

WESTERN AUSTRALIA

INDUSTRIAL LEGISLATION AMENDMENT ACT 1995

No. 1 of 1995

AN ACT to amend the —

- *Industrial Relations Act 1979;*
- *Workplace Agreements Act 1993;*
- *Education Act 1928; and*
- *Salaries and Allowances Act 1975,*

and to amend various other Acts for consequential or related purposes.

[Assented to 9 May 1995.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Legislation Amendment Act 1995*.

Commencement

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

(2) Part 3 comes into operation on such day as is fixed by proclamation.

PART 2 — GOVERNMENT SCHOOL TEACHERS

Division 1 — Industrial Relations Act 1979

Principal Act

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

[* *Reprinted as at 11 May 1994.*
Amended by Act No. 32 of 1994.]

Section 7 amended

4. Section 7 of the principal Act is amended —

(a) in subsection (1) —

- (i) in the definition of “constituent authority” by deleting “the Government School Teachers Tribunal,”;
- (ii) in the first definition of “industrial matter” by deleting “, other than in relation to a person who is a teacher as defined in section 73A and is employed under the *Education Act 1928*,”;
- (iii) by deleting the second definition of “industrial matter”; and
- (iv) by inserting in the appropriate alphabetical positions the following definitions —

“

“Minister for Education” means
the Minister to whom the
administration of the *Education
Act 1928* is committed;

“teacher” includes —

- (a) any person engaged in teaching in a government school within the meaning of the *Education Act 1928*;
- (b) any person employed by the Minister for Education and engaged in teaching in a pre-school centre within the meaning of the *Education Act 1928*; and
- (c) any person holding or acting in a position in respect of which a teaching academic qualification is required in the department of the Public Service principally assisting the Minister for Education in administering the *Education Act 1928*,

but does not include any public service officer, whether or not that public service officer holds or acts in a position in respect of which a teaching academic qualification is required;

”;

and

- (b) in subsection (2) by deleting “each of the definitions” and substituting the following —

“ the definition ”.

Section 7C amended

5. Section 7C (1) (a) of the principal Act is amended by deleting “either of the definitions” and substituting the following —

“ the definition ”.

Section 23B inserted

6. After section 23A of the principal Act the following section is inserted —

“

Jurisdiction to hear Education Act appeals

23B. (1) The Commission has jurisdiction to hear and determine —

- (a) an appeal by a teacher against any punishment for alleged misconduct imposed on the teacher under the *Education Act 1928* other than a punishment that is a reprimand or a fine that does not exceed \$50;
- (b) an appeal by a teacher (not being a person to whom subsection (2) applies) against the dismissal, or reduction to a position carrying a lower salary or remuneration, of the teacher for inefficiency under any regulations relating to the assessment of inefficiency and made under the *Education Act 1928*; and
- (c) an appeal under section 7D (4) of the *Education Act 1928*.

(2) This subsection applies to a person who is —

- (a) a teacher appointed on probation; or
- (b) a teacher who is reduced to a position carrying a lower salary or lower remuneration but whose salary or remuneration is not by reason only of that reduction reduced to the level of the lower salary or lower remuneration.

(3) Without limiting the generality of subsection (1) the Commission may confirm, modify or reverse any decision, determination, finding or declaration appealed against.

(4) No record relating to an appeal against a punishment imposed on a teacher shall be open to public inspection.

”.

Section 29 amended

7. After section 29 (1) of the principal Act the following subsection is inserted —

“

(1a) An appeal to the Commission under section 23B may be instituted —

- (a) by the teacher concerned; or
- (b) on behalf of the teacher by an organization in which the teacher is eligible to be enrolled as a member or an association that represents such an organization.

”.

Section 31 amended

8. Section 31 (1) (c) (ii) of the principal Act is amended by inserting after “in respect of” the following —

“ an appeal under section 23B, ”.

Section 49 amended

9. After section 49 (2a) of the principal Act the following subsection is inserted —

“ (2b) An appeal does not lie under this section from a decision of the Commission on an appeal under section 23B.

”.

Division 1 of Part IIA repealed

10. Part IIA of the principal Act is amended by repealing Division 1.

Section 80C amended

11. Section 80C (1) of the principal Act is amended in paragraph (d) of the definition of “Government officer” by deleting “as defined in section 73A”.

