

WESTERN AUSTRALIA

**LABOUR RELATIONS LEGISLATION
AMENDMENT ACT 1997**

(No. 3 of 1997)

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**LABOUR RELATIONS
LEGISLATION AMENDMENT
ACT 1997**

No. 3 of 1997

AN ACT to amend the —

- ***Industrial Relations Act 1979;***
- ***Workplace Agreements Act 1993; and***
- ***Minimum Conditions of Employment Act 1993,***

and for related purposes.

[Assented to 23 May 1997.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Labour Relations Legislation Amendment Act 1997*.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.

(2) The provisions of Parts 2 and 4 come into operation on the 28th day after the day on which this Act receives the Royal Assent.

(3) The provisions of Parts 3, 5 and 10 and sections 34, 35 (b), 36 and 37 come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Industrial Relations Act 1979** is referred to as the principal Act.

[* *Reprinted as at 27 May 1996.*
For subsequent amendments see Acts Nos. 78 and 79 of 1995 and 14 and 42 of 1996.]

PART 2 — DUTIES OF OFFICIALS OF ORGANIZATIONS

Part II, Division 5 heading amended

4. Part II, Division 5 of the principal Act is amended in the heading by inserting after “*officers*” the following —

“ *and employees* ”.

Section 74 amended

5. (1) Section 74 (1) of the principal Act is amended —

(a) by inserting after “officer” the following —

“ or employee ”; and

(b) by inserting after “organization” the following —

“
and includes an employee who is entitled to so
participate in a representative or advisory
capacity
”.

(2) Section 74 (13) of the principal Act is amended by deleting “This section” and substituting the following —

“ Subject to section 79, this section ”.

Section 77 amended

6. Section 77 (2) (b) of the principal Act is amended by inserting after “subsection (3)” the following —

“ and section 79 (5) (a) ”.

Sections 78, 79 and 80 inserted

7. After section 77 of the principal Act the following sections are inserted —

“

Failure to comply with order

78. A person who fails to comply with an order under section 77 (2) (e) is guilty of an offence and liable to a penalty of \$5 000 and a daily penalty of \$500.

Effect on or of other proceedings

79. (1) Subject to subsection (3), where an application is made to an industrial magistrate's court under section 77, the matter to which the application relates (whether as shown in the application or as emerging in the course of the determination of the application) is not justiciable by another court in civil proceedings unless —

- (a) that matter was before that other court at the time when the application was made to the industrial magistrate's court; or
- (b) the application to the industrial magistrate's court is withdrawn or not pursued.

(2) Where a matter that an industrial magistrate's court has jurisdiction to determine under section 77 is before another court in civil proceedings, that other court may order that the matter be transferred to and determined by the industrial magistrate's court.

(3) Where a matter that a court has jurisdiction to determine in civil proceedings is before an industrial magistrate's court, the industrial magistrate's court may order that the matter be transferred to and determined by that other court.

(4) In making an order for compensation, restitution or forfeiture under section 77 (2) (c) or (d) an industrial magistrate's court is to have regard to any amount that the respondent has been ordered to pay in civil proceedings relating to the same matter in another court.

(5) If criminal proceedings are instituted under any other enactment in respect of conduct that also constitutes a contravention of or failure to comply with section 74 —

- (a) an industrial magistrate's court is not to impose a penalty under section 77 (2) (b) in proceedings under section 77 in respect of the matter; but
- (b) the outcome of the criminal proceedings is not to be taken into consideration in the determination of proceedings under section 77 in respect of the matter.

Disqualification for breach of duty

80. (1) If an order is made against an officer of an organization under section 77 (2) (b), (c), (d) or (e), the industrial magistrate's court may, on the application of the Registrar, order —

- (a) that the officer's office becomes vacant when the order is made; and
- (b) that, from the time when the order is made, the officer is disqualified from holding or acting in any office in the organization during such period of not more than 3 years as is specified in the order.

(2) The industrial magistrate's court may include in an order under subsection (1) any provision that it considers necessary to ensure the operation of the order and to provide for the election or appointment of a person to replace the officer whose office becomes vacant under the order.

(3) A person who performs or attempts to perform the functions of an office in the organization while disqualified by an order under subsection (1) from holding or acting in the office commits an offence punishable by the Supreme Court as for a contempt.

”.

Consequential amendments to sections 81A and 81CA

8. (1) Section 81A of the principal Act is amended by inserting after “77” the following —

“ , 80 (1) and (2) ”.

(2) Section 81CA (1) of the principal Act is amended, in paragraph (a) of the definition of “general jurisdiction”, by inserting after “77” the following —

“ , 80 (1) and (2) ”.

PART 3 — PRE-STRIKE BALLOTS

Section 73 amended

9. Section 73 (3) (a) (iii) of the principal Act is amended by inserting after “*Workplace Agreements Act 1993*” the following —

“ or section 97B (2) of this Act ”.

Part VIB inserted

10. After Part VIA of the principal Act the following Part is inserted —

“

PART VIB — PRE-STRIKE BALLOTS

Interpretation

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

“**related Federal body**”, in relation to an organization, means —

- (a) a Counterpart Federal Body of the organization within the meaning of section 71; or
- (b) a Branch, within the meaning of section 71, that is declared under subsection (2) to operate in conjunction with the organization as if they were the same body;

“**strike**” has the meaning given by section 97A;

“this Part” includes, in addition to regulations made for the purposes of this Part, the code of practice set out in Schedule 2.

(2) The Full Bench may on application in the manner, and by the person, prescribed declare that a Branch, within the meaning of section 71, operates in conjunction with an organization as if they were the same body.

(3) In determining an application under subsection (2) the Full Bench shall have regard to whether the Branch —

- (a) has rules as to the qualification of people for membership that enable the members of the organization, or a substantial proportion of them, to be members of the Branch;
- (b) has the same officers and employees, or some of the same officers and employees, as the organization;
- (c) shares premises in the State with the organization;
- (d) has funds or accounts that are jointly owned, managed or controlled by the organization.

Meaning of “strike”

97A. (1) In this section —

“award” includes an order and an industrial agreement;

“dispute resolution procedures” means procedures provided for in an award that are to be followed in connection with questions, disputes or difficulties arising under that award;

“relevant stop-work activity”, in relation to a stop-work meeting referred to in subsection (5), means participation by 5 or more employees of the employer who are members of the organization in one or more stop-work meetings of employees of the employer that have not been approved by the employer by written notice given to the organization before each meeting.

(2) For the purposes of this Part —

“strike” means any stoppage of, or ban or limitation on, the performance of work by 5 or more employees but —

- (a) does not include action referred to in subsection (3); and
- (b) only includes a stop-work meeting if the meeting is unreasonable within the meaning of subsection (5).

(3) The following actions are not included within the definition of “strike” in subsection (2) —

- (a) a ban or limitation on the performance of work by employees —
 - (i) that preserves the status quo;
 - (ii) that is permitted under, and carried out in accordance with, relevant dispute resolution procedures;
 - (iii) that is undertaken for the purpose of compelling or inducing an employer or employee to comply with any existing terms or conditions of employment; and

- (iv) in respect of which the Commission has not made an order requiring the employer or employee to comply with the terms or conditions of employment that are in dispute;
- (b) a ban or limitation on the performance of work by employees —
 - (i) that is permitted under, and carried out in accordance with, relevant dispute resolution procedures;
 - (ii) that is undertaken for a period that does not exceed 48 hours; and
 - (iii) in respect of which neither conciliation proceedings nor a hearing have commenced before the Commission;
- or
- (c) an employee's refusal to work if that employee has reasonable grounds, as determined under section 26 of the *Occupational Safety and Health Act 1984* or section 72 of the *Mines Safety and Inspection Act 1994*, to believe that to continue to work would expose that employee or any other person to a risk of imminent and serious injury or imminent and serious harm to the health of that employee.

(4) For the purposes of subsection (3) (b) (ii), if at any time during the 27 days preceding the day on which the ban or limitation occurs, the employees have taken previous industrial action in respect of the same matter, the ban or limitation is to be regarded as having begun when that previous industrial action began.

