

WESTERN AUSTRALIA

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**WORKPLACE AGREEMENTS  
ACT 1993**

(No. 13 of 1993)

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WESTERN AUSTRALIA

# WORKPLACE AGREEMENTS ACT 1993

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No. 13 of 1993

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**AN ACT to provide for the making of agreements between employers and employees as to their respective rights and obligations, for the registration of such agreements by a public official, for the effect of such agreements, and for their enforcement, to confer qualified immunity for certain industrial action relating to such agreements, and to provide for related matters.**

*[Assented to 23 November 1993]*

The Parliament of Western Australia enacts as follows:

## PART 1 — PRELIMINARY

### Short title

1. This Act may be cited as the *Workplace Agreements Act 1993*.

### Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

### Interpretation

3. In this Act, unless the contrary intention appears —

“award” means —

- (a) an award under the *Industrial Relations Act 1979*, and includes any industrial agreement or order under that Act; and
- (b) an award under the *Coal Industry Tribunal of Western Australia Act 1992*, and includes 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 or persons representing another person or other persons under section 15;

“collective workplace agreement” means a workplace agreement of the kind described in section 9 and where the context so requires means an agreement of that kind that is in force;

**“Commissioner”** means the Commissioner of Workplace Agreements appointed under Part 7 and, except in clauses 1 (1), 2 and 4 of Part A of Schedule 2, a person acting under section 84;

**“employee”** means —

- (a) a person who is an employee within the meaning of the *Industrial Relations Act 1979*; and
- (b) a person to whom section 43 (1) applies;

**“employer”** has the same meaning as in the *Industrial Relations Act 1979* except that for the purposes of giving effect to Part 3 it has the meaning given by section 44;

**“individual workplace agreement”** means a workplace agreement of the kind described in section 10 and where the context so requires means an agreement of that kind that is in force;

**“organization”** has the same meaning as in section 7 of the *Industrial Relations Act 1979*;

**“Public Service Act”** means the *Public Service Act 1978* or any Act that repeals and replaces that Act;

**“workplace agreement”** means an agreement of the kind described in section 5 and where the context so requires means an agreement of that kind that is in force.

### **Act overrides *Industrial Relations Act 1979***

4. This Act has effect despite any provision of the *Industrial Relations Act 1979*.

**PART 2 — WORKPLACE AGREEMENTS*****Division 1 — Purpose and effect of workplace agreements*****Workplace agreements**

5. (1) Workplace agreements are agreements —
- (a) made between employers and employees; and
  - (b) providing for some or all of the rights and obligations that employers and employees have in relation to one another, including rights and obligations that are to take effect after termination of employment.
- (2) A workplace agreement may —
- (a) cover a single workplace or a number of workplaces;
  - (b) apply to the employment relationship between the parties in any place or circumstances.
- (3) Nothing in this Act is to be taken to prevent —
- (a) any contract of employment and a workplace agreement between an employer and employee being entered into at the same time; or
  - (b) any contract of employment between an employer and any employee being in the form of a workplace agreement.

**Effect of workplace agreement**

6. (1) Where a workplace agreement —
- (a) has been made between —
    - (i) an employer and an employee under a contract of employment; or

(ii) an employer and employees under contracts of employment;

and

(b) has come into force,

no award, whether existing or future, applies to —

(c) that contract or those contracts of employment; or

(d) the employer or any such employee as a party to any such contract,

so long as the workplace agreement remains in force.

(2) Where a workplace agreement has been made as mentioned in subsection (1) (a), in relation to any contract of employment, and has come into force, any award provision that applied to that contract immediately before that coming into force is not to be implied into, or in any way read as being part of, the workplace agreement unless the agreement expressly so requires.

(3) A workplace agreement also has the effects described in sections 7B, 7C, 7D and 7E of the *Industrial Relations Act 1979*.

(4) A workplace agreement does not displace the contract of employment between an employer and an employee but while it is in force it has effect —

(a) as if it formed part of that contract; and

(b) regardless of any provision of that contract.

(5) Subsection (1) (c) may be extended by an agreement of the kind described in section 14 (2).

### **Effect of workplace agreement on accrued entitlements**

7. Any entitlement accrued to an employee under the relevant award before the workplace agreement entered into by the

employee comes into effect shall be preserved and paid to the employee by the employer at either —

- (a) the award rate; or
- (b) the rate the employee was paid

whichever was the higher at the time immediately prior to the workplace agreement coming into effect.

**Effect of addition of employee as party**

8. Where an employee under a contract of employment is added as a party to a collective workplace agreement under section 23 (1) 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 and the agreement under section 23 (1) remain in force.

***Division 2 — Making of workplace agreements***

**Making of collective workplace agreements**

9. A workplace agreement may be entered into between an employer and all or some of the employer's employees.

**Making of individual workplace agreements**

10. (1) A workplace agreement may be entered into between an employer and one of the employer's employees.

(2) An individual workplace agreement may —

- (a) override a collective workplace agreement that could otherwise apply to the employee;
- (b) be in addition to an applicable collective workplace agreement; or
- (c) be in substitution for any provision of an applicable collective workplace agreement.

(3) A provision of an individual workplace agreement has effect despite any inconsistency with an applicable collective workplace agreement.

### **Employee organizations may join in collective workplace agreements**

11. (1) Subject to subsection (2), an organization of employees may as part of a collective workplace agreement undertake to the employer and the employees under the agreement that it will conduct its affairs —

- (a) in a way that is consistent with the observance of the agreement; and
- (b) so as not to incite or encourage any breach of the agreement,

by the parties to the agreement.

(2) An undertaking under subsection (1) cannot be included in a workplace agreement unless the employer and the employees who are parties to it have in writing agreed to its inclusion.

(3) An organization that has given an undertaking under subsection (1) as part of a workplace agreement is to be treated as a party to the agreement for the purposes of sections 35 (3) and 39, but not for the purposes of section 16 (2), 21, 24, 29, 30 or 88 (4).

**Persons bound by workplace agreement**

- 12.** (1) A workplace agreement is binding on —
- (a) the parties to the agreement, but subject to sections 14 (1) and 32;
  - (b) an employer that is a successor, assignee or transmittee, whether immediate or not, to or of the whole or part of the business of an employer that is a party to the agreement; and
  - (c) an organization that gives an undertaking under section 11, to the extent of that undertaking.

(2) Where an employer becomes bound by a workplace agreement as mentioned in subsection (1) (b) any right or entitlement accrued to an employee under the agreement before the succession, assignment or transmission is binding on, and enforceable against, the employer to the extent that it is not enforced against the previous employer.

(3) A workplace agreement entered into by a person who is under 18 years of age binds the person as if he or she were of full age.

**Disposition etc. of business**

**13.** (1) An employer who becomes bound by a workplace agreement by operation of section 12 (1) (b) is to be taken to be a party to every contract of employment that it governs.

(2) A disposition or transmission of the whole or part of a business of an employer does not affect the continuation in force of a relevant workplace agreement to which that employer is a party if another employer becomes bound by that workplace agreement under section 12 (1) (b).

### **Termination of contract of employment**

14. (1) Where a contract of employment of an employee comes to an end, a workplace agreement that governs that contract no longer applies to that person except where an agreement under subsection (2) provides otherwise.

