



Western Australia

Industrial Relations Amendment Act 2018

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Industrial Relations Amendment Act 2018

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Western Australia

Industrial Relations Amendment Act 2018

No. 39 of 2018

An Act to amend the *Industrial Relations Act 1979* and to make consequential amendments to various Acts.

[Assented to 12 December 2018]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Industrial Relations Amendment Act 2018*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

Part 2 — *Industrial Relations Act 1979* amended

3. Act amended

This Part amends the *Industrial Relations Act 1979*.

4. Section 7 amended

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

Fair Work Australia

member of the Commission

President

secondary office

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

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

presiding commissioner, of the Full Bench, means the presiding commissioner under section 15(1A);

secondary office, in relation to a person who holds the office of commissioner and is subsequently appointed to an office of the Fair Work Commission under section 14A, means the office of member of the Fair Work Commission;

- (3) In section 7(1) in the definition of *office* paragraph (e) delete “Full Bench pursuant to” and insert:

Commission under

s. 5

- (4) In section 7(1) in the definition of *registration* delete “Full Bench;” and insert:

Commission in Court Session;

- (5) In section 7(4) delete “subsection (3)(b)” and insert:

subsection (3)

5. Section 8 amended

In section 8(2):

- (a) delete “shall consist of the following members — ” and insert:

is to consist of —

- (b) delete paragraph (a);
(c) delete “shall be” and insert:

are

- (d) delete “in Her Majesty’s name.” and insert:

under the Public Seal of the State.

Note: The heading to amended section 8 is to read:

Commission constituted

6. Section 9 amended

Delete section 9(1), (1aa) and (1a).

Note: The heading to amended section 9 is to read:

Qualifications for appointment of Chief Commissioner

7. Section 10 amended

In section 10 delete “member of the Commission and each member of the Commission shall retire from his” and insert:

commissioner and each commissioner must retire from

Note: The heading to amended section 10 is to read:

Age limit for commissioners

8. Section 11 amended

In section 11(1) delete “his office each member of the Commission shall make oath before a judge that he will faithfully and impartially perform the duties of his office and that he” and insert:

office each commissioner must make oath before a judge that the commissioner will faithfully and impartially perform the duties of office of commissioner and

9. Section 13 replaced

Delete section 13 and insert:

13. Protection of commissioners and others

Each of the following persons has the same protection and immunity as a judge has when performing functions of a judge —

s. 10

- (a) a commissioner when performing the functions of a commissioner;
- (b) an industrial magistrate appointed under section 81B when performing the functions of an industrial magistrate;
- (c) a member of a Board of Reference referred to in section 48 when performing the functions of a member of a Board of Reference;
- (d) a constituent authority or a member of a constituent authority, as the case requires, when performing the functions of a constituent authority or a member of a constituent authority.

10. Section 14 amended

- (1) Delete section 14(1).
- (2) In section 14(3) delete “member of the Commission” (each occurrence) and insert:

commissioner

Note: The heading to amended section 14 is to read:

Exercise of powers and jurisdiction of Commission

11. Section 14A amended

In section 14A:

- (a) delete “A person who is a member of the Commission” and insert:

A commissioner

- (b) delete “Fair Work Australia,” and insert:

the Fair Work Commission,
- (c) delete “the offices of member of the Commission” and insert:

the office of commissioner
- (d) delete “Fair Work Australia but” and insert:

the Fair Work Commission but

12. Section 14B amended

Delete section 14B(1) and insert:

- (1) As agreed from time to time by the Chief Commissioner and the President of the Fair Work Commission, a person who holds the office of commissioner and an office of member of the Fair Work Commission —
 - (a) may perform the duties of the secondary office; and
 - (b) may exercise, in relation to a particular matter —
 - (i) any powers that the person has as a commissioner; and
 - (ii) any powers that the person has as a member of the Fair Work Commission.

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13. Section 15 amended

Delete section 15(1) and insert:

- (1) The Full Bench is to be constituted by 3 commissioners, at least 1 of whom must be the Chief Commissioner or the Senior Commissioner, sitting or acting together.
- (1A) The presiding commissioner of the Full Bench is the most senior of the commissioners who constitute the Full Bench.

Note: The heading to amended section 15 is to read:

Constitution of Full Bench and Commission in Court Session

14. Section 16 amended

- (1) In section 16(1aa) delete “members of the Commission.” and insert:

commissioners.