(5) For the purposes of the definition of “strike” in subsection (2) a stop-work meeting in which 5 or more employees of the same employer who are members of the same organization participate is “**unreasonable**” if —

(a) the meeting has not been approved by that employer by written notice given to that organization before the meeting;

and

(b) there have been more than —

(i) 12 hours of relevant stop-work activity since the beginning of the calendar year in which the meeting is held; or

(ii) 4 hours of relevant stop-work activity since the beginning of the day on which the meeting is held.

(6) In subsection (5) participation by the employees in stop-work meetings at the same time in different places is taken to be one period of relevant stop-work activity.

Application

97B. (1) Nothing in this Part takes away, restricts or otherwise affects any power, right or liability, civil or criminal, arising under any other Part of this Act, or any other enactment or at common law.

(2) This Part has effect notwithstanding anything contained in the rules of an organization of employees.

(3) Nothing in this Part applies to or in respect of an employee employed under a workplace agreement.

(4) This Part does not apply to the continuation of a strike initiated before the coming into operation of section 10 of the *Labour Relations Legislation Amendment Act 1997* as long as that strike does not contravene the rules of the relevant organization of employees and is completed within 28 days of the coming into operation of that section.

Participation in strike

97C. (1) A member of an organization of employees shall not participate in any form of strike unless —

- (a) a pre-strike ballot in respect of that form of strike was ordered to be held under section 97F (2) or (4);
- (b) a ballot in respect of that form of strike has been conducted in accordance with this Part;
- (c) the member was entitled to vote in that ballot;
- (d) participation in that form of strike is endorsed by that ballot;
- (e) the participation takes place within —
 - (i) 28 days of the declaration of the result of the pre-strike ballot which endorsed that form of strike; or
 - (ii) if that period has been extended by order under section 97J, the period specified in the order; and
- (f) notice of intention to participate in that strike has been given in accordance with section 97I.

(2) If an organization of employees or an officer or employee of an organization of employees —

- (a) incites, encourages or assists a member of the organization to participate in a strike in contravention of subsection (1); or
- (b) is in any way by act or omission and directly or indirectly knowingly concerned in or party to a contravention of subsection (1),

the organization, officer or employee, as the case may be, commits an offence.

Penalty:

- (a) in the case of an individual, \$1 000 and a daily penalty of \$200; and
- (b) in any other case, \$5 000 and a daily penalty of \$1 000.

(3) For the purposes of subsection (1) (d), participation in a particular form of strike is endorsed by a pre-strike ballot if —

- (a) the majority of persons who were entitled to vote in the ballot voted “Yes” to the question applicable to participation in that form of strike; or
- (b) at least 75% of the persons who were entitled to vote in the ballot voted in the ballot and a majority of those voting voted “Yes” to the question applicable to participation in that form of strike.

(4) For the purposes of subsection (2), ascertaining the views of members as to a contemplated strike, or providing advice or information on a contemplated strike, does not constitute incitement, encouragement or assistance, or concern or participation in a contravention of subsection (1).

(5) In subsection (2) —

“employee of an organization of employees”
means an employee who is entitled to participate directly in the management of the organization, including an employee who is entitled to so participate in a representative or advisory capacity.

Responsibility of members and organizations

97D. (1) For the purposes of this Part, where a member of an organization of employees who is also a member of its related Federal body participates in a strike then, unless the contrary is proved, the member is taken to have participated in that strike as a member of the organization of employees.

(2) An organization of employees is taken to have contravened or failed to comply with section 97C (2) if an officer or employee of the organization —

- (a) incites, encourages or assists a member of the organization to participate in a strike in contravention of section 97C (1); or
- (b) is in any way by act or omission and directly or indirectly knowingly concerned in or party to a contravention of section 97C (1),

unless it is proved that —

- (c) the officer or employee acted without the organization’s consent or connivance; and
- (d) the organization took all reasonable precautions and exercised due diligence to prevent the officer or employee so acting, having regard to all the circumstances.

Application for a pre-strike ballot

97E. (1) If a strike is contemplated, or believed to be contemplated, by members of an organization of employees, or by any section or class of its members, application may be made to the Commission for a pre-strike ballot to find out whether a majority of those members endorse, or do not endorse, participation in a strike.

(2) Application for a pre-strike ballot may be made by —

- (a) the organization of employees whose members contemplate participation in the strike;
- (b) a member of that organization;
- (c) an employer who has reason to believe that —
 - (i) employees of that employer contemplate participation in a strike; and
 - (ii) the strike is likely to occur;
- (d) an employer who has reason to believe that —
 - (i) a strike is likely to occur; and
 - (ii) he or she is likely to be directly affected by the strike;

or

- (e) an organization of employers, a member of which is an employer referred to in paragraph (c) or (d).

(3) An application made under subsection (2) shall be —

- (a) in writing stating the reasons for the application and the facts relevant to the contemplated strike, including a description of the form of the contemplated strike; and

- (b) accompanied by —
 - (i) a list of all of the employers of the persons contemplating, or believed to be contemplating, the strike; and
 - (ii) such other particulars as are prescribed.

(4) The Commission shall deal with an application under this section as quickly as practicable, and, in any event shall endeavour to make a decision on the application, and give directions and reasons, within 3 days of the making of the application.

Holding of pre-strike ballot

97F. (1) The Commission shall not order a pre-strike ballot applied for under section 97E to be held, or make an order under subsection (4), unless it is satisfied that —

- (a) applicable procedures for resolution of matters to which the contemplated strike relates in any relevant award, order or industrial agreement have been complied with as far as is practicable in the circumstances; or
- (b) if those procedures have not been so complied with, there are exceptional circumstances that justify ordering the pre-strike ballot to be held.

(2) Subject to subsection (1), the Commission shall order a pre-strike ballot to be held if —

- (a) it has been applied for under section 97E (2) (a) by an organization of employees pursuant to a resolution of the committee of management of the organization;
- (b) it has been applied for under section 97E (2) (a) other than in the circumstances mentioned in

paragraph (a), or under section 97E (2) (b), (c), (d) or (e), and the Commission is satisfied, after the parties who have a sufficient interest in the matter have been given an opportunity to be heard, that it is justified by the circumstances; or

- (c) it is in the public interest that the pre-strike ballot be held.

(3) If the Minister is of the opinion that a form of strike is contemplated by members of an organization of employees, or by any section or class of its members, and that the safety, health, welfare or economic well-being of the community or a part of it will be at risk if the strike occurs, the Minister may issue a certificate declaring that it is in the public interest that a pre-strike ballot be held, and that certificate shall be conclusive evidence for the purpose of subsection (2) (c) that it is in the public interest that the ballot be held.

(4) Notwithstanding that an application has not been made under section 97E, the Commission may order a pre-strike ballot to be held if the Commission has reason to believe that a form of strike is contemplated by members of an organization of employees, or by any section or class of its members, and that a pre-strike ballot in respect of that form of strike is justified by the circumstances.

(5) In deciding whether or not a pre-strike ballot is justified, the Commission may take into account information other than that given in the application.

(6) In dealing with an application and giving directions under this Part the paramount considerations of the Commission shall be the circumstances of the application and the provisions of this Part.

(7) The Commission shall give written notice of any decision under this section and any decision under

section 97G (3), the reasons for each decision, and the directions given under sections 97G (1) and 97H (1), to —

- (a) the applicant for the pre-strike ballot;
- (b) if the order is not made on the application of the organization of employees whose members are entitled to vote in the pre-strike ballot, that organization; and
- (c) any other parties, including interveners, to the proceedings.

(8) An applicant under section 97E (2) (b) or an organization of employees may, within 48 hours of being notified under subsection (7) of a decision, or a direction under section 97G (1), appeal to the Full Bench in the manner prescribed against that decision or direction.

(9) A person, not being a person referred to in subsection (8), given notice under subsection (7) of a decision or a direction under section 97G (1) may, within 48 hours of being so notified, appeal to the Full Bench in the manner prescribed against that decision or direction on the grounds that the decision or direction is erroneous in law or is in excess of jurisdiction but on no other grounds.

(10) Section 49 shall apply to an appeal against a direction as if the direction were a decision of the Commission.

Who will be entitled to vote and where

97G. (1) In any order under section 97F (2) or (4) the Commission, having regard to which members are likely to participate in the strike, shall give directions as to which members, or members of a section or class of members, of the organization of employees or a Branch of that organization will be entitled to vote in the pre-strike ballot.