(2) An employer and a person who is employed by the employer may agree in writing that a specified workplace agreement is to apply to that person as an employee of that employer during a specified period, not exceeding 12 months, regardless of the number of separate contracts of employment between them that come into existence during that period.

(3) Subsection (1) does not affect rights or obligations under a workplace agreement that are to take effect after termination of employment.

### **Bargaining agents**

15. (1) The employer, the employees or any employee are entitled to be represented by a bargaining agent —

- (a) in any negotiations for a workplace agreement; or
- (b) in connection with the operation of a workplace agreement.

(2) A bargaining agent may be any person or group of persons.

(3) The authority of a bargaining agent to represent an employer or an employee under this section —

- (a) must be given in writing by that employer or employee;
- (b) may be terminated by that employer or employee at any time by notice in writing to the bargaining agent; and

- (c) is automatically terminated on the registration of that agreement under Division 4, unless the bargaining agent is authorized for the purposes of subsection (1) (b).

(4) A copy of an authority given to a bargaining agent under subsection (3) (a) must be given to each other party who is not represented by that agent.

(5) The fact that an employer or an employee has appointed a bargaining agent under this section does not prevent the employer or employee communicating with any other party or that other party's bargaining agent.

(6) Where an employer or an employee has appointed a bargaining agent under this section any other party must not —

- (a) refuse to recognize that appointment or deal with some other person as if he or she were that person's bargaining agent; or
- (b) coerce or induce, or attempt to coerce or induce, the employer or employee to terminate the authority of the bargaining agent.

Penalty: \$2 000.

(7) Nothing in subsection (6) is to be read as requiring any person to enter into or continue negotiations for a workplace agreement.

(8) In this section "**employer**" and "**employee**" include persons who wish to negotiate with a view to entering into a contract of employment and a workplace agreement that will govern that contract.

***Division 3 — Contents and formalities***

**Contents**

16. (1) A workplace agreement —

- (a) must comply with sections 19 (3), 20 and 21; and
- (b) must not contravene section 18 (3) or 22.

(2) Subject to subsection (1), a workplace agreement may contain whatever provisions the parties agree to include.

**Minimum conditions of employment**

17. The *Minimum Conditions of Employment Act 1993* has effect despite any provision of a workplace agreement.

**Implied provision as to unfair dismissal**

18. (1) There is implied in every workplace agreement a provision that the employer must not unfairly, harshly or oppressively dismiss from employment any employee who is a party to the agreement.

(2) The provision described in subsection (1) is enforceable under section 51 of this Act or under section 7G of the *Industrial Relations Act 1979*, as the case may be, and not otherwise.

(3) A workplace agreement must not exclude the operation of subsection (1) and to the extent that it purports to do so it is of no effect.

**Commencement and duration**

19. (1) A collective workplace agreement has effect when it is registered under Division 4, or from any later day provided for in the agreement.

(2) Subject to sections 27 and 33, an individual workplace agreement has effect when it has been signed by the parties to the agreement, or from any later day provided for in the agreement.

(3) A workplace agreement must provide for the day on which it expires which cannot be more than 5 years after it was entered into.

(4) On the expiry of a workplace agreement this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to —

- (a) another workplace agreement; or
- (b) some other arrangement between the parties provided for in the expired workplace agreement.

(5) So long as a contract of employment is not subject to award provisions because of an arrangement under subsection (4) (b), sections 6 and 8 continue to apply to that contract as if the workplace agreement had not expired.

### **Requirements for writing and other formalities**

20. (1) A workplace agreement and an agreement under section 23 (1) must —

- (a) be in writing;
- (b) name the employer and the employee or employees between whom they are made; and
- (c) be signed by each of them.

(2) An agreement referred to in subsection (1) may be signed on behalf of a body corporate by an officer or employee of the body corporate and need not be made under its seal.

**Agreement must provide for resolution of certain disputes**

**21.** (1) A workplace agreement must set out provisions for dealing with any question or dispute that arises between the parties about the meaning or effect of the agreement, including any provisions implied in the agreement by the *Minimum Conditions of Employment Act 1993*.

(2) The provisions referred to in subsection (1) must —

- (a) confer a right on any party to refer to arbitration a dispute of the kind described in that subsection;
- (b) specify the means for appointing a person or persons to conduct an arbitration referred to in paragraph (a), and for making any new appointment that may be required; and
- (c) contain an undertaking by the parties to accept the arbitrated decision as final and binding for the purposes of the agreement, but subject to section 64 (3).

(3) The Commissioner cannot be an arbitrator for the purposes of a workplace agreement.

(4) Schedule 1 has effect to provide for the powers of arbitrators and the related matters set out in that Schedule.

**Certain requirements relating to membership of organizations to have no effect**

**22.** (1) A workplace agreement must not —

- (a) require a person —
  - (i) to become or remain a member of an organization;
  - (ii) to cease to be a member of an organization;

- (iii) not to become a member of an organization; or
- (iv) to treat another person less favourably or more favourably according to whether or not that other person is, or will become or cease to be, a member of an organization;

or

- (b) confer on any person by reason of that person's membership or non-membership of an organization any right to preferential employment or to be given preference in any aspect of employment.

(2) In subsection (1) "**organization**" has the same meaning as it has in section 96A of the *Industrial Relations Act 1979*.

### **Addition of employees as parties**

**23.** (1) An employee may by agreement in writing with his or her employer be added as a party to a collective workplace agreement to which the employer is a party.

(2) Subsection (1) applies to —

- (a) an employee whose contract of employment starts after the collective workplace agreement was entered into; and
- (b) an existing employee who did not enter into it.

(3) Subject to sections 27 and 33, an agreement under subsection (1) has effect when it has been signed by the parties to the agreement, or from any later day provided for in the agreement.

(4) This section does not limit the ability of the employer and the employee to enter into an individual workplace agreement under section 10.

### **Cancellation and variation**

**24.** (1) The parties to a workplace agreement may enter into an agreement in writing cancelling the workplace agreement.

(2) The parties to a workplace agreement may while it is in force agree to change the agreement, but can only do so by a new workplace agreement containing the change.

(3) A change under subsection (2) cannot be in the form of a separate variation agreement.

(4) On the cancellation of a workplace agreement this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to another workplace agreement.

### **Employees to be given copies**

**25.** An employer who is a party to —

(a) an agreement that is intended by the parties to be registered as a workplace agreement; or

(b) an agreement under section 23 (1),

must ensure that a copy of the agreement is given to each employee who is a party to the agreement, as soon as is practicable after it is entered into and in any case before it is lodged for registration under section 29.

Penalty: \$2 000.

### ***Division 4 — Registration of workplace agreements etc.***

#### **Requirements for registration**

**26.** (1) An agreement does not have effect as a collective workplace agreement for the purposes of this Act unless it is registered under section 31 or 32.

(2) An agreement under section 24 (1) does not have effect for the purposes of this Act unless it is registered under section 31.

(3) Subject to sections 27 and 33, an individual workplace agreement and an agreement under section 23 (1) have effect whether or not they are registered under section 31.

