

Western Australia

Industrial Legislation Amendment Act 2011

As at 11 Nov 2011

No. 53 of 2011

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Industrial Legislation Amendment Act 2011

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Western Australia

Industrial Legislation Amendment Act 2011

No. 53 of 2011

An Act to amend the following Acts —

- **the *Construction Industry Portable Paid Long Service Leave Act 1985*;**
 - **the *Industrial Relations Act 1979*;**
 - **the *Minimum Conditions of Employment Act 1993*;**
 - **the *Employment Dispute Resolution Act 2008*,**
- and to make minor amendments to other Acts.**

[Assented to 11 November 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Industrial Legislation Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**Part 2 — Construction Industry Portable Paid Long
Service Leave Act 1985 amended**

3. Act amended

This Part amends the *Construction Industry Portable Paid Long Service Leave Act 1985*.

4. Section 3A inserted

After section 2 insert:

3A. Application offshore

(1) In this section —

offshore area means an area referred to in the *Industrial Relations Act 1979* section 3(3).

(2) Where, under the *Industrial Relations Act 1979* section 3, that Act applies to and in relation to any construction industry carried on wholly or partly in an offshore area, then —

- (a) this Act applies to and in relation to employers and employees in that industry in that area; and
- (b) subsection (4) of that section applies with all necessary changes for the purposes of this Act.

5. Section 3 amended

(1) In section 3(1) delete the definitions of:

award

employee

employer

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(2) In section 3(1) insert in alphabetical order:

apprentice means a person who is an apprentice under a training contract that —

- (a) provides for training in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification; and
- (b) is registered under the *Vocational Education and Training Act 1996* Part 7 Division 2 or an Act of another State or a Territory that corresponds to that Act;

approved form means a form approved by the Board for the purposes of the provision in which the term is used;

employee means —

- (a) a person who is employed under a contract of service in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification; or
- (b) an apprentice;

employer means —

- (a) a natural person, firm or body corporate who or which engages persons as employees in the construction industry; or
- (b) a labour hire agency which arranges for a person who is a party to a contract of service with the agency (***person A***) to do work in the construction industry for another person (***person B***), even though person A is working for person B under an arrangement between the agency and person B,

but does not include a Minister, authority or local government prescribed under subsection (4)(c);

industrial instrument means —

- (a) an award, industrial agreement or order made under the *Industrial Relations Act 1979*; or
- (b) an award, determination, enterprise agreement or order made under the *Fair Work Act 2009* (Commonwealth); or
- (c) an award, determination or agreement given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth),

irrespective of whether or not the instrument has, since it was made or given continuing effect, ceased to be in force;

inspector means a person engaged or appointed under section 44(1);

labour hire agency means a person or entity that conducts a business of the kind commonly known as a labour hire agency;

prescribed means prescribed by regulations made under this Act;

training contract means a contract that complies with the *Vocational Education and Training Act 1996* section 60E;

WAIRC means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*;

(3) In section 3(1) in the definition of ***construction industry***:

(a) after paragraph (a)(i) insert:

(ia) swimming pools and spa pools;

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(b) in paragraph (a)(xvi) delete “for the use on” and insert:

for use on or for the use of

(c) in paragraph (f) delete “for an employer who” and insert:

for an employer, or another person under an arrangement with a labour hire agency, who

(4) In section 3(1) in the definition of *union* delete “Schedule 1 of the *Workplace Relations Act 1996* of the Commonwealth” and insert:

the *Fair Work (Registered Organisations) Act 2009*
(Commonwealth)

(5) Delete section 3(3).