- (2) Only an employee who is —
- (a) a member, or member of a section or class of members, of the organization of employees or a Branch of that organization mentioned in a direction under subsection (1); and
 - (b) included in the list prepared under section 97H (10) (a),

is entitled to vote in the pre-strike ballot.

(3) Where the members of an organization who will be entitled to vote in a pre-strike ballot have different places of work the Commission may order —

- (a) a separate pre-strike ballot be held for each place of work;
- (b) a single pre-strike ballot be held for all the places of work; or
- (c) separate pre-strike ballots be held for places of work as specified in the order.

(4) A pre-strike ballot only applies in respect of the place or places of work for which it was held.

Conduct of pre-strike ballot

97H. (1) The Commission may direct that a pre-strike ballot is to be conducted —

- (a) by the Registrar or a nominee of the Commission;
- (b) under arrangements made by the Commission with the Electoral Commissioner appointed

under the *Electoral Act 1907* for the conduct of the pre-strike ballot by an officer holding office under that Act or by some other person authorized in writing by the Electoral Commission; or

- (c) by the organization of employees whose members will be entitled to vote in the pre-strike ballot.

(2) The Commission shall not nominate under subsection (1) (a), and the Electoral Commissioner shall not authorize under subsection (1) (b), an organization of employees, or an officer, employee or member of an organization of employees whose members will be entitled to vote in the pre-strike ballot, to conduct a pre-strike ballot.

(3) If the Commission directs that the pre-strike ballot is to be conducted by an organization of employees under subsection (1) (c), the Commission shall —

- (a) appoint a member of the Commission as scrutineer; and
- (b) certify whether or not the pre-strike ballot has been substantially conducted in accordance with this Part, and shall endeavour to do so within 24 hours of the time at which voting is required to be completed.

(4) A certificate of the Commission issued under subsection (3) is —

- (a) for the purposes of section 49, a decision of the Commission; and
- (b) subject to section 49, final and conclusive evidence of the matters certified.

(5) If the organization whose members will be entitled to vote in a pre-strike ballot is not conducting that ballot, the person conducting the ballot shall, by written notice, require that organization of employees, or an officer or employee of that organization, to provide the person conducting the ballot with a list setting out as accurately as is practicable the names, addresses and employers of all of those members as at the day the notice is given.

(6) An organization of employees or an officer or employee shall comply with a notice given to that organization or person under subsection (5).

Penalty:

- (a) in the case of an individual, \$1 000; and
- (b) in any other case, \$5 000.

(7) Any party to an application for a pre-strike ballot, including an intervener, is entitled to appoint a scrutineer for the pre-strike ballot in the prescribed manner.

(8) The Commission may give directions to the person conducting a pre-strike ballot as to the conduct of the ballot and that person shall comply with those directions.

(9) The person conducting a pre-strike ballot may seek directions, or further directions, from the Commission as to the conduct of the ballot.

(10) The person conducting a pre-strike ballot shall take all reasonable steps to ensure that —

- (a) a list of the names and addresses of members entitled to vote in the ballot, and of the names of employers of those members, is compiled as accurately as is practicable before the ballot is held; and

- (b) the votes of individual members remain secret.
- (11) If the Commission —
- (a) has given a direction under subsection (1) (a) or (b), the person conducting the pre-strike ballot may take such reasonable action and give such reasonable directions as that person considers necessary in order to conduct a ballot in accordance with this Part; or
 - (b) has given a direction under subsection (1) (c), the person conducting the pre-strike ballot may, with the authorization of a member of the Commission, take such reasonable action and give such reasonable directions as that person considers necessary in order to conduct a ballot in accordance with this Part.
- (12) A person shall not —
- (a) refuse or fail to comply with a direction given under subsection (11); or
 - (b) obstruct or hinder —
 - (i) the person conducting a pre-strike ballot in the conduct of the ballot or the taking of any action under subsection (11); or
 - (ii) any other person in the carrying out of a direction given under subsection (11).
- (13) A pre-strike ballot shall be conducted —
- (a) in accordance with the code of practice set out in Schedule 2; and
 - (b) if the Commission has given a direction under subsection (1) (c), subject to subsection (14), in

accordance with the rules of the organization of employees.

(14) To the extent that directions given by the Commission, regulations made under section 97M or the code of practice set out in Schedule 2, are contrary to or inconsistent with the rules of an organization, the directions, regulations or code shall prevail.

(15) The provisions of section 70 apply, with such modifications as are necessary, to and in relation to a pre-strike ballot and a contravention of that section in relation to a pre-strike ballot is an offence under this subsection.

Penalty:

- (a) in the case of an individual, \$1 000; and
- (b) in any other case, \$5 000.

Notices to employers and employees

97L. (1) A person conducting a pre-strike ballot shall ensure that all employers and employees included in the list compiled under section 97H (10) (a) in relation to the ballot are given notice of the results of the ballot in the prescribed manner.

(2) A member of an organization of employees who intends to participate in a strike endorsed by a pre-strike ballot shall give notice of that intention to the employer of that member.

(3) Subsection (2) does not apply if notice of that intention is given to the employer by the organization of employees on behalf of the member in accordance with subsection (4).

- (4) Notice under subsection (2) or (3) shall be given —
- (a) as directed by the Commission, or, if no direction is given, within the period prescribed; and
 - (b) in the manner, if any, prescribed.

Extension of participation period

97J. (1) If no participation in a form of strike that is endorsed by a pre-strike ballot takes place —

- (a) within 28 days of the declaration of the result of the pre-strike ballot; or
- (b) if the Commission has made an order under subsection (2) in respect of that participation, within the period specified in the order,

the organization of employees whose members voted in the ballot may apply to the Commission for an order extending the period within which the participation may take place.

(2) The Commission may, on application under subsection (1), order that the participation may take place within a period specified by the Commission, being a period that is not longer than —

- (a) 56 days after the declaration of the result of the pre-strike ballot which endorsed that form of strike; or
- (b) 28 days after the final day of the period specified in the previous order made under this subsection in respect of the participation,

as the case requires.

(3) The Commission shall not make more than 2 orders under subsection (2) in respect of participation endorsed by the same pre-strike ballot.

Injunctions

97K. (1) The Supreme Court may, on an application under this section, grant an injunction in such terms as the Supreme Court thinks fit where the Supreme Court is satisfied that a person —

- (a) has engaged, or is proposing to engage in, conduct that amounts to, or would amount to, a breach of section 97C (1) or (2); or
- (b) is involved in a breach of section 97C (1) or (2).

(2) An interim or interlocutory injunction may be granted before final determination of an application.

(3) An application under this section may be made by —

- (a) a person authorized by the Minister to apply for the injunction; or
- (b) a person the Supreme Court is satisfied is or will be affected by the conduct in respect of which the injunction is sought.

(4) In dealing with an application for an injunction made otherwise than under this section on a matter related to a strike, the Supreme Court shall not have regard to —

- (a) whether or not a pre-strike ballot has been held; or
- (b) the results of a pre-strike ballot.

Statistics

97L. (1) The Registrar shall collect and provide to the Chief Commissioner statistics in respect of —

- (a) times taken for the determination of applications for pre-strike ballots and the conduct of pre-strike ballots; and
- (b) such other matters in relation to pre-strike ballots as the Chief Commissioner directs.

(2) The Chief Commissioner shall include the statistics provided under subsection (1) in the annual report to the Minister under section 16 (2) (b).

Regulations

97M. (1) The Governor may make regulations —

- (a) providing for the conduct of pre-strike ballots;
- (b) providing for the appointment of, and prescribing the functions of, scrutineers;
- (c) prescribing questions and other matters that must be presented to a voter in a pre-strike ballot;
- (d) prescribing the functions of a person conducting a pre-strike ballot;
- (e) providing for the manner in which expenses incurred in conducting a pre-strike ballot are to be met, including the extent to which those expenses may be met by the State;
- (f) authorizing the payment by the State of expenses incurred in a pre-strike ballot;

- (g) providing that contravention of or failure to comply with a regulation constitutes an offence, and providing for penalties not exceeding \$1 000 in the case of an individual, or \$5 000 in any other case, for offences against regulations made under this section;
- (h) providing for any matter or thing which is required or permitted to be prescribed for the purposes of this Part.

(2) The Commission may make regulations with respect to any matter referred to in subsection (1) (a), (b), (c), (d), (g) or (h).

