

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT AND REPEAL ACT 1995

(No. 79 of 1995)

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INDUSTRIAL RELATIONS LEGISLATION AMENDMENT AND REPEAL ACT 1995

No. 79 of 1995

AN ACT:

to amend the following Acts —

- ***Industrial Relations Act 1979;***
- ***Legal Practitioners Act 1893;***
- ***Workplace Agreements Act 1993;***
- ***Minimum Conditions of Employment Act 1993;***
- and
- ***Long Service Leave Act 1958,***

to repeal the following Acts —

- ***The Masters and Servants Act 1892;***
- ***Truck Act 1899;***
- ***Trade Unions Act 1902;***
- ***Factories and Shops Act 1963;***
- ***Salaries and Wages Freeze Act 1982;*** and
- ***Temporary Reduction of Remuneration (Senior Public Officers) Act 1983,***

and consequentially amend other Acts,

and for related purposes.

[Assented to 16 January 1996.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

- 1.** This Act may be cited as the *Industrial Relations Legislation Amendment and Repeal Act 1995*.

Principal Act

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

[* *Reprinted as at 11 May 1994.*
*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 102 and
Acts Nos. 1 and 11 of 1995.]*

Commencement

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

(2) The provisions of Part 2 and Part 5 and sections 12 (1), 13, 35, 36, 66 and 68 come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — POLITICAL DONATIONS
BY ORGANIZATIONS**

Part VIC inserted

4. Before Part VII of the principal Act the following Part is inserted —

“

**PART VIC — POLITICAL DONATIONS
BY ORGANIZATIONS**

Interpretation

97N. (1) In this Part —

“election candidate” means a candidate in a parliamentary election;

“ordinary moneys”, in relation to an organization, means any moneys of the organization other than —

- (a) amounts referred to in section 97P (2); or
- (b) interest or other amounts referred to in section 97P (3);

“parliamentary election” means the election of a member or members of the parliament of the State, the Commonwealth, another State or a Territory;

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

“political fund”, in relation to an organization, means a fund maintained by the organization under section 97P (1);

“political levy” means a levy imposed by an organization on its members (otherwise than as a portion of each member’s subscriptions) for the purpose of raising moneys to be applied by way of political donation;

“political party” means a body corporate or other body or organization having as one of its objects or activities the promotion of the election of election candidates endorsed by it.

(2) A reference in this Part to a political donation is a reference to expenditure incurred —

- (a) in making a payment to a political party (whether by way of a membership subscription or affiliation fee or in any other manner);
- (b) in making a payment to an election candidate or a group of election candidates;
- (c) in the payment of expenses directly or indirectly incurred by a political party;
- (d) in the payment of expenses directly or indirectly incurred in connection with a parliamentary election by an election candidate or a group of election candidates; or
- (e) in connection with, or by way of, the making of a payment to a person on the understanding that that person or another

person will directly or indirectly apply the whole or a part of the payment as mentioned in paragraph (a), (b), (c) or (d).

Payments

97O. For the purposes of this Part any payment made from a fund or account jointly owned, managed or controlled by an organization and another body shall be regarded as having been made by the organization.

Political donations by organizations

97P. (1) An organization shall, if necessary for the purposes of this section, maintain a separate fund as a political fund.

(2) If an organization receives an amount from any of its members to be applied by way of political donation (whether the amount is received as a portion of a member's subscription, or in payment of a political levy or in any other circumstances), the organization shall credit the amount to a political fund.

(3) If an organization receives any interest or other amount earned or derived from the investment of moneys standing to the credit of a political fund, the organization shall credit the interest or other amount to that political fund.

(4) Subject to subsection (6), an organization may credit any amount from its ordinary moneys to a political fund.

(5) The rules of an organization must contain provisions that enable a member to elect not to have —

- (a) any portion of the member's subscription;
or
- (b) a proportion of the member's subscription greater than the proportion specified by the member in accordance with the rules,

applied by way of political donation.

(6) An organization shall not credit any amount to a political fund contrary to an election made by a member under the rules referred to in subsection (5).

(7) If an organization seeks payment, as a specific portion of each member's subscription, of an amount that is to be applied by way of political donation, an election made by a member under the rules referred to in subsection (5) does not reduce the total subscription payable by that member.

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

(9) Subsection (8) does not prevent the making of a decision which authorizes both the crediting of an amount to a political fund and the payment of that amount, or some of it, from the political fund by way of political donation.

(10) An organization shall not make any payment by way of political donation unless the payment is made in accordance with rules of the organization providing for such a payment to be made only with the specific approval of the state council of the organization.

(11) If an organization does not have a state council, the reference in subsection (10) to the state council is a reference to the body that, on application made by the organization under this subsection, is designated by the President as having functions in the nature of those of a state council in relation to the organization.

(12) Subsection (10) does not apply to moneys that have been received by an organization in payment of a political levy.

(13) If —

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

the organization shall make payments in accordance with that direction from moneys in a political fund derived from that amount and shall not make any payment from those moneys that would be contrary to that direction.

(14) A direction referred to in subsection (13) (b) may be altered by the member concerned by written notice given to the organization and, if that occurs, the altered direction has effect for the purposes of subsection (13).

(15) An organization shall not impose a political levy unless the rules of the organization provide for the imposition of political levies and contain provisions that enable a member to elect not to pay a political levy.

Rules are not to conflict with section 97P

97Q. Within 12 months of the coming into operation of section 4 of the *Industrial Relations Legislation Amendment and Repeal 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 of those rules is contrary to or inconsistent with section 97P.

Monitoring compliance with political donation requirements

97R. (1) An organization shall make its records relating to political donations and political funds available for inspection if requested to do so by the Registrar or a Deputy Registrar.

(2) If in the course of auditing the accounting records of an organization the auditor forms the opinion that there has been any contravention of or failure to comply with section 97P, the auditor is to express that opinion in reporting on those records.

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

Duties of officers relating to political donations

97S. If an organization contravenes or fails to comply with section 97P, any officer of the organization who is in any way, by act or omission and directly or indirectly, concerned in or a party to the transaction in question, knowing the transaction to have been a contravention of or failure to comply with that section also contravenes or fails to comply with that section.

Organizations to notify details of political expenditure

97T. (1) An organization shall file with the Registrar, at such time after the end of each financial year of the organization as is prescribed, a statement showing the relevant particulars in relation to each political donation made by the organization during the financial year.

(2) The relevant particulars in relation to a political donation are —

- (a) the amount of the donation;
- (b) the manner in which the donation was made;
- (c) the name and address of the person to whom the donation was made; and
- (d) the political fund from which the donation was made.

(3) The statement does not have to show the relevant particulars in relation to a political donation unless —

- (a) the donation exceeds \$1 500; or
- (b) the sum of that political donation and all other political donations made by the organization during the financial year to or for the benefit of the same political party, electoral candidate or group of electoral candidates exceeds \$1 500.

(4) The statement shall be certified by statutory declaration by the Secretary or other prescribed officer of the organization to be a correct statement of the information contained in it.

(5) All statements filed with the Registrar under this section shall be made available for inspection at the office of the Registrar as prescribed.

”.

PART 3 – OFFICIALS OF ORGANIZATIONS

Section 63 amended

5. Section 63 (1) (c) of the principal Act is deleted and the following paragraph is substituted —

“

- (c) accounting records that are in accordance with generally accepted accounting principles and truly record and explain the financial transactions and financial position of the organization;

”

Section 65 amended

6. (1) Section 65 (a) of the principal Act is amended by deleting “accounts” and substituting the following —

“ accounting records ”.