- (2) Delete section 16(2)(c).

15. Section 16A amended

In section 16A(1) delete “member of the Commission” and insert:

commissioner

16. Section 17 amended

(1) In section 17(1):

- (a) delete “member of the Commission is, or is expected to be, unable to attend to his” and insert:

commissioner is, or is expected to be, unable to attend to their

- (b) delete “acting President,”

(2) Delete section 17(1a) and (1b).

(3) In section 17(2) delete “shall not be appointed acting President or acting Chief Commissioner unless he” and insert:

must not be appointed acting Chief Commissioner unless the person

Note: The heading to amended section 17 is to read:

Appointment of acting commissioners

17. Section 18 amended

(1) In section 18(1):

- (a) delete “member of the Commission” (each occurrence) and insert:

commissioner

- (b) delete “his period” and insert:

the commissioner’s period

s. 18

(c) delete “enable him” and insert:

enable the commissioner

(d) delete “he has” and insert:

the commissioner has

(2) Delete section 18(3) and (4) and insert:

(3) The continuation in office of a retired commissioner under subsection (1) does not prevent the appointment of a person to fill the office from which the commissioner retired.

(4) The continuation in office of an acting commissioner under subsection (1) does not prevent the appointment of another person to act in the office in which the acting commissioner acted.

18. Section 19 replaced

Delete section 19 and insert:

19. Duty of commissioners

Each commissioner must keep acquainted with industrial affairs and conditions.

19. Section 20 amended

(1) Delete section 20(1).

- (2) In section 20(2) delete “the members of the Commission, other than the President” and insert:

commissioners

- (3) Delete section 20(8c), (8d), (11), (12) and (13).

Note: The heading to amended section 20 is to read:

Conditions of service of commissioners

20. Section 21 amended

In section 21 delete “A member of the Commission may resign his office by writing under his hand” and insert:

A commissioner may resign office by writing

21. Section 22 amended

- (1) In section 22(1) delete “the members of the Commission shall” and insert:

commissioners

- (2) Delete section 22(2) and insert:

(2) The office of a commissioner becomes vacant if the commissioner —

- (a) is removed from office under subsection (1); or
- (b) retires under section 10 or resigns under section 21; or

- (c) except with the approval of the Governor, accepts the office of member of the Fair Work Commission.

22. Section 27 amended

- (1) In section 27(1)(t) delete “thereof” and insert:

of the matter, including any question of interpretation of the rules of an organisation arising in the matter,

- (2) Delete section 27(1)(u) and insert:

- (u) with the consent of the Chief Commissioner refer to the Full Bench for hearing and determination by the Full Bench any question of law arising in the matter, other than a question of interpretation of the rules of an organisation; and

23. Section 29AA amended

In section 29AA(1) and (2) delete “Fair Work Australia” (each occurrence) and insert:

the Fair Work Commission

24. Section 34 amended

- (1) Delete section 34(1) and (2) and insert:

- (1) The decision of the Commission must be made in the form of an award, order or declaration and must be

signed and dated at the time it is made —

- (a) in the case of a decision made by the Commission constituted by a single commissioner — by the commissioner; or
 - (b) in the case of a decision of the Commission in Court Session — by the most senior commissioner of the commissioners who constitute the Commission in Court Session; or
 - (c) in the case of a decision by the Full Bench or its presiding commissioner — by the presiding commissioner of the Full Bench.
- (1A) A decision of the Commission must be sealed with the seal of the Commission.
- (2) When the commissioners who constitute the Commission in Court Session are divided in opinion on a question, the question must be decided according to the decision of the majority of the commissioners.

(2) In section 34(3) delete “the President, the Full Bench or”.

(3) In section 34(4):

- (a) delete “the President, the Full Bench or”;
- (b) delete “question by any” and insert:

question by or in any

25. Section 35 amended

(1) Delete section 35(1) and insert:

(1A) In this section —

final decision means a decision, determination or ruling in proceedings that finally decides, determines or disposes of the matter to which the proceedings relate.

- (1) Subject to subsection (4), a final decision must, before it is made, be drawn up in the form of minutes which must be handed down to the parties concerned and, unless in any particular case the Commission otherwise determines, its reasons for decision must be published at the same time.
- (1AB) Subsection (1) does not apply to an order made for the purposes of section 27(1)(a) or an order or declaration made under section 32(8).
- (2) In section 35(3) delete “they are delivered as the decision of the Commission.” and insert:

the final decision is made in the terms of the minutes.