(6) In section 3(4):

(a) delete “award” (each occurrence) and insert:

industrial instrument

(b) in paragraph (a) delete “definition of *employee*,” and insert:

definitions of *apprentice* and *employee*;

6. Section 6 amended

- (1) Delete section 6(1)(b) and (c) and insert:
- (b) 2 persons appointed from among persons whose names are on a panel of 4 names comprised of —
 - (i) 2 names submitted by the Master Builders' Association of Western Australia; and
 - (ii) 2 names submitted by the Chamber of Commerce and Industry of Western Australia (Inc);
 - (c) 2 persons appointed from among persons whose names are on a panel of 4 names comprised of —
 - (i) 2 names submitted by UnionsWA; and
 - (ii) 2 names submitted by The Building Trades Association of Unions of Western Australia (Association of Workers);
 - (d) one person who in the Minister's opinion represents the interests of employers in the construction industry;
 - (e) one person who in the Minister's opinion represents the interests of employees in the construction industry.
- (2) After section 6(4) insert:
- (5) Despite subsection (1) —
- (a) subject to section 8, each of the persons holding office as a member of the Board under subsection (1)(b) or (c) immediately before the

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coming into operation of the *Industrial Legislation Amendment Act 2011* section 6(1) continues to hold office for the remainder of their term of appointment; and

- (b) the Minister is not to appoint a person under subsection (1)(d) until a person referred to in paragraph (a) ceases to hold office as a member under subsection (1)(b); and
 - (c) the Minister is not to appoint a person under subsection (1)(e) until a person referred to in paragraph (a) ceases to hold office as a member under subsection (1)(c).
- (6) The regulations may amend subsection (1)(b) or (c) in order to reflect a change in the name of any body referred to in that paragraph.

7. Section 7 amended

- (1) Delete section 7(1) and insert:

- (1) If —
- (a) a member appointed under section 6(1)(b) or (c) is absent or temporarily incapable of fulfilling the duties of a member; or
 - (b) the office of a member appointed under section 6(1)(b) or (c) is vacant,

the Minister may, on the nomination of the relevant body referred to in section 6(1)(b) or (c), appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires.

- (2) Delete section 7(3) and insert:
- (3) If —
- (a) the chairman or a member appointed under section 6(1)(d) or (e) is absent or temporarily incapable of fulfilling the duties of a member; or
 - (b) the office of the chairman or a member appointed under section 6(1)(d) or (e) is vacant,
- the Minister may appoint a person to act in the place of that member.
- (4A) While acting in the place of a member under this section an acting member has all the functions and entitlements of the member.

8. Section 8 amended

- (1) Delete section 8(1) and insert:
- (1) The Minister may remove a member from office on the grounds of —
- (a) mental or physical inability to carry out the duties of the office in a satisfactory manner; or
 - (b) neglect of duty; or
 - (c) misconduct; or
 - (d) absence, without leave of the Minister or an excuse which is satisfactory to the Minister, from 3 consecutive meetings of the Board of which the member has had notice.

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- (2) In section 8(2):
- (a) in paragraph (b) delete “his appointment is terminated” and insert:

the member is removed from office
 - (b) delete paragraph (c).

9. Section 21 amended

- (1) In section 21(1) delete “award” and insert:
- any industrial instrument
- (2) After section 21(2) insert:
- (3A) In addition to the provisions set out in subsection (2), for the purposes of calculating the entitlement of an employee to long service leave under subsection (1), any period of service which occurred —
- (a) before a break in service; and
 - (b) when the person was not registered as an employee under this Act; and
 - (c) after the coming into operation of the *Industrial Legislation Amendment Act 2011* section 9(2),
- is not to be counted as service.

- (3) In section 21(3) delete “subsection (1) —” and insert:

this section —

break in service means —

- (a) in the case of a person who has been engaged as an employee for any number of days that does not exceed 1 100 days of service — a period within which the person is not so engaged of 2 years or more commencing from the last day of that engagement; or
- (b) in the case of a person who has been engaged as an employee for any number of days exceeding 1 100 days of service — a period within which the person is not so engaged of 4 years or more commencing from the last day of that engagement;

10. Section 22 amended

- (1) Delete section 22(1)(b)(ii) and insert:

- (ii) for any period of service after the completion of 10 years of service which is not part of the period of an accrued entitlement under section 21(1), a sum which bears the same proportion to the money value of the entitlement referred to in section 21(1)(a) as the period of service bears to 10 years.