(2) Section 65 (b) of the principal Act is amended —

- (a) by deleting “and” after subparagraph (i); and
- (b) by deleting “auditor.” at the end of subparagraph (ii) and substituting the following —

“

auditor; and

- (iii) a sources and application of funds statement of the organization for the financial year concerned audited by the auditor.

”

Section 65A inserted

7. After section 65 of the principal Act the following section is inserted —

“

Powers of auditor

65A. For the purposes of auditing the accounting records of an organization or of performing any function conferred on the auditor under this Act, the auditor of an organization is entitled —

- (a) to have full and free access at all reasonable times to all records or documents relating to the receipt or expenditure of moneys by the organization, or the acquisition, use or disposal of assets of the organization, or the incurring of liabilities by the organization; and
- (b) to require any officer or employee of the organization to provide the auditor with any information or explanation that the auditor wants.

”.

Part II, Division 5 inserted and consequential amendments

8. (1) After section 73 of the principal Act the following Division is inserted in Part II —

“

***Division 5 — Duties of officers
of organizations***

Duties

74. (1) In this section and in section 77 —

“**finance official**” means an officer of an organization who is entitled to participate directly in the financial management of the organization.

(2) A finance official is to act honestly at all times in the performance of the functions of the finance official's office or employment.

(3) A finance official is to exercise a reasonable degree of care and diligence at all times in the performance of the functions of the finance official's office or employment.

(4) The degree of care and diligence required by subsection (3) is the degree of care and diligence that a reasonable person in the finance official's position would reasonably be expected to exercise.

(5) Each finance official of an organization is to ensure that the organization keeps and maintains accounting records as required by section 63 (1) (c).

(6) A person who is or has been a finance official of an organization is not to make use of information acquired by virtue of the person's position as a finance official to obtain or seek to obtain directly or indirectly, a pecuniary advantage for the person or for any other person or to cause or seek to cause detriment, loss or damage to the organization.

(7) Subsection (6) does not apply to acts done —

- (a) in and for the purposes of the performance of the functions of a finance official's office or employment; or
- (b) with the consent of the committee of management of the organization.

(8) Details of any matter about which consent is given under subsection (7) (b) are to be disclosed by the committee of management to the members of the organization in accordance with the rules of the organization.

(9) A finance official of an organization is not to make use of the finance official's position as a finance official to obtain or seek to obtain, directly or indirectly, a pecuniary advantage for the official or for any other person or to cause or seek to cause detriment, loss or damage to the organization.

(10) Subsection (9) does not apply to acts done in and for the purposes of the performance of the functions of a finance official's office or employment.

(11) A finance official of an organization is to provide the committee of management of the organization with returns of the finance official's pecuniary interests at such times and in such form as are prescribed by the rules of the organization.

(12) A finance official of an organization who has a material personal interest in a matter involving the organization is to disclose the nature of the interest to the committee of management of the organization as soon as is practicable after the relevant facts come to the finance official's knowledge.

(13) This section is in addition to, and not in derogation of, any rule of law relating to the duties or liabilities of a finance official and does not prevent the institution of civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Auditor to report on compliance with duties

75. (1) In reporting on the accounting records of an organization under section 65 the auditor is to express an opinion as to whether any person has contravened or failed to comply with section 74.

(2) If the auditor finds that the accounting records are not in a form that enables an informed opinion to be expressed as required by subsection (1), the auditor is to report that finding.

Rules are not to conflict with section 74 or 75

76. Within 6 months of the coming into operation of section 8 of the *Industrial Relations Legislation Amendment and Repeal Act 1995* the Registrar shall review the rules of each organization of employees and shall, by application pursuant to section 66, bring before the President the rules of any organization of employees if, in the opinion of the Registrar, any of those rules is contrary to or inconsistent with section 74 or 75.

Proceedings for breach of duty

77. (1) If a person who is or has been a finance official of an organization (“**the respondent**”) contravenes or fails to comply with section 74 —

- (a) the organization;
- (b) an officer of the organization;
- (c) a member of the organization;
- (d) the Registrar or a Deputy Registrar; or
- (e) an Industrial Inspector,

may apply in the prescribed manner to an industrial magistrate’s court for the enforcement of section 74.

(2) On the hearing of an application under subsection (1) the industrial magistrate's court may, if the contravention or failure to comply is proved, do any one or more of the following —

- (a) by order, issue a caution to the respondent;
- (b) subject to subsection (3), by order impose a penalty on the respondent of such amount as the industrial magistrate's court considers just, but not exceeding \$5 000;
- (c) order the respondent to pay compensation to the organization in respect of any loss or damage suffered by the organization as a result of the contravention or failure to comply;
- (d) order the restitution or forfeiture of any pecuniary advantage obtained by any person as a result of the contravention or failure to comply;
- (e) order the respondent to do any specified thing or to cease any specified activity.

(3) Only one penalty can be imposed on the respondent under subsection (2) (b) in respect of contraventions or failures to comply arising out of one course of conduct.

(4) The industrial magistrate's court may, by order, dismiss an application under subsection (1).

(5) Subject to subsection (6) an order under subsection (2) or (4) may be made with or without costs.

(6) Costs shall not be given against the Registrar, a Deputy Registrar or an Industrial Inspector in relation to proceedings under this section.

(7) Where the industrial magistrate's court orders money to be paid under this section by way of a penalty, compensation, restitution, forfeiture or costs the industrial magistrate's court shall state in the order the name of the person liable to pay the money and the name of the person to whom the money is to be paid.

(2) The principal Act is amended as set out in the following Table —

Table

Provision amended	Amendment
s. 84A (1) (a)	After “44 (3)” insert — “ or 74 ”.
s. 93 (9)	Before “83” insert — “ 77 or ”.
s. 102A (1) and (2)	Before “83” insert — “ 77 or ”.
s. 103 (3)	Before “83” insert — “ 77 or ”.

**PART 4 — MISCELLANEOUS PROVISIONS RELATING
TO AWARDS ETC.**

Section 26 amended

9. Section 26 (1) (d) of the principal Act is amended —

- (a) by deleting “in having regard for the interests of the community as a whole under paragraph (c)”;
- (b) in subparagraph (iv) by deleting “inflation.” and substituting the following —

“ inflation; ”; and

- (c) by inserting after subparagraph (iv) the following subparagraph —

“

- (v) any changes in productivity that have occurred or are likely to occur.

”.

Section 41A amended

10. After section 41A (1) of the principal Act the following subsection is inserted —

“

(1a) The Commission shall not under section 41 register an agreement as an industrial agreement unless the agreement includes an estimate of the number of employees who will be bound by the agreement upon registration.

”.

Part II, Division 2A inserted

11. After section 49 of the principal Act the following Division is inserted —

“

***Division 2A — Miscellaneous provisions
relating to awards etc.***

**Awards and agreements to make provision for
resolution of disputes**

49A. (1) In exercising its jurisdiction under this Part the Commission shall not make an award or applicable order, or register an industrial agreement, unless the award, order or industrial agreement makes provision for procedures to be followed in connection with questions, disputes or difficulties arising under the award, order or industrial agreement.

(2) The Commission may order persons involved in a question, dispute or difficulty arising under an award, order or industrial agreement that is before the Commission to comply with the dispute settling procedures provided for in that award, order or industrial agreement.