Section 80X amended

12. Section 80X (1) of the principal Act is amended —

- (a) in paragraph (b) of the definition of “office” by deleting “of the Education Department as defined in section 73A” and substituting the following —

“ of the Department ”; and

- (b) by inserting after the definition of “relevant organization” the following definition —

“
 “teaching staff of the Department”
 includes —

- (a) persons who are employed under the *Education Act 1928* and engaged in teaching; and
- (b) persons who hold or act in positions in respect of which a teaching academic qualification is required in the department of the Public Service principally assisting the Minister for Education in administering the *Education Act 1928*,

and includes any position in respect of which a qualification referred to in paragraph (b) is required, but does not include public service officers;

”.

Section 113 amended

13. Section 113 (1) (db) of the principal Act is amended by deleting “section 78 (1) (b) (i) or”.

Division 2 — Education Act 1928

Principal Act

14. In this Division the *Education Act 1928** is referred to as the principal Act.

[* *Reprinted as at 11 August 1992.*
Amended by Act No. 32 of 1994.]

Section 3 amended

15. Section 3 (1) of the principal Act is amended by inserting after the definition of “department” the following definition —

“
 “Department of Training” means the department of the Public Service designated “Western Australian Department of Training” at the commencement of section 15 of the *Industrial Legislation Amendment Act 1995*;

”.

Section 7 amended

16. Section 7 of the principal Act is amended —

- (a) in subsection (3) by deleting “and Division 1 of Part IIA of the *Industrial Relations Act 1979*” and substituting the following —

“
 , the *Industrial Relations Act 1979* and any applicable public sector standard established under the *Public Sector Management Act 1994*

”;

and

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

“
 (5) Conditions of employment, including conditions relating to appointment, transfer, promotion and discipline, prescribed by or under this Act do not apply to or in respect of persons appointed under subsection (2) to the Department of Training.

”.

17. Section 7D of the principal Act is amended —

- (i) by inserting after the definition of “salary” the following definition —

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

”

- (ii) in the definition of “the regulations” by deleting “this Act,” and substituting the following —

“ this Act. ”; and

- (iii) by deleting the definition of “the Tribunal”;

- (b) in subsection (3) (c) by deleting subparagraph (ii) and substituting the following subparagraph —

(ii) agreement or award in force under the *Industrial Relations Act 1979*.

22.

and

- (c) by repealing subsection (4) and substituting the following subsection —

(4) A declaration with respect to a teacher is not a punishment for the purposes of section 23B (1) (a) of the

Industrial Relations Act 1979 but a teacher who is aggrieved by a declaration may within 14 days of being served with notice of the declaration appeal to the Commission on the ground that the teacher did not refuse or fail to comply with an order and on no other ground, and the Commission may hear and determine such an appeal.

”.

Division 3 — Transitional and miscellaneous

Interpretation

18. In this Division, unless the contrary intention appears —

“**amended provisions**” means the *Industrial Relations Act 1979* as amended by this Part;

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

“**repealed provisions**” means provisions repealed by section 10;

“**former Tribunal**” means the Government School Teachers Tribunal established under the repealed provisions.

Members to vacate office

19. (1) The members of the former Tribunal immediately before the coming into operation of section 10 are to vacate office on the coming into operation of section 10.

(2) Nothing in subsection (1) affects the operation of section 21.

Awards, orders or other decisions

20. After the coming into operation of section 10 —

- (a) an award, order or other decision of the former Tribunal in force under the repealed provisions immediately before the coming into operation of section 10 is, for all the purposes of the amended provisions and of any other written law, to be taken to be an award, order or decision made by the Commission under the amended provisions; and
- (b) any industrial agreement registered by the former Tribunal under the repealed provisions and in force under those provisions immediately before the coming into operation of section 10 is, for all the purposes of the amended provisions and of any other written law, to be taken to be an industrial agreement registered by the Commission.

Pending proceedings continued

21. (1) In this section “**pending proceedings**” means any application, appeal or other claim made to the former Tribunal under the *Industrial Relations Act 1979* that was commenced before the former Tribunal before the coming into operation of section 10.