(3) If a regulation made under subsection (2) is inconsistent with a regulation made under subsection (1) the former prevails to the extent of the inconsistency.

(4) Regulations under subsection (1) or (2) are in addition to, and do not derogate from, the code of practice set out in Schedule 2.

”.

Schedule 2 added

11. After Schedule 1 to the principal Act the following Schedule is added —

“

SCHEDULE 2 — PRE-STRIKE BALLOTS — CODE OF PRACTICE

[Section 97H (13)]

Conduct of pre-strike ballot

- 1.** A pre-strike ballot shall be conducted —
 - (a) as quickly as reasonably practicable; and

- (b) so far as is reasonably practicable in a manner that ensures that individuals voting —
 - (i) do so in secret; and
 - (ii) do so without incurring expense by reason of voting.

Pre-strike ballots involving more than one organization

2. If the members of more than one organization of employees are entitled to vote in pre-strike ballots in connection with the same dispute or potential dispute, the arrangements for the different ballots shall be coordinated by the persons conducting those ballots so that, as far as practicable, they are held at the same time and the results are notified at the same time.

Questions

3. (1) A question presented to a voter in relation to a strike shall specify —

- (a) the form of the strike; and
- (b) the purpose of the strike,

and shall require the person answering it to say, by answering “Yes” or “No”, whether that person is prepared to participate in that form of strike for that purpose.

(2) Separate questions shall be presented to the voter in respect of each form of strike which the voter may endorse.

(3) The question or questions presented to a voter shall be simply expressed and each question shall be presented separately from any other question that might also appear.

(4) Neither the required question or questions, nor any commentary or other matter which is presented to the voter, shall —

- (a) be presented in a way which might encourage a voter to answer one way rather than another as a result of that presentation; or

- (b) include any commentary which endeavours to influence the outcome of a voter's response to any question on the voting paper. ”.

Consequential amendment

12. Section 66 of the principal Act is amended by inserting after subsection (7) the following subsection —

“

(8) Within 6 months of the coming into operation of section 10 of the *Labour Relations Legislation Amendment Act 1997* the Registrar shall review the rules of each organization of employees and shall, by application pursuant to this section, bring before the President the rules of any organization of employees if, in the opinion of the Registrar, any of those rules is contrary to or inconsistent with Part VIB.

”.

PART 4 — POLITICAL EXPENDITURE

Part VIC heading amended

13. Part VIC of the principal Act is amended in the heading by deleting “**DONATIONS**” and substituting the following —

“ **EXPENDITURE** ”.

Section 97N amended

14. (1) Section 97N (1) of the principal Act is amended —

- (a) by deleting the definition of “ordinary moneys”;
- (b) by deleting the definition of “political donation” and substituting the following definition —

“
 “**political expenditure**” has the meaning given
 by subsection (2);
”;

and

- (c) by deleting the definition of “political levy”.

(2) Section 97N (2) of the principal Act is repealed and the following subsection is substituted —

- “
- (2) Political expenditure is —
 - (a) making a payment to a political party (whether by way of a membership subscription or affiliation fee or in any other manner);

- (b) making a payment to an election candidate or a group of election candidates;
- (c) paying expenses directly or indirectly incurred by a political party;
- (d) paying expenses directly or indirectly incurred in connection with a parliamentary election by an election candidate or a group of election candidates; or
- (e) making a payment to a person on the understanding that that person or another person will directly or indirectly apply the whole or a part of the payment in a way mentioned in paragraph (a), (b), (c) or (d).

”.

Section 97P amended

15. (1) Section 97P (2) of the principal Act is amended by deleting “donation (whether the amount is received as a portion of a member’s subscription, or in payment of a political levy or in any other circumstances)” and substituting the following —

“ expenditure ”.

(2) Section 97P (4) to (15) of the principal Act are repealed and the following subsections are substituted —

“

(4) An organization shall not credit any moneys to a political fund other than moneys referred to in subsection (2) or (3) and, in particular, shall not credit any moneys from a member’s subscriptions to a political fund.

(5) An organization shall not make any payment by way of political expenditure except from moneys already standing to the credit of a political fund.

(6) If —

(a) an organization receives an amount from any of its members to be applied for political expenditure; and

(b) that amount is received subject to a direction from the member as to the political party or parties, or election candidate or election candidates, to or in respect of which or whom the organization may pay or apply the amount,

the organization shall not make any payment from moneys in a political fund derived from that amount if the payment would be contrary to that direction.

”.

Section 97Q amended

16. Section 97Q is amended by deleting “section 4 of the *Industrial Relations Legislation Amendment and Repeal Act 1995*” and substituting the following —

“

section 15 of the *Labour Relations Legislation Amendment Act 1997*

”.

Sections 97R to 97T repealed and sections 97R to 97U substituted

17. Sections 97R, 97S and 97T of the principal Act are repealed and the following sections are substituted —

“

Auditor to report on compliance with political expenditure requirements

97R. (1) In reporting on the accounting records of an organization under section 65 the auditor, if able to do so, is to express an opinion on whether or not the organization has contravened or failed to comply with section 97P.

(2) If the auditor finds that the accounting records are not in a form that is conducive to identifying a contravention of or failure to comply with section 97P, the auditor is to report that finding.

Offences by organizations and officials relating to political expenditure

97S. (1) An organization that —

- (a) fails to credit an amount to a political fund as required by section 97P;
- (b) credits an amount to a political fund contrary to section 97P; or
- (c) makes a payment contrary to section 97P,

is guilty of an offence and liable to a penalty of \$5 000.

(2) If an organization is guilty of an offence against subsection (1), any finance official of the organization who is in any way, by act or omission and directly or indirectly, concerned in or party to the transaction in question,

knowing the transaction to have been made in contravention of section 97P is guilty of an offence and liable to a penalty of \$1 000.

(3) In subsection (2) —

“**finance official**” has the same meaning as it has in section 74.

Disqualification for unauthorized political expenditure

97T. (1) If an officer of an organization is convicted of an offence against section 97S (2), the industrial magistrate’s court may, on the application of the Registrar, order —

- (a) that the officer’s office becomes vacant when the order is made; and
- (b) that, from the time when the order is made, the officer is disqualified from holding or acting in any office in the organization during such period of not more than 3 years as is specified in the order.

(2) The industrial magistrate’s court may include in an order under subsection (1) any provision that it considers necessary to ensure the operation of the order and to provide for the election or appointment of a person to replace the officer whose office becomes vacant under the order.

(3) A person who performs or attempts to perform the functions of an office in the organization while disqualified by an order under subsection (1) from holding or acting in the office commits an offence punishable by the Supreme Court as for a contempt.

Recovery of unauthorized payments

97U. (1) In this section —

“unauthorized payment” means —

- (a) a payment made contrary to section 97P; or
- (b) a payment made from moneys that have been credited contrary to section 97P.

(2) If an organization is convicted of an offence against section 97S (1) and an unauthorized payment is proved to have been made, the industrial magistrate’s court may order the unauthorized payment to be forfeited to the Crown by the political party, candidate or candidates which or who received the payment or incurred the expenses in respect of which the payment was made, or in a case mentioned in section 97N (2) (e), by the person to whom the payment was made or a person by whom the payment was applied.

(3) An amount ordered to be forfeited under subsection (2) is a debt due to the Crown by the political party, candidate, candidates or person, as the case may be, to which or to whom the order is directed.

(4) The Registrar, a Deputy Registrar, or an Industrial Inspector, may apply in the prescribed manner to an industrial magistrate’s court for the recovery of the amount.

”.

Consequential amendments to sections 81A and 81CA

18. (1) Section 81A of the principal Act is amended by inserting after “96J” the following —

“ , 97T, 97U ”.

(2) Section 81CA (1) of the principal Act is amended —

(a) in paragraph (a) of the definition of “general jurisdiction” by inserting after “96J” the following —

“ , 97U ”; and

(b) in the definition of “prosecution jurisdiction” by inserting after paragraph (a) the following paragraph —

“ (aa) section 97T; ”.

PART 5 — FEDERAL AWARD COVERAGE

Section 73 amended

19. Section 73 of the principal Act is amended —

(a) by inserting after subsection (10) the following subsections —

“

(10a) Subsection (10) does not apply to an order made under this section for the cancellation of the registration of an organization pursuant to an application under subsection (12) (aa).