(3) In subsection (1) “**applicable order**” means an order with respect to which, in the opinion of the Commission, a question, dispute or difficulty capable of resolution by dispute settling procedures may arise.

Inspection of records

49B. (1) In exercising its jurisdiction under this Part the Commission shall not make an award or order, or register an industrial agreement, empowering a representative of an organization of

employees to inspect the time and wages records of an employee or former employee unless the award, order or industrial agreement provides that —

- (a) the power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who —
 - (i) is not a member of the organization; and
 - (ii) has notified the employer in writing that the employee or former employee does not consent to a representative of an organization of employees having access to those records;
- (b) the power of inspection may only be exercised by a representative of an organization of employees authorized for the purpose in accordance with the rules of the organization;
- (c) the representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records;
- (d) a person who has given a notification referred to in paragraph (a) (ii) may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect;
- (e) before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer; and

- (f) an employer shall endeavour to —
- (i) maintain the time and wages records of employees in such a manner that access by a representative of an organization to the records of employees does not give access to records of employees who are not members of the organization and have notified the employer that they do not consent to a representative of an organization of employees having access to the records;
 - (ii) ensure that a representative of an organization does not obtain access to the records of employees who are not members of the organization and have notified the employer that they do not consent to a representative of an organization of employees having access to the records; and
 - (iii) ascertain whether an employee or prospective employee does not consent to a representative of an organization of employees having access to the time and wages records of the employee or prospective employee.

(2) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organization of employees having access to the time and wages records of that employee or prospective employee.

”.

Certain provisions of no effect or to be reviewed

12. (1) On and from the coming into operation of this subsection a provision of an award, order or industrial agreement made before the coming into operation of section 11 that is contrary to, or inconsistent with, section 49B as inserted into the principal Act by this Act is, to the extent of the conflict or inconsistency, of no effect.

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

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

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

- (a) varying its provisions, or inserting further provisions, to make adequate provision for the procedures required under section 49A of the principal Act as inserted into the principal Act by this Act; and
- (b) varying or omitting any provision that is contrary to, or in conflict with, section 49B of the principal Act as inserted into the principal Act by this Act, or inserting further provisions, to ensure that the award, order or industrial agreement is consistent with that provision,

as the case requires.

Section 49C inserted and transitional provisions

13. (1) Before the heading to Division 3 of Part II of the principal Act the following section is inserted —

“

Superannuation

49C. (1) In this section —

“complying superannuation fund or scheme” means a superannuation fund or scheme —

- (a) that is a complying superannuation fund or scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; and
- (b) to which, under the governing rules of the fund or scheme, contributions may

be made by or in respect of the employee permitted to nominate a fund or scheme.

(2) In exercising its jurisdiction under this Part the Commission shall not make an award or order, or register an industrial agreement, which requires contribution to a superannuation fund or scheme by an employee or by an employer in respect of an employee unless the award, order or industrial agreement —

- (a) permits the employee to nominate a complying superannuation fund or scheme;
- (b) requires the employer to notify the employee of the entitlement to nominate a complying superannuation fund or scheme;
- (c) requires the employer —
 - (i) if the award, order or industrial agreement specifies one or more complying superannuation funds or schemes to which contributions may be made, to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer, until the employee **n o m i n a t e s a c o m p l y i n g** superannuation fund or scheme; or
 - (ii) if the award, order or industrial agreement does not specify a complying superannuation fund or scheme to which contributions may be made, to make contributions to a complying fund or scheme nominated by the employer until the employee nominates such a fund or scheme;

- (d) requires the employee and employer to be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made; and
 - (e) provides that an employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee.
- (3) The Governor may make regulations —
- (a) prescribing procedures to be followed by an employer in notifying an employee of entitlement to nominate a complying superannuation fund or scheme; and
 - (b) prescribing procedures to be followed by an employee in nominating a complying superannuation fund or scheme.
- (4) A person shall not by threats or intimidation persuade or attempt to persuade —
- (a) an employee or prospective employee to nominate a particular superannuation fund or scheme; or
 - (b) an employer to make contributions to a particular superannuation fund or scheme.

Penalty:

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

(5) In subsection (4) —

“**threats**” includes any conduct by an employer that clearly indicates to an employee or prospective employee that employment or promotion is conditional upon the employee nominating, or changing to, a complying superannuation fund or scheme suggested by the employer.

”.

(2) On the coming into operation of this section any employer bound by an award, order or industrial agreement which requires contributions in respect of an employee to be made to a superannuation fund or scheme specified in the award, order or industrial agreement may, in lieu of those contributions and notwithstanding any provision of the award, order or industrial agreement, make contributions to a complying superannuation fund or scheme, as defined in section 49C (1) of the principal Act, nominated by the employee.

(3) Regulations made under section 49C (3) of the principal Act as amended by this Act apply to and in respect of notifications and nominations under subsection (2) of this section.

(4) An employee and an employer are bound by the nomination of an employee under subsection (2) of this section unless the employee and employer agree to change the complying superannuation fund or scheme to which the contributions are to be made.

(5) An employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee entitled to nominate such a fund or scheme under this section.

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

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

and

- (c) after affording employers and organizations who make application under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement by varying or omitting any provision that is contrary to, or in conflict with, section 49C of the principal Act as inserted into the principal Act by subsection (1) of this section to ensure that the award, order or industrial agreement is consistent with that provision.

Section 80W amended

14. Section 80W (1) of the principal Act is amended by inserting after “Division 2” the following —

“ and Division 2A ”.

PART 5 — BARGAINING AND INDUSTRIAL AGENTS

Section 81E inserted

15. After section 81D of the principal Act the following section is inserted —

“

Representation

81E. In proceedings before an industrial magistrate's court a party may —

- (a) appear in person;
- (b) be represented by an agent; or
- (c) be represented by a legal practitioner.

”.

Section 112A inserted

16. After section 112 of the principal Act the following section is inserted —

“

Registration of industrial agents

112A. (1) In this section a reference to carrying on business as an industrial agent is a reference to carrying on business as a person who does either or both of the following —

- (a) appears as an agent under section 31, 81E or 91;

- (b) provides advice or other services in relation to industrial matters,

but does not include carrying on business by an organization, the Council, the Chamber or the Mines and Metals Association.

(2) Except as provided under this section a person who, not being an industrial agent registered under this section or a legal practitioner, in any way carries on business as an industrial agent, or holds himself out as carrying on business as an industrial agent, commits an offence.

Penalty: \$2 000.

(3) For the purposes of section 77A of the *Legal Practitioners Act 1893* a person who is —

- (a) registered under this section;
- (b) acting under a contract of employment for a person who is registered under this section; or
- (c) an employee or officer of any organization, the Council, the Chamber, the Mines and Metals Association, or a prescribed body or class of body, acting on behalf of that body,

is authorized to —

- (d) appear for a party, person or body under section 31, 81E or 91; and
- (e) provide advice and other services in relation to industrial matters.

(4) A person shall not be registered under this section unless that person can demonstrate that that

person has professional indemnity insurance, or has sufficient material resources, of a prescribed kind to provide professional indemnity.

(5) Regulations made by the Governor are to —

- (a) provide for a scheme of registration of persons for the purposes of this section and the procedure for obtaining registration;
- (b) prescribe a code of conduct for persons registered under this section;
- (c) prescribe the circumstances in which, and the procedures by which, a person may be disqualified from obtaining registration, or registration may be cancelled;
- (d) provide for appeals to the Full Bench from disqualification or cancellation of registration; and
- (e) prescribe any matter or thing which is authorized or required to be prescribed for the purposes of this section.

