examined; or
 - (iii) to answer a question relevant to the proceedings truthfully to the best of the

employer's knowledge, information and belief, as the case requires,

in respect of any amount relating to a period not being more than 6 years prior to that failure.

- (3) When an order is made under subsection (1), the amount stated in the order shall be taken to be a penalty imposed under this Act and may be recovered accordingly, but on recovery shall be paid as stated in the order under section 83F.
- (4) Nothing in this section limits the operation of section 83.

83B. Enforcement of unfair dismissal order

- (1) Where an employer contravenes or fails to comply with an order made under section 23A any of the following may apply in the prescribed manner to an industrial magistrate's court for the enforcement of the order —
 - (a) the Registrar or a Deputy Registrar;
 - (b) an Industrial Inspector;
 - (c) an organization of employees in which the employee in relation to whom the order is made is eligible to be enrolled as a member or an association that represents such an organization; and
 - (d) the employee in relation to whom the order is made.
- (2) No fee is payable for the filing of an application under subsection (1).

- (3) On an application under subsection (1) in respect of a contravention or failure to comply with an order under section 23A(3) or (4), the industrial magistrate's court may —
- (a) if the contravention or failure to comply is proved, make an order for whichever of the following type of remedy was requested in the application —
 - (i) an order that the employer do any specified thing, or cease any specified activity, for the purpose of preventing any further contravention or failure to comply with the order;
 - (ii) an order revoking the order, and any associated orders, made under section 23A and, subject to subsection (7), ordering the employer to pay to the employee an amount decided by the industrial magistrate's court;
- or
- (b) dismiss the application.
- (4) On an application under subsection (1) in respect of a contravention or failure to comply with an order under section 23A(5), (6) or (12), the industrial magistrate's court may —
- (a) if the contravention or failure to comply is proved, order the person to do any specified thing, or to cease any specified activity, for the purpose of preventing any further contravention or failure to comply with the order; or
 - (b) dismiss the application.

- (5) The industrial magistrate's court may, in addition to making an order under subsection (3)(a) or (4)(a) —
- (a) issue a caution or impose such penalty as the industrial magistrate's court thinks just but not exceeding \$5 000;
 - (b) in the case of an order under subsection (3)(a), order the employer to pay to the employee, in addition to any remuneration or amount ordered to be paid, the remuneration lost, or likely to have been lost, by the employee because of the contravention or failure to comply with the order under section 23A; and
 - (c) make any ancillary or incidental order that the court thinks necessary for giving effect to any order made under this section.
- (6) An order under subsection (3)(a) or (4)(a) —
- (a) shall, unless it has immediate effect, specify a time within which the order must be obeyed (which time may be extended by the court); and
 - (b) may be made subject to any terms and conditions the court thinks appropriate.
- (7) The amount ordered to be paid under subsection (3)(a)(ii) —
- (a) is not to be less than 6 months' remuneration of the employee in relation to whom the order is made; and
 - (b) is not to exceed 12 months' remuneration of the employee in relation to whom the order is made.
- (8) For the purposes of subsection (7) the industrial magistrate's court may calculate the amount on the basis of an average rate received by the employee during any relevant period of employment.

- (9) In deciding an amount for the purposes of making an order under subsection (3)(a)(ii), the industrial magistrate's court is to have regard to —
- (a) the efforts (if any) of the employer and employee to mitigate the loss suffered by the former employee as a result of the dismissal;
 - (b) any redress the employee has obtained under another enactment where the evidence necessary to establish the claim for that redress was also the evidence necessary to establish the claim before the Commission under section 23A; and
 - (c) any other matter that the court considers relevant.
- (10) A person shall comply with an order made against that person under subsection (3)(a) or (4)(a).
Penalty: \$5 000 and a daily penalty of \$500.

83C. Costs of enforcement orders

- (1) Subject to subsection (2), an order under section 83, 83A or 83B may be made in any case with or without costs, but in no case shall any costs be given against the Registrar, a Deputy Registrar, or an Industrial Inspector.
- (2) In proceedings under section 83 or 83B costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the industrial magistrate's court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

”.

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- (2) Any proceedings begun before an industrial magistrate's court under section 83 of the *Industrial Relations Act 1979*, and not abandoned or finally determined, before the commencement of this section are to be dealt with after the coming into operation of this section as if section 83 had not been amended by this Act.
- (3) Subject to subsection (2), sections 83, 83A and 83B of the *Industrial Relations Act 1979* as amended by this Act apply to and in relation to an award, industrial agreement or order made before the coming into operation of this section as if the award, industrial agreement or order were made after the coming into operation of this Act.

156. Section 83A amended

Section 83A is amended by deleting the section designation "83A." and inserting instead —

“ **83D.** ”.

157. Sections 83E and 83F inserted

Before section 84 the following sections are inserted —

“

83E. Contravention of a civil penalty provision

- (1) If a person contravenes a civil penalty provision, an industrial magistrate's court may make an order imposing a penalty on the person, not exceeding —
 - (a) in the case of an employer, organization or association, \$5 000; and
 - (b) in any other case, \$1 000.
- (2) Subject to subsection (3), if a person contravenes a civil penalty provision an industrial magistrate's court may, instead of or in addition to making an order under subsection (1), make an order against the person for the

purpose of preventing any further contravention of that provision.