26. Section 36 replaced

Delete section 36 and insert:

36. Copy of decision must be given to parties and be available for inspection

- (1) The Commission must, as soon as practicable after making a decision —
 - (a) give a copy of the decision to each party to the proceeding; and
 - (b) deposit a copy of the decision in the office of the Registrar.

- (2) A copy of each decision of the Commission lodged in the office of the Registrar must be open to inspection without charge during office hours by any person interested.

27. Section 39 amended

- (1) Delete section 39(1) and (2) and insert:
 - (1) An award comes into operation —
 - (a) on the day on which it is made; or
 - (b) on such day or days as the Commission fixes and specifies in the award.
- (2) In section 39(4) delete “delivered.” and insert:

made.

28. Section 49 amended

- (1) In section 49(1):
 - (a) delete “this section” and insert:

subsections (2) to (6a)
 - (b) delete “section 80ZE.” and insert:

section 80ZE or subsection (11).
- (2) Delete section 49(7).

(3) Delete section 49(8) and insert:

(8) When the commissioners who constitute the Full Bench are divided on a question, the question must be decided according to the decision of a majority of them but, if their decisions on the question are equally divided, the question must be decided according to the decision of the presiding commissioner of the Full Bench.

(4) In section 49(9) delete “President may state a case for the decision of the Court thereon and shall” and insert:

presiding commissioner of the Full Bench may state a case for the decision of the Court and must

(5) In section 49(10) delete “(7),”.

(6) Delete section 49(12) and insert:

(12) For the purposes of hearing and determining an application under subsection (11) for an order in respect of a decision, the Commission must be constituted by the presiding commissioner of the Full Bench allocated the appeal against the decision.

29. Section 49E amended

In section 49E(4) in the definition of *relevant person* delete paragraph (d) and insert:

(d) a Registrar’s Department officer authorised in writing by the Registrar.

30. Section 53 amended

- (1) In section 53(1) delete “Full Bench.” and insert:

Commission in Court Session.

- (2) In section 53(2) delete “Full Bench if the Full Bench” and insert:

Commission in Court Session if it

31. Section 54 amended

- (1) In section 54(1) delete “Full Bench.” and insert:

Commission in Court Session.

- (2) In section 54(2) delete “Full Bench if the Full Bench” and insert:

Commission in Court Session if it

32. Section 55 amended

- (1) In section 55(2)(c) delete “Full Bench that he” and insert:

Commission in Court Session that the person

- (2) In section 55(3) delete “Full Bench” and insert:

Commission in Court Session

- (3) In section 55(4) delete “Full Bench is satisfied for the purposes of section 53(2) or 54(2), the Full Bench shall” and insert:

Commission in Court Session is satisfied for the purposes of section 53(2) or 54(2), the Commission in Court Session must

- (4) In section 55(5):
(a) delete “Full Bench shall” and insert:

Commission in Court Session must

- (b) delete “Full Bench is” and insert:

Commission in Court Session is

33. Section 58 amended

- (1) In section 58(1):
(a) delete “Full Bench to register an organisation he shall” and insert:

Commission in Court Session to register an organisation the Registrar must

- (b) delete “shall thereupon”.

- (2) In section 58(2) and (3) delete “Full Bench” (each occurrence) and insert:

Commission in Court Session

34. Section 59 amended

- (1) In section 59(1):
 (a) delete “Full Bench shall” and insert:

Commission in Court Session must

- (b) delete “Full Bench, likely” and insert:

Commission in Court Session, likely

- (2) In section 59(3) delete “Full Bench” and insert:

Commission in Court Session

35. Section 60 amended

In section 60(1) delete “Full Bench,” and insert:

Commission in Court Session,

36. Section 62 amended

- (1) In section 62(2) delete “Full Bench.” and insert:

Commission in Court Session.