”.

***Legal Practitioners Act 1893* amended**

17. After section 77 of the *Legal Practitioners Act 1893** the following section is inserted —

“

Sections 76 and 77 not to apply to certain persons

77A. Nothing in sections 76 and 77 shall be construed as preventing a person from appearing for a

person before a court, or as preventing a person from providing advice or other services, if that appearance or the provision of that advice or service, is authorized by a written law.

”.

[* Reprinted as at 25 March 1993.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 118-9.]

***Workplace Agreements Act 1993* amended**

18. (1) Section 3 of the *Workplace Agreements Act 1993** is amended by inserting after the definition of “individual workplace agreement” the following definition —

“

“**legal practitioner**” means a “certificated practitioner” as defined in the *Legal Practitioners Act 1893*;

”.

(2) Section 37 of the *Workplace Agreements Act 1993** is repealed and the following section is substituted —

“

Representation on appeal

37. A party to an appeal under section 35 may —

- (a) appear in person;
- (b) be represented by an agent; or
- (c) be represented by a legal practitioner.

”.

(3) Section 53 of the *Workplace Agreements Act 1993** is repealed and the following section is substituted —

“

Representation

53. In any proceedings under this Division an employer or employee may —

- (a) appear in person;
- (b) be represented by an agent; or
- (c) be represented by a legal practitioner.

”.

(4) After section 101 of the *Workplace Agreements Act 1993** the following section is inserted —

“

Registration of industrial agents

101A. (1) In this section a reference to carrying on business as an industrial agent is a reference to carrying on business as a person who does all or any of the following —

- (a) acts as a bargaining agent;
- (b) acts as an agent under section 37 or 53;
- (c) provides advice or other services in relation to workplace agreements,

but does not include carrying on business by an organization, the Council, the Chamber or the Mines and Metals Association.

(2) Except as provided under this section a person who, not being an industrial agent registered under

this section or a legal practitioner, in any way carries on business as an industrial agent, or holds himself out as carrying on business as an industrial agent, commits an offence.

Penalty: \$2 000.

(3) For the purposes of section 77A of the *Legal Practitioners Act 1893* a person who is —

- (a) registered under this section;
- (b) acting under a contract of employment for a person who is registered under this section;
or
- (c) an employee or officer of any organization, the Council, the Chamber, the Mines and Metals Association, or a prescribed body or class of body, acting on behalf of that body,

is authorized to —

- (d) act as a bargaining agent;
- (e) act as an agent under section 37 or 53; and
- (f) provide advice and other services in relation to workplace agreements.

(4) A person shall not be registered under this section unless that person can demonstrate that that person has professional indemnity insurance, or has sufficient material resources, of a prescribed kind to provide professional indemnity.

- (5) Regulations made by the Governor are to —
- (a) provide for a scheme of registration of persons for the purposes of this section and the procedure for obtaining registration;
 - (b) prescribe a code of conduct for persons registered under this section;
 - (c) prescribe the circumstances in which, and the procedures by which, a person may be disqualified from obtaining registration, or registration may be cancelled;
 - (d) provide for appeals to the Full Bench within the meaning of the *Industrial Relations Act 1979* from disqualification or cancellation of registration; and
 - (e) prescribe any matter or thing which is authorized or required to be prescribed for the purposes of this section.

”.

[* *Act No. 13 of 1993.*
Amended by Act No. 1 of 1995.]

PART 6 — INDUSTRIAL MAGISTRATE'S COURTS

Section 81A repealed and a section substituted

19. Section 81A of the principal Act is repealed and the following section is substituted —

“

Jurisdiction under this Act

81A. An industrial magistrate's court has the jurisdiction conferred on it by sections 77, 83, 83A, 96J, 110, 111 and 112.

”

Section 81AA amended

20. After section 81AA (b) of the principal Act the following paragraphs are inserted —

“

(ba) Part IV of the *Long Service Leave Act 1958*;

(bb) section 36 of that Act;

(bc) section 107C (2) of the *Child Welfare Act 1947*;

”

Section 81CA inserted

21. After section 81C of the principal Act the following section is inserted —

“

Procedure, enforcement etc.

81CA. (1) In this section —

“**general jurisdiction**” means the jurisdiction of an industrial magistrate's court under —

(a) section 77, 83, 96J, 110, 111 or 112;

- (b) Part IV of the *Long Service Leave Act 1958*; or
- (c) Division 1 of Part 5 of the *Workplace Agreements Act 1993*;

“prosecution jurisdiction” means the jurisdiction of an industrial magistrate’s court under —

- (a) section 83A;
- (b) section 100 of the *Workplace Agreements Act 1993*;
- (c) section 36 of the *Long Service Leave Act 1958*;
- (d) section 107C (2) of the *Child Welfare Act 1947*; or
- (e) section 46 of the *Minimum Conditions of Employment Act 1993*.

(2) Except as otherwise prescribed by or under this Act or another law —

- (a) the powers of an industrial magistrate’s court; and
- (b) the practice and procedure to be observed by an industrial magistrate’s court,

when exercising general jurisdiction are those provided for by the *Local Courts Act 1904* as if the proceedings were an action within the meaning of that Act.

(3) Without limiting subsection (2), regulations may extend the circumstances in which an industrial

magistrate's court exercising general jurisdiction may hear and determine an action under Part VIA of the *Local Courts Act 1904*.

(4) Section 88 applies to and in relation to an industrial magistrate's court exercising general jurisdiction as if —

- (a) each reference to the Court in that section were a reference to the industrial magistrate's court; and
- (b) “or the Presiding Judge” in section 88 (4) were deleted.

(5) When exercising prosecution jurisdiction an industrial magistrate's court constitutes a court of summary jurisdiction.

(6) An order or other decision of an industrial magistrate's court made in exercise of prosecution jurisdiction shall be enforced in accordance with the *Justices Act 1902*.

(7) Subject to subsection (6), a judgment, order, direction or other decision of an industrial magistrate's court may be enforced in accordance with regulations made under section 113 (3).

(8) In the absence of evidence to the contrary, anything done by an industrial magistrate's court shall be taken to have been done within its jurisdiction.

”.

Section 81D amended

22. (1) Section 81D (3) of the principal Act is amended by deleting “Except where subsection (4) applies” and substituting the following —

“ For the purposes of prosecution jurisdiction ”.

(2) Section 81D (4) of the principal Act is amended by deleting “the jurisdiction referred to in section 81AA (a)” and substituting the following —

“ general jurisdiction ”.

Section 82A amended

23. Section 82A of the principal Act is amended by inserting before “83 ” the following —

“ 77, ”.

Section 83 amended

24. (1) After section 83 (1) of the principal Act the following subsection is inserted —

“
(1a) An application for the enforcement of an award, industrial agreement or order (other than an order made under section 32, 44 (6) or 66) shall not be made otherwise than to an industrial magistrate’s court.
”.

(2) In section 83 of the principal Act subsections (7) and (8) are repealed.

Section 83A inserted

25. After section 83 of the principal Act the following section is inserted —

“

Proceedings for offences

83A. (1) An industrial magistrate's court has jurisdiction to hear and determine, under the *Justices Act 1902*, complaints for any contravention or failure to comply with this Act that constitutes an offence.

(2) In subsection (1) the reference to the *Justices Act 1902* does not include Part VIII of that Act.

(3) Without limiting section 84, the jurisdiction referred to in subsection (1) shall not be exercised by any other court.