- (3) In the case of a contravention of section 49D(2) or (3), the court is not to make an order under subsection (2) instead of making an order under subsection (1) but may make an order under subsection (2) in addition to making an order under subsection (1).
- (4) An order under subsection (2) —
 - (a) may be subject to any terms and conditions the court thinks appropriate; and
 - (b) may be revoked at any time.
- (5) An interim order may be made under subsection (2) pending final determination of an application under this section.
- (6) An application for an order under this section may be made by —
 - (a) a person directly affected by the contravention or, if that person is a represented person, his or her representative;
 - (b) an organization or association of which a person who comes within paragraph (a) is a member;
 - (c) the Registrar or a Deputy Registrar; or
 - (d) an Industrial Inspector.
- (7) An application under subsection (6) must be made in accordance with regulations made by the Governor.
- (8) The standard of proof to be applied in determining whether there has been a contravention of a civil penalty provision is the standard observed in civil proceedings.

- (9) A person must comply with an order made against him or her under subsection (2).
Penalty: \$5 000 and a daily penalty of \$500.
- (10) Where, on an application under subsection (6), the industrial magistrate's court does not make an order under subsection (1) or (2), the court may, by order, dismiss the application.
- (11) An order under subsection (1), (2) or (10) may be made in any case with or without costs, but in no case shall any costs be given against the Registrar, the Deputy Registrar, or an Industrial Inspector.
- (12) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the industrial magistrate's court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

83F. Payment of costs and penalties

- (1) Where the industrial magistrate's court, by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs the industrial magistrate's court shall state in the order —
 - (a) the name of the person liable to pay the penalty or costs; and
 - (b) the name of the person to whom the penalty is, or costs are, payable.
- (2) An industrial magistrate's court imposing a penalty by order under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to —
 - (a) a person directly affected by the conduct to which the contravention relates;

- (b) the applicant; or
 - (c) the Treasurer.
- (3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned.

”.

158. Section 84A amended

Section 84A(3) is repealed and the following subsection is inserted instead —

“

- (3) Subsection (1) does not apply to a contravention of or a failure to comply with —
- (a) a civil penalty provision; or
 - (b) a provision of this Act if the contravention or failure constitutes an offence against this Act.

”.

159. Section 102 amended

After section 102(2) the following subsection is inserted —

“

- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

”.

160. Consequential amendments to sections 81A, 81CA, 82A, 93, 102A and 103

- (1) Section 81A is amended by inserting after “83A,” the following —

“ 83B, 83D, 83E, ”.

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- (2) Section 81CA(1) is amended as follows:
- (a) in paragraph (a) of the definition of “general jurisdiction” by deleting “83” and inserting instead —
“ 83(1) to (7), 83A, 83B(1) to (9), 83E(1) to (8) ”;
 - (b) in paragraph (a) of the definition of “prosecution jurisdiction” by deleting “83A” and inserting instead —
“ 83D ”.
- (3) Section 82A is amended by inserting after “83” the following —
“ , 83B, 83E ”.
- (4) Section 93(9) is amended by deleting “77 or 83 or” and inserting instead —
“ 77, 83, 83B, 83E or ”.
- (5) Section 102A(1) is amended by deleting “77 or 83 or” and inserting instead —
“ 77, 83, 83B, 83E or ”.
- (6) Section 102A(2) is amended by deleting “77 or 83 or” and inserting instead —
“ 77, 83, 83B, 83E or ”.
- (7) Section 103(3) is amended in the definition of “application” by deleting “77 or 83 or” and inserting instead —
“ 77, 83, 83B, 83E or ”.

161. Section 96 inserted

After section 95 the following section is inserted in Part V —

“

96. Delegation of certain functions to Registrar

- (1) In this section —
“**Registrar**” means the Registrar or a Deputy Registrar.

- (2) Subject to subsection (3), the regulations may provide for and in relation to the delegation to a Registrar of all or any of the functions of the Commission in relation to the following —
- (a) claims referred to in section 29(1)(b);
 - (b) the review of awards for the purposes of section 40B;
 - (c) applications under section 49I(7).
- (3) The powers of the Commission —
- (a) to make an order under section 23A;
 - (b) to make an order that an employee has not been allowed by his or her employer a benefit to which he or she is entitled under his or her contract of service; and
 - (c) to make an order under section 40B,
- cannot be delegated to a Registrar.
- (4) The Chief Commissioner may from time to time give directions in writing to a Registrar with respect to the performance of any of the Registrar's functions under this section and the Registrar is to give effect to any such direction.
- (5) A direction may be either general or with respect to a particular matter.
- (6) A function performed by a Registrar as a delegate of the Commission is to be taken to be performed by the Commission.
- (7) A function may be performed by the Commission despite it being a delegated function.
- (8) Except as provided in subsection (4) and despite any other provision of this Act, the *Public Sector Management Act 1994* or any other written law, a

Registrar is not subject to the direction or control of any person in relation to the manner in which the Registrar performs a delegated function.

- (9) A party to proceedings in which a Registrar has performed a delegated function may, within the time prescribed by, or within such further time as is allowed in accordance with, the regulations, apply to the Commission to review a direction, determination or order made by a Registrar in the performance of the delegated function.
- (10) The Commission constituted by a Commissioner may, on application under subsection (9), review the direction, determination or order and may —
 - (a) affirm the direction, determination or order; or
 - (b) revoke the direction, determination or order and make a direction, determination or order the Commission considers appropriate with respect to the matter to which the performance of the delegated function related.
- (11) The Chief Commissioner of his or her own motion may review, or may assign a Commissioner to review, a direction, determination or order made by a Registrar in the performance of a delegated function and the Commission constituted by the Chief Commissioner or the Commissioner assigned may —
 - (a) affirm the direction, determination or order; or
 - (b) revoke the direction, determination or order and make a direction, determination or order the Commission considers appropriate with respect to the matter to which the performance of the delegated function related.

- (12) A review under subsection (11) may be carried out within the time prescribed by, or within such further time as is allowed in accordance with, the regulations.
- (13) The Chief Commissioner may make regulations for the purposes of this section.

”.

162. Section 113 amended

- (1) Section 113(1) is amended by deleting “and the members of the Commission, or a majority of them” and inserting instead —

“

and the Chief Commissioner, after consultation with the members of the Commission

”.