- (2) In section 62(3) delete “President, he” and insert:

Chief Commissioner, the Registrar

37. Section 66 amended

(1) In section 66(1):

(a) delete “President” and insert:

Chief Commissioner

(b) in paragraph (c) delete “his own” and insert:

the Registrar’s own

(2) In section 66(2):

(a) delete “President may make” and insert:

Chief Commissioner may make

(b) delete “he considers” and insert:

the Chief Commissioner considers

(c) in paragraph (a) delete “President — ” and insert:

Chief Commissioner —

(d) in paragraph (b) delete “President may direct; and” and insert:

Chief Commissioner may direct; and

- (e) in paragraph (ca), (e) and (f) delete “President” (each occurrence) and insert:

Chief Commissioner

- (3) Delete section 66(3), (7) and (8).
- (4) Delete section 66(9) and insert:
- (9) The power of the Chief Commissioner under subsection (2)(d) may, on a reference made under section 27(1)(t), be exercised by the Commission in Court Session.

Note: The heading to amended section 66 is to read:

Power of Chief Commissioner to deal with rules of organisation

38. Section 68 amended

In section 68 delete “Full Bench” and insert:

Commission

Note: The heading to amended section 68 is to read:

Declaration as to certain functions

39. Section 69 amended

In section 69(12):

- (a) delete “his” and insert:

the

- (b) delete “Full Bench” and insert:

Commission in Court Session

40. Section 71 amended

- (1) In section 71(2) delete “Full Bench,” and insert:

Commission in Court Session,

- (2) In section 71(3):

- (a) delete “Full Bench” and insert:

Commission in Court Session

- (b) in paragraph (a) delete “his”.

- (3) In section 71(7) delete “Full Bench” and insert:

Commission in Court Session

- (4) In section 71(8):

- (a) delete “Full Bench approves an agreement under subsection (7) the Registrar shall —” and insert:

Commission in Court Session approves an agreement under subsection (7) the Registrar must —

- (b) in paragraph (b) delete “Full Bench” and insert:

Commission in Court Session

- (5) In section 71(9):
- (a) in paragraph (a) delete “Full Bench; and” and insert:

Commission in Court Session; and
 - (b) in paragraph (b) delete “he is” and insert:

the Registrar is
- (6) In section 71(10) delete “Full Bench” (each occurrence) and insert:

Commission in Court Session

41. Section 72 amended

In section 72(1) delete “Full Bench.” and insert:

Commission in Court Session.

42. Section 72A amended

- (1) In section 72A(2) delete “Full Bench” and insert:

Commission in Court Session

- (2) In section 72A(3):

- (a) delete “shall publish” and insert:

must publish

- (b) delete “shall not be listed for hearing before the Full Bench” and insert:

must not be listed for hearing before the Commission in Court Session

- (3) In section 72A(4) delete “Full Bench” and insert:

Commission in Court Session

- (4) In section 72A(5):

- (a) delete “Full Bench shall” and insert:

Commission in Court Session must

- (b) delete “the opinion of the Full Bench,” and insert:

its opinion,

- (5) In section 72A(6) delete “Full Bench is to refer the matter to the President unless the Full Bench” and insert:

Commission in Court Session must refer the matter to the Chief Commissioner unless it

- (6) In section 72A(7):

- (a) delete “President shall,” and insert:

Chief Commissioner must,

- (b) delete “President’s opinion, necessary to reflect the order made by the Full Bench.” and insert:

Chief Commissioner’s opinion, necessary to reflect the order made by the Commission in Court Session.

- (7) In section 72A(8) delete “shall be made by instrument in writing signed by the President and shall take” and insert:

must be made by instrument in writing signed by the Chief Commissioner and takes

43. Section 73 amended

- (1) In section 73(1):

- (a) after “the Commission” insert:

constituted by a commissioner

- (b) delete “Full Bench” and insert:

Commission in Court Session

- (2) In section 73(2):

- (a) delete “shall ascertain from the President” and insert:

must ascertain from the Chief Commissioner

- (b) delete “date shall” and insert:

date must

s. 43

- (3) In section 73(6) delete “shall not be a member of the Full Bench.” and insert:

must not be one of the commissioners who constitute the Commission in Court Session for the purposes of this section.

- (4) In section 73(7):

- (a) delete “Full Bench that” and insert:

Commission in Court Session that

- (b) delete “Full Bench —” and insert:

Commission in Court Session —

- (5) In section 73(7a)(c) delete “Full Bench” and insert:

Commission in Court Session

- (6) In section 73(7b):

- (a) delete “Full Bench that” and insert:

Commission in Court Session that

- (b) delete “Full Bench —” and insert:

Commission in Court Session —

- (7) In section 73(8) and (9) delete “Full Bench” (each occurrence) and insert:

Commission in Court Session

- (8) In section 73(10):
- (a) delete “Full Bench considers” and insert:

Commission in Court Session considers
 - (b) delete “by the Full Bench” and insert:

by the Commission in Court Session
 - (c) delete “appear to the Full Bench” and insert:

appear to it

- (9) In section 73(12) delete “Full Bench shall” and insert:

Commission in Court Session must

44. Section 76 deleted

Delete section 76.