”.

Section 96J amended

26. Section 96J (3) of the principal Act is repealed.

Section 111 amended

27. Section 111 (3) of the principal Act is amended by deleting “any court of competent jurisdiction” and substituting the following —

“ an industrial magistrate's court ”.

Section 112 amended

28. Section 112 (3) of the principal Act is amended by deleting “any court of competent jurisdiction” and substituting the following —

“ an industrial magistrate's court ”.

***Workplace Agreements Act 1993* amended**

29. Section 62 of the *Workplace Agreements Act 1993** is repealed.

[* *Act No. 13 of 1993.*
Amended by Act No. 1 of 1995.]

PART 7 — MISCELLANEOUS AMENDMENTS

Division 1 — Industrial Relations Act 1979

Section 7 amended

30. (1) Section 7 (1) of the principal Act is amended by inserting in the appropriate alphabetical position the following definition —

“
 “subscription” means any subscription, fee or dues payable by a member for or in respect of membership of an organization;
”.

(2) Section 7 (2) of the principal Act is amended by deleting “, dues, fees,”.

Section 55 amended

31. Section 55 (4) of the principal Act is amended —

(a) after paragraph (d) by inserting the following —

“ and ”;

(b) after paragraph (e) by deleting “; and” and substituting a full stop; and

(c) by deleting paragraph (f).

Section 64D inserted

32. After section 64C of the principal Act the following section is inserted —

“
 Purging the register

64D. The rules of an organization shall provide for the register referred to in section 63 to be purged on

not less than 4 occasions in each year by striking off the names of members whose membership has ended under section 64A or 64B or under the rules.

”.

Section 66 amended

33. Section 66 (1) (c) of the principal Act is amended by deleting “by reason of any matter arising from the discharge of his duties under this Act” and substituting the following —

“ of his own motion ”.

Section 72 amended

34. Section 72 (5) of the principal Act is amended —

- (a) after paragraph (a) by deleting “and”; and
- (b) after paragraph (b) by substituting a semicolon for the full stop and inserting the following —

“

- (c) actions and other proceedings already commenced by or against any of those organizations may be continued by or against the new organization and the new organization is substituted for each of those organizations as a party; and
- (d) actions and other proceedings that could have been brought by or against any of those organizations may be brought by or against the new organization.

”.

Section 72A amended

35. Section 72A (1) of the principal Act is amended in the definition of “organization” by inserting after “employees” the following —

“
and includes the Western Australian Branch of the
Australian Medical Association Incorporated
”.

Section 72B inserted and consequential amendments

36. (1) After section 72A of the principal Act the following section is inserted —

“
AMA may represent interests of medical practitioners

72B. (1) In this section —

“**medical practitioner**” means a medical practitioner as defined in the *Medical Act 1894*;

“**WA Branch of the AMA**” means the Western Australian Branch of the Australian Medical Association Incorporated.

(2) The WA Branch of the AMA may represent under this Act the industrial interests of medical practitioners as if it were an organization of employees and for that purpose —

(a) the references to “**organization**” in paragraphs (e), (i), (j), (k) and (l) of the definition of “industrial matter” in

section 7 (1) include the WA Branch of the AMA; and

- (b) Divisions 2 and 3 of Part II, sections 80C (4) and 80F and Parts III and VIA apply to the WA Branch of the AMA as if it were an organization of employees.

(3) The WA Branch of the AMA does not have the right, to the exclusion of an organization or organizations, to represent under this Act the industrial interests of medical practitioners, unless an order to that effect is made under section 72A.

(4) Within 30 days of the coming into operation of section 36 of the *Industrial Relations Legislation Amendment and Repeal Act 1995* the WA Branch of the AMA shall lodge with the Registrar a copy of its rules as then in force.

(5) The WA Branch of the AMA shall lodge with the Registrar, within 30 days of the making of the alteration, any alteration made to the rules lodged under subsection (4) as altered from time to time.

(6) The WA Branch of the AMA shall file with the Registrar once in each year, at such time as is prescribed —

- (a) a list of the names, residential addresses, and occupations of the persons holding offices in the Branch; and
- (b) a record of the number of members of the Branch,

certified by statutory declaration by the Executive Director of the Branch to be a correct statement of the information contained in the list and the record.

”.

(2) Section 80C of the principal Act is amended by repealing subsections (5) and (6).

(3) Section 80X (1) of the principal Act is amended in the definition of “organization” by deleting “employed in a public hospital”.

(4) The *Hospitals Amendment Act 1994* is amended by repealing the following passage in item 11 of the Table to section 18 —

“

In section 80C (5), insert after “Incorporated” the following —

“

or any other association, whether
registered under this Act or not, approved
by the Commission in relation to the
application or claim in question

”.

”.

Section 96M repealed

37. Section 96M of the principal Act is repealed.

Section 98 amended

38. (1) Section 98 (1) of the principal Act is amended by inserting after “awards” the following —

“ , industrial agreements ”.

(2) Section 98 (2) of the principal Act is amended by inserting after “award” the following —

“ , industrial agreement ”.

(3) Section 98 (3) of the principal Act is amended —

(a) in paragraph (d) by inserting after “location” the following —

“
and, if he thinks fit, require written
answers to be given
”;

(b) in paragraph (e) by deleting “or exhibit” and substituting the following —

“ , exhibit, send or deliver ”; and

(c) in paragraph (f) —

(i) by inserting after “seize” the following —

“ or retain ”; and

(ii) by deleting “or exhibited” and substituting the following —

“ , exhibited, sent or delivered ”.

Section 102A amended

39. Section 102A of the principal Act is amended in subsections (1) and (2) by deleting “or institute proceedings for an offence against this Act”.

Section 104 inserted

40. After section 103 of the principal Act the following section is inserted —

“

Prosecutions

104. (1) A person authorized by the Minister to prosecute offences under this Act of a particular kind

may make and prosecute a complaint of an offence of that kind.

(2) If a complaint shows that the person making the complaint is authorized as referred to in subsection (1), that fact is to be taken to be proved in the absence of evidence to the contrary.

(3) An Industrial Inspector may, of his own motion, make and prosecute a complaint of an offence under this Act.

(4) The Registrar or a Deputy Registrar may, of his own motion, and shall, if he is directed under this Act to do so, make and prosecute a complaint of an offence under this Act.

(5) A person not referred to in subsection (1), (3) or (4) may make a complaint of an offence under this Act but the complaint cannot be prosecuted unless the court is satisfied that the complainant has been affected by the conduct complained of.

”.

Section 109 amended

41. Section 109 of the principal Act is amended by deleting “fees, levies, and dues” in both places where it occurs and substituting, in each case the following —

“ subscriptions and levies ”.

Schedule 1 amended

42. Schedule 1 to the principal Act is amended by deleting item 1 and substituting the following item —

“
1. The complete text of industrial agreements, and retirements from industrial agreements.
”.

Division 2 — Workplace Agreements Act 1993

Section 47 amended

43. Section 47 (3) (b) of the *Workplace Agreements Act 1993** is deleted and following paragraph is substituted —

“

- (b) each entry in relation to long service leave is retained during the employment of the employee and for not less than 7 years thereafter, and any other entry is retained for not less than 7 years after it is made.

”.

[* *Act No. 13 of 1993.*
Amended by Act No. 1 of 1995.]