(10b) In making an order for cancellation of registration pursuant to an application under subsection (12) (aa) the Full Bench may direct that the order is not to take effect until the expiration of such period as the Full Bench considers necessary to enable any debts, liabilities, or obligations incurred by the organization to be met.

”;

(b) in subsection (12) by inserting after paragraph (a) the following paragraph —

“

(aa) the rights of the organization generally have been cancelled;

”;

and

(c) in subsection (13) by inserting after “this section” the following —

“ or Part IIIA ”.

Part IIIA inserted

20. After section 84A of the principal Act the following Part is inserted —

“

PART IIIA — FEDERAL AWARD COVERAGE

Interpretation

84B. In this Part, unless the contrary intention appears —

“**application**” means an application referred to in section 84E (1);

“**Branch**” has the same meaning as in section 71 (1);

“**commencement day**” means the day of the coming into operation of section 20 of the *Labour Relations Legislation Amendment Act 1997*;

“**Federal organization**” means an organization of employees registered under the Commonwealth Act, a Branch of which is a related Federal body of a State organization;

“**related State organization**” means an organization required to give notice under section 84D;

“**relevant dispute**” means an alleged industrial dispute, notice of which is received by a State organization under section 84C;

“**State employer**” means an employer who —

- (a) is bound by an award or industrial agreement under this Act; or

- (b) is a party to a workplace agreement and would, but for that workplace agreement, be bound by an award or industrial agreement under this Act;

“State organization” has the same meaning as in section 71 (1).

Constructive notice to State organization

84C. (1) If notification of an alleged industrial dispute that —

- (a) arises out of service of a log of claims; and
- (b) affects a State employer,

is given by a Federal organization under section 99 of the Commonwealth Act on or after commencement day, then for the purposes of this Part each State organization which has a Branch of the Federal organization as its related Federal body receives notice of the alleged industrial dispute on the same day as that notification is given by the Federal organization.

(2) If notification of an alleged industrial dispute that —

- (a) arises out of service of a log of claims;
- (b) affects a State employer;
- (c) has not been fully settled or finally dealt with under the Commonwealth Act;
- (d) has not ceased to exist; and

- (e) is not the subject of a determination by the Australian Industrial Relations Commission under the Commonwealth Act that it will refrain from hearing or determining the alleged industrial dispute or part of the alleged industrial dispute insofar as it involves the State,

was given by a Federal organization under section 99 of the Commonwealth Act before the commencement day, then for the purposes of this Part each State organization which has a Branch of the Federal organization as its related Federal body receives notice of the alleged industrial dispute on commencement day.

State organization to notify Registrar of dispute

84D. (1) An organization shall, not later than 7 days after receiving notice under section 84C, notify the Registrar in writing of —

- (a) the nature of the relevant dispute;
- (b) the name and address of each State employer who is named as a party to the alleged industrial dispute in the notification given under section 99 of the Commonwealth Act;
- (c) the title by which each award or industrial agreement which binds the State employer and to which the State organization is a party is known and the date on which the award was made or the industrial agreement was registered; and
- (d) such other details as may be prescribed by regulation by the Governor.

Penalty: \$5 000.

(2) If an organization is guilty of an offence against subsection (1), any officer of the organization who is in any way, directly or indirectly, knowingly concerned in or party to the contravention of that subsection, is guilty of an offence and liable to a penalty of \$1 000.

(3) It is a defence in any proceeding under subsection (1) for the organization to prove that, apart from the notice of the alleged industrial dispute received under section 84C, it did not know, and could not reasonably be expected to have known, that notification of the alleged industrial dispute had been given under section 99 of the Commonwealth Act.

Advertisement of right to seek to have party struck out

84E. (1) Not later than 7 days after receiving notification under section 84D (1), or, if notification is not so received, not later than 7 days after otherwise becoming aware of the existence of a relevant dispute, the Registrar shall —

- (a) inform the Chief Commissioner accordingly; and
- (b) cause to be published in a newspaper circulating throughout the State a notice advising that, within 14 days of publication of the notice a State employer or organization may make written application to the Chief Commissioner —
 - (i) to have the related State organization struck out as a party to an award or industrial agreement with respect to all of

the employees, or with respect to any employee or group or class of employee, bound by the relevant award or industrial agreement; and

- (ii) to have another organization substituted as a party to the award or industrial agreement in place of that related State organization.

(2) An application may include the nomination of another organization to be substituted as a party to the award or industrial agreement in place of the related State organization.

(3) A State employer shall not make an application unless that employer is bound by the relevant award or industrial agreement or would, but for the terms of a workplace agreement, be bound by the relevant award or industrial agreement.

Referral of application to have party struck out

84F. (1) At the close of the period within which applications may be made the Chief Commissioner shall refer each application to the Full Bench for hearing and determination.

(2) If no organization is nominated by application the Chief Commissioner may, not later than 3 months after the period for making application has lapsed, by notice to the Full Bench nominate an organization to be substituted for the related State organization as a party to the award or industrial agreement.

Determination of application

84G. (1) At the hearing of an application referred under section 84F (1), if the Full Bench is satisfied that the organization in question is a related State organization, and irrespective of whether or not an organization has been nominated by application or under section 84F (2), the Full Bench shall cancel, in whole or in part as it considers appropriate, the rights of the related State organization with respect to the employees to whom the application applies.

(2) Upon making an order under subsection (1) or receiving notice under section 84F (2), the Full Bench may add an organization nominated by application or under section 84F (2) as a party to the relevant award or industrial agreement with all of the rights of the related State organization immediately before the making of the order under subsection (1) with respect to those employees.

(3) An organization nominated by application or under section 84F (2) has the right to be heard in any proceedings under this section but may not refuse to be added as a party to an award or industrial agreement.

Cancelled organization may not be added to award

84H. An organization whose rights are cancelled under section 84G (1) shall not be added as a party to an award or industrial agreement under section 84G (2).

Full Bench may take steps to give effect to orders

84I. (1) Upon making an order under section 84G (1) or (2) the Full Bench is empowered by this section to do all things that are necessary to give effect to the order including —

- (a) cancelling or varying the rules of the affected organizations;
- (b) varying any relevant award, industrial agreement or order; and
- (c) dismissing any pending proceedings which, in the opinion of the Full Bench, are proceedings that, as a consequence of the order, should be taken by an organization substituted as a party to an award or industrial agreement.

(2) In subsection (1) —

“pending proceedings” means any application or claim commenced under this Act by the organization before an order was made under subsection (1) in respect of that organization.

Commission to give notice of cancellation

84J. If an order is made under section 84G (1) cancelling the rights of a State organization the Commission shall give notice of the order to employers in accordance with the regulations.

Subscriptions to cancelled organization

84K. (1) An employer shall not deduct subscriptions to an organization from the wages of an employee if —

- (a) any of the rights of the organization are cancelled in respect of the employee under this Part; and
- (b) notice of the order cancelling the rights has been given to the employer under section 84J.

(2) If the rights of an organization are cancelled under this Part in respect of an employee, that employee may upon resignation from the organization request in writing the refund of the proportion of that employee's membership dues attributable to the period of cancellation.

(3) The organization shall refund the membership dues upon request under subsection (2).

(4) Membership dues in respect of which a request has been made under subsection (2) are a debt due by the organization to the member.

(5) The member, the Registrar, a Deputy Registrar, or an Industrial Inspector, may apply in the prescribed manner to an industrial magistrate's court for the recovery of the amount of the dues.

Details of members

84L. (1) Where by order made under section 84G (2) an organization is added as a party to an award or industrial agreement with all of the rights of a related State organization with respect to certain employees, that organization may request from the related State organization the names and addresses of those employees.

(2) A related State organization shall comply with a request under subsection (1) not later than 14 days after receiving the request.

Pending proceedings

84M. (1) In this section —

“pending proceedings” means any application or claim commenced by a related State organization under this Act before an order was made under section 84G (2) in respect of the organization.

(2) Subject to —

- (a) any action taken by the Full Bench under section 84I; and
- (b) subsection (3) of this section,

upon the making of an order under section 84G (2) any pending proceedings which relate to employees to whom the order applies may be continued and dealt with as if they were instituted by the organization added as a party to the award or industrial agreement in respect of those employees.

(3) Notwithstanding subsection (2), an organization added as a party to an award or industrial agreement with all of the rights of a related State organization is not bound or estopped by any undertaking given by, or agreement reached with, the related State organization.