- (2) After section 22(2) insert:

- (3) When a lump sum payment is made to an employee or in respect of a deceased employee under this section,

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the Board must remove the name of that person from the register of employees.

- (4) Nothing in subsection (3) prevents a person referred to in subsection (1) from becoming entitled to registration as an employee under this Act by virtue of any subsequent service as an employee.

11. Section 23 amended

In section 23(1)(a) and (b) after “1 100 days” insert:

of service

12. Section 24 amended

Delete section 24(2).

13. Section 28 amended

- (1) In section 28(1) and (2) delete the Penalty.
(2) After section 28(3) insert:

- (4A) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of the *Industrial Relations Act 1979* section 83E.
- (4B) Subsection (4A) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 13 unless the person was charged with an offence in respect of that contravention.

14. Section 30 amended

- (1) Delete section 30(1) to (8) and insert:
- (1) Every employer must register as an employer under this Act.
 - (2) An application for registration as an employer must —
 - (a) be made in the approved form; and
 - (b) contain the information required by the form.
 - (3) An applicant for registration as an employer must include in the application every name under which, and address from which, the applicant operates as an employer.
 - (4) An employer must notify the Board if the employer ceases to operate as an employer under any name or from any address included in an application for registration by the employer.
 - (5) A contravention of subsection (1), (3) or (4) is not an offence but those subsections are civil penalty provisions for the purposes of the *Industrial Relations Act 1979* section 83E.
 - (6) Subsection (5) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 14 unless the person was charged with an offence in respect of that contravention.

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- (2) In section 30(10)(a) delete “employer or employee as the case requires; and” and insert:

employer; and

Note: The heading to amended section 30 is to read:

Registration of employers

15. Section 31A inserted

After section 30 insert:

31A. Registration of employees

- (1) Subject to subsection (5), the Board must —
- (a) register as an employee under this Act any employee in respect of whom an employer makes a statement under section 31(1); and
 - (b) issue to the employee a certificate of registration.
- (2) A person who desires to register as an employee under this Act may apply in writing to the Board for registration.
- (3) An application made under subsection (2) must —
- (a) be made in the approved form; and
 - (b) contain the information required by the form.
- (4) The Board may by written notice require —
- (a) an employee in respect of whom an employer makes a statement under section 31(1); or
 - (b) an employer who makes a statement in respect of an employee under section 31(1); or

- (c) an applicant for registration under subsection (2),

to supply information the Board requires in relation to the proposed registration of the employee or applicant, and may require the information to be verified by statutory declaration.

- (5) If the Board is not satisfied with any information given in an application or under subsection (4), the Board may —
 - (a) in the case of an employee to whom subsection (1) applies, refuse to register the employee; or
 - (b) in the case of an applicant for registration under subsection (2), return the application and refuse to register the applicant.

16. Section 31 amended

- (1) In section 31(1):

- (a) delete “each prescribed period —” and insert:

each prescribed period, within 15 days after the end of that period —

- (b) delete paragraph (a) and insert:

- (a) a statement in the approved form giving the information required by the form; and

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(2) Delete section 31(2) and insert:

- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
- (3) Subsection (2) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 16 unless the person was charged with an offence in respect of that contravention.

17. Section 32 amended

Delete section 32(3) and insert:

- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of the *Industrial Relations Act 1979* section 83E.
- (4) Subsection (3) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 17 unless the person was charged with an offence in respect of that contravention.

18. Section 34 amended

After section 34(1) insert:

- (2A) In subsection (1) a reference to a person employed as an employee does not include an apprentice.

19. Section 35A inserted

After section 34 insert:

35A. Penalty for late payment

- (1) Without limiting section 34, if an employer fails to pay to the Board an amount of contribution within the time required under section 31(1) the employer is liable to pay to the Board, by way of penalty, a surcharge determined by the Board.
- (2) The surcharge becomes due and payable 30 days after the employer is notified in writing by the Board of the determination of the surcharge.