- (2) After section 113(1)(b) the following paragraph is inserted —

“

- (ba) prescribing the practice and procedure to be followed in the mediation of a claim of harsh, oppressive or unfair dismissal, and other matters related to that mediation;

”.

- (3) Section 113(1)(d) is deleted.

- (4) After section 113(3a) the following subsection is inserted —

“

- (3b) The Governor may make regulations prescribing what fees shall be paid in respect of any proceeding before the Court and the Commission, and the party by whom such fees shall be paid.

”.

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(5) Section 113(4) is amended by deleting “\$40” and inserting instead —

“ \$1 000 ”.

**Part 10 — Amendments about minimum weekly rates
of pay and other conditions of employment**

**Division 1 — Amendments to the *Minimum Conditions of
Employment Act 1993* in relation to minimum weekly rates of
pay and other minimum conditions of employment**

163. The Act amended

The amendments in this Division are to the *Minimum
Conditions of Employment Act 1993**.

[* Reprinted as at 4 June 1997.]

164. Section 3 amended

- (1) Section 3(1) is amended in the definition of “award” by
inserting after “order” the following —

“ of the Commission ”.

- (2) Section 3(1) is amended by deleting the definition of “minimum
condition of employment” and inserting the following
definitions instead —

“

“minimum condition of employment” means —

- (a) a rate of pay prescribed by this Act;
- (b) a requirement as to pay, other than a rate of
pay, prescribed by this Act;
- (c) a condition for leave prescribed by this Act;
- (d) the use, in manner prescribed by this Act, of
a condition for leave prescribed by this Act;
or
- (e) a condition prescribed by Part 5;

“trainee” has the same meaning as in the IR Act;

”.

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Part 10 Amendments about minimum weekly rates of pay and other
Division 1 Amendments to the Minimum Conditions of Employment Act 1993 in relation to minimum weekly rates of pay and other minimum conditions of employment

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- (3) Section 3(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**apprentice**” has the same meaning as in the IR Act;

“**IR Act**” means the *Industrial Relations Act 1979*;

”.

165. Section 8 amended and savings provisions as to certain existing section 8 agreements

- (1) Section 8 is amended as follows:

- (a) by inserting before “An” the subsection designation “(1)”;
- (b) by inserting after “forgo” —
“ up to 50% of ”.

- (2) At the end of section 8 the following subsection is inserted —

“

- (2) An agreement referred to in subsection (1) is of no effect if the employer’s offer of employment was made on the condition that the employee would be required to enter into the agreement.

”.

- (3) An agreement continues to have effect on and from the commencement day in respect of the employee’s entitlement to annual leave that accrued before the commencement day as if former section 8 had not been amended by this Act.
- (4) An agreement that provides for the foregoing of the employee’s entitlement to annual leave that would have accrued after the commencement day if former section 8 had not been amended by subsection (1) has effect on and from the commencement day as if it provided for the foregoing of 50% of that entitlement.

(5) In this section —

“**agreement**” means an agreement —

- (a) under former section 8 for an employee to forgo his or her entitlement to annual leave; and
- (b) that is in effect immediately before the commencement day;

“**commencement day**” means the day on which subsection (1) comes into operation;

“**former section 8**” means section 8 of the *Minimum Conditions of Employment Act 1993* as it was in effect immediately before the commencement day.

166. Section 9 amended

Section 9(1) is amended by deleting “within the meaning of Part 3 that is applicable to the employee’s age” and inserting instead —

“

that is applicable to the employee under section 12, 13, 14 or 15

”.

167. Part 3 replaced

Part 3 is repealed and the following Part is inserted instead —

“

Part 3 — Minimum rates of pay

10. Entitlement of employees to be paid a minimum rate of pay

An employee is entitled to be paid, for each hour worked by the employee in a week, the minimum weekly rate of pay applicable to the employee under section 12, 13, 14 or 15, divided by 38.

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Part 10 Amendments about minimum weekly rates of pay and other
Division 1 Amendments to the Minimum Conditions of Employment Act 1993 in relation to minimum weekly rates of pay and other minimum conditions of employment

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11. Minimum rate of pay for casual employees includes a loading

- (1) A casual employee is entitled to be paid the amount which he or she is entitled to be paid under section 10 plus the prescribed percentage of that amount.
- (2) In subsection (1) —
“prescribed percentage” means —
 - (a) 20%; or
 - (b) if a percentage higher than 20% is set by order under section 51I of the IR Act for the purposes of this section, that percentage.

12. Minimum weekly rate of pay: employees of 21 or more years of age

The minimum weekly rate of pay applicable at a particular time to an employee —

- (a) who has reached 21 years of age; and
- (b) who is not an apprentice or trainee,

is the rate in effect at that time under section 51F of the IR Act in relation to employees who have reached 21 years of age and who are not apprentices or trainees.

13. Minimum weekly rate of pay: employees under 21 years of age

The minimum weekly rate of pay applicable at a particular time to an employee —

- (a) who is of the age mentioned in the first column in the Table to this section; and
- (b) who is not an apprentice or trainee,

is the percentage, set out opposite that age in the second column in the Table, of the rate referred to in

section 12 in effect at that time, rounded up to the nearest 10 cents.

Table

Age	Percentage of 21 year old rate
20 years	90%
19 years	80%
18 years	70%
17 years	60%
16 years	50%
Under 16 years	40%

14. Minimum weekly rates of pay: apprentices

The minimum weekly rate of pay applicable at a particular time to an employee who is an apprentice —

- (a) in the case where a rate is in effect at that time under section 51F of the IR Act in relation to the class of apprentice to which the employee belongs, is that rate;
- (b) otherwise, is the rate in effect at that time under section 51F of the IR Act in relation to apprentices generally.