(2) For the purposes of this section, an application, appeal or other claim is commenced if proceedings pursuant to the referral of the industrial matter or the institution of the appeal have commenced.

(3) Pending proceedings may be continued and dealt with under the repealed provisions as in force immediately before the coming into operation of section 10.

(4) Notwithstanding section 10, for the purposes of continuing and dealing with pending proceedings the former

Tribunal is to continue as constituted under the repealed provisions.

(5) Notwithstanding section 10 repealed provisions are to be taken to remain in force to the extent necessary for the purposes of subsections (3) and (4).

(6) An award, order or other decision made in pending proceedings is, for all the purposes of the amended provisions and of any other written law, to be taken to be an award, order or decision made by the Commission.

Jurisdiction in relation to existing matters

22. Subject to section 21 and the amended provisions, the Commission may exercise jurisdiction in relation to a matter whether that matter arose before or after the coming into operation of section 10.

***Constitution Acts Amendment Act 1899* amended**

23. Schedule V to the *Constitution Acts Amendment Act 1899** is amended —

- (a) in Division 1 of Part 1 by deleting “Chairman, or deputy of the Chairman, of the Government School Teachers’ Tribunal established under Division 1 of Part IIA of the *Industrial Relations Act 1979*.”; and
- (b) in Division 1 of Part 2 by deleting “Member, or deputy of a member, of the Government School Teachers’ Tribunal established under Division 1 of Part IIA of the *Industrial Relations Act 1979*.”.

[* *Reprinted as at 6 April 1993.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 44-6 and Acts Nos. 6, 32, 35 and 36 of 1994.]

Government Employees' Housing Act 1964 amended

24. Section 19 (h) of the *Government Employees' Housing Act 1964** is amended by deleting "subject to section 78 (1) (b) (iv) of the *Industrial Relations Act 1979*, but otherwise".

[* *Act No. 95 of 1964.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 90 and Act No. 32 of 1994.]

PART 3 — PUBLIC SECTOR MANAGEMENT

Division 1 — Industrial Relations Act 1979

Principal Act

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

[* *Reprinted as at 11 May 1994.*
Amended by Act No. 32 of 1994.]

Section 7 amended

26. Section 7 (1) of the principal Act is amended in the definition of “constituent authority” by deleting “the Railways Classification Board, or a Promotions Appeal Board,” and substituting the following —

“ or the Railways Classification Board, ”.

Section 23 amended

27. After section 23 (2) of the principal Act the following subsection is inserted —

“

(2a) Notwithstanding subsections (1) and (2), the Commission does not have jurisdiction to enquire into or deal with any matter in respect of which a procedure referred to in section 97 (1) (a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.

”.

Section 80E amended

28. Section 80E of the principal Act is amended —

- (a) in subsection (1) by deleting “and subsection (6)” and substituting the following —

“ and subsections (6) and (7) ”;

- (b) in subsection (6) by inserting after “subsection (1)” the following —

“ , but subject to subsection (7), ”; and

- (c) by inserting after subsection (6) the following subsection —

“
(7) Notwithstanding subsections (1) and (6), an Arbitrator does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench, any matter in respect of which a procedure referred to in section 97 (1) (a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.
”.

Section 80I amended

29. Section 80I of the principal Act is amended —

- (a) in subsection (1) —

- (i) by inserting after “*Public Sector Management Act 1994*” the following —

“ and subsection (3) of this section ”;

- (ii) in paragraph (b) by deleting “a public service officer” and substituting the following —

“ a Government officer ”;

and

- (iii) in paragraph (d) by deleting “a public service officer” and substituting the following —

“ a Government officer ”;

and

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

“
(3) A Board does not have jurisdiction to hear and determine an appeal by a Government officer from a decision made under regulations referred to in section 94 of the *Public Sector Management Act 1994*. ”.

Section 80T repealed

30. Section 80T of the principal Act is repealed.

Division 4 of Part IIA repealed

31. Part IIA of the principal Act is amended by repealing Division 4.

Section 113 amended

32. Section 113 (1) of the principal Act is amended by deleting paragraph (db).

Schedule 2 repealed

33. Schedule 2 to the principal Act is repealed.

Division 2 — Transitional and miscellaneous**Pending appeals and claims continued**

34. (1) In this section —

“amended provisions” means the *Industrial Relations Act 1979* as amended by this Part;

“former Board” means a Promotions Appeal Board established under the repealed provisions;

“pending appeal” means any appeal made to a former Board under the *Industrial Relations Act 1979* that was commenced before the former Board before the coming into operation of section 31;

“repealed provisions” means provisions repealed by section 31.