### **Position if individual workplace agreements etc. not lodged for registration**

**27.** (1) If an individual workplace agreement or an agreement under section 23 (1) is not lodged for registration under section 29 within the period of 21 days from the day on which it took effect (“**the period allowed for lodgement**”) —

- (a) the agreement ceases to have effect for the purposes of this Act on the expiration of that period and cannot be lodged for registration; and
- (b) either party may, subject to subsection (2), recover from the other under section 52 any amount which, if the agreement had not taken effect, he or she —
  - (i) would have been entitled to receive;
  - or
  - (ii) would not have been required to pay,as the case may be, in respect of the period allowed for lodgement.

(2) The entitlement of an employee is to be determined for the purposes of subsection (1) (b) as if any relevant award provision applied to the employer and the employee during the period allowed for lodgement.

### **Register**

**28.** (1) The Commissioner is to keep a register of workplace agreements and the other agreements referred to in section 26.

(2) The register is to be kept in a form and manner determined by the Commissioner which may be in the form of a computer record.

### **Lodgement**

**29.** Any party to an agreement provided for by this Part may, in accordance with the regulations, lodge the agreement with the Commissioner for registration.

### **Commissioner to be satisfied of certain matters**

**30.** (1) Where an agreement is lodged with the Commissioner under section 29 the Commissioner is to satisfy himself or herself —

- (a) that the agreement complies with this Act;
- (b) that each party to the agreement appears to understand his or her rights and obligations under the agreement;
- (c) that no party to the agreement was persuaded by threats or intimidation to enter into the agreement; and
- (d) that each party to the agreement genuinely wishes to have the agreement registered.

(2) Subsection (1) (b) does not apply to an agreement under section 24 (1).

(3) For the purposes of subsection (1), the Commissioner may —

- (a) meet with the parties to the agreement; and
- (b) otherwise obtain information in any way that he or she thinks appropriate,

but the Commissioner must meet with any party who requests a meeting.

(4) Any meeting may be held with the parties together or separately, or with any bargaining agents of the parties.

### **Registration**

**31.** (1) Where in relation to an agreement the Commissioner is satisfied as to the matters referred to in section 30 (1), the Commissioner must —

- (a) register the agreement as a workplace agreement or as an agreement under section 23 (1) or 24 (1), as the case may be; and
- (b) give to the parties notice in writing of the registration and the day on which it occurred, within 7 days after that day.

(2) Where in relation to an agreement the Commissioner is not satisfied as to the matters referred to in section 30 (1), the Commissioner must unless section 32 applies —

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

### **Partial registration of collective workplace agreement**

**32.** (1) Where, in the case of an agreement lodged for registration as a collective workplace agreement, the Commissioner is satisfied as to the matters referred to in section 30 (1) (b), (c) and (d) in relation to some, but not all, of the parties to the agreement, the Commissioner must register the agreement in accordance with subsection (2).

(2) Where subsection (1) applies the Commissioner is to —

- (a) attach to the agreement a memorandum showing —
  - (i) the parties to the agreement in respect of whom the Commissioner is satisfied as to the matters referred to in section 30 (1) (b), (c) and (d); and
  - (ii) the parties in respect of whom the Commissioner is not so satisfied (“**the excluded parties**”);
- (b) register the agreement in terms that exclude the parties referred to in paragraph (a) (ii); and
- (c) give notice to all of the parties (including the excluded parties) of —
  - (i) the registration;
  - (ii) the memorandum under paragraph (a); and
  - (iii) the reasons for the registration of the agreement under this section.

(3) If the Commissioner subsequently becomes satisfied as to the matters referred to in section 30 (1) (b), (c) and (d) in respect of any of the excluded parties, the Commissioner may revoke or amend the memorandum under subsection (2) (a), as the case may require.

(4) A party who is for the time being an excluded party —

- (a) is not subject to section 6; and
- (b) is not a party to the workplace agreement for the purposes of the provisions of this Act (not including section 39) that apply to that agreement as a registered workplace agreement.

**Position where an agreement is refused registration**

**33.** (1) Where an individual workplace agreement or an agreement under section 23 (1) is lodged under section 29 but registration is refused by the Commissioner —

- (a) the agreement ceases to have effect for the purposes of this Act as from the day of that refusal; and
- (b) either party may, subject to subsection (2), recover from the other under section 52 any amount which, if the agreement had not taken effect, he or she —
  - (i) would have been entitled to receive; or
  - (ii) would not have been required to pay,

as the case may be, in respect of the period between the day when the agreement took effect and the day on which registration is refused.

(2) The entitlement of an employee is to be determined for the purposes of subsection (1) as if any relevant award provision applied to the employee during the period referred to in that subsection or in section 35 (5).

**Delegation and review of delegate's decision**

**34.** (1) Where a delegate of the Commissioner makes a decision under section 31 or 32 in relation to an agreement, a party to the agreement may, within 14 days of receiving notice of the decision, request the Commissioner to review the decision; and the Commissioner is to comply with such a request.

(2) An organization that has given an undertaking under section 11 (1) as part of a workplace agreement may request a review under subsection (1), but only where —

- (a) the decision to be reviewed is a refusal under section 31 (2) to register the agreement; and

- (b) the employee or employees who are parties to the agreement consent in writing to the request being made.

(3) On a review the Commissioner may confirm or reverse the decision; and is to give notice of the result of the review as mentioned in section 31 (1) (b) or (2) (b) or 32 (2) (c), whichever is applicable.

(4) The Commissioner may seek and receive such further information as the Commissioner may require for the purpose of a review under this section.

(5) In subsection (1) “**delegate**” means a person exercising delegated powers under section 93.

## **Appeal**

**35.** (1) Where the Commissioner refuses to register an agreement, a party to the agreement may within 21 days after receiving notice of the refusal appeal against the refusal to the Supreme Court.

(2) An organization that has given an undertaking under section 11 (1) as part of a workplace agreement may appeal under subsection (1), but only if the employee or employees who are parties to the agreement consent in writing to the appeal.

(3) On an appeal any other party to the agreement is entitled to be joined as a party to the appeal in accordance with rules of court.

(4) Without limiting the rules of court, where an appeal under this section has been commenced, the Supreme Court —

- (a) may suspend the operation or effect of the decision appealed against from the day of the decision until the appeal is determined or is withdrawn; and
- (b) may revoke any such suspension.

(5) The right of a person to recover moneys as mentioned in section 33 (1) (b) includes any period when a decision to refuse registration of an agreement is suspended under subsection (4) if the decision on appeal does not result in the registration of the agreement.

### **Hearing and determination of appeal**

**36.** (1) An appeal under section 35 is to be by way of rehearing and the Supreme Court —

- (a) is not confined to the record of the decision appealed against; and
- (b) may receive any further evidence it thinks fit.

(2) On the determination of the appeal, the Supreme Court may by order —

- (a) confirm the decision; or
- (b) set aside the decision and —
  - (i) make a decision in substitution for that decision; or
  - (ii) remit the matter to the Commissioner for reconsideration with any direction or recommendation that the Court thinks fit.

### **Representation on appeal**

**37.** A party to an appeal under section 35 to the Supreme Court, may appear —

- (a) in person; or
- (b) be represented by an agent; or

- (c) be represented by a legal practitioner.

### **Costs on appeal**

**38.** On an appeal under section 35 costs are not to be given to any party to the proceedings for the services of any legal practitioner unless, in the opinion of the Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case may be, by the other party.

### **Confidentiality**

**39.** (1) An agreement lodged with or registered by the Commissioner is not open for inspection by any person except a party to it or a person authorized in writing by such a party.