15. Minimum weekly rates of pay: trainees

The minimum weekly rate of pay applicable at a particular time to an employee who is a trainee —

- (a) in the case where a rate is in effect at that time under section 51F of the IR Act in relation to the class of trainee to which the employee belongs, is that rate;
- (b) otherwise, is the rate in effect at that time under section 51F of the IR Act in relation to trainees generally.

”.

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Part 10 Amendments about minimum weekly rates of pay and other
Division 1 Amendments to the Minimum Conditions of Employment Act 1993 in relation to minimum weekly rates of pay and other minimum conditions of employment

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168. Transitional provisions for minimum weekly rates of pay

- (1) A minimum weekly rates of pay order under section 15 of the *Minimum Conditions of Employment Act 1993* that has effect immediately before the commencement of Part 10 of the *Labour Relations Reform Act 2002* has no effect after that commencement.
- (2) Schedule 1 and subsections (3) and (4) have effect for the period commencing immediately after the commencement of Part 10 of the *Labour Relations Reform Act 2002* and ending when the first order under section 51F(1) of the *Industrial Relations Act 1979* has effect.
- (3) Schedule 1 clause 2 has the same effect as if it were a provision of an order under section 51F(1) of the *Industrial Relations Act 1979* setting the minimum weekly rate of pay in relation to employees who have reached 21 years of age and who are not apprentices or trainees.
- (4) Schedule 1 clause 4 has the same effect as if it were a provision of an order under section 51F(1) of the *Industrial Relations Act 1979* setting the minimum weekly rate of pay in relation to apprentices and trainees.

169. Section 19 amended and a savings provision

- (1) Section 19(1) is repealed and the following subsection is inserted instead —

“

- (1) Subject to sections 20 and 22, an employee, other than a casual employee, who is unable to work as a result of the employee's illness or injury, is entitled to paid leave each year for periods of absence from work resulting from the illness or injury for the number of hours the employee is required ordinarily to work in a 2 week period during that year, up to 76 hours.

”.

- (2) An entitlement to paid leave for illness or injury that accrued before the commencement day is preserved on and from the commencement day as if former section 19 had not been amended by this Act.
- (3) In this section —
- “**commencement day**” means the day on which subsection (1) comes into operation;
- “**former section 19**” means section 19 of the *Minimum Conditions of Employment Act 1993* as it was in effect immediately before the commencement day.

170. Section 20A inserted

After section 20 the following section is inserted —

“

20A. Entitlement to use certain sick leave entitlements as carer’s leave

- (1) An employee is entitled to use, each year, up to 5 days of the employee’s entitlement under section 19(1) for that year to be the primary care giver of a member of the employee’s family or household who is ill or injured and in need of immediate care and attention.
- (2) In subsection (1) —
- “**member of the employee’s family**” means any of the following persons —
- (a) the employee’s spouse or de facto spouse;
 - (b) a child for whom the employee has parental responsibility as defined by the *Family Court Act 1997*;
 - (c) an adult child of the employee;
 - (d) a parent, sibling or grandparent of the employee.

”.

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Part 10 Amendments about minimum weekly rates of pay and other
Division 1 Amendments to the Minimum Conditions of Employment Act 1993 in relation to minimum weekly rates of pay and other minimum conditions of employment

s. 171

171. Section 21 replaced

Section 21 is repealed and the following section is inserted instead —

“

21. Certain matters as to sick leave not minimum conditions

Nothing in this Division requires —

- (a) an employee's untaken entitlement under section 19(1) or 20A(1) to be carried over from the year in which the entitlement arose to the next year;
- (b) an entitlement under section 19(1) or 20A(1) to be taken as a whole working day; or
- (c) an employer to pay an employee in lieu of the employee's untaken entitlement under section 19(1), on the termination of the employee's employment.

”

172. Section 22 replaced

Section 22 is repealed and the following section is inserted instead —

“

22. Proof in support of claims for sick leave or use of sick leave entitlements as carer's leave

An employee who claims to be entitled —

- (a) to paid leave under section 19(1); or

- (b) to use the employee's entitlement under section 19(1) to care for a person in accordance with section 20A(1),

is to provide to the employer evidence that would satisfy a reasonable person of the entitlement.

”.

173. Section 23 amended and a savings provision

- (1) Section 23(1) is amended by deleting “160” and inserting instead —
“ 152 ”.
- (2) An entitlement to paid annual leave that accrued before the commencement day is preserved on and from the commencement day as if former section 23 had not been amended by this Act.
- (3) In this section —
“**commencement day**” means the day on which subsection (1) comes into operation;
“**former section 23**” means section 23 of the *Minimum Conditions of Employment Act 1993* as it was in effect immediately before the commencement day.

174. Section 40 amended

- (1) Section 40(1) is amended in the definition of “employee” by deleting “industrial trainee within the meaning of the *Industrial Training Act 1975*,” and inserting instead —
“ trainee; ”.
- (2) Section 40(1) is amended in the definition of “redundant” by deleting “, for a reason that is not a usual reason for change in the employer's work-force,”.

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175. Section 43 amended

Section 43(1) is amended by inserting after “employee” the following —

“ , other than a seasonal worker ”.

176. Section 44 amended

After section 44(2)(aa) the following paragraph is inserted —

“

- (ab) the total number of hours worked by the employee in each week of the employee’s employment with the employer unless the employee’s contract of employment provides for an annual salary exceeding \$45 000 or the salary specified, or worked out in a manner specified, by the regulations;

”.

177. Miscellaneous amendments as to “IR Act”

The provisions referred to in the Table to this section are amended in each case by deleting “*Industrial Relations Act 1979*” and inserting instead —

“ IR Act ”.