(2) Pending appeals may be continued and dealt with under the repealed provisions as in force immediately before the coming into operation of section 31.

(3) Notwithstanding section 31, for the purposes of continuing and dealing with pending proceedings a former Board is to continue as constituted under the repealed provisions.

(4) Notwithstanding section 31, the repealed provisions are to be taken to remain in force to the extent necessary for the purposes of subsections (2) and (3).

(5) Notwithstanding the amendments effected by section 28, section 80E of the principal Act continues to apply to and in

respect of any claim that was commenced under that section before the coming into operation of section 28.

Miscellaneous amendments

35. The Acts referred to in the Table to this section are amended in the manner set out in the Table.

TABLE

<i>Short title of Act</i>	<i>Amendment</i>
1. <i>Aboriginal Affairs Planning Authority Act 1972</i>	In section 16 delete “, the <i>Superannuation and Family Benefits Act 1938</i> or the <i>Government Employees (Promotions Appeal Board) Act 1945</i> ,” and substitute the following — “ or the <i>Superannuation and Family Benefits Act 1938</i> ”.
2. <i>Agriculture and Related Resources Protection Act 1976</i>	In section 9 (5) delete “, the <i>Government Employees (Promotions Appeal Board) Act 1945</i> ”.
3. <i>Agriculture Protection Board Act 1950</i>	In section 8A delete “the <i>Government Employees (Promotions Appeal Board) Act 1945</i> ”.
4. <i>Coal Miner’s Welfare Act 1947</i>	In section 15 (2) delete “and Division 4 of Part IIA of the <i>Industrial Relations Act 1979</i> ”.
5. <i>Colleges Act 1978</i>	Repeal section 33.

6. *Edith Cowan University Act 1984* Repeal section 33.
7. *Gold Corporation Act 1987* In section 52 (3) delete “and Division 4 of Part IIA of that Act does not apply to GoldCorp or its employees”.
- In section 68 (4) delete “and Division 4 of Part IIA of that Act does not apply to Gold Corporation or its employees”.
8. *Industrial Relations Amendment Act 1990* Repeal section 14.
9. *Parliamentary Commissioner Act 1971* In the Schedule delete “ A Promotions Appeal Board established under Division 4 of Part IIA of the *Industrial Relations Act 1979*.”.
10. *Public Sector Management Act 1994* Repeal section 37 (1).
- In section 37 (2) delete “referred to in subsection (1)” and substitute the following —
- “ as a public service officer of a person who was employed in an organization immediately before the organization became a part of the Public Service ”.

In Schedule 5 repeal clause 11.

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| 11. <i>Taxation
(Staff
Arrangements)
Act 1969</i> | Repeal section 11. |
| 12. <i>University of
Notre Dame
Australia
Act 1989</i> | In section 25 (3) (b) delete “and Division 4 of that Part does not apply to the University or its academic or other staff”. |
| 13. <i>Waterways
Conservation
Act 1976</i> | In section 39 (7) delete “, and the provisions of the <i>Government Employees (Promotions Appeal Board) Act 1945</i> do not apply to or in relation to such an officer or employee”. |

PART 4 — RAILWAYS CLASSIFICATION BOARD**Section 80R amended**

36. Section 80R of the *Industrial Relations Act 1979** is amended —

- (a) in subsection (1) by deleting “subsection (3)” and substituting the following —

“ subsections (2a) and (3) ”;

- (b) in subsection (2) by inserting after “subsection (1)” the following —

“ , but subject to subsection (2a), ”; and

- (c) by inserting after subsection (2) the following subsections —

“

(2a) Where the Westrail Enterprise Bargaining Agreement provides that an industrial matter is to be included in an umbrella enterprise award established in accordance with that Agreement, that industrial matter —

- (a) is, for the purposes of enabling such an award to be made by the Commission, taken to be an industrial matter in respect of which the Board does not have jurisdiction; and
- (b) ceases to be an industrial matter in respect of which the Board has jurisdiction upon the making by the Commission of such an award including that industrial matter.