(4) The Full Bench may give such directions in relation to pending proceedings, either generally or in a particular case, as are necessary or desirable for the purposes of this Act.

Appeal

84N. An appeal against a decision of the Full Bench under section 84G does not operate to suspend the operation or effect of that decision and the Court shall not order the suspension of the operation or effect of that decision.

Minister may apply for writ of mandamus

84O. (1) The Minister has standing to apply to the Supreme Court for a grant of mandamus enforcing the performance of any function of the Commission or the Registrar under this Part.

(2) Notwithstanding any other provision of this Act, the Supreme Court may, on application under subsection (1), grant a mandamus enforcing the performance of any function of the Commission or the Registrar under this Part.

”.

Consequential amendments

21. (1) Section 81A of the principal Act is amended by inserting before “96J” the following —

“ 84K, ”.

(2) Section 81CA (1) of the principal Act is amended in paragraph (a) of the definition of “general jurisdiction” by inserting before “96J” the following —

“ 84K, ”.

PART 6 — UNFAIR DISMISSAL

Division 1 — Industrial Relations Act 1979

Section 23AA repealed and transitional

22. (1) Section 23AA of the principal Act is repealed.

(2) Notwithstanding subsection (1), section 23AA of the principal Act as in force immediately before the coming into operation of this section continues to operate in respect of any proceeding arising from a claim made before the coming into operation of this section.

Section 23A amended

23. Section 23A of the principal Act is amended —

(a) by repealing subsection (1a) and substituting the following subsection —

“

(1a) The Commission is not to make an order under subsection (1) (ba) unless —

(a) it is satisfied that reinstatement or re-employment of the claimant is impracticable; or

(b) the employer has agreed to pay the compensation instead of reinstating or re-employing the claimant.

”;

and

- (b) by inserting after subsection (4) the following subsection —

“
 (5) For avoidance of doubt, an order under subsection (1) (ba) may permit the employer concerned to pay the compensation required in instalments specified in the order.
”

Section 29 amended

- 24.** Section 29 of the principal Act is amended —

- (a) in subsection (2) by deleting “Subject to subsection (3), a referral” and substituting the following —

“ A referral ”; and

- (b) by repealing subsections (3) and (4).

Division 2 — Workplace Agreements Act 1993

Workplace Agreements Act

- 25.** In this Division the *Workplace Agreements Act 1993** is referred to as the Workplace Agreements Act.

[* *Act No. 13 of 1993.*

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 245 and Acts Nos. 78 and 79 of 1995 and 14 and 49 of 1996.]

Section 51 amended and transitional

- 26.** (1) Section 51 of the Workplace Agreements Act is amended by repealing subsections (2), (3) and (4).

(2) Notwithstanding subsection (1), subsections (2), (3) and (4) of section 51 of the Workplace Agreements Act as in force immediately before the coming into operation of this section continue to operate in respect of any proceeding arising from an action brought before the coming into operation of this section.

Section 56 amended

27. Section 56 of the Workplace Agreements Act is amended —

(a) in subsection (2) by deleting “Subject to subsection (3), an action” and substituting the following —

“ An action ”; and

(b) by repealing subsections (3) and (4).

Section 57 amended

28. Section 57 of the Workplace Agreements Act is amended —

(a) by repealing subsection (2) and substituting the following subsection —

“

(2) The court is not to make an order under subsection (1) (d) (ii) unless —

(a) it is satisfied that reinstatement or re-employment of the claimant is impracticable; or

(b) the employer has agreed to pay the compensation instead of reinstating or re-employing the claimant.

”;

and

- (b) by inserting after subsection (2) the following subsection —

“

(2a) For avoidance of doubt, an order under subsection (1) (d) (ii) may permit the employer concerned to pay the compensation required in instalments specified in the order.

”.

**PART 7 — MISCELLANEOUS PROVISIONS RELATING
TO AWARDS ETC.**

Section 7 amended and transitional

- 29.** (1) Section 7 of the principal Act is amended —
- (a) in the definition of “industrial matter” in subsection (1) by deleting paragraph (g); and
 - (b) in subsection (2) by deleting “Subject to paragraph (g) of the definition of “**industrial matter**” in subsection (1), the” and substituting the following —

“ The ”.
- (2) On and from the coming into operation of this section a provision of an award, order or industrial agreement dealing with the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been ceased by an employer or implementing an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization is of no effect, and any agreement so implemented is of no effect.
- (3) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall —
- (a) review each award, order and industrial agreement in force on the coming into operation of this section;
 - (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and

- (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;

and

- (c) after affording employers and organizations who give notice under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement by omitting any provision that is of no effect under subsection (2).

Section 23 amended

30. Section 23 (3) (c) of the principal Act is amended —

- (a) by deleting “or” after subparagraph (i);
- (b) by inserting “or” after subparagraph (ii); and
- (c) by inserting the following subparagraph —

“
(iii) the premises of an employer unless the employer is the employer, or former employer, of a member of the organization; ”

Section 49A amended

31. After section 49A (1) of the principal Act the following subsection is inserted —

“
(1a) The procedures referred to in subsection (1) shall provide for the persons involved in the question, dispute or difficulty to confer among themselves and make reasonable attempts to resolve questions,

disputes or difficulties before taking those matters to the Commission.

”.

Certain provisions of no effect or to be reviewed

32. (1) On and from the coming into operation of this section a provision of an award, order or industrial agreement made before the coming into operation of this section that is contrary to, or inconsistent with, section 23 (3) (c) (iii) or 49A of the principal Act as amended by this Act is, to the extent of the conflict or inconsistency, of no effect.

(2) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall, for the purposes of subsection (3) —

- (a) review each award, order and industrial agreement in force on the coming into operation of this section;
 - (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;
- and
- (c) after affording employers and organizations who give notice under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement as provided under subsection (3).

(3) The Commission or Railways Classification Board, as the case requires, shall vary each award, order and industrial agreement by —

- (a) omitting any provision that is of no effect under subsection (1);
- (b) varying its provisions, or inserting further provisions, to make adequate provision for the procedures required under sections 49A of the principal Act as amended by this Act; and
- (c) varying or omitting any provision that is contrary to, or in conflict with, section 23 (3) (c) (iii) or 49A of the principal Act as amended by this Act, or inserting further provisions, to ensure that the award, order or industrial agreement is consistent with that provision,

as the case requires.

Section 49AB inserted

33. After section 49A of the principal Act the following section is inserted —

“

Power of entry

49AB. (1) Where an award, order or industrial agreement empowers a representative of an organization to enter the premises of the employer or former employer of a member of the organization, that power may only be exercised by the representative for the purpose of dealing with an industrial matter involving that member.

(2) If a representative of an organization intends to exercise a power referred to in subsection (1), the representative may —

- (a) give to the Registrar a declaration made by the representative before a justice —
 - (i) stating that the representative intends to exercise that power and will not enter the premises for other purposes; and
 - (ii) annexed to which is a list of members of the organization in respect of whom the power is to be exercised;

and

- (b) before exercising the power, give the employer or former employer a copy of the declaration, without the annexure, endorsed on behalf of the Commission.

(3) An employer, former employer or organization may apply to the Commission to determine any question or dispute that has arisen between the employer and the organization as to whether a representative of the organization is empowered to enter the premises of the employer for a purpose specified in the application.

(4) If an application is made under subsection (3) the Commission shall determine the question or dispute as if it were an application under section 46, and section 46 shall apply to a declaration made by the Commission under this section as if it were made under that section.

(5) If —

(a) a representative of an organization —

(i) exercises a power referred to in subsection (1) in a way that exceeds the ambit of that power; or

(ii) purports to exercise a power referred to in subsection (1) in circumstances in which the representative is not entitled to do so;

or

(b) an employer or former employer who has received a copy of a declaration from a representative of an organization under subsection (2) refuses to allow the representative to exercise a power referred to in subsection (1) that the representative is entitled to exercise,

that person contravenes the award, order or industrial agreement under which the power is exercised or purportedly exercised.

(6) A representative who makes a statement or provides information in a declaration or the annexure to a declaration under subsection (2), knowing the statement or information to be false, commits an offence.

Penalty: \$10 000 or imprisonment for 2 years.