(2) 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 Act except —

- (a) in the course of performing functions under this Act;
- (b) as required or allowed by this Act or any other written law;
- (c) for the purpose of proceedings in a court, other than the Western Australian Industrial Relations Commission;
- (d) with the written authority of the party to whom the information relates; or
- (e) in other prescribed circumstances.

Penalty: \$2 000.

## s. 40

(3) Subsection (2) does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

(4) Subsection (2) applies to a person who holds or has held the office of Commissioner or is or has been a member of the Commissioner's staff.

(5) This section has effect despite any provision of the *Freedom of Information Act 1992*.

**Section 39 not applicable to public sector agreements**

**40.** Despite section 39, the contents of a workplace agreement referred to in section 43 (1) that has been lodged with or registered by the Commissioner —

- (a) are to be open for inspection by any person; and
- (b) may be disclosed to any person who, in the opinion of the Commissioner, makes a request for information that can reasonably be complied with by the Commissioner.

### **PART 3 — APPLICATION TO PUBLIC SECTOR**

#### **Definition for this Part**

**41.** In this Part “public authority” means —

- (a) the Governor in Executive Council;
- (b) a Minister of the Crown in right of the State;
- (c) the President of the Legislative Council or the Speaker of the Legislative Assembly or both of them acting jointly, as the case may be, under the *Parliamentary and Electorate Staff (Employment) Act 1992*;
- (d) the Governor or his or her delegate under the *Governor’s Establishment Act 1992*;
- (e) any State Government department, State trading concern, State instrumentality or State agency; or
- (f) any public statutory body, corporate or unincorporate, established under a written law but not including a municipality or regional council constituted under the *Local Government Act 1960*.

#### **Act binds Crown**

**42.** This Act binds the Crown.

#### **Employees in the public sector**

**43.** (1) Subject to this Act any person who is —

- (a) appointed under a written law to a position as an officer or employee;

- (b) employed by the Crown; or
- (c) the holder of an office or position in or under a public authority,

may be a party to a workplace agreement as an employee.

(2) Subsection (1) applies whether or not in law a person has a contract of employment.

(3) Subsection (1) does not apply to —

- (a) the holder of an office mentioned in Division 1 of Part 1 of Schedule V to the *Constitution Acts Amendment Act 1899*;
- (b) the holder of an office or position for which the remuneration is determined under the *Salaries and Allowances Act 1975*; or
- (c) the holder of any office or position, or class of office or position, that is prescribed by the regulations to be excluded from the operation of this Act.

(4) Without limiting section 14, a workplace agreement referred to in subsection (1) no longer applies to a person as an employee if his or her appointment or employment ceases or is terminated.

(5) Subsection (4) does not affect rights or obligations that under a workplace agreement are to take effect after termination of appointment or employment.

### **Employers in the public sector**

44. (1) In respect of any employee, or class of employee, to whom section 43 (1) applies, the employer for the purpose of this Act is to be a person prescribed by the regulations in respect of that employee or class of employee.

(2) A person referred to in subsection (1) is to be taken to be the employer of an employee for the purposes of this Act and, despite any provision of a written law, has authority to enter into a workplace agreement or other agreement under this Act with that employee.

### **Matters that cannot be the subject of a workplace agreement**

45. (1) Any matter that is excluded from the operation of this Part by the Public Service Act (including regulations under that Act) cannot be varied or affected by agreement between the parties to a workplace agreement referred to in section 43 (1).

(2) To the extent that a provision of a workplace agreement is inconsistent with subsection (1) it is of no effect.

### **Agreement to prevail over certain written laws**

46. (1) Subject to section 45, this Part and any workplace agreement have effect despite any relevant enactment that would otherwise apply.

(2) In subsection (1) “**relevant enactment**” means an enactment that —

- (a) makes provision for or in relation to the way in which human resources are to be managed or administered in any part of the public sector;
- (b) confers a right of appeal against a decision or recommendation of an official performing any function of public sector management;
- (c) empowers a person or body to determine the remuneration or other terms and conditions of employment of officers or employees;

- (d) requires any determination of the kind referred to in paragraph (c) to be made subject to any order, award or industrial agreement under the *Industrial Relations Act 1979*,

but does not include any provision of the *Equal Opportunity Act 1984*.

## **PART 4 — KEEPING OF RECORDS**

### **Keeping of employment records**

**47.** (1) Subsection (2) applies to an employee during any period when the employee's contract of employment is governed by a workplace agreement.

(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) the workplace agreement that applies;
- (c) the gross and net amounts paid to the employee under the agreement, and all deductions and the reasons for them;
- (d) all leave taken by the employee, whether paid, partly paid or unpaid; and
- (e) other matters prescribed by the regulations.

(3) The employer must ensure that —

- (a) the records are kept in accordance with the regulations; and
- (b) each entry is retained for not less than 7 years after it is made.

Penalty: \$5 000.

**Access to records kept by employer**

**48.** (1) An employer, on request in writing by a relevant person, must —

- (a) produce to the person the records under section 47 relating to an employee to whom that section applies; and
- (b) let the person inspect the records.

Penalty: \$5 000.

(2) Relevant persons are —

- (a) the employee;
- (b) a person authorized in writing by the employee; and
- (c) a member of the staff of the Commissioner authorized in writing by the Commissioner.

(3) The duty placed on an employer by subsection (1) —

- (a) continues so long as the record is required to be kept under section 47 (3) (b);
- (b) is not affected by the fact that the employee is no longer employed by the employer or that the workplace agreement 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 purposes of inspection of 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) the end of the next pay period; or

(ii) the expiration of 14 days,

whichever is the earlier, after the request for inspection is received.

## **PART 5 — DISPUTES, REMEDIES AND OFFENCES**

### *Division 1 — Enforcement in industrial magistrate's court*

#### **Definitions**

49. In this Division —

**“industrial magistrate's court”** means an industrial magistrate's court established under Part III of the *Industrial Relations Act 1979*;

**“the court”** means the industrial magistrate's court in which an action under this Division has been brought;

**“unfair”**, in relation to dismissal, includes harsh or oppressive;

**“workplace agreement”** means a workplace agreement that has been registered under Division 4 of Part 2, and includes a contract of employment that is governed by that agreement.

#### **Actions for breach of agreement etc.**

50. (1) Where an employer or employee who is a party to a workplace agreement claims that there has been a breach of the workplace agreement by a party to the agreement, the employer or employee may bring an action in an industrial magistrate's court against that party.

(2) Where an employer or employee who is a party to a workplace agreement claims that there has been a breach by an organization of an undertaking under section 11, the employer or employee may bring an action in an industrial magistrate's court against that organization.

(3) Where a right to bring an action under this section has accrued to a person as an employer or employee under a contract of employment it does not matter that at the time when the action is brought or subsequently the contract has ceased to be in force.

### **Unfair dismissal**

**51.** Where —

- (a) 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; and
- (b) section 7G (1) (b) of the *Industrial Relations Act 1979* does not apply,

the person dismissed may bring an action in an industrial magistrate's court against the employer for relief in respect of that dismissal.

### **Recovery of amounts due under section 27 or 33**

**52.** A person who is entitled to recover from another person an amount under section 27 or 33 may bring an action for that purpose against the person in an industrial magistrate's court.