45. Section 80D amended

Delete section 80D(1), (2) and (3) and insert:

- (1) The Chief Commissioner —
 - (a) must appoint 1 commissioner as a public service arbitrator within the Commission; and
 - (b) may appoint 1 or more commissioners as additional public service arbitrators within the Commission.
- (2) Without limiting subsection (1), the Chief Commissioner may be appointed as a public service arbitrator under that subsection.

46. Section 80E amended

Delete section 80E(6)(a) and (b) and insert:

- (a) with the consent of the Chief Commissioner refer to the Commission in Court Session for hearing and determination by the Commission in Court Session —
 - (i) an industrial matter referred to in subsection (1) or any part of that industrial matter; or
 - (ii) any question of interpretation of the rules of an organisation arising in a matter before the Arbitrator;
- and
- (b) with the consent of the Chief Commissioner refer to the Full Bench for hearing and determination by the Full Bench any question of law arising in a matter before the Arbitrator,

other than a question of interpretation of the
rules of an organisation,

47. Section 80H amended

- (1) Delete section 80H(3).
- (2) In section 80H(4) delete “In the case of an appeal referred to in section 80I(1)(d) or (e), the” and insert:

The

- (3) In section 80H(5) delete “subsections (3) and” and insert:

subsection

48. Section 80K amended

In section 80K(2) delete “shall be given in writing and shall be signed and delivered” and insert:

must be given in writing and must be signed and dated at the
time it is made

49. Section 80L amended

In section 80L(1) delete “(3), (5) and (6),” and insert:

(3) and (5),

50. Section 80R amended

Delete section 80R(3)(a) and (b) and insert:

- (a) with the consent of the Chief Commissioner refer to the Commission in Court Session for hearing and determination by the Commission in Court Session —
 - (i) an industrial matter referred to in subsection (1) or any part of that industrial matter; or
 - (ii) any question of interpretation of the rules of an organisation arising in a matter before the Board;

and

- (b) with the consent of the Chief Commissioner refer to the Full Bench for hearing and determination by the Full Bench any question of law arising in a matter before the Board, other than a question of interpretation of the rules of an organisation,

51. Section 80V amended

In section 80V(3) delete “shall be in the form of an award, order, determination or declaration and shall be signed and delivered” and insert:

must be in the form of an award, order, determination or declaration and must be signed and dated at the time it is made

52. Section 80ZF replaced

Delete section 80ZF and insert:

80ZF. Term used: Fair Work Commission

In this Part —

Fair Work Commission includes a member of the Fair Work Commission.

53. Section 80ZG amended

(1) Delete section 80ZG(1)(a) to (c) and insert:

- (a) the Fair Work Commission; and
- (b) the parties to an industrial dispute in relation to which the Fair Work Commission is exercising power; and
- (c) any witness summoned by the Fair Work Commission,

(2) In section 80ZG(2) delete “Fair Work Australia,” and insert:

the Fair Work Commission,

(3) In section 80ZG(3) delete “Fair Work Australia” and insert:

the Fair Work Commission

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

Joint proceedings of Commission and Fair Work Commission

s. 54

54. Section 80ZH amended

- (1) In section 80ZH(1) delete “Fair Work Australia to nominate a member of Fair Work Australia” and insert:

the Fair Work Commission to nominate a member of the Fair Work Commission

- (2) In section 80ZH(2) delete “Fair Work Australia nominates a member of Fair Work Australia,” and insert:

the Fair Work Commission nominates a member of the Fair Work Commission,

- (3) In section 80ZH(3) and (4) delete “Fair Work Australia” and insert:

the Fair Work Commission

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

Referring matters to Fair Work Commission for determination under this Act

55. Section 80ZI amended

- (1) In section 80ZI(1) delete “he may, if that authority is willing, confer with that authority, or arrange for another member of the Commission” and insert:

the Chief Commissioner may, if that authority is willing, confer with that authority, or arrange for another commissioner

- (2) In section 80ZI(2) delete “he may confer with Fair Work Australia” and insert:

the Chief Commissioner may confer with the Fair Work Commission

- (3) In section 80ZI(3) delete “Fair Work Australia” and insert:

the Fair Work Commission

56. Section 81B amended

In section 81B(2) and (4) delete “joint recommendation of the President and” and insert:

recommendation of

57. Section 90 amended

In section 90(1) and (3) delete “President, the Full Bench, or” and insert:

Full Bench, the Commission on an application under section 49(11) or

58. Section 92 amended

Delete section 92(4).