**PART 8 — AMENDMENTS RELATING TO
LONG SERVICE LEAVE**

Division 1 — Long Service Leave Act 1958

Long Service Leave Act

44. In this Part the *Long Service Leave Act 1958** is referred to as the Long Service Leave Act.

[* *Approved for Reprint 11 July 1974.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 126.*]

Long title amended

45. The long title to the Long Service Leave Act is amended by deleting “**Industrial Arbitration Act, 1912,**” and substituting the following —

“ ***Industrial Relations Act 1979*** ”.

Section 4 amended

46. (1) Section 4 (1) of the Long Service Leave Act is amended —

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

“
“**award**” means an award in force under
the *Industrial Relations Act 1979*;
”;

- (b) by deleting the definition of “Board of Reference”;

- (c) by deleting the definition of “Commission”;

- (d) in the definition of “Commission in Court Session” by deleting “Industrial Arbitration Act, 1912,” and substituting the following —

“ *Industrial Relations Act 1979* ”;

- (e) by deleting the definition of “employee” and substituting the following definition —

“

“**employee**” means, subject to subsection (3) —

- (a) any person employed by an employer to do work for hire or reward including an apprentice or industrial trainee;
- (b) any person whose usual status is that of an employee;
- (c) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or
- (d) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if the person is in all other respects an employee;

”;

- (f) by deleting the definition of “employer” and substituting the following definition —

“

“employer” includes —

- (a) persons, firms, companies and corporations; and
- (b) the Crown and any Minister of the Crown, or any public authority,

employing one or more employees;

”;

- (g) by deleting the definition of “industrial agreement” and substituting the following definition —

“

“industrial agreement” means an industrial agreement in force under the *Industrial Relations Act 1979*;

”;

and

- (h) by inserting in the appropriate alphabetical positions the following definitions —

“

“apprentice” means an apprentice under the *Industrial Training Act 1975*;

“industrial trainee” means an industrial trainee under the *Industrial Training Act 1975*;

“workplace agreement” means a workplace agreement that is in force under the *Workplace Agreements Act 1993*.
”.

(2) Section 4 (2) of the Long Service Leave Act is amended —

(a) by deleting paragraph (c) and substituting the following —

“
(c) where the normal weekly number of hours have varied over the period of employment of an employee the normal weekly number of hours of work shall, subject to paragraph (a), be deemed to be the average weekly number of hours worked by the employee during that period of employment (calculated by reference to such hours as are ascertainable if the hours actually worked over that period are not known); and
”;

and

(b) in paragraph (d) by deleting “rate of three dollars a week for board, and one dollar a week for lodging” and substituting the following —

“ prescribed rate ”.

(3) After section 4 (2) of the Long Service Leave Act the following subsection is inserted —

“
(3) Where a person is, by virtue of —

(a) an award or industrial agreement;

- (b) a workplace agreement or other agreement between the person and his employer; or
- (c) an enactment of the State, the Commonwealth or of another State or Territory,

entitled to, or eligible to become entitled to, long service leave at least equivalent to the entitlement to long service leave under this Act, that person is not within the definition of “employee” in subsection (1).

”.

Section 5 repealed and a section substituted

47. Section 5 of the Long Service Leave Act is repealed and the following section is substituted —

“

Limited contracting-out of long service leave

5. An employer and an employee may agree that the employee may forgo his entitlement to long service leave under this Act if —

- (a) the employee is given an adequate benefit in lieu of the entitlement; and
- (b) the agreement is in writing.

”.

Section 6 amended

48. Section 6 (2) (d) (i) of the Long Service Leave Act is amended by deleting “Industrial Arbitration Act, 1912,” and substituting the following —

“ *Industrial Relations Act 1979* ”.

Section 8 amended

49. Section 8 (3) of the Long Service Leave Act is amended —

(a) by inserting after paragraph (a) the following —

“ or ”; and

(b) by deleting paragraphs (b) and (c) and substituting the following paragraph —

“
(b) for any reason other than serious misconduct,
”.

Section 8A amended

50. Section 8A of the Long Service Leave Act is amended by deleting “an agreement between the Western Australian Employers’ Federation (Incorporated) and the Trades and Labor Council of Western Australia or”.

Section 9 amended

51. (1) Section 9 (1) of the Long Service Leave Act is repealed and the following subsections are substituted —

“

(1) Where an employee becomes entitled to a period of long service leave under this Act the leave is to be granted and taken —

(a) subject to any agreement between the employer and the employee, as soon as reasonably practicable after it becomes due; and

- (b) in one continuous period, or if the employer and the employee so agree, in separate periods of not less than one week.

(1a) Where an employer and employee have not agreed when the employee is to take the employee's long service leave, subject to subsection (1b), the employer is not to refuse the employee taking, at any time suitable to the employee, any period of long service leave to which the employee became entitled more than 12 months before that time.

(1b) The employee is to give to the employer at least 2 weeks' notice of the period during which the employee intends to take the long service leave.

(2) Section 9 (3) of the Long Service Leave Act is repealed and the following subsection is substituted —

(3) An employee is to be paid for a period of long service leave at the time payment is made in the normal course of the employment, unless the employee requests in writing to be paid before the period of leave commences, in which case the employee is to be so paid.

Parts IV, V and VI repealed and a Part substituted

52. Parts IV, V and VI of the Long Service Leave Act are repealed and the following Part is substituted —

**PART IV. — ENFORCEMENT OF THE
PROVISIONS OF THE ACT**

Industrial magistrate's courts

11. (1) An industrial magistrate's court has jurisdiction to hear and determine all questions and

disputes in relation to rights and liabilities under this Act, including without limiting the generality of the foregoing, questions and disputes —

- (a) as to whether a person is or is not an employee, or an employer, to whom this Act applies;
- (b) whether and when and to what extent an employee is or has become entitled to long service leave, or payment in lieu of long service leave;
- (c) as to the ordinary rate of pay of an employee;
- (d) as to whether the employment of the employee was or was not ended by an employer in order to avoid or to attempt to avoid liability for long service leave; and
- (e) with respect to a benefit in lieu of long service leave under an agreement made under section 5.

(2) Jurisdiction granted under subsection (1) is exclusive of any other court except where an appeal lies to that other court.

”.

Division 1 of Part VII repealed

53. Part VII of the Long Service Leave Act is amended by repealing Division 1.

Section 26 repealed and sections 26 and 26A substituted

54. Section 26 of the Long Service Leave Act is repealed and the following sections are substituted —

“

Keeping of employment records

26. (1) An employer must ensure that details are recorded of —

- (a) each employee's name and, if the employee is under 21 years of age, the employee's date of birth;
- (b) the date on which the employee commenced employment with the employer;
- (c) the gross and net amounts paid to the employee under the contract of employment, and all deductions and the reasons for them;
- (d) all leave taken by the employee, whether paid, partly paid or unpaid;
- (e) details of any agreement made under section 5 between the employer and the employee;
- (f) such other details as are necessary for the calculation of the entitlement to, and payment for, long service leave under this Act; and
- (g) other matters prescribed by the regulations.

(2) The employer must ensure that —

- (a) the records are kept in accordance with the regulations; and
- (b) each entry is retained during the employment of the employee and for not less than 7 years thereafter.

Penalty: \$5 000.

Access to records kept by employer

26A. (1) An employer, on request in writing by a relevant person, must —

- (a) produce to the person the records under section 26 relating to an employee to whom that section applies; and
- (b) let the person inspect the records.

Penalty: \$5 000.

(2) Relevant persons are —

- (a) the employee or a person authorized in writing by the employee; and
- (b) an industrial inspector under the *Industrial Relations Act 1979*.