(2b) In subsection (2a) **“Westrail Enterprise Bargaining Agreement”** means the Westrail Enterprise Bargaining Agreement 1992 registered by the Commission on 18 February 1993, as renewed from time to time, or any Agreement expressed to be made in substitution for that Agreement.

”.

[* *Reprinted as at 11 May 1994.*
Amended by Act No. 32 of 1994.]

PART 5 — WORKPLACE AGREEMENTS

Section 6, *Salaries and Allowances Act 1975* amended

37. After section 6 (4) of the *Salaries and Allowances Act 1975** the following subsection is inserted —

“

(4a) Nothing in this section prevents a person referred to in subsection (1) (d) or (e) from being a party, as an employee, to a workplace agreement under the *Workplace Agreements Act 1993*, and a workplace agreement under that Act has effect despite any determination of the Tribunal.

”.

[* *Reprinted as at 26 April 1994.*

For subsequent amendments see Acts Nos. 14 and 32 of 1994.]

Section 43, *Workplace Agreements Act 1993* amended

38. Section 43 (3) of the *Workplace Agreements Act 1993** is amended by deleting paragraph (b) and substituting the following paragraph —

“

(b) the holder of an office or position for which the remuneration is determined under the *Salaries and Allowances Act 1975*, unless that person is an officer referred to in section 6 (1) (d) or (e) of that Act.

”.

[* *Act No. 13 of 1993.*]

PART 6 — UNFAIR DISMISSAL

Division 1 — Industrial Relations Act 1979

Principal Act

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

[* *Reprinted as at 11 May 1994.*
Amended by Act No. 32 of 1994.]

Section 23 amended

40. Section 23 (3) of the principal Act is amended by deleting paragraph (h) and substituting the following paragraph —

“

(h) on a claim of harsh, oppressive or unfair dismissal make any order except an order that is authorized by section 23A.

”

Section 23AA inserted and transitional

41. (1) After section 23 of the principal Act the following section is inserted —

“

Onus of proof on claims of unfair dismissal

23AA. (1) On a claim of harsh, oppressive or unfair dismissal, the onus is on the employer to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified.

(2) If —

- (a) the employer does not show that there is a ground or are grounds on which the Commission could find that the dismissal was justified; or
- (b) the employee establishes that, whether or not it was justified, the dismissal was harsh, oppressive or unfair,

the claim is taken to have been established.

(3) For the purposes of this section, a dismissal is justified if there was a valid reason, or were valid reasons, connected with the employee's capacity or conduct, or based on the operational requirements of the undertaking, establishment or service, for the dismissal.

”.

(2) Section 23AA of the principal Act as inserted by this section applies to and in relation to —

- (a) any claim made under the principal Act after the coming into operation of this section; and
- (b) any claim that was made under the principal Act before the coming into operation of this section and has not been heard and determined under the principal Act.

Section 23A amended and transitional

42. (1) Section 23A of the principal Act is amended —

(a) in subsection (1) —

- (i) by deleting “On a referral to the Commission of a claim of harsh, oppressive or unfair dismissal

under section 29 (1) (b) (i)” and substituting the following —

“
On a claim of harsh, oppressive or
unfair dismissal
”;

(ii) by deleting “and” after paragraph (b); and

(iii) by inserting after paragraph (b) the following —

“
(ba) subject to subsections (1a) and
(4), order the employer to pay
compensation to the claimant for
loss or injury caused by the
dismissal; and
”;

(b) by inserting after subsection (1) the following subsection —

“
(1a) The Commission is not to make
an order under subsection (1) (ba) unless it
is satisfied that reinstatement or re-
employment of the claimant is
impracticable.
”;

and

(c) in subsection (4) by deleting “subsection (3)” and substituting the following —

“ subsection (1) (ba) or (3) ”.

(2) Section 23A of the principal Act as amended by this section applies to and in relation to —

(a) any claim made under the principal Act after the coming into operation of this section; and

- (b) any claim that was made under the principal Act before the coming into operation of this section and has not been heard and determined under the principal Act.