### **Representation**

**53.** In any proceedings under this Division, an employer or employee may appear personally or be represented by any agent, including a legal practitioner.

**Disputes procedures to be followed**

**54.** (1) A person who brings an action under section 50 in respect of a workplace agreement must include in the claim a certificate under subsection (2).

(2) The certificate must state either —

- (a) that there are no relevant provisions in the workplace agreement that relate to the resolution of the matter in dispute; or
- (b) that there are such provisions and the claimant has, so far as is possible, complied with them,

and must be given in accordance with any requirements of the regulations.

(3) The court is not to make an order under section 57 unless a certificate under this section has been given and the court is satisfied that the certificate has been correctly given.

**Court bound by arbitrated decision**

**55.** In any proceedings under this Division, the court is not bound by any decision about the meaning and effect of a workplace agreement made —

- (a) by arbitration under a provision described in section 21; or
- (b) by the Industrial Relations Commission under section 7F of the *Industrial Relations Act 1979*.

**Time limits**

**56.** (1) An action under section 50 cannot be brought more than 6 years after the time when the cause of action arose.

(2) An action under section 51 or 52 cannot be brought more than 28 days after the day on which the person's employment terminated.

### **Orders that can be made**

**57.** (1) In any proceedings under this Division the court may —

- (a) order the payment of any amount payable under the workplace agreement;
- (b) where section 52 applies, order the payment to a person of any amount he or she is entitled to recover;
- (c) subject to section 58, order the payment of an amount for compensation for loss or injury caused by —
  - (i) breach of the workplace agreement; or
  - (ii) where section 50 (2) applies, breach of an undertaking under section 11;
- (d) where an employee has been dismissed unfairly, or in breach of the workplace agreement, order the employer —
  - (i) to reinstate or re-employ the employee; or
  - (ii) subject to subsection (2) and section 58, to pay compensation to the employee for loss or injury caused by the unfair dismissal or the breach;
- (e) make any ancillary or incidental order that the court thinks necessary for giving effect to any order made under this subsection.

(2) The court is not to make an order under subsection (1) (d) (ii) unless it is satisfied that an order under subsection (1) (d) (i) is unlikely to be effectual because of the state of the relationship between the employer and the employee.

(3) An order under subsection (1) may require that it be complied with within a specified time.

(4) If an employer fails to comply with an order under subsection (1) (d) (i) the court may, upon further application, revoke that order and, subject to section 58, make an order for the payment of compensation for loss or injury caused by the breach of the workplace agreement or by the unfair dismissal, as the case may be.

### **Monetary limit on jurisdiction**

**58.** (1) The court does not have jurisdiction under section 57 (1) (c) or (d) or (3) to order that there be paid —

- (a) to an employee who has been unfairly dismissed, any amount exceeding 6 months' loss of earnings of the employee; and
- (b) in any other case, any amount exceeding the prescribed amount.

(2) For the purposes of subsection (1) (a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.

(3) In subsection (1) (b) "the prescribed amount" is \$5 000 or some other amount fixed by the regulations.

### **Jurisdiction of other courts**

**59.** Nothing in this Part prevents the bringing of an action in any other court in respect of a matter that is, under this Part, within the jurisdiction of an industrial magistrate's court if the matter is within the jurisdiction of that other court.

### **Proof of agreement**

**60.** In any proceedings under this Division, a document which purports to be certified by the Commissioner as being a copy of —

- (a) a workplace agreement; or
- (b) an agreement under section 23 (1),

that is or was registered under section 31 or 32 is to be taken to be such an agreement in the absence of evidence to the contrary.

### **Appeals**

**61.** (1) A party to proceedings under this Division before the court may appeal to the District Court against a decision of the court in those proceedings in the manner and in the time prescribed by rules made by the District Court.

(2) A party to an appeal to the District Court under subsection (1) may appeal to the Supreme Court against a decision of the District Court, in the manner and in the time prescribed by rules made by the Supreme Court.

(3) Without limiting the rules of court, where an appeal under this section has been commenced, the Court to which the appeal is made —

- (a) may suspend the operation or effect of the decision appealed against until the appeal is determined or is withdrawn; and
- (b) may revoke any such suspension.

### **Practice and procedure**

**62.** (1) Except as otherwise prescribed —

- (a) the powers of the court; and

- (b) the practice and procedure to be observed,

under this Division are those provided for by the *Local Courts Act 1904* as if proceedings under this Division were an action within the meaning of that Act.

(2) Section 81A of the *Industrial Relations Act 1979* does not apply to the exercise by the court of its jurisdiction under this Division.

### **Enforcement of money orders**

**63.** (1) Where —

- (a) an order of the court requires the payment of a sum of money; and
- (b) a party to the proceedings in which the order was made, or a person claiming through or under such a party, applies for a certified copy of the order,

the clerk of the court is to issue such a copy.

(2) Where a certified copy of an order is lodged with the clerk of a Local Court in accordance with the rules of court (which may include provision for the payment of a lodging fee), the clerk of that Court is to register the order; and payment of the sum of money to which the order relates may be enforced as if it were required by an order of that Court.

### ***Division 2 — Other remedies***

#### **Arbitrated decisions**

**64.** (1) In this section “**arbitrated decision**” means a decision about the meaning or effect of a workplace agreement made by arbitration under a provision described in section 21.

(2) An arbitrator must give reasons in writing for an arbitrated decision.

(3) The Supreme Court has the same powers in respect of arbitrations and arbitrators under a workplace agreement as it has in respect of those matters under Part V of the *Commercial Arbitration Act 1985*; and the provisions of that Part have effect, with the necessary changes, for the purposes of this subsection.

(4) An arbitrated decision cannot be the subject of appeal or judicial review or otherwise be called in question in any proceedings except under subsection (3).

(5) Subsection (4) does not affect the operation of section 55.

## **Injunctions**

**65.** (1) The Supreme Court may, on the application of any person, grant an injunction in such terms as the Court thinks fit where the 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 67, 68, 69, 70 or 71; or
- (b) is involved in a breach of any of those provisions.

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

## ***Division 3 — Offences***

### **Definition**

**66.** In this Division “an agreement under this Act” means a workplace agreement or an agreement under section 23 (1) or 24 (1).

**Offences relating to representation**

- 67.** (1) A person must not make any statement to —
- (a) an employer or an employer's bargaining agent; or
  - (b) an employee or an employee's bargaining agent,

that falsely asserts or implies that the person is authorized under section 15 to represent employees or an employer.

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

**Threats and intimidation**

**68.** (1) A person must not by threats or intimidation persuade or attempt to persuade another person to enter into, or not enter into —

- (a) an agreement under this Act; or
- (b) an agreement under this Act that contains or does not contain particular provisions.

(2) A person must not intimidate an employee of an employer, or threaten injury or harm to the person or property of an employee of an employer, because the employee is or is not a party to —

- (a) an agreement under this Act with his or her employer;  
or
- (b) an agreement under this Act with his or her employer that contains or does not contain particular provisions.

(3) A person must not by threats or intimidation persuade or attempt to persuade an employer to apply to any employee of the employer any provision of a workplace agreement that is not binding on the employer.

**Misinformation**

**69.** A person must not make or give to another person any statement or information that he or she knows to be false with intent to persuade that other person to enter into, or not to enter into —

- (a) an agreement under this Act; or
- (b) an agreement under this Act that contains or does not contain particular provisions.