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

- (a) continues so long as the record is required to be kept under section 26 (2) (b);

- (b) is not affected by the fact that the employee is no longer employed by the employer;
- (c) includes the further duties —
 - (i) to let the relevant person enter premises of the employer for the purposes of inspection of the records; and
 - (ii) to let the relevant person take copies of, or extracts from, the records;and
- (d) must be complied with not later than the end of the next pay period after the request for inspection is received.

”.

Division 4 of Part VII repealed

55. Part VII of the Long Service Leave Act is amended by repealing Division 4.

Sections 32, 33 and 34 repealed

56. Sections 32, 33 and 34 of the Long Service Leave Act are repealed.

Section 36 repealed and a section substituted

57. Section 36 of the Long Service Leave Act is repealed and the following section is substituted —

“

Exclusive jurisdiction for offences

36. An industrial magistrate’s court has jurisdiction to hear and determine complaints for any

contravention or failure to comply with this Act that constitutes an offence and that jurisdiction is exclusive of any other court except where an appeal lies to that other court.

”.

Section 37 amended

58. Section 37 of the Long Service Leave Act is amended by deleting from “his solicitor” to the end of the section and substituting the following —

“

a legal practitioner who is a certificated practitioner under and for the purposes of the *Legal Practitioners Act 1893* or by the person’s agent duly appointed for that purpose.

”.

Section 38 amended

59. Section 38 (2) of the Long Service Leave Act is amended by deleting “fifty dollars.” and substituting the following —

“ \$1 000. ”

Section 39 amended

60. Section 39 of the Long Service Leave Act is amended by deleting “Industrial Arbitration Act, 1912,” and substituting the following —

“ Industrial Relations Act 1979 ”.

Division 2 — Transitional and Saving

General transitional provisions

61. (1) In this Division —

“**amended provisions**” means the Long Service Leave Act as amended by this Part;

“**commencement day**” means the day on which this Part comes into operation;

“**former provisions**” means the Long Service Leave Act as in force before the commencement day.

(2) On the commencement day —

(a) notwithstanding the definition of “**employee**” in the amended provisions, where a person is an employee as defined by section 4 of the former provisions that person is, while in continuous employment (within the meaning of that term in section 6 of the Long Service Leave Act) with his or her employer, to be regarded as an employee for the purposes of the amended provisions; and

(b) where an exemption has been granted under section 5 of the former provisions to an employer in respect of the employees of that employer, that exemption continues until —

(i) an agreement is entered into under section 5 of the amended provisions by that employer with each of the employees of that employer; or

(ii) the expiry of the period of 6 months, or such extended period as is determined in relation to that employer pursuant to subsection (3), after the commencement day,

whichever is the earlier.

(3) The Minister may, on the application of an employer who has been granted an exemption under section 5 of the former provisions, extend the period of 6 months referred to in subsection (2) (b) (ii) for such further period as the Minister determines.

(4) Regulations may be made for any matter if —

- (a) this section does not make provision or sufficient provision in respect of the matter; or
- (b) it is necessary or convenient to do so to facilitate the transition to the amended provisions.

Pending proceedings continued

62. (1) In this section —

“former Board” means the Board of Reference constituted under Part IV of the former provisions;

“Full Bench” means the Full Bench of the Western Australian Industrial Relations Commission as defined in and for the purposes of the *Industrial Relations Act 1979*;

“pending proceedings” means —

- (a) the reference of any question or dispute to the former Board; or
- (b) an appeal to the Commission in Court Session,

under the former provisions that was commenced before the commencement day.

(2) Pending proceedings may be continued and dealt with under the former provisions.

(3) Notwithstanding section 52 or the amended provisions, for the purposes of continuing and dealing with pending proceedings the former Board shall continue as constituted by the former provisions.

(4) Notwithstanding section 52, the former provisions remain in force to the extent necessary for the purposes of subsections (2) and (3).

(5) A determination made in pending proceedings shall, for all the purposes of the amended provisions and of any other written law, be deemed to be a determination made by —

- (a) in the case of proceedings referred to in paragraph (a) of the definition of “**pending proceedings**”, an industrial magistrate; or
- (b) in the case of proceedings referred to in paragraph (b) of the definition of “**pending proceedings**”, the Full Bench,

under the amended provisions.

Jurisdiction over existing matters

63. Subject to section 62 and the amended provisions an industrial magistrate’s court or the Full Bench, as the case requires, may exercise jurisdiction in relation to a matter whether that matter arose before or after the commencement day.

Division 3 — Consequential Amendments

Consequential amendments to the *Minimum Conditions of Employment Act 1993*

64. (1) Section 44 (2) of the *Minimum Conditions of Employment Act 1993** is amended —

- (a) by inserting after paragraph (a) the following paragraph —

“
(aa) the date on which the employee commenced employment with the employer;
”;

- (b) by deleting “and” after paragraph (c); and

- (c) by inserting after paragraph (c) the following —

“
(ca) such details as are necessary for the calculation of the entitlement to, and payment for, long service leave under the *Long Service Leave Act 1958*; and
”.

(2) Section 44 (3) (b) of the *Minimum Conditions of Employment Act 1993** is deleted and the following paragraph is substituted —

“
(b) each entry in relation to long service leave is retained during the employment of the employee and for not less than 7 years thereafter, and any other entry is retained for not less than 7 years after it is made;
”.

[* *Act No. 14 of 1993.*]

**PART 9 — REPEAL OF SPENT OR OUTDATED
LEGISLATION**

***The Masters and Servants Act 1892* repealed**

65. *The Masters and Servants Act 1892* is repealed.

***Truck Act 1899* repealed and consequential amendments**

66. (1) The *Truck Act 1899* is repealed.

(2) Section 5 of the principal Act is repealed.

(3) Section 113 of the *Prisons Act 1981** is repealed.

[* *Reprinted as at 9 July 1992.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 171-2.]*

(4) Section 31 of the *Coal Industry Tribunal of Western
Australia Act 1992** is repealed.

[* *Act No. 37 of 1992.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 34.]*

(5) Section 3 of the *Minimum Conditions of Employment
Act 1993** is amended in the definition of “minimum condition of
employment” by inserting after “pay” in paragraph (a) the
following —

“ , or other requirement as to pay, ”.

[* *Act No. 14 of 1993.*]

(6) After section 17 of the *Minimum Conditions of Employment Act 1993** the following Part is inserted —

“

**PART 3A — OTHER REQUIREMENTS
AS TO PAY**

References to terms in this Part

17A. (1) A reference in this Part to an employee includes a reference to any person in any manner employed for wages in work of any kind or in manual labour.

(2) In subsection (1), “**wages**” includes any money or thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration.

(3) A reference in this Part to the contract of employment only applies if the contract is in writing.

Entitlements as to form and use of pay

17B. (1) An employee is not to be directly or indirectly compelled by an employer to accept —

- (a) goods of any kind; or
- (b) accommodation or other services of any kind,

instead of money as any part of his or her pay unless this is authorized or required under the workplace agreement, award or contract of employment or under a written law.

(2) An employee is not to be directly or indirectly compelled by an employer to spend any part of his or her pay in a particular way.

(3) In proceedings by an employee for recovery of any amount due as his or her pay —

- (a) anything given or provided by the employer contrary to subsection (1) is to be treated as if it had never been given or provided;
- (b) any amount that the employee has been compelled to spend contrary to subsection (2) is to be treated as if it had never been paid to the employee.