20. Section 38 amended

- (1) After section 38(1) insert:
 - (2A) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
 - (2B) Subsection (2A) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 20 unless the person was charged with an offence in respect of that contravention.
- (2) Delete section 38(3) to (6).

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21. Section 45 amended

Delete section 45(2) and insert:

- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).
- (3) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
- (4) Subsection (3) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Industrial Legislation Amendment Act 2011* section 21 unless the person was charged with an offence in respect of that contravention.

22. Section 49 amended

After section 49(1) insert:

- (2A) In any proceedings against a person for recovery of a surcharge determined under section 35A, a certificate purporting to be signed by the chief executive officer certifying any of the following —
 - (a) that the employer named in the certificate was liable to pay the surcharge;
 - (b) that the determination of the surcharge was duly made;
 - (c) that the amount of the surcharge is as stated in the certificate,

is admissible in evidence in the proceedings and is, in the absence of evidence to the contrary, conclusive proof of the matters stated in the certificate.

23. Section 50 replaced

Delete section 50 and insert:

50. Review of Board's decision

- (1) In this section —
reviewable decision means a decision by the Board —
 - (a) to refuse to register an employee; or
 - (b) to require an employer to register under this Act; or
 - (c) to remove the name of an employer or employee from the employers register or the employees register respectively; or
 - (d) as to the assessment of the amount of ordinary pay of an employee under section 34; or
 - (e) as to the entitlement of an employee to long service leave; or
 - (f) as to the amount of any moneys to be paid in respect of a long service leave entitlement whether pro rata or otherwise.
- (2) A person who is aggrieved by a reviewable decision may, in the manner and time prescribed by regulations made under section 51A(3), refer the decision for review to the WAIRC constituted by a single commissioner.
- (3) On a referral of a decision under subsection (2), the WAIRC is to inquire into the circumstances relevant to the decision and may —
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and —
 - (i) substitute another decision; or

- (ii) send the matter back to the Board for reconsideration in accordance with any directions or recommendations that the WAIRC considers appropriate.

51A. Procedure on review

- (1) The provisions of the *Industrial Relations Act 1979* sections 22B, 26(1)(a) and (b) and (3), 27, 28, 31(1), (2) and (3), 34(3) and (4), 36 and 49 that apply to and in relation to the exercise of the jurisdiction of the WAIRC constituted by a commissioner apply to and in relation to the exercise of the jurisdiction conferred by section 50 —
 - (a) with any modifications that may be prescribed by the Chief Commissioner under the *Industrial Relations Act 1979* section 113; and
 - (b) with any other modifications that may be necessary or appropriate.
- (2) For the purposes of subsection (1), the *Industrial Relations Act 1979* section 31(1) applies as if paragraph (c) were deleted and the following paragraph were inserted —
 - (c) by a legal practitioner.
- (3) The Chief Commissioner may make regulations under the *Industrial Relations Act 1979* section 113 providing for —
 - (a) the manner in which, and time within which, a decision may be referred for review under section 50; and
 - (b) the practice and procedure to be followed for the purposes of a review under section 50.

24. Section 51 amended

In section 51(1) delete “by virtue of continuous service with an employer” and insert:

under another Act or under an industrial instrument

25. Section 52 replaced

Delete section 52 and insert:

52. Obstructing inspector or other person

- (1) A person must not without reasonable excuse —
 - (a) obstruct or hinder an inspector performing a function under this Act; or
 - (b) fail to comply with a lawful requirement or direction of an inspector under this Act; or
 - (c) conceal any person from, or prevent any person from appearing before, an inspector, or attempt to conceal a person from, or prevent a person from appearing before, an inspector; or
 - (d) hinder a person authorised by a union to do so from inspecting any records required to be maintained by an employer under this Act.
- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
- (3) Subsection (2) extends to a contravention of section 52 as in force immediately before the coming into operation of the *Industrial Legislation Amendment Act 2011* section 25 that occurred within the period of 12 months ending on that coming into operation unless

the person was charged with an offence in respect of that contravention.