(7) Subject to subsection (8), a declaration or an annexure given under subsection (2) is not admissible in evidence in any proceedings other than proceedings in respect of an offence under subsection (6).

(8) A copy of a declaration given to an employer or former employer under subsection (2) (b) is admissible in proceedings in respect of a contravention of an award, order or industrial agreement referred to in subsection (5) (b).

”.

Section 49B amended and transitional

34. (1) Section 49B (1) of the principal Act is amended —

(a) by repealing paragraph (a) and substituting the following paragraph —

“

(a) the employer may refuse the representative access to the records if —

(i) the employer is of the opinion that access to the records by the representative of the organization would infringe the privacy of persons who are not members of the organization; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative;

”;

(b) by inserting “and” after paragraph (b);

(c) by repealing paragraphs (c) and (d);

(d) by deleting “; and” in paragraph (e) and substituting a full stop; and

(e) by repealing paragraph (f).

(2) Section 49B (2) of the principal Act is repealed and the following subsections are substituted —

“

(2) An Industrial Inspector shall give extracts from records produced to that Industrial Inspector pursuant to an undertaking referred to in subsection (1) (a) (ii) to the relevant organization as soon as is practicable after the records are so produced.

(3) An extract referred to in subsection (2) —

- (a) shall be of such matters as are prescribed;
- (b) shall be made in the prescribed manner; and
- (c) shall not include information in respect of a person who is not a member of the relevant organization.

(4) The Governor may make regulations —

- (a) with respect to the manner and form in which time and wages records are maintained; and
- (b) for the purposes of subsection (3).

”.

(3) On and from the coming into operation of this section a provision of an award, order or industrial agreement made before the coming into operation of this section that is contrary to, or inconsistent with, section 49B of the principal Act as amended by this Act is, to the extent of the conflict or inconsistency, of no effect.

(4) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall, for the purposes of subsection (5) —

- (a) review each award, order and industrial agreement in force on the coming into operation of this section;
- (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;

and

- (c) after affording employers and organizations who give notice under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement as provided under subsection (5).

(5) The Commission or Railways Classification Board, as the case requires, shall vary each award, order and industrial agreement by —

- (a) omitting any provision that is of no effect under subsection (3);
- (b) varying its provisions, or inserting further provisions, to make adequate provision for the procedures required under section 49B of the principal Act as amended by this Act; and

- (c) varying or omitting any provision that is contrary to, or in conflict with, section 49B of the principal Act as amended by this Act, or inserting further provisions, to ensure that the award, order or industrial agreement is consistent with that provision,

as the case requires.

PART 8 — MISCELLANEOUS AMENDMENTS

Section 7 amended

35. Section 7 (1) of the principal Act is amended —

- (a) by deleting the definition of “Commonwealth Act” and substituting the following definition —

“**Commonwealth Act**” means the *Workplace Relations Act 1996* of the Commonwealth;
and

- (b) by inserting, in the appropriate alphabetical position, the following definition —

“**pre-strike ballot**” means a ballot held under Part VIB;
”.

Section 32 amended

36. Section 32 of the principal Act is amended —

- (a) in subsection (4) by inserting after “subsection (3)” in the 3 places where it occurs the following —

“, (8) or (9) ”; and

- (b) by inserting after subsection (7) the following subsections —

“(8) Despite any other provision of this Act, if it appears at any time to the Commission that

an industrial matter referred to the Commission involves a strike which constitutes, or will constitute, a breach of —

- (a) any award, order or agreement to which an organization of employees whose members are participating in the strike is a party; or
- (b) any understanding, undertaking or procedure entered into, given or agreed by an organization of employees whose members are participating in the strike,

the Commission shall order that organization, and those members, to ensure that normal work resumes immediately.

(9) Despite any other provision of this Act and subject to subsection (8), if it appears at any time to the Commission that an industrial matter referred to the Commission involves a strike matter (as defined in subsection (12)), the Commission shall use its best endeavours to ensure that normal work resumes immediately, and for that purpose may order the members of an organization participating in the strike, and that organization, to ensure that normal work resumes immediately.

(10) In this section an order under subsection (8) or (9) requiring an organization and members of it to ensure that normal work resumes immediately is referred to as a **“resume work order”**.

(11) It is a defence to any proceedings instituted against an organization of employees for enforcement of a resume work order, or in

respect of contravention of a resume work order, for the organization to prove that it used its best endeavours to ensure that normal work resumed immediately.

(12) The following matters are “**strike matters**” —

- (a) a strike is occurring in respect of which a pre-strike ballot has not been ordered to be held under section 97F (2) or (4);
- (b) a strike is occurring in respect of which participation is not endorsed by a pre-strike ballot;
- (c) a strike is occurring in respect of which participation is endorsed by a pre-strike ballot and —
 - (i) that participation is taking place more than 28 days after the declaration of the result of that pre-strike ballot; or
 - (ii) notice of intention to participate has not been given by a member of an organization in accordance with section 97I (2); or
- (d) a strike is occurring in which participation is endorsed by a pre-strike ballot and it appears to the Commission that subsection (13) does not apply and that the strike —
 - (i) is not related to the furtherance of claims relating to the wages and conditions of employment of

the employees participating in the strike;

- (ii) threatens directly or indirectly the safety or welfare of the employees participating;
- (iii) may seriously disrupt the supply of essential services to a significant number of members of the public; or
- (iv) may cause undue hardship to any of the parties to the dispute.

(13) The occurrence of a strike is not a “strike matter” under subsection (12) (d) if —

- (a) there is in force between each organization of employees whose members are participating in the strike and each employer in respect of whom the strike is occurring an agreement —
 - (i) that complies with regulations made by the Governor for the purposes of this paragraph; and
 - (ii) in which the organization of employees has agreed on behalf of its members that the normal supply of goods or services by its members will be maintained despite any strike;

and

- (b) the Commission is satisfied that the terms of each such agreement are being met.

(14) The Commission may perform its functions under subsection (8) or (9) of its own motion or on the application of —

- (a) any person who could have referred the industrial matter to the Commission; or
- (b) any person who is directly affected, or who is likely to be directly affected, by the strike.

(15) The Commission shall hear and determine an application for it to perform its functions under subsection (8) or (9) as quickly as practicable.

(16) An appeal under section 49 from a resume work order does not operate to suspend the operation or effect of the resume work order and the Full Bench shall not order the suspension of the operation or effect of the resume work order.

(17) The functions conferred on the Commission by subsections (8) and (9) are in addition to, and not in derogation of, the functions conferred on the Commission by the rest of this Act.

(18) The Supreme Court may, on an application under this section of a person or organization affected by a resume work order, grant an injunction in such terms as the Supreme Court thinks fit if the Supreme Court is satisfied that another person or organization —

- (a) has engaged in conduct that constitutes a contravention of the resume work order; or
- (b) is proposing to engage in conduct that would constitute such a contravention of the resume work order.

(19) An interim or interlocutory injunction may be granted before final determination of an application under subsection (18).

(20) The Minister, and an applicant referred to in subsection (14), have standing to apply to the Supreme Court for a grant of mandamus enforcing the performance of any function of the Commission under subsection (8), (9) or (15).

(21) Despite any other provision of this Act, the Supreme Court may, on application under subsection (20), grant a mandamus enforcing the performance of a function of the Commission.

(22) In this section —

“**strike**” means a strike within the meaning of section 97A (2).

”.

Section 44 amended

37. Section 44 of the principal Act is amended —

(a) by inserting after subsection (5a) the following subsections —

“

(5b) Despite any other provision of this Act if, at or in relation to a conference under this section, it appears to the Commission that a strike is occurring which constitutes, or will constitute, a breach of —

(a) any award, order or agreement to which an organization of employees whose members are participating in the strike is a party; or

(b) any understanding, undertaking or procedure entered into, given or agreed by an organization of employees whose members are participating in the strike,

the Commission shall order that organization, and those members, to ensure that normal work resumes immediately.

(5c) Despite any other provision of this Act and subject to subsection (5b) if, at or in relation to a conference under this section, it appears to the Commission that a strike matter (as defined in section 32 (12)) is occurring, the Commission shall use its best endeavours to ensure that normal work resumes immediately, and for that purpose may order the members of an organization participating in the strike, and that organization, to ensure that normal work resumes immediately.