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59. Section 98 amended

In section 98(7) delete “subsection (1).” and insert:

subsection (2A).

60. Section 99D amended

In section 99D(5) delete “the Minister,” and insert:

the CEO,

61. Section 106 amended

In section 106(a)(ii) delete “President.”

62. Section 113 amended

(1) In section 113(1):

(a) delete “members of the Commission,” and insert:

other commissioners,

(b) in paragraph (a) after “prescribing” insert:

or providing for the approval of

(2) In section 113(2) after “prescribe” insert:

or provide for the approval of

63. Section 116 inserted

At the end of Part VII insert:

116. Transitional provisions for *Industrial Relations Amendment Act 2018*

- (1) Schedule 6 sets out transitional provisions.
- (2) Schedule 6 does not affect the operation of the *Interpretation Act 1984* Part V.

64. Part VIII deleted

Delete Part VIII.

65. Schedule 1 amended

- (1) Delete Schedule 1 item 2(c).
- (2) In Schedule 1 item 6 delete “Court, the President,” and insert:

Court

66. Schedule 6 inserted

After Schedule 5 insert:

Schedule 6 — Transitional provisions

[s. 116]

Division 1 — Preliminary

1. Terms used

In this Schedule —

amended Act means this Act as amended by the amending Act;

amending Act means the *Industrial Relations Amendment Act 2018*;

commencement day means the day on which the amending Act section 66 comes into operation;

former, in relation to a section, means the section as in force immediately before commencement day;

former acting President — see clause 2(1);

matter includes any application, reference, proceeding or appeal.

Division 2 — Provisions for President

2. Acting President: continuation in office

- (1) A person who holds the office of acting President immediately before commencement day (the *former acting President*) may, for a period approved by the Minister, remain in office with the functions and entitlements of the former acting President for the purpose of completing any matter or inquiry not completed by the former acting President before commencement day.
- (2) The Minister may extend, or further extend, the period approved under subclause (1) and may do so even if the period has expired.

3. Past President's pension entitlements

Despite the amendments made by the amending Act section 19(3), former section 20(12) and (13) continues to apply in relation to a person who held office as President or acting President before commencement day or the surviving spouse, de facto partner or child of that person.

4. Judicial notice of signature and appointment of President

All courts and persons acting judicially must take judicial notice of the official signature of every person who has remained in office under clause 2 or has at any time been or acted in the office of President of the Commission under the Act and of the fact that the person has held or acted in the office.

Division 3 — Provisions for pending matters

5. Pending matters

- (1) In this clause —
Commission means the Commission constituted by the former acting President, or constituted including the former acting President;
former Act means the Act as in force immediately before commencement day.
- (2) A matter is to be dealt with in accordance with the relevant provisions of the amended Act if —
 - (a) the matter was before the Commission immediately before commencement day; but
 - (b) the Commission had not begun to hear the matter.
- (3) Except as provided in subclauses (4) and (5), if the Commission has begun or completed hearing a matter, but has not finally determined the matter immediately before commencement day, the matter is to continue to be dealt with on or after that day in accordance with the relevant provisions of the former Act.
- (4) A matter is to be dealt with in accordance with the relevant provisions of the amended Act if —
 - (a) the matter was before the Commission immediately before commencement day; and

- (b) the Commission has begun or completed hearing a matter, but has not finally determined the matter; and
 - (c) the former acting President is not in the office of acting President immediately after commencement day, or ceases to remain in office after commencement day.
- (5) The Chief Commissioner may, after consulting with the former acting President, direct that —
 - (a) subclause (3) does not apply to a matter specified in the direction; and
 - (b) the matter is to be dealt with in accordance with the relevant provisions of the amended Act.
- (6) A direction under subclause (5) has effect in accordance with its terms.