26. Section 53 replaced

Delete section 53 and insert:

53. Protection of persons giving information under this Act

- (1) A person must not —
- (a) dismiss a person from, or otherwise injure a person in, that person's employment; or
 - (b) detrimentally alter a person's employment position; or
 - (c) refuse to promote a person; or
 - (d) refuse to employ another person; or
 - (e) directly or indirectly hinder or prevent the employment of another person or the promotion of a person,

when a reason for doing so is that the person or other person has given information to an inspector or to the chief executive officer under this Act.

- (2) A contravention of subsection (1) is not an offence but that subsection —
- (a) is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E; and
 - (b) is also enforceable under section 54A.
- (3) Subsection (2) extends to a contravention of section 53(1) as in force immediately before the coming into operation of the *Industrial Legislation Amendment Act 2011* section 26 that occurred within

the period of 12 months ending on that coming into operation unless the person was charged with an offence in respect of that contravention.

54A. Remedies for breach of section 53

- (1) If an industrial magistrate's court determines under the *Industrial Relations Act 1979* section 83E that an employer has contravened section 53(1) in relation to a person who is or was an employee of that person, the court may make an order under subsection (2).
- (2) The court may order the employer —
 - (a) to reinstate the person if he or she was dismissed from employment; or
 - (b) subject to subsection (6), to pay to the person compensation for any loss or injury suffered as a result of the contravention,or to do both of those things.
- (3) If an industrial magistrate's court determines under the *Industrial Relations Act 1979* section 83E that a person has contravened section 53(1) in relation to a person other than an employee of the person, the court may, subject to subsection (6), order the person found to have contravened section 53(1) to pay compensation to that other person for any loss or injury suffered as a result of the contravention.
- (4) The court may make an order under this section in addition to imposing a penalty under the *Industrial Relations Act 1979* section 83E.
- (5) A person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.

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- (6) The court does not have jurisdiction under this section to order that there be paid —
- (a) to an employee who has been dismissed, any amount exceeding 6 months' remuneration of the employee; and
 - (b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.
- (7) For the purposes of subsection (6)(a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.
- (8) A person must comply with an order made against the person under this section.
Penalty: a fine of \$5 000 and a daily penalty of \$500.

27. Section 55 amended

In section 55 delete “award” and insert:

any industrial instrument

Part 3 — *Industrial Relations Act 1979* amended

Division 1 — Preliminary

28. Act amended

This Part amends the *Industrial Relations Act 1979*.

Division 2 — Amendments consequential to Part 2 amendments

29. Section 81AA amended

- (1) In section 81AA delete “on it by —” and insert:

on it by the following —

- (2) Before section 81AA(ba) insert:

- (a) the *Construction Industry Portable Paid Long Service Leave Act 1985* section 53;

30. Section 81CA amended

In section 81CA(1) in the definition of *general jurisdiction*:

- (a) in paragraph (b) delete “1958;” and insert:

1958; or

- (b) after paragraph (b) insert:

- (c) the *Construction Industry Portable Paid Long Service Leave Act 1985* section 53;

31. Section 83E amended

- (1) In section 83E(6) delete “An application” and insert:

Except as provided in subsections (6a) and (7A), an application

- (2) After section 83E(6a) insert:

- (7A) In the case of a contravention of a provision under the *Construction Industry Portable Paid Long Service Leave Act 1985* that is a civil penalty provision —
- (a) subsection (6) does not apply; and
 - (b) an application for an order under this section may be made, with the written consent of the Construction Industry Long Service Leave Payments Board established under section 5 of that Act, by an officer of the Board.