”;

- (b) by inserting after subsection (6a) the following subsection —

“

(6b) Subsections (16) to (21) of section 32 apply, with such modifications as are necessary, to —

- (a) an order made under subsection (5b) of this section as if that order were a resume work order made under section 32 (8); and
- (b) an order made under subsection (5c) of this section as if that order were a resume work order made under section 32 (9). ”; and

- (c) by inserting after subsection (14) the following subsection —

“

(15) In this section —

“**strike**” means a strike within the meaning of section 97A (2).

”.

Section 113 amended

- 38.** After section 113 (3) of the principal Act the following subsection is inserted —

“

(3a) The Governor may make regulations in any case where this Act contemplates the making of regulations by the Governor.

”.

**PART 9 — MINIMUM CONDITIONS OF
EMPLOYMENT ACT 1993**

Section 24 amended

39. Section 24 of the *Minimum Conditions of Employment Act 1993** is amended by repealing subsection (2) and substituting the following subsections —

“

(2) If —

- (a) an employee lawfully leaves his or her employment; or
- (b) an employee's employment is terminated by the employer through no fault of the employee,

before the employee has taken annual leave to which he or she is entitled, the employee is to be paid for all of that annual leave.

(3) If —

- (a) an employee leaves his or her employment; or
- (b) that employment is terminated by the employer,

in circumstances other than those referred to in subsection (2) before the employee has taken annual leave to which he or she is entitled, the employee is to be paid for any untaken leave that relates to a completed year of service, except that if the employee is dismissed for misconduct, the employee is not entitled to be paid for any untaken leave that relates

to a year of service that was completed after the misconduct occurred.

(4) In this section —

“**year**” does not include any period of unpaid leave.

”.

[* *Act No. 14 of 1993.*

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 146 and Act No. 58 of 1996.]

PART 10 — WORKPLACE AGREEMENTS ACT 1993

Part 2A inserted

40. After Part 2 of the *Workplace Agreements Act 1993** the following Part is inserted —

“

**PART 2A — WORKPLACE AGREEMENTS FOR
FEDERAL AWARD EMPLOYEES**

Definition

40A. In this Part —

“**Commonwealth Act**” means the *Workplace Relations Act 1996* of the Commonwealth.

Application of this Part

40B. (1) This Part applies to a collective workplace agreement that, in accordance with section 152 of the Commonwealth Act, is intended by the parties to prevail over an award under that Act.

(2) However this Part does not so apply unless the agreement expressly states that it is made for the purposes of section 152 (5) of the Commonwealth Act.

Agreement requires approval

40C. A workplace agreement to which this Part applies does not have effect for the purposes of this Act unless it has been —

- (a) approved by the Tribunal under section 40H; and
- (b) registered under section 40I.

Establishment of Tribunal

40D. (1) A Tribunal consisting of the Commissioner for the time being is established for the purposes of this Part.

(2) The Tribunal is to have a seal.

Functions of Tribunal

40E. The functions of the Tribunal are —

- (a) in accordance with sections 40G and 40H to be the State industrial authority referred to in section 152 (5) of the Commonwealth Act; and
- (b) if appointed in terms of section 21, to be an arbitrator in relation to disputes that arise about the meaning or effect of a workplace agreement to which this Part applies.

Lodgement for approval

40F. Any party to an agreement to which this Part applies may, in accordance with the regulations, lodge the agreement with the Tribunal for approval.

Tribunal to be satisfied of certain matters

40G. (1) Where an agreement is lodged for approval, the Tribunal is to satisfy itself that —

- (a) the agreement complies with this Act;
- (b) the employees covered by the agreement are not disadvantaged in comparison to their entitlements under the relevant award;

- (c) the agreement was genuinely made; and
- (d) the agreement covers all the employees whom it would be reasonable for the agreement to cover.

(2) For the purposes of subsection (1), the Tribunal may —

- (a) hear the parties or any party; and
- (b) otherwise obtain information in any way that it thinks appropriate,

but the Tribunal must hear any party who asks to be heard.

(3) For the purposes of subsection (2) —

- (a) the powers in section 94 (a) to (f) may be exercised by the Tribunal;
- (b) the power in section 94 (g) may be exercised as if it referred to an agreement lodged for approval under section 40F; and
- (c) sections 95 to 99 apply as if any reference to the Commissioner were a reference to the Tribunal.

Approval

40H. (1) Where in relation to an agreement the Tribunal is satisfied as to the matters referred to in section 40G (1), the Tribunal must —

- (a) approve the agreement; and
- (b) give to —
 - (i) the parties; and

(ii) the Commissioner,

notice in writing of the approval and the day on which it was given, within 7 days after that day.

(2) Where in relation to an agreement the Tribunal is not satisfied as to the matters referred to in section 40G (1), the Tribunal must —

- (a) refuse to approve the agreement; and
- (b) within 7 days after making the decision, give to each party a notice of the refusal and of the reasons for it.

Registration of agreement

40I. Where the Commissioner receives notice under section 40H (1) (b) that an agreement has been approved the Commissioner is to register the agreement as a workplace agreement.

Addition of employees as parties

40J. (1) Sections 8, 20, 23 (except subsection (4)), 25, 26 (3), 27, 60 and 66 apply for the purpose of enabling an employee to be added as a party to a workplace agreement to which this Part applies, and for related purposes.

(2) For those purposes, in the provisions mentioned in subsection (1) —

- (a) references to a collective workplace agreement are to be read as references to an agreement to which this Part applies; and

(b) references to an agreement under section 23 (1) include references to an agreement under that section as applied by subsection (1).

(3) A party to an agreement under section 23 (1) as applied by subsection (1) may, in accordance with the regulations, lodge the agreement with the Tribunal for approval.

(4) Where an agreement is lodged under subsection (3) —

(a) section 40G applies except that the Tribunal is to satisfy itself as to the following instead of the matters set out in subsection (1) of that section —

- (i) that the agreement complies with this Act;
- (ii) that the employee is not disadvantaged in comparison to his or her entitlement under the relevant award; and
- (iii) that the agreement was genuinely made;

(b) section 40H applies with the necessary changes in the same way as it applies to an agreement referred to in section 40B;

(c) where the Commissioner receives notice that the agreement has been approved, the Commissioner is to register the agreement; and

(d) if the Tribunal refuses to approve the agreement —

- (i) it is not to be registered; and

- (ii) section 33 applies with the necessary changes as if it referred to an approval of an agreement lodged under subsection (3) being refused by the Tribunal instead of to the registration of certain agreements being refused by the Commissioner.

Provisions of Act modified

40K. Division 4 of Part 2, except for sections 26 (2), 28, 39 and 40, does not apply to an agreement that is registered under section 40I.

”.

[* *Act No. 13 of 1993.*

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 245 and Acts Nos. 78 and 79 of 1995 and 14 and 49 of 1996.]

Amendments consequential on new Part 2A

41. The *Workplace Agreements Act 1993* is further amended —

- (a) in section 8 by inserting after “section 23 (1)” the following —
“ or 40J ”;
- (b) in section 15 (3) (c) by inserting after “Division 4” the following —
“ or section 40I ”;
- (c) in section 19 (1) by inserting after “Division 4” the following —
“ or section 40I ”;

- (d) in section 21 (3) by deleting “The” and substituting the following —
“ Except as provided in section 40E (b), the ”;
- (e) in section 23 (3) by deleting “and 33” and substituting the following —
“ , 33 and 40J ”;
- (f) in section 25 by inserting after “section 29” the following —
“ or for approval under section 40F ”;
- (g) in section 26 (1) by deleting “or 32” and substituting the following —
“ , 32 or 40I ”;
- (h) by repealing section 26 (3) and substituting the following —
“
(3) Subject to sections 27, 33 and 40J, an individual workplace agreement and an agreement under section 23 (1) have effect whether or not they are registered under section 31 or 40J.
”;
- (i) in section 27 (1) by inserting after “29” the following —
“ or 40J ”;
- (j) in section 49, in the definition of “workplace agreement”, by inserting after “Part 2” the following —
“ or under section 40I ”;

(k) in section 60 by deleting “or 32” and substituting the following —

“ , 32, 40I or 40J ”;

(l) in section 86 (1) by inserting after “Part 2” the following —

“ and by section 40D ”; and

(m) in section 86 (3) by deleting “It” and substituting the following —

“ Except as provided in section 40E (b), it ”.