(3) Notwithstanding section 29 (2) of the principal Act, a referral by any employee in respect of a dismissal —

- (a) that occurred before the coming into operation of this section; and
- (b) that is, on the coming into operation of this section, the subject of an application under section 170EA of the *Industrial Relations Act 1988* of the Commonwealth that has not been determined under that Act,

may be made under section 29 (1) (b) (i) of the principal Act not later than 28 days after the coming into operation of this section.

Section 29 amended

43. Section 29 of the principal Act is amended —

- (a) in subsection (2) by deleting “A referral” and substituting the following —

“ Subject to subsection (3), a referral ”; and

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

“

(3) The Commission may, on the application of the employee, extend the time within which a referral may be made

by an employee under subsection (1) (b) (i)
if the Commission is satisfied that —

- (a) the dismissal is, at the time of the application under this subsection, the subject of an application under section 170EA of the Commonwealth Act; and
- (b) the extension of time is necessary to ensure a remedy in respect of the dismissal is available under this Act.

(4) The Commission may make an order under subsection (3) although an application for the making of the order was not made until after the expiration of 28 days after the day on which the relevant employment was terminated.

”.

Division 2 — Workplace Agreements Act 1993

Principal Act

44. In this Division the *Workplace Agreements Act 1993** is referred to as the principal Act.

[* *Act No. 13 of 1993.*]

Section 51 amended and transitional

45. (1) Section 51 of the principal Act is amended —

- (a) by inserting after the section designation “51.” the subsection designation “(1)”; and

- (b) by inserting the following subsections —

“

(2) In any proceeding under subsection (1) the onus is on the employer to show that there is a ground or are grounds on which the court could find that the dismissal was justified.

- (3) If —

(a) the employer does not show that there is a ground or are grounds on which the court could find that the dismissal was justified; or

(b) the person dismissed establishes that, despite being justified, the dismissal was harsh, oppressive or unfair,

the claim is taken to have been established.

(4) For the purposes of this section, a dismissal is justified if there was a valid reason, or were valid reasons, connected with the capacity or conduct of the person dismissed, or based on the operational requirements of the undertaking, establishment or service, for the dismissal.

”.

- (2) Section 51 (2), (3) and (4) of the principal Act as inserted by this section apply to and in relation to —

- (a) any action brought under section 51 (1) of the principal Act after the coming into operation of this section; and

- (b) any action that was brought under section 51 of the principal Act before the coming into operation of this section and has not been heard and determined under the principal Act.

Section 56 amended

46. Section 56 of the principal Act is amended —

- (a) in subsection (2) by deleting “An action” and substituting the following —

“ Subject to subsection (3), an action ”; and

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

“

(3) The court may, on the application of the person dismissed, extend the time within which an action may be brought under section 51 if the court is satisfied that —

- (a) the dismissal is, at the time of the application under this subsection, the subject of an application under section 170EA of the *Industrial Relations Act 1988* of the Commonwealth; and
- (b) the extension of time is necessary to ensure that a remedy in respect of the dismissal is available under this Act.

(4) The court may make an order under subsection (3) although an application for the making of the order was not made until after the expiration of 28 days after the day on which the relevant employment was terminated.

”.

Section 57 amended and transitional

47. (1) Section 57 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) The court is not to make an order under subsection (1) (d) (ii) unless it is satisfied that reinstatement or re-employment of the employee is impracticable.

”.

(2) Section 57 of the principal Act as amended by this section applies to and in relation to —

- (a) any action brought under section 51 of the principal Act after the coming into operation of this section; and
- (b) any action that was brought under section 51 of the principal Act before the coming into operation of this section and has not been heard and determined under the principal Act.

**PART 7 — MISCELLANEOUS AMENDMENTS TO
INDUSTRIAL RELATIONS ACT 1979**

Principal Act

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

[* *Reprinted as at 11 May 1994.*
Amended by Act No. 32 of 1994.]

Section 7 amended

49. After section 7 (1) of the principal Act the following subsection is inserted —

“

(1a) A matter relating to —

(a) the dismissal of an employee by an employer; or

(b) the refusal or failure of an employer to allow an employee a benefit under his contract of service,

is and remains an industrial matter for the purposes of this Act even though their relationship as employee and employer has ended.