- (3) In section 83E(7) delete “subsection (6)” and insert:

subsection (6) or (7A)(b)

**Division 3 — Amendments relating to
Commonwealth legislation**

32. Section 7 amended

- (1) In section 7(1) delete the definition of *Australian Commission*.
- (2) In section 7(1) insert in alphabetical order:

Fair Work Australia means the body established by the *Fair Work Act 2009* (Commonwealth) section 575;

33. Section 31 amended

In section 31(1)(c)(i) delete “Commonwealth Act; or” and insert:

Fair Work Act 2009 (Commonwealth); or

34. Section 71 amended

In section 71(1) in the definition of **Branch** delete “Commonwealth Act;” and insert:

Fair Work (Registered Organisations) Act 2009
(Commonwealth);

35. Section 73 amended

- (1) In section 73(3)(a)(ii) delete “under the Commonwealth Act,” and insert:

made under the *Fair Work Act 2009*
(Commonwealth) or continued in
existence under the *Fair Work*
(Transitional Provisions and
Consequential Amendments) Act 2009
(Commonwealth),

- (2) In section 73(7b) delete “under the Commonwealth Act,” and insert:

made under the *Fair Work Act 2009* (Commonwealth)
or continued in existence under the *Fair Work*
(Transitional Provisions and Consequential
Amendments) Act 2009 (Commonwealth),

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36. Section 80H amended

In section 80H(6) delete “Commonwealth Act” and insert:

Fair Work (Registered Organisations) Act 2009
(Commonwealth)

37. Section 80ZJ amended

In section 80ZJ(1) delete “Commonwealth Act” and insert:

Fair Work Act 2009 (Commonwealth)

Note: The heading to amended section 80ZJ is to read:

Exercise of powers conferred under Fair Work Act

38. Section 97VS amended

In section 97VS(5)(a) delete “under the Commonwealth Act,” and insert:

made under the *Fair Work Act 2009*
(Commonwealth) or continued in existence
under the *Fair Work (Transitional Provisions
and Consequential Amendments) Act 2009*
(Commonwealth),

39. Various references to “the Australian Commission” amended

In the provisions listed in the Table delete “the Australian Commission” (each occurrence) and insert:

Fair Work Australia

Table

s. 7(1) def. of <i>secondary office</i>	s. 14A
s. 14B(1)	s. 22(2)(c)
s. 29AA(1) and (2)	s. 80ZF
s. 80ZG(1), (2) and (3)	s. 80ZH(1), (2), (3) and (4)
s. 80ZI(2) and (3)	

Notes:

1. The heading to amended section 80ZF is to read:

References to Fair Work Australia

2. The heading to amended section 80ZH is to read:

**Reference of industrial matters to Fair Work Australia for
determination under this Act**

Division 4 — Other amendments

40. Section 7 amended

- (1) In section 7(1) delete the definitions of:

Council

deputy registrar

industrial inspector

Registrar

- (2) In section 7(1) insert in alphabetical order:

CEO means the chief executive officer of the
Department;

Department means the department of the Public
Service principally assisting the Minister in the
administration of this Act;

departmental officer means a person employed in the
Department as referred to in section 99C(2);

deputy registrar means a person designated as a deputy registrar under this Act;

industrial inspector means a person designated as an industrial inspector under this Act;

officer of the Commission means —

- (a) the Registrar, a deputy registrar or any other Registrar's Department officer assisting the Commission in the performance of its functions; or
- (b) an officer appointed under section 93(1a);

officer of the Court means the clerk of the Court or any other Registrar's Department officer assisting the Court in the performance of its functions;

Registrar means the chief executive officer of the Registrar's Department or, if another person is designated as the Registrar under this Act, that person;

Registrar's Department means the department of the Public Service known as the Department of the Registrar Western Australian Industrial Relations Commission;

Registrar's Department officer means a person employed in the Registrar's Department as referred to in section 99C(3);

41. Section 29A amended

Delete section 29A(2a) and insert:

- (2A) The Chief Commissioner may, if of the opinion that it is appropriate to do so in the circumstances, direct that the area and scope provisions of the proposed award or industrial agreement —
 - (a) need not be published in the *Industrial Gazette*;
or

(b) need not be published at all.

42. Section 81AA amended

Delete section 81AA(bb).