Table

s. 3(1) “award”	s. 7(b)
s. 3(1) “employee”	s. 7(c)
s. 3(1) “employer”	s. 26
s. 6(1)	s. 45(2)(b)
s. 6(2)	s. 46(1)

**Division 2 — Amendments to the *Industrial Relations Act 1979*
in relation to minimum weekly rates of pay**

178. Section 7 amended

- (1) Section 7(1) is amended in the definition of “employee” in paragraph (a) by deleting “industrial”.
- (2) Section 7(1) is amended in the definition of “industrial matter” in paragraph (f) as follows:
 - (a) by deleting “industrial trainees” and inserting instead —
“ trainees ”;
 - (b) by deleting “industrial training” and inserting instead —
“ training ”.
- (3) Section 7(1) is amended by deleting the definition of “industrial trainee”.
- (4) Section 7(1) is amended by inserting in the appropriate alphabetical positions the following definitions —
“
 “MCE Act” means the *Minimum Conditions of Employment Act 1993*;
 “trainee” means a person who belongs to a class of persons prescribed by regulations made by the Governor as persons to be treated as trainees for the purposes of this Act;
”.

179. Section 50 amended

Section 50(2a) is repealed.

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Part 10 Amendments about minimum weekly rates of pay and other

Division 2 Amendments to the Industrial Relations Act 1979 in relation to minimum weekly rates of pay

s. 180

180. Section 51B inserted

After section 51A the following section is inserted in Part II Division 3 —

“

51B. Commission’s power to make General Orders as to matters for which minimum conditions of employment are prescribed by MCE Act

- (1) The Commission does not have power under this Division to make a General Order setting a minimum condition in relation to a matter if the matter is the subject of a minimum condition of employment as defined in the MCE Act.
- (2) Nothing in subsection (1) prevents the Commission from making a General Order under this Division in relation to a matter that is the subject of a minimum condition of employment as defined in the MCE Act if the General Order is more favourable to employees than the minimum condition of employment.

”.

181. Part II Division 3A inserted

Before Part II Division 4 the following Division is inserted —

“

Division 3A —MCE Act functions

Subdivision 1 — Preliminary

51C. Interpretation

- (1) In this Division —

“award” includes an industrial agreement or order of the Commission under this Act or an award of the Australian Commission;

“Commission” means the Commission in Court Session.

- (2) Subject to subsection (1), words and expressions in this Division that are defined in the MCE Act have the meanings that they have in that Act.

Subdivision 2 — Minimum weekly rates of pay

51D. Commission to review minimum weekly rates of pay for purposes of MCE Act

The Commission shall review the following in accordance with section 51E —

- (a) the minimum weekly rate of pay applicable under section 12 of the MCE Act to employees who have reached 21 years of age and who are not apprentices or trainees;
- (b) the minimum weekly rate or rates of pay applicable under section 14 of the MCE Act to apprentices;
- (c) the minimum weekly rate or rates of pay applicable under section 15 of the MCE Act to trainees.

51E. When reviews can occur

- (1) The Commission shall review the minimum weekly rates of pay referred to in section 51D(a), (b) and (c) each time the Commission considers, under section 51(2), a National Wage Decision.

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Part 10 Amendments about minimum weekly rates of pay and other

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- (2) Subject to subsection (3), the Commission may review one or more of the minimum weekly rates of pay referred to in section 51D(a), (b) or (c).
- (3) A review under subsection (2) can only occur on an application made —
 - (a) by the Council, the Chamber, the Mines and Metals Association or the Minister; and
 - (b) at least 12 months after the most recent increase in the rate that is the subject of the application.

51F. Setting of minimum weekly rates of pay by the Commission

- (1) Following a review under section 51E(1) the Commission shall make an order —
 - (a) rescinding the order setting the minimum weekly rates of pay referred to in section 51D(a), (b) and (c) that is in effect at the time of the review; and
 - (b) setting the new minimum weekly rates of pay referred to in section 51D(a), (b) and (c).
- (2) If, following a review under section 51E(2) of one or more of the minimum weekly rates of pay referred to in section 51D(a), (b) or (c), the Commission decides to set a new minimum weekly rate of pay in respect of one or more of the rates under review, the Commission shall make an order —
 - (a) rescinding the order that set the minimum weekly rates of pay referred to in section 51D(a), (b) and (c) in effect at the time of the review;
 - (b) setting the new minimum weekly rate of pay in respect of the rate or rates that are the subject of its decision; and

- (c) resetting any other minimum weekly rate of pay referred to in section 51D(a), (b) and (c) at the respective rate in effect at the time of the review.

51G. Matters relevant to setting rates for apprentices and trainees

- (1) For the purposes of section 51F as it relates to rates for apprentices or trainees, the Commission may —
 - (a) set a minimum weekly rate of pay in relation to apprentices or trainees generally;
 - (b) subject to subsections (2) and (3), set a minimum weekly rate of pay in relation to apprentices or trainees who belong to particular classes of apprentice or trainee; or
 - (c) do a combination of (a) and (b).
- (2) The Commission may set a minimum weekly rate of pay in relation to apprentices or trainees who have reached 21 years of age that is different from a rate or rates for apprentices or trainees who are under 21 years of age.
- (3) In setting a minimum weekly rate of pay in relation to apprentices or trainees who have reached 21 years of age the Commission shall not set different minimum weekly rates of pay for those apprentices or trainees on the sole basis of age.
- (4) The Commission shall ensure that at any particular time there is applicable in relation to each class of apprentice and each class of trainee —
 - (a) a minimum weekly rate of pay set in respect of that class; or

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- (b) the minimum weekly rate of pay in relation to apprentices or trainees, as is relevant to the case, generally.
- (5) In setting a minimum weekly rate of pay in relation to apprentices or trainees generally or in relation to apprentices or trainees who belong to a particular class of apprentice or trainee, the Commission may use such means as in its opinion are appropriate including, but not limited to —
- (a) setting the rate in figures;
 - (b) setting the rate as a proportion of —
 - (i) the minimum weekly rate of pay referred to in section 51D(a);
 - (ii) the minimum rate of pay set by a General Order under section 51(2); or
 - (iii) any award or other wages instrument;
 - (c) adopting some or all of the provisions of any award or other wages instrument; or
 - (d) setting out any other method for the calculation or assessment of the rate.