”

Section 43 amended

50. After section 43 (1) of the principal Act the following subsections are inserted —

“

(2) The Commission may vary an industrial agreement for the purpose of including, omitting or

varying a provision, however expressed, that authorizes an employer to stand-down an employee.

(3) An application to the Commission to vary an industrial agreement for a purpose mentioned in subsection (2) may be made by any organization, association or employer which or who is a party to the agreement.

”

Sections 64A to 64C inserted

51. After section 64 of the principal Act the following sections are inserted —

“

Resignation from an organization

64A. (1) A member of an organization may end that membership by written notice of resignation addressed to the organization.

(2) A notice of resignation shall be served on the organization by —

- (a) delivering it personally to the organization's office at the address registered under section 58 (1) (c); or
- (b) sending it by certified mail to the address mentioned in paragraph (a) or to the address of the organization as ascertained by referring to a current directory of telephone numbers.

(3) A notice of resignation takes effect on the day on which it is served on the organization or on a later day specified in the notice.

Membership to end if subscription not paid

64B. (1) Where —

- (a) a period in respect of which a subscription has been paid to an organization for a person's membership of the organization expires; and
- (b) no subscription to continue or renew that membership has been paid to the organization before, or within 3 months after, that expiry,

that membership ends by operation of this subsection at the end of that 3 month period.

(2) Subsection (1) does not apply if the membership has already ended under section 64A or under the rules of the organization.

Effect of sections 64A and 64B in relation to rules

64C. (1) The ways of ending membership of an organization set out in sections 64A and 64B are in addition to any ways of ending that membership provided for in the rules of the organization.

(2) The ending of membership of an organization under section 64A or 64B has effect despite anything in the rules of the organization.

Section 66 amended

52. Section 66 (7) of the principal Act is repealed and the following subsection is substituted —

“

(7) When 6 months have elapsed after the coming into operation of section 51 of the *Industrial Legislation Amendment Act 1995* the Registrar shall review the rules of each organization and shall, by application pursuant to this section, bring before the President the rules of any organization if, in the opinion of the Registrar, any such rule is contrary to or inconsistent with section 64A or 64B.

”.

Minor amendments

53. The principal Act is amended —

- (a) in the long title by deleting “**unions**” and substituting the following —

“ **organizations** ”;

- (b) in section 16 (3) by inserting after “attend” the following —

“ to ”;

- (c) in section 17 (4) by deleting “term” and substituting the following —

“ terms ”;

- (d) in section 22 (1) by deleting “subsections (2) (c) and (3)” and substituting the following —

“ subsection (2) (c) ”;

- (e) in section 47 (5) (a) by inserting before “Association” the following —

“ Mines and Metals ”;

- (f) in section 69 (10) by deleting “referred to in that subsection” and substituting the following —

“ on which that request was so made ”;

- (g) in section 70 (1) (f) by deleting “alter” and substituting the following —

“ utter ”;

- (h) in section 72 (1) by deleting “unions” and substituting the following —

“ organizations ”;

- (i) in section 93 (3) by deleting “the Schedule” and substituting the following —

“ Schedule 1 ”;

- (j) in section 94 by deleting “the Act” and substituting the following —

“ this Act ”;

- (k) in section 102 (1) (c) —
 - (i) by deleting “a union” and substituting the following —

“ an organization ”; and
 - (ii) by deleting “the union” and substituting the following —

“ the organization ”;
- (l) in section 102 (1) (d) by deleting “a union” and substituting the following —

“ an organization ”;
- (m) in section 111 (3) (a) by inserting after “person by” the following —

“ whom ”;
- (n) in section 112 (3) (a) by inserting after “person by” the following —

“ whom ”;
- (o) in section 113 (1) (c) by deleting “its” and substituting the following —

“ their ”;
- (p) in section 113 (1) (c) (iv) by inserting after “Commission” the following —

“ and of industrial agreements ”;

- (q) in each of the provisions listed in the Table to this paragraph by deleting “union” and substituting in each case the following —

“ organization ”;

Table

section 66 (2) (a) (iii)

section 66 (2) (a) (v)

section 66 (4)

and

- (r) in each of the provisions listed in the Table to this paragraph by deleting “union” and substituting in each case the following —

“ State organization ”.

Table

section 71 (7)

section 71 (8) (b)

section 71 (8) (c)