6. Order under former s. 49 does not begin hearing of appeal

An appeal under section 49 has not commenced to be heard merely because an application for an order under section 49(11) in respect of the decision appealed against has been made, heard or determined.

7. Notices and applications under former s. 55

- (1) If a notice published under former section 55(2) in relation to an application refers to the Full Bench, but on commencement day the Full Bench has not begun to hear the application, the reference is taken to be a reference to the Commission in Court Session.
- (2) If the hearing of an application made under former section 55 has not begun immediately before commencement day, the application must be dealt with under section 55 of the amended Act.

8. Summonses under former s. 73

- (1) In this clause —

former section 73 summons means a summons issued under former section 73.

- (2) A former section 73 summons to appear before the Full Bench on a date that is on or after commencement day —
- (a) is taken to be a summons issued under section 73 of the amended Act to appear before the Commission in Court Session on that date; and
 - (b) is to be dealt with under the amended Act as if it were a summons issued under section 73 of the amended Act to appear before the Commission in Court Session.

Part 3 — Consequential amendments to other Acts

67. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 1 Division 1 delete “President of The Western Australian Industrial Relations Commission.”.

68. *Equal Opportunity Act 1984* amended

- (1) This section amends the *Equal Opportunity Act 1984*.
- (2) In section 66ZN(2)(g) delete “President or”.

69. *Juries Act 1957* amended

- (1) This section amends the *Juries Act 1957*.
- (2) In Schedule 1 Division 1 clause 2(1)(g) delete “the President or”.

70. *Police Act 1892* amended

- (1) This section amends the *Police Act 1892*.
- (2) In section 33S in the Table:
 - (a) delete “s. 31(6)”;
 - (b) in the item relating to section 32 delete the first paragraph and insert:

Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall” were a reference to “If the Commission is dealing with an appeal instituted under the *Police Act 1892* section 33P, the Commission may recommend that the parties to the appeal”.

(c) delete the item relating to section 34 and insert:

- s. 34 A reference in subsection (1) to “an award, order or declaration” is to be read as if it were a reference to “an order”.
- A reference in subsection (4) to “no award, order, declaration, finding, or proceeding” is to be read as if it were a reference to “no decision, order, finding or proceeding”.

(d) delete the item relating to section 90 and insert:

- s. 90 A reference in subsection (1) to “any decision of the Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the *Police Act 1892* section 33U”.

71. *Prisons Act 1981* amended

- (1) This section amends the *Prisons Act 1981*.
- (2) In section 110B in the Table:
- (a) in the item relating to section 32 delete the first paragraph and insert:

Section 32(1) is to be read as if a reference to “Where an industrial matter has been

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referred to the Commission the Commission shall” were a reference to “If the Commission is dealing with an appeal instituted under the *Prisons Act 1981* section 106, the Commission may recommend that the parties to the appeal”.

(b) delete the item relating to section 34 and insert:

| | |
|-------|--|
| s. 34 | <p>A reference in subsection (1) to “an award, order or declaration” is to be read as if it were a reference to “an order”.</p> <p>A reference in subsection (4) to “no award, order, declaration, finding, or proceeding” is to be read as if it were a reference to “no decision, order, finding or proceeding”.</p> |
|-------|--|

(c) delete the item relating to section 90 and insert:

| | |
|-------|--|
| s. 90 | <p>A reference in subsection (1) to “any decision of the Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the <i>Prisons Act 1981</i> section 110E”.</p> |
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72. *Young Offenders Act 1994* amended

- (1) This section amends the *Young Offenders Act 1994*.
- (2) In section 11CM in the Table:
 - (a) in the item relating to section 32 delete the first paragraph and insert:

Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall” were a reference to “If the Commission is dealing with an appeal instituted under the *Young Offenders Act 1994* section 11CH, the Commission may recommend that the parties to the appeal”.

- (b) delete the item relating to section 34 and insert:

| | |
|-------|--|
| s. 34 | <p>A reference in subsection (1) to “an award, order or declaration” is to be read as if it were a reference to “an order”.</p> <p>A reference in subsection (4) to “no award, order, declaration, finding, or proceeding” is to be read as if it were a reference to “no decision, order, finding or proceeding”.</p> |
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- (c) delete the item relating to section 90 and insert:

| | |
|-------|---|
| s. 90 | A reference in subsection (1) to “any decision of the Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the <i>Young Offenders Act 1994</i> section 11CP”. |
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