43. Section 85 amended

Delete section 85(7) and insert:

- (7) Subject to subsection (9), the chief executive officer of the Registrar's Department is to be the clerk of the Court.
- (8) The *Public Sector Management Act 1994* section 32(1) does not apply to the performance of functions of the clerk of the Court by the chief executive officer of the Registrar's Department.
- (9) The chief executive officer of the Registrar's Department may designate a Registrar's Department officer as the clerk of the Court.

44. Section 93 amended

(1) Delete section 93(1) and insert:

- (1) Subject to subsection (1AB), the chief executive officer of the Registrar's Department is to be the Registrar.
- (1AA) The *Public Sector Management Act 1994* section 32(1) does not apply to the performance of functions of the Registrar by the chief executive officer of the Registrar's Department.
- (1AB) The chief executive officer of the Registrar's Department may, after consultation with the Chief

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Division 4 Other amendments

s. 45

Commissioner, designate a Registrar's Department officer as the Registrar.

- (1AC) The Registrar may designate a Registrar's Department officer as a deputy registrar.
- (1AD) There are to be as many deputy registrars as are necessary for the purposes of this Act.

- (2) In section 93(1a) delete "appointed under and subject to Part 3 of the *Public Sector Management Act 1994*." and insert:

public service officers.

- (3) After section 93(2) insert:

(3A) Subsection (2) applies despite the *Public Sector Management Act 1994* but if the chief executive officer of the Registrar's Department is the Registrar, nothing in that subsection affects the functions of the Registrar as chief executive officer.

45. Section 98 amended

Delete section 98(1) and insert:

- (1) The CEO may designate a departmental officer as an industrial inspector.
- (2A) There are to be as many industrial inspectors as are necessary to perform the functions conferred on industrial inspectors by this Act or any other written law.

46. Sections 99A to 99D inserted

After section 98 insert:

99A. Identity card

- (1) Every industrial inspector is to be provided with an identity card signed by the CEO or a departmental officer authorised in that behalf by the CEO.
- (2) An identity card purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it or of the person's authority to have signed it, evidence in a court —
 - (a) of the appointment to which the identity card purports to relate; and
 - (b) of any other matter specified on the identity card.
- (3) If the designation of a person under section 98(1) is revoked or ceases to have effect, the person must, as soon as practicable, but within 21 days, after the designation is revoked or ceases to have effect, return the identity card to the CEO or a departmental officer authorised by the CEO to receive it, unless the person has a reasonable excuse.

Penalty: a fine of \$2 000.

99B. Production of identification

- (1) An industrial inspector must, if requested to do so by a person in respect of whom the industrial inspector has exercised, or is about to exercise, a power under this Act or any other written law, produce the industrial inspector's identity card for the person's inspection.

- (2) Subsection (1) only applies if the industrial inspector is in the physical presence of the person in respect of whom the power has been, or is about to be, exercised.
- (3) If for any reason it is not practicable to comply with subsection (1), the industrial inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

99C. Staff

- (1) In this section —
employed in the Department or the Registrar's Department includes seconded to perform functions or services for, or duties in the service of, that department.
- (2) As many public service officers are to be employed in the Department as are necessary for the purposes of this Act.
- (3) As many public service officers are to be employed in the Registrar's Department as are necessary —
 - (a) for the performance of the Court's functions; and
 - (b) for the performance of the Commission's functions; and
 - (c) otherwise for the purposes of this Act.

99D. Designation of officers, generally

- (1) This section applies to the following —
 - (a) the designation of a person under section 85(9) to be the clerk of the Court;
 - (b) the designation of a person under section 93(1AB) to be the Registrar;
 - (c) the designation of a person under section 93(1AC) to be a deputy registrar;

- (d) the designation of a person under section 98(1) to be an industrial inspector.
- (2) A designation is to be in writing and the *Interpretation Act 1984* section 52 applies to it in the same way as that section applies to an appointment.
- (3) A designation referred to in subsection (1)(a), (b) or (c) ceases to have effect if the person designated ceases to be a Registrar's Department officer.
- (4) A designation referred to in subsection (1)(d) ceases to have effect if the person designated ceases to be a departmental officer.
- (5) The chief executive officer of the Registrar's Department, the Registrar or the Minister, as the case may be, may, in writing, delegate the power to make a designation to another person.