**Dismissal etc. because of refusal to enter into agreement**

**70.** (1) An employer must not —

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

when the reason for doing so is that the employee refused to enter into —

- (e) an agreement under this Act; or
- (f) an agreement under this Act that contains or does not contain particular provisions.

(2) If an employer is convicted of an offence against subsection (1) in relation to a person who is or was an employee, the industrial magistrate's court by which the employer was convicted may order the employer —

- (a) to re-instate the person if he or she was dismissed from employment; or

- (b) subject to subsection (3), to pay to the person compensation for any loss or injury suffered as a result of the commission of the offence; or
- (c) to do both of those things,

but the person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.

(3) An industrial magistrate's 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' loss of earnings of the employee; and
- (b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.

(4) For the purposes of subsection (3) (a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.

(5) Where in any proceedings for an offence against subsection (1) it is proved that an employer took any course of action mentioned in that subsection against or in relation to an employee after the employee refused to enter into —

- (a) an agreement under this Act; or
- (b) an agreement under this Act that contains or does not contain particular provisions,

it is for the employer to prove that he or she took that course of action for some reason other than because the employee refused to enter into any such agreement.

## **Coercion of employers by commercial pressure**

**71.** (1) A person must not —

- (a) in the course of carrying on any trade or business refuse to deal with or threaten to refuse to deal with an employer on the ground that —
  - (i) the employer is, or is not, a party to a workplace agreement with the employer's employees; or
  - (ii) a workplace agreement between the employer and the employer's employees contains, or does not contain, any particular provision; or
- (b) cause, encourage, or procure another person to do anything that contravenes paragraph (a).

(2) For the purposes of subsection (1) references to refusing to deal with an employer mean —

- (a) refusing to make use of, or refusing to agree to make use of, any service offered by the employer;
- (b) refusing to receive, or refusing to agree to receive, any goods offered by the employer; or
- (c) refusing to supply, or refusing to agree to supply, goods or services to the employer.

## **Penalties**

**72.** (1) A person who contravenes section 67, 68, 69, 70 or 71 commits an offence and is liable to —

- (a) in the case of an individual, a fine of not less than \$400 and not more than \$5 000; and
- (b) in any other case, a fine of not less than \$1 000 and not more than \$10 000; and a daily penalty of \$500.

(2) The minimum penalties provided for by subsection (1) are not to be reduced in mitigation despite anything in the *Justices Act 1902*, *The Criminal Code* and the *Offenders Community Corrections Act 1963*.

### **Exceptions to sections 68 and 70**

**73.** An act or omission is not an offence against section 68 or 70 if it constitutes, or is part of, industrial action that under Part 6 does not give rise to any cause of action mentioned in section 77.

### **Who may prosecute**

**74.** (1) A prosecution for an offence in this Division may only be brought —

- (a) by a person authorized by the Minister to prosecute such offences; or
- (b) by a person who comes within subsection (2).

(2) Any person may make a complaint of an offence in this Division, but except where subsection (1) (a) applies a complaint cannot be prosecuted unless the court is satisfied that the complainant has been affected by the conduct complained of.

(3) If a complaint shows that the person making the complaint is authorized under subsection (1) (a), that fact is to be taken to be proved on the absence of evidence to the contrary.

**PART 6 — LIMITED IMMUNITY FOR  
INDUSTRIAL ACTION**

**Meaning of “industrial action”**

**75.** In this Part —

“**industrial action**” means any act, omission or circumstance done, effected or brought about by an employer or employee for the purpose of compelling or inducing an employer or an employee to accept any terms or conditions of employment or to enforce compliance with any demand relating to employment.

**Situations to which immunity applies**

**76.** (1) This Part applies to industrial action —

- (a) in which an employee or employees take part for the purpose of obtaining a new workplace agreement with the employer on particular terms and conditions; or
- (b) taken by an employer or employers for the purpose of obtaining a new workplace agreement with an employee or employees of the employer on particular terms and conditions.

(2) In subsection (1) references to obtaining a new workplace agreement mean obtaining a workplace agreement in place of an expired workplace agreement.

**Limited immunity conferred**

**77.** (1) Subject to this Part, the taking of industrial action to which this Part applies does not give rise to any cause of action against an employer or an employee founded on —

- (a) the torts of —
  - (i) conspiracy;

- (ii) intimidation;
  - (iii) inducement of breach of contract; or
  - (iv) interference by unlawful means with trade, business or employment; or
- (b) breach of contract.

(2) Subject to section 80, subsection (1) does not give immunity to a person who encourages, assists, incites or is knowingly concerned in the taking of industrial action by an employer or an employee, and the liability of any such person is to be determined as if this Part had not been enacted.

### **Exceptions to immunity**

**78.** (1) Section 77 does not prevent a cause of action against an employer or employee founded on any of the torts mentioned in that section arising out of —

- (a) any form of picketing activities engaged in by the employee;
- (b) industrial action taken by the employee which causes loss or damage to the business of an employer other than the employer of the employee;
- (c) industrial action taken by the employee if the industrial action affects services in a way that is contrary to a continuity-of-supply agreement that is binding on the employee;
- (d) industrial action taken by the employer or employee after more than 3 months have elapsed since the workplace agreement expired.

(2) In subsection (1) (c) “**continuity-of-supply agreement**” means an agreement or a provision of an agreement in which an

employee or a number of employees in a workplace have agreed in writing with an employer to maintain —

- (a) the normal supply or provision of goods or services; or
- (b) the supply or provision of specified goods or services,

despite any industrial action that may be taken.

### **Immunity conditional on giving of notice**

**79.** (1) The immunity conferred by section 77 in respect of industrial action taken by an employer or an employee does not apply unless 7 days' notice of the intention to take the industrial action was given to the other party in the manner and form required by the regulations.

(2) Notice need not be given under subsection (1) of any industrial action —

- (a) by an employee, if the employer involved in the negotiations is taking industrial action; or
- (b) by an employer, if employees involved in negotiations are taking part in industrial action.

### **When immunity extends to organization of employees**

**80.** Where —

- (a) any employee has immunity under this Part in respect of industrial action relating to an expired workplace agreement; and
- (b) that workplace agreement contains an undertaking under section 11 by an organization of employees,

the organization has, in respect of that industrial action, the same immunity under this Part as the employee.

### **Saving of employer's right of dismissal**

**81.** Nothing in this Part affects any right that an employer has in law to summarily dismiss or terminate the employment of an employee for failure to carry out his or her duties.

**PART 7 — COMMISSIONER OF WORKPLACE  
AGREEMENTS**

***Division 1 — Administrative arrangements***

**Office created**

**82.** (1) The Governor is to appoint a person to be the Commissioner of Workplace Agreements.

(2) The office of Commissioner is not an office in the public service and is not to be included in the Senior Executive Service within the meaning of the Public Service Act.

**Tenure, salary etc.**

**83.** Part A of Schedule 2 has effect with respect to the tenure, salary and conditions of service of the Commissioner and the other matters provided for in that Part.

**Acting Commissioner**

**84.** (1) An Acting Commissioner may act in the office of Commissioner —

- (a) during a vacancy in the office of the Commissioner; or
- (b) during any period when the Commissioner is unable to perform the functions of that office or is absent from the State.