51H. When orders under this Subdivision have, and cease to have, effect

- (1) If —
 - (a) the Commission makes a General Order under section 51 following its consideration under that section of a National Wage Decision; and
 - (b) an order under section 51F(1) is made following a review of minimum weekly rates of pay at the time the Commission considered that National Wage Decision,

the order made under section 51F(1) has effect at the same time the General Order has effect.

- (2) If —
- (a) the Commission does not make a General Order under section 51 following its consideration under that section of a National Wage Decision; and
 - (b) an order under section 51F(1) is made following a review of minimum weekly rates of pay at the time the Commission considered that National Wage Decision,

the order made under section 51F(1) has effect from such time as is specified in the order.

- (3) An order made under section 51F(2) has effect from such time as is specified in the order.
- (4) An order made under section 51F(1) or (2) has effect until the order is rescinded —
- (a) following the next review under section 51(2); or
 - (b) following a review under section 51E(2),

whichever happens first.

- (5) All the provisions of an order made under section 51F(1) or (2) are to have effect at the same time.

Subdivision 3 — Casual employees' loading

51I. Casual employees' loading

- (1) Subject to subsection (2), the Commission may, by way of order, set a percentage that is higher than 20%

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to be the prescribed percentage for the purposes of section 11 of the MCE Act.

- (2) An order under subsection (1) can only be made on an application made —
- (a) by the Council, the Chamber, the Mines and Metals Association or the Minister; and
 - (b) at least 12 months after the determination of the most recent application for an order under subsection (1).

Subdivision 4 — Orders under this Division generally

51J. Notification of hearings under this Division

The Commission shall ensure that notice of each initial hearing to be conducted for the purposes of making or reviewing an order under this Division is given —

- (a) by giving written notice to the Council, the Chamber, the Mines and Metals Association, the Minister and each organization; and
- (b) by publication in the required manner.

51K. Right to be heard

The Commission shall not make an order under this Division until it has afforded the Council, the Chamber, the Mines and Metals Association, the Minister and any other person permitted by the Commission to be heard, an opportunity to be heard in relation to the matter.

51L. Restrictions on matters that orders under this Division can provide for

An order made under this Division shall not —

- (a) provide for a penalty rate or allowance of any kind;
- (b) provide for a loading of any kind other than that referred to in section 51I; or
- (c) be made in respect of preference of employment at the time of, or during employment by reason of being or not being a member of an organization.

51M. Publication of orders

The Commission shall direct the Registrar to prepare and publish in the *Industrial Gazette* the provisions of all orders made under this Division.

51N. Variation or rescission

- (1) An order made under section 51F shall not be added to, varied or rescinded except —
 - (a) following a review under section 51E(1) and in accordance with section 51F(1); or
 - (b) following a review under section 51E(2) and in accordance with section 51F(2),as is relevant to the case.
- (2) An order made under section 51I shall not be added to, varied or rescinded except in accordance with section 51I(2).
- (3) Nothing in subsection (1) or (2) affects the Commission's powers under section 27(1)(m).

”.

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Part 10 Amendments about minimum weekly rates of pay and other

Division 3 Consequential amendments in relation to minimum weekly rates of pay

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182. Miscellaneous amendments as to “MCE Act”

The provisions referred to in the Table to this section are amended in each case by deleting “*Minimum Conditions of Employment Act 1993*” and inserting instead —

“ MCE Act ”.

Table

s. 7F(1)	s. 81CA(1) “prosecution jurisdiction”
s. 81AA(c)	

Division 3 — Consequential amendments in relation to minimum weekly rates of pay

183. *Equal Opportunity Act 1984* amended

Section 66ZS(1)(b) of the *Equal Opportunity Act 1984** is amended as follows:

(a) by inserting before “an award or” —

“

a provision of the *Minimum Conditions of Employment Act 1993*,

”;

(b) by deleting “that award or industrial agreement” and inserting instead —

“ that provision ”.

[* *Reprinted as at 21 July 2000.*

For subsequent amendments see Acts Nos. 36 and 58 of 1999, 2 of 2000 and 12 of 2001.]

184. *Vocational Education and Training Act 1996* amended

Schedule 2 to the *Vocational Education and Training Act 1996** is amended as follows:

(a) by deleting clause 1(b);

- (b) by deleting clause 1(c);
- (c) by deleting clause 1(d)(i);
- (d) in clause 1(d)(iii) by deleting “industrial”;
- (e) by deleting the semicolon and “and” after clause 1(d) and inserting a full stop instead;
- (f) by deleting clause 1(e).

[* *Act No. 42 of 1996.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 475.]

Part 11 — Other amendments

185. Section 7 amended

- (1) Section 7(1) is amended in the definition of “employer” by inserting after “employees” —

“

and also includes a labour hire agency or group training organization that arranges for an employee (being a person who is a party to a contract of service with the agency or organization) to do work for another person, even though the employee is working for the other person under an arrangement between the agency or organization and the other person

”.

- (2) Section 7(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“group training organization” means an organization that manages the employment and training of apprentices and trainees under contracted work based arrangements for the purpose of hosting those apprentices and trainees out to other employers;

“labour hire agency” means a person or entity that conducts a business of the kind commonly known as a labour hire agency;

”.