47. Section 113 amended

- (1) Delete section 113(1)(d)(ii)(III) (first occurrence) and insert:

(IIIA) the *Owner-Drivers (Contracts and Disputes) Act 2007*; and

- (2) After section 113(1)(d)(ii)(III) (second occurrence) and (IV) insert:

and

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Part 3 Industrial Relations Act 1979 amended

Division 4 Other amendments

s. 48

48. Various references to “the Council” amended

In the provisions listed in the Table delete “the Council” (each occurrence) and insert:

UnionsWA

Table

s. 29A(2)(a)(i) and (b)	s. 31(1)(c)(i)
s. 38(1) and (1a)(a)	s. 40B(2) and (3)(a)
s. 47(5)(a)	s. 50(2)
s. 51A(1)	s. 51BA(1)(a)
s. 51I(2)(a)	s. 51J(a)
s. 51K	s. 97VZ(3) def. of <i>peak industrial body</i>
s. 112A(1a)(a) and (3)(c)	

Part 4 — *Minimum Conditions of Employment Act 1993* amended

49. Act amended

This Part amends the *Minimum Conditions of Employment Act 1993*.

50. Schedule 1 amended

In Schedule 1:

- (a) delete the reference after the heading and insert:

[s. 3(1)]

- (b) after “Boxing Day.” insert:

Any special day appointed by proclamation under the *Public and Bank Holidays Act 1972* section 7 to be a public holiday.

Part 5 — *Employment Dispute Resolution Act 2008* amended

51. Act amended

This Part amends the *Employment Dispute Resolution Act 2008*.

52. Section 3 amended

- (1) In section 3(1) delete the definitions of:

Commonwealth workplace agreement

Workplace Relations Act

- (2) In section 3(1) insert in alphabetical order:

Commonwealth enterprise agreement means an enterprise agreement as defined in the *Fair Work Act 2009* (Commonwealth) or any other agreement or arrangement prescribed under the IR Act section 113 for the purposes of this definition;

- (3) In section 3(1) in the definition of ***organisation*** delete paragraph (b) and insert:

- (b) an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);

- (4) In section 3(1) in the definition of ***referral proceeding*** delete “Division 2;” and insert:

Division 2.

53. Section 26 deleted

Delete section 26.

54. Section 27 replaced

Delete section 27 and insert:

27. Application for IR Commission to conduct dispute resolution process

A party to an employment dispute may apply to the IR Commission to have a dispute resolution process conducted by the IR Commission in relation to the employment dispute if —

- (a) the parties to the employment dispute are bound by a Commonwealth enterprise agreement; and
- (b) the Commonwealth enterprise agreement authorises, permits or provides for the IR Commission, or a member of the IR Commission, to conduct a dispute resolution process under dispute settlement procedures set out in the agreement.

55. Section 28 amended

In section 28(2) and (3) delete “workplace” (each occurrence) and insert:

enterprise

56. Section 29 amended

(1) Delete section 29(1)(a) and (b) and insert:

- (a) the Commonwealth enterprise agreement concerned; and
- (b) the *Fair Work Act 2009* (Commonwealth).

(2) Delete section 29(2) and insert:

- (2) The *Fair Work Act 2009* (Commonwealth) section 740 applies to a dispute resolution process conducted under this Division.

57. Section 31 amended

In section 31(1) after “may be made” insert:

by the Chief Commissioner

Part 6 — *Litter Act 1979* amended

58. Act amended

This Part amends the *Litter Act 1979*.

59. Section 9 amended

Delete section 9(1)(ka) and insert:

- (k) one shall be appointed on the nomination of UnionsWA;

Part 7 — *Occupational Safety and Health Act 1984* amended

60. Act amended

This Part amends the *Occupational Safety and Health Act 1984*.

61. Section 6 amended

In section 6(2)(d)(ii) delete “the body known as The Trades and Labor Council of Western Australia; and” and insert:

UnionsWA; and