(2) The Minister may appoint an Acting Commissioner for the purposes of this section, and may —

- (a) on the recommendation of the Minister to whom the administration of the Public Service Act is committed, determine the terms and conditions of appointment, including salary and other entitlements; and

(b) at any time terminate an appointment.

(3) The validity of anything done by or in relation to a person purporting to act under this section is not to be called in question on the ground that —

- (a) the occasion for an appointment under this section had not arisen;
- (b) there is a defect or irregularity in the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Judicial notice of appointment and signature**

**85.** All courts and persons acting judicially shall take judicial notice —

- (a) of the fact that a person holds or held the office of Commissioner; and
- (b) of the official signature of a person who holds or has held the office of Commissioner.

### **Functions and powers of the Commissioner**

**86.** (1) The main functions of the Commissioner are those conferred by Division 4 of Part 2.

(2) The functions of the Commissioner also include the publication of statistical and other information about agreements to which this Act applies and other matters provided for by this Act.

(3) It is not a function of the Commissioner to engage in conciliation or arbitration.

(4) The Commissioner may do all things that are necessary or convenient to be done for the performance of the Commissioner's functions.

### **Minister may give directions**

**87.** (1) The Minister may give directions in writing to the Commissioner with respect to the performance of the functions of the Commissioner, either generally or in relation to a particular matter, and the Commissioner is to give effect to any such direction.

(2) Directions under subsection (1) may relate only to matters of administration and the Minister cannot under that subsection direct the Commissioner with respect to the performance of any function referred to in section 86 (1) or (2).

(3) The text of any direction given under subsection (1) is to be laid before each House of Parliament within 6 sitting days of that House after the direction is given.

(4) The text of any direction given under subsection (1) is to be included in the annual report submitted by the Commissioner under section 66 of the *Financial Administration and Audit Act 1985*.

### **Minister to have access to information**

**88.** (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled, subject to subsection (4) —

(a) to have information in the possession of the Commissioner; and

(b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Commissioner to furnish information to the Minister;
- (b) request the Commissioner to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Commissioner to obtain the information and furnish it to the Minister.

(3) The Commissioner shall comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) The Minister is not entitled to have information under this section in a form that discloses details of any agreement (other than an agreement referred to in section 43 (1)) lodged with or registered by the Commissioner unless —

- (a) all of the parties to the agreement have consented to the disclosure; or
- (b) the information is required for the purpose of complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

(5) In this section —

**“document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**“information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Commissioner;

“parliamentary purposes” means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

### Financial administration

**89.** (1) There is to be an account at the Treasury called the “Commissioner of Workplace Agreements Account”.

(2) The account referred to in subsection (1) —

- (a) is to form part of the Trust Fund constituted under the *Financial Administration and Audit Act 1985*; and
- (b) is to be the account —
  - (i) into which all funds of the Commissioner are to be paid; and
  - (ii) from which all expenditure incurred by the Commissioner in performing his or her functions under this Act are to be met.

(3) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commissioner and the Commissioner’s operations.

### Staff and consultants

**90.** (1) There are to be appointed or made available under the *Public Service Act 1978* such officers as are necessary to enable the Commissioner to perform his or her functions.

(2) The Commissioner may, with the approval of the Minister, engage persons under contracts for services to provide such professional, technical or other assistance as the Commissioner considers necessary, for the carrying out of this Act.

### **Use of other government staff etc.**

**91.** (1) The Commissioner may by arrangement make use, either full-time or part-time, of —

- (a) the services of staff employed in the public service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the public service or of a State agency or instrumentality.

(2) An arrangement under subsection (1) is to be made between the Commissioner and the Minister concerned and on such terms as they agree with the Minister to whom the administration of the Public Service Act is committed.

### **Supplementary provisions as to Commissioner and staff**

**92.** Part B of Schedule 2 has effect with respect to the Commissioner and members of the Commissioner's staff.

### **Delegation**

**93.** The Commissioner may by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a member of the Commissioner's staff the performance, on behalf of and subject to the direction and control of the Commissioner, of any of the functions of the Commissioner under this Act, but not including the power to delegate under this section.

***Division 2 — Particular powers conferred***

**Powers to obtain information**

**94.** For the purpose of Division 4 of Part 2 the Commissioner may —

- (a) by notice in writing require the attendance of any person at a place and time specified in the notice;
- (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 workplace that is the subject of an agreement lodged for registration under section 29.

**Obstruction**

**95.** A person must not hinder or obstruct the Commissioner or the Commissioner's delegate exercising any power under this Division.

Penalty: \$2 000.

**False statements**

**96.** A person must not make a statement or give an answer to the Commissioner or the Commissioner's delegate, that the person knows to be false or misleading in a material particular.

Penalty: \$2 000.

**Failure to attend, take oath, etc.**

**97.** (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 section 94.

Penalty: \$2 000.

(2) A person must not, without lawful excuse, refuse or fail —

(a) to be sworn or make an affirmation;

(b) to answer a question,

when required to do so under section 94.

Penalty: \$2 000.

**Legal professional privilege**

**98.** Nothing in this Division 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.

**Incriminating answers etc.**

**99.** (1) It is not a lawful excuse for the purposes of section 97 (1) or (2) 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 subsection (1), an answer given or any statement made for the purposes of section 97 is not, except in proceedings under this Division, admissible in evidence in any civil or criminal proceedings against the person giving the answer or making the statement.

## PART 8 — GENERAL

### **Exclusive jurisdiction for offences**

**100.** (1) An industrial magistrate's court established under Part III of the *Industrial Relations Act 1979* has jurisdiction to hear and determine, under the *Justices Act 1902*, complaints for offences against this Act; and that jurisdiction is exclusive of any other court except where an appeal lies to that other court.

(2) In subsection (1) the reference to the *Justices Act 1902* includes Part VIII of that Act.

### **Application offshore**

**101.** (1) Where under section 3 of the *Industrial Relations Act 1979* that Act applies to and in relation to employers and employees in any industry carried on wholly or partly in an offshore area —

- (a) an agreement may be made and registered under this Act between those employers and employees; and
- (b) subsection (4) of that section applies with all necessary changes for the purposes of this Act.

(2) In subsection (1) “**offshore area**” means the areas referred to in section 3 (3) of the *Industrial Relations Act 1979*.

### **Regulations**

**102.** The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**Consequential amendments**

**103.** The Acts referred to in the first column of Schedule 3 are amended in the manner set out in the second column of that Schedule.

**SCHEDULE 1**

[s. 21 (4)]

**POWERS OF ARBITRATOR AND RELATED MATTERS**

**Powers to obtain information**

1. For the purposes of an arbitration under a provision of a workplace agreement referred to in section 21, an arbitrator may —

- (a) by notice in writing require the attendance of any person at a place and time specified in the notice;
- (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 workplace that is the subject of the workplace agreement to which the arbitration relates.

**Obstruction**

2. A person must not hinder or obstruct an arbitrator exercising any power conferred by this Schedule.

Penalty: \$2 000.

**False statements**

3. A person must not make a statement or give an answer to an arbitrator, that the person knows to be false or misleading in a material particular.

Penalty: \$2 000.

**Failure to attend, take oath, etc.**

4. (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;

(b) to answer a question,

when required to do so under clause 1.