- (3) Section 7(1) is amended in the definition of “industrial matter” as follows:

- (a) by inserting after “or relating” —

“ or pertaining ”;

- (b) by deleting “matter relating” and inserting instead —

- “ matter affecting or relating or pertaining ”;
- (c) after paragraph (c) by inserting —
- “
- (ca) the relationship between employers and employees;
- ”;
- (d) by inserting before “but does not include” —
- “
- and also includes any matter of an industrial nature the subject of an industrial dispute or the subject of a situation that may give rise to an industrial dispute
- ”.
- (4) Section 7(3) is repealed and the following subsection is inserted instead —
- “
- (3) A matter that has been referred to a safety and health magistrate under the *Occupational Safety and Health Act 1984* or the *Mines Safety and Inspection Act 1994* is not an industrial matter.
- ”.
- (5) After section 7(4) the following subsections are inserted in the appropriate numerical position —
- “
- (6) Subject to subsection (7), for the purposes of the definitions of “employee” and “employer” in subsection (1), if a person (“**the principal**”) engages a person, or a group of persons, under a contract to personally give a performance as, or as part of, musical, theatrical, dance or comic entertainment, the principal is to be regarded as employing the person, or each person in the group, to do work.

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- (7) Subsection (6) has effect only to the extent necessary to enable a claim of the kind referred to in section 29(1)(b)(ii) to be referred to and dealt with by the Commission in respect of a person who would not be an employee but for the operation of subsection (6).

”.

186. Section 20 amended and transitional and savings provisions

- (1) Section 20(2) to (6) are repealed and the following subsection is inserted instead —

“

- (2) The offices of the members of the Commission, other than the President are to be regarded, for the purposes of the *Salaries and Allowances Act 1975* and any other written law, as having been prescribed for the purposes of section 6(1)(e) of that Act.

”.

- (2) Until remuneration becomes payable to a member of the Commission pursuant to the first determination, the member is to receive remuneration at the rate that would be applicable to that member if the former provisions were still in operation.
- (3) Despite any determination under section 6 of the *Salaries and Allowances Act 1975*, while a person who was a member of the Commission at the time of the publication of the first determination in the *Government Gazette* remains a member he or she is to receive remuneration at a rate that is not less than the rate that was applicable to him or her immediately before that time.
- (4) In this section —
- “**first determination**” means the first determination made under section 6 of the *Salaries and Allowances Act 1975* that gives effect to the amendment made by subsection (1);
- “**former provisions**” means section 20(1) to (6) of the *Industrial Relations Act 1979* as they were in effect

immediately before the coming into operation of subsection (1);

“member of the Commission” has the meaning given by the *Industrial Relations Act 1979*;

“remuneration” has the meaning given by the *Salaries and Allowances Act 1975*.

187. Section 32 amended

(1) Section 32(3) is amended as follows:

- (a) by deleting the semicolon after paragraph (b) and inserting a full stop instead;
- (b) by deleting paragraphs (c) and (d).

(2) After section 32(7) the following subsection is inserted —

“

(8) For the purposes of this section the Commission may —

- (a) give such directions and make such orders as will in the opinion of the Commission —
 - (i) prevent the deterioration of industrial relations in respect of the matter until conciliation or arbitration has resolved the matter;
 - (ii) enable conciliation or arbitration to resolve the matter; or
 - (iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter;
- (b) give any direction or make any order or declaration which the Commission is otherwise authorised to give or make under this Act.

”.

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188. Section 37A repealed

Section 37A is repealed.

189. Section 51 amended

- (1) Section 51(2) is repealed and the following subsection is inserted instead —

“

- (2) Subject to section 50(10), when and as often as a National Wage Decision is made after the coming into operation of this section the Commission shall of its own motion consider that decision and —

- (a) unless it is satisfied that there are good reasons not to do so, shall make a General Order to adjust, by the amount of any change in the rate of wages under that decision, rates of wages paid under awards; and
- (b) may make a General Order to adopt in whole or in part and with or without modification any principle, guideline, condition or other matter having effect under that decision.

”.

- (2) Section 51(2a) is repealed and the following subsections are inserted instead —

“

- (3) If the Commission makes a General Order under subsection (2) the Commission shall ensure that the order has effect no more than 30 days after the day on which the relevant National Wage Decision was made.
- (4) Subject to this Act, the Commission may add to, vary or rescind a General Order made under subsection (2) but the Commission shall not add to or vary such an order in relation to any amount other than the amount of any change in the rate of wages under the relevant National Wage Decision.

- (5) Without limiting the generality of section 26(1), in the exercise of its jurisdiction under this section the Commission shall ensure, to the extent possible, that there is consistency and equity —
- (a) in relation to the variation of awards; and
 - (b) in relation to when such variations have effect.

”.

190. Sections 7, 47, 50, 55, 72A and 93 and Schedule 1 amended relating to publication in the *Industrial Gazette*

- (1) Section 7(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

“published in the required manner” means published in the next available issue of the *Industrial Gazette* and —

- (a) in a newspaper circulating throughout the State; or
- (b) on an internet website maintained by the Commission;

”.

- (2) Section 47(3)(b)(i) is amended by deleting “in a newspaper circulating in the area of the State in which the award or industrial agreement operates and in the *Industrial Gazette*” and inserting instead —

“ by publication in the required manner ”.

- (3) Section 47(4) is amended by deleting “the publication in the newspaper or in the *Industrial Gazette*, whichever is the later, of the notice referred to in subsection (3)” and inserting instead —

“

the day on which the notice referred to in subsection (3) is first published

”.

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- (4) Sections 50(9) and 55(2) are each amended by deleting “*Industrial Gazette*” and inserting instead —

“ required manner ”.