Entitlement as to payment of money

17C. (1) To the extent that an employee receives his or her pay in money the employee is entitled to be paid in full and payment is to be made —

- (a) in cash;
- (b) by cheque, postal order or money order payable to the employee;
- (c) by payment into an account, specified by the employee, with a bank or financial institution; or
- (d) in any other manner authorized or required under the workplace agreement, award or contract of employment.

(2) In the case of any employee who is not employed by the Crown, payment can be made under subsection (1) (b) or (c) if, and only if, the employee so authorizes.

Authorized deductions from pay

17D. (1) Despite section 17C, an employer may deduct from an employee's pay —

- (a) an amount the employer is authorized, in writing, by the employee to deduct and pay on behalf of the employee;
- (b) an amount the employer is authorized to deduct and pay on behalf of the employee under the workplace agreement, award or contract of employment; and
- (c) an amount the employer is authorized or required to deduct by order of a court or under a law of the State or the Commonwealth.

(2) The employee is entitled to have any amount so deducted paid by the employer in accordance with the employee's instructions or in accordance with the requirements of the workplace agreement, award, contract of employment, court order or law of the State or the Commonwealth (as the case may be).

(3) Nothing in this section requires an employer to make deductions requested by an employee.

(4) An employee may, by giving written notice to the employer, withdraw an authorization under subsection (1) (a).

”.

[* *Act No. 14 of 1993.*]

Trade Unions Act 1902 repealed and consequential amendments

67. (1) The *Trade Unions Act 1902* is repealed.

(2) Section 80H (6) of the principal Act is amended by deleting —

“
a Trade Union within the meaning of the *Trade Unions Act 1902*,
”.

(3) Section 4 (3) of the *Associations Incorporations Act 1987** is repealed.

[* *Act No. 59 of 1987.*
*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 14.*]

(4) Section 4 (1) of the *Mines Safety and Inspection Act 1994** is amended in paragraph (a) of the definition of “trade union” by deleting “or under the *Trade Unions Act 1902*”.

[* *Act No. 62 of 1994.*]

(5) Section 3 (1) of the *Occupational Health, Safety and Welfare Act 1984** is amended in paragraph (a) of the definition of “trade union” by deleting “or under the *Trade Unions Act 1902*”.

[* *Reprinted as at 23 January 1989.*
*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 150.*]

(6) Section 5 (c) of the *Timber Industry Regulation Act 1926** is amended —

- (a) by deleting subparagraph (ii) and substituting the following subparagraph —

“
 (ii) a nominee of the organizations of timber workers that are registered under section 53 of the *Industrial Relations Act 1979*;
”;
and

- (b) by deleting “a timber workers’ trade union registered under the Trade Unions Act, 1902” and substituting the following —

“
 an organization of timber workers that is registered under section 53 of the *Industrial Relations Act 1979*
”.

[* Reprinted as approved 17 July 1970.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 214.]

Factories and Shops Act 1963 repealed and consequential amendments

68. (1) The *Factories and Shops Act 1963* is repealed.

(2) The *Child Welfare Act 1947** is amended —

- (a) in section 107 (1) by inserting after “107A (1)” the following —

“ , 107B (2) ”.

- (b) by inserting after section 107A the following sections —

“

Employment other than street trading

107B. (1) In this section “**employment**” does not include street trading.

(2) A child who is under 15 years of age shall not engage in employment —

- (a) during the hours when the child is required to attend school; or
- (b) outside the time between 6 a.m. and 9.30 p.m.

(3) Subsection (2) (a) does not apply to an exempt child.

(4) Where the Director-General is of the opinion that the welfare of a child is likely to be jeopardized by the fact of or the manner or extent of the engagement by the child in employment, the Director-General may, by written notice given to the child —

- (a) prohibit the child from engaging in employment; or
- (b) impose limitations on the engagement by the child in employment,

and a child who receives such a notice shall comply with it.

(5) The Director-General shall serve a copy of a notice issued under subsection (4) on —

- (a) the employer of the child; and
- (b) each person who has custody or guardianship of the child.

(6) A person who knowingly causes, procures or employs a child to engage in employment in contravention of subsection (2) or of a notice under subsection (4) or who knowingly allows a child in the custody or guardianship of that person to so engage, commits an offence.

Penalty: \$2 000 for a first offence and \$5 000 for a later offence.

(7) It shall be a requirement for —

- (a) the custodian or guardian of a child seeking employment to provide a declaration of details relating to any notice of prohibition from engaging in employment; and
- (b) the employer to sight and hold a copy of any declaration provided under paragraph (a).

(8) Where a person is prosecuted for an alleged offence of causing, procuring or employing a child to engage in employment in contravention of a notice under subsection (4), or of allowing a child in the custody or guardianship of that person to

so engage, it is a defence for the person to show —

- (a) that the Director-General had not served a copy of the notice on that person or otherwise informed that person of the contents of the notice; and
- (b) that the person was otherwise unaware of the contents of the notice.

Proceedings against employers may be taken by industrial inspectors

107C. (1) The powers of an industrial inspector appointed under the *Industrial Relations Act 1979* extend to the prosecution of a complaint against a person for —

- (a) an offence under section 107A (6) of causing procuring or employing a child to engage in street trading contrary to section 107A (1) or (2) or a notice under section 107A (4); or
- (b) an offence under section 107B (6) of causing, procuring or employing a child to engage in employment contrary to section 107B (2) or a notice under section 107B (4).

(2) An industrial magistrate's court established under Part III of the

Industrial Relations Act 1979 has jurisdiction to hear and determine complaints prosecuted by industrial inspectors under subsection (1).

”;

and

- (c) in section 142 (1), by inserting after “or (4)” the following —

“ or section 107B (2) or (4) ”.

[* *Reprinted as at 23 May 1990.*
*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 30-1.*]

- (3) Section 61 of the *Dental Act 1939** is repealed.

[* *Reprinted as approved 11 January 1979.*
*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 58-9.*]

- (4) The *Motor Vehicle Dealers Act 1973** is amended —

- (a) in section 21 by repealing subsections (4) to (7); and
- (b) in section 31 (a) by deleting “or to which a special certificate under section 21 issued in his name relates”.

[* *Reprinted as at 1 February 1985.*
*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 143.*]

- (5) Section 29 of the *Timber Industry Regulation Act 1926** is amended —

- (a) in subsection (1) by deleting “and of the Factories and Shops Act, 1920, and any amendment thereof,

and the regulations under those Acts” and substituting —

“ and the regulations under that Act ”; and

(b) by repealing subsection (2).

[* Reprinted as approved 17 July 1970.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 214.]

Salaries and Wages Freeze Act 1982 repealed and consequential amendments

69. (1) The *Salaries and Wages Freeze Act 1982* is repealed.

(2) Section 33 (2) of the *Petroleum Products Pricing Act 1983** is amended —

(a) after paragraph (c) by inserting the following —

“ or ”;

(b) by deleting “; or” at the end of paragraph (d) and substituting a full stop; and

(c) by deleting paragraph (e).

[* Act No. 1 of 1983.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 162.]

Temporary Reduction of Remuneration (Senior Public Officers) Act 1983 repealed

70. The *Temporary Reduction of Remuneration (Senior Public Officers) Act 1983* is repealed.

Saving

71. A repeal effected by section 69 (1) or 70 does not create or revive any entitlement to, or eligibility for the payment of any amount of money that was not payable before the repeal occurred.