Penalty: \$2 000.

**Legal professional privilege**

5. 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.

**Incriminating answers etc.**

**6.** (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.

**SCHEDULE 2**

[ss. 83 and 92]

**PROVISIONS AS TO COMMISSIONER AND STAFF**

**PART A**

*Tenure, salary, conditions of service, etc. of Commissioner*

**Tenure of office**

1. (1) Subject to this Act, the Commissioner holds office for a term, not exceeding 5 years, fixed by the instrument of appointment, and is eligible for re-appointment once or more than once.

(2) The Commissioner may resign his or her office by writing signed and delivered to the Governor.

**Salary and entitlements**

2. Subject to the *Salaries and Allowances Act 1975*, the Commissioner —

(a) is to be paid salary and allowances at such rates per annum as are determined by the Minister, on the recommendation of the Minister to whom the administration of the Public Service Act is committed; and

(b) has the same annual leave, sick leave and long service leave entitlements as a permanent officer of the public service.

**Appointment of public service officer**

3. If a person occupied an office in the public service immediately before being appointed to the office of Commissioner, the person is entitled to be appointed to an office in the public service, not lower in classification and salary than the office which the person occupied if —

(a) the person ceases to hold office as Commissioner on the completion of a periodical appointment; and

- (b) at that time the person is eligible to occupy an office in the public service.

**Removal from office**

- 4. (1) The Governor may remove the Commissioner from office —
  - (a) for —
    - (i) misbehaviour or incompetence; or
    - (ii) physical or mental incapacity, other than temporary illness, impairing the performance of the Commissioner's functions;
  - (b) if the Commissioner becomes a bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of salary for their benefit.

(2) In subclause (1) (a) (i) "**misbehaviour**" includes conduct that renders the Commissioner unfit to hold office as Commissioner even if the conduct does not relate to any function of the office.

**Other conditions of service**

5. Subject to this Schedule, the Governor may, on the recommendation of the Minister to whom the administration of the Public Service Act is committed, determine other terms and conditions of service (if any) that apply to the Commissioner.

**PART B**

*Further provisions as to Commissioner and staff*

**Definition**

1. In this Part “**relevant office**” means the office of Commissioner or of a member of the Commissioner’s staff.

**Superannuation**

2. (1) If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* immediately before being appointed to a relevant office the person may continue to be a contributor under that Act after being appointed.

(2) For the purposes of subclause (1) —

(a) the office of the Commissioner is to be taken to be a department within the meaning of the *Superannuation and Family Benefits Act 1938*; and

(b) the Commissioner is to pay to the Board under that Act payments of the kind described in paragraph (i) of the proviso to the definition of “department” in section 6 of that Act.

**Saving of rights**

3. (1) If a person occupied an office in the public service immediately before being appointed to a relevant office, the person retains existing and accruing entitlements in respect of leave of absence as if service in the relevant office were a continuation of service in the office in the public service.

(2) A person who ceases to hold a relevant office and becomes the holder of an office in the public service retains existing and accruing entitlements in respect of leave of absence as if service in the public service were a continuation of service in the relevant office.

SCHEDULE 3

[s. 103]

CONSEQUENTIAL AMENDMENTS

Short title of Act	Amendment
1. <i>Constitution Acts Amendment Act 1899</i>	In Schedule V in Division 3 of Part 1, insert in the appropriate alphabetical position the following —  “ Commissioner of Workplace Agreements appointed under the <i>Workplace Agreements Act 1993</i> . ”
2. <i>Parliamentary Commissioner Act 1971</i>	In the Schedule, insert in the appropriate alphabetical position the following —  “ Commissioner of Workplace Agreements appointed under the <i>Workplace Agreements Act 1993</i> . ”
3. <i>Financial Administration and Audit Act 1985</i>	In Schedule 1, insert in the appropriate alphabetical position the following —  “ Commissioner of Workplace Agreements ”.
4. <i>Government Employees Superannuation Act 1987</i>	In Schedule 1, in Part B, insert in the appropriate alphabetical position the following —  “ Commissioner of Workplace Agreements ”.

5. *Public and Bank Holidays Act 1972* In section 3, insert after “*Industrial Relations Act 1979*” the following —
- “ , or of a workplace agreement under the *Workplace Agreements Act 1993*, ”.
6. *Public Service Act 1978* Immediately before section 54, insert the following section —
- “ **Matters that cannot be the subject of workplace agreements**
- 53A.** There is excluded from the operation of Part 3 of the *Workplace Agreements Act 1993* any matter concerning the management or structure of the Public Service that is prescribed for the purposes of this section. ”.
7. *Coal Industry Tribunal of Western Australia Act 1992* After section 3, insert the following sections —
- “ **This Act subject to *Workplace Agreements Act 1993***
- 3A.** This Act has effect subject to the *Workplace Agreements Act 1993*.
- Exclusions from jurisdiction under this Act**
- 3B.** (1) Despite any provision of this Act, where any employer and

any employee are parties to a workplace agreement that is in force under the *Workplace Agreements Act 1993* (not being excluded parties within the meaning in section 32 (2) of that Act) the Tribunal or a local board of reference does not have jurisdiction in respect of —

- (a) any industrial dispute between that employer and that employee; or
- (b) any other matter that is part of the relationship of that employer and that employee,

and any such dispute or matter is not —

- (c) an industrial matter; or
- (d) a matter to which section 10 (1) (c) applies.

(2) Subsection (1) also applies where —

- (a) a workplace agreement has expired; and
- (b) an arrangement is in force between the

parties to that agreement of the kind referred to in section 19 (4) (b) of the *Workplace Agreements Act 1993*,

except to the extent that the employer and any employee agree that any matter is to be treated as an industrial matter between them.

**Parties may submit question of interpretation to Tribunal**

**3C.** (1) The parties to a workplace agreement that is in force under the *Workplace Agreements Act 1993* may by agreement in writing refer to the Tribunal for determination any question or dispute that has arisen between the parties about the meaning or effect of the agreement, including any provisions implied in the agreement by the *Minimum Conditions of Employment Act 1993*.

(2) For the purposes of this section the Tribunal shall be constituted by such member or members and/or other person or persons as the parties to

the workplace agreement agree upon.

(3) Where a question or dispute is referred to the Tribunal under subsection (1) the Tribunal —

- (a) shall determine the meaning or effect of the agreement;
- (b) does not have any function other than to make that determination, and shall not exercise any of its powers under this Act in respect of industrial disputes, industrial matters or other matters;
- (c) shall in making the determination follow the practice and procedure that is provided for by regulations referred to in subsection (6).

(4) A party cannot withdraw from or cancel an agreement in writing made for the purposes of subsection (1) except by further agreement in writing made by the parties.

(5) Section 18 does not apply to a determination made by the Tribunal under this section.

(6) Regulations may be made under section 32 providing for —

- (a) the practice and procedure to be followed by the Tribunal for the purposes of this section;
- (b) an appeal from a determination under this section and the practice and procedure to be followed on an appeal; and
- (c) the payment of fees to the Tribunal by a party to a workplace agreement where —
  - (i) the Tribunal performs any function under this section; or
  - (ii) an appeal is brought under regulations made under paragraph (b),

**Sch. 3**

and the amount or  
m e t h o d o f  
calculating the fees,  
and for their  
collection.

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