- (5) Section 55(3) is amended by deleting “date of the issue of the *Industrial Gazette* in which the matters referred to in subsection (2) are” and inserting instead —

“

day on which the matters referred to in subsection (2) are first

”.

- (6) Section 72A(3) is repealed and the following subsection is inserted instead —

“

- (3) The Registrar shall publish notice of an application under subsection (2) in the *Industrial Gazette* and —

(a) in a newspaper circulating throughout the State;
or

(b) on an internet website maintained by the Commission,

and the application shall not be listed for hearing before the Full Bench until after the expiration of 30 days from the day on which the notice is first published.

”.

- (7) Section 93(3) is amended by deleting “*Gazette* all” and inserting instead —

“

Gazette and —

(a) in a newspaper circulating throughout the State;
or

(b) on an internet website maintained by the Commission,

all

”.

(8) Section 93(4) is repealed and the following subsection is inserted instead —

“

(4) The *Industrial Gazette* shall be published in such form and at such intervals as the Registrar, after consultation with the Chief Commissioner, directs.

”.

(9) Section 93(6) is amended by deleting “a consolidation of any such award.” and inserting instead —

“

and —

(a) in a newspaper circulating throughout the State;
or

(b) on an internet website maintained by the Commission,

a consolidation of any such award.

”.

(10) Schedule 1 item 1 is deleted and the following item is inserted instead —

“ 1. Retirements from industrial agreements. ”.

191. Amendments to the Act and the *Labour Relations Legislation Amendment Act 1997* about collection of union subscriptions

(1) Section 7(1) is amended in the definition of “industrial matter” by inserting after paragraph (f) the following paragraph —

“

(g) any matter relating to the collection of subscriptions to an organization of

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employees with the agreement of the employee from whom the subscriptions are collected including —

- (i) the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been stopped by an employer; or
- (ii) the implementation of an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization;

”.

- (2) Section 7(2) is repealed.
- (3) Section 29(2) of the *Labour Relations Legislation Amendment Act 1997* is repealed.

192. Amendments about duties of employees of organizations

- (1) Part II Division 5 is amended in the heading by deleting “and employees”.
- (2) Section 74(1) is amended as follows:
 - (a) by deleting “or employee”;
 - (b) by deleting “and includes an employee who is entitled to so participate in a representative or advisory capacity”.

193. Amendments about Federal award coverage

- (1) Part IIIA is repealed.
- (2) Section 73 is amended as follows:
 - (a) subsections (10a) and (10b) are repealed;
 - (b) subsection (12)(aa) is deleted;

- (c) subsection (13) is amended by deleting “or Part IIIA”.
- (3) Section 81A is amended by deleting “84K,”.
- (4) Section 81CA(1) is amended in paragraph (a) of the definition of “general jurisdiction” by deleting “84K,”.

194. Amendments about pre-strike ballots

- (1) Part VIB is repealed.
- (2) Section 7(1) is amended by deleting the definition of “pre-strike ballot”.
- (3) Section 32(4)(a), (b) and (c) are each amended by deleting “, (8) or (9)”.
- (4) Section 32(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21) and (22) are repealed.
- (5) Section 44(5b), (5c), (6b) and (15) are repealed.
- (6) Section 73(3)(a)(iii) is amended by deleting “or section 97B(2) of this Act”.
- (7) Schedule 2 is repealed.
- (8) The *Industrial Relations (Pre-strike Ballot) Regulations 1997* are repealed.
- (9) The *Industrial Relations (Pre-strike Ballot Expenses) Regulations 1997* are repealed.

195. Amendments about political expenditure by organizations

- (1) Part VIC is repealed.
- (2) Section 81A is amended by deleting “, 97T, 97U”.
- (3) Section 81CA(1) is amended in paragraph (a) of the definition of “general jurisdiction” by deleting “, 97U”.

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- (4) Section 81CA(1) is amended by deleting paragraph (aa) of the definition of “prosecution jurisdiction”.

Schedule 1 — Transitional minimum weekly rates of pay

[s. 168]

1. Interpretation

Unless the contrary intention appears, words and expressions used in this Schedule have the same respective meanings as they have in the *Minimum Conditions of Employment Act 1993*.

2. Minimum weekly rate of pay for employees 21 or more years of age

The minimum weekly rate of pay applicable at a particular time to employees who have reached 21 years of age but who are not apprentices or trainees is the rate for the minimum adult weekly award wage for employees who have reached 21 years of age and who are not apprentices or trainees, as provided for in the General Order made under section 51(2) of the *Industrial Relations Act 1979* that is in effect at that time.

3. Minimum weekly rate of pay for employees less than 21 years of age

- (1) The minimum weekly rate of pay applicable at a particular time to employees who are of the age mentioned in the first column in the Table to this subclause but who are not apprentices or trainees is the percentage, set out opposite that age in the second column in the Table of the rate referred to in clause 2 in effect at that time, rounded up to the nearest 10 cents.

Table

Age	Percentage of 21 year old rate
20 years	90%
19 years	80%
18 years	70%
17 years	60%
16 years	50%
under 16 years	40%

- (2) Subclause (1) is for information only and if there is any inconsistency between subclause (1) and section 13 of the *Minimum Conditions of Employment Act 1993*, the section prevails.

4. Minimum weekly rate of pay for apprentices and trainees

- (1) The minimum weekly rate of pay for an apprentice or trainee in relation to whom a workplace agreement or an employer-employee agreement is not in force is the rate of pay that is provided for under an award that applies to that apprentice or trainee.
- (2) The minimum weekly rate of pay for an apprentice or trainee in relation to whom a workplace agreement or an employer-employee agreement is in force is the rate of pay that is provided for under an award that would, if the workplace agreement or employer-employee agreement were not in force, apply to that apprentice or trainee.

