

WESTERN AUSTRALIA

**INDUSTRIAL RELATIONS
AMENDMENT ACT 1993**

No. 15 of 1993

AN ACT to amend the *Industrial Relations Act 1979*.

[Assented to 29 November 1993]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Industrial Relations Amendment Act 1993*.

Commencement

2. This Act comes into operation on the day on which the *Workplace Agreements Act 1993* comes into operation.

Principal Act

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

[* *Reprinted as at 12 June 1991.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 101.]

Section 7 amended

4. (1) Section 7 (1) of the principal Act is amended —

(a) by deleting the definition of “Confederation” and inserting after the definition of “canvasser” the following definition —

“

“**Chamber**” means the body known as the Chamber of Commerce and Industry of Western Australia (Inc);

”;

(b) in the definition of “employee”, by inserting after “means” the following —

“ , subject to section 7B ”;

(c) in the definition of “employer”, by inserting after “includes” the following —

“ , subject to section 7B ”;

(d) in the definition of “industrial matter” where it first appears —

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

“ , subject to section 7C, ”;

(ii) in paragraph (g) of the definition by deleting “the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been ceased by an employer or”;

(iii) by deleting paragraph (h); and

(iv) by inserting at the end of the definition, outset to the left hand margin of the definition, the following —

“

but does not include —

(j) compulsion to join an organization of employees to obtain or hold employment;

(k) preference of employment at the time of, or during, employment by reason of being or not being a member of an organization of employees;

(l) non-employment by reason of being or not being a member of an organization of employees; or

(m) any matter relating to the matters described in paragraph (j), (k) or (l);

”;

(e) in the definition of “industrial matter” where it secondly appears —

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

“ , subject to section 7C ”;

(ii) by deleting paragraph (e);

(iii) in paragraph (g) of the definition by deleting “any matter relating to the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been ceased by an employer, or”; and

(iv) by inserting at the end of the definition, the following —

“

and also does not include —

(h) compulsion to join an organization of employees to obtain or hold employment;

(i) preference of employment at the time of, or during, employment by reason of being or not being a member of an organization of employees;

(j) non-employment by reason of being or not being a member of an organization of employees; or

(k) any matter relating to the matters described in paragraph (h), (i) or (j);

”;

- (f) by deleting the fullstop at the end of the subsection and substituting a semicolon; and
- (g) by inserting at the end of the subsection the following definition —

“

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

”

(2) Section 7 of the principal Act is amended by inserting after subsection (1) the following subsection —

“

(2) Subject to paragraph (g) of each of the definitions of “industrial matter” in subsection (1), the collection by an employer of subscriptions, dues, fees or levies payable to an organization of employees is not an industrial matter for the purposes of this Act.

”

Part IA inserted

5. After section 7 of the principal Act, the following Part is inserted —

“

PART IA — EFFECT OF *WORKPLACE AGREEMENTS ACT 1993* ON THIS ACT

This Act subject to *Workplace Agreements Act 1993*

7A. Without limiting the other provisions of this Part, this Act has effect subject to the *Workplace Agreements Act 1993*.

**Certain persons excluded from expression
“party”**

7AA. For the purposes of this Part an employee is not a party to a workplace agreement if the employee is an excluded party, within the meaning in section 32 (2) of the *Workplace Agreements Act 1993*, in respect of that agreement.

**Definitions of “employer” and “employee”
limited**

7B. Where any employer and any employee are parties to a workplace agreement, they are not, in relation to one another, within the definitions of “employer” and “employee” respectively in section 7 (1).

Definition of “industrial matter” limited

7C. (1) Where any employer and any employee are parties to any workplace agreement, a matter that is part of the relationship between that employer and that employee —

(a) is not —

(i) an industrial matter; or

(ii) capable of being agreed to be an industrial matter,

for the purpose of either of the definitions of “industrial matter” in section 7 (1);

(b) is not capable of being determined under section 24 (1) to be an industrial matter; and

- (c) cannot be referred to the Commission under section 80ZE.

(2) Subsections (3) and (4) of section 34 do not apply to a determination that is made contrary to subsection (1)(b) or to any proceeding based on that determination, and in the determination of any application for a prerogative writ or declaratory judgment no regard shall be had to the existence of any right of appeal under this Act.

(3) Subsection (1) also applies where —

- (a) a workplace agreement has expired; and
- (b) an arrangement is in force between the parties to that agreement of the kind referred to in section 19 (4) (b) of the *Workplace Agreements Act 1993*,

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

Powers in section 44 excluded

7D. (1) Where any employer and any employee are parties to —

- (a) an agreement that has been lodged for registration as a collective workplace agreement under Division 4 of Part 2 of the *Workplace Agreements Act 1993*; or
- (b) a workplace agreement that is in force under that Act,

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the powers in section 44 shall not be exercised by the Commission —

(c) to summon that employer or employee under that agreement to attend at a conference in relation to any matter (including industrial action) affecting, relating to or arising out of —

(i) that agreement; or

(ii) if that agreement has expired or is about to expire, the making of a new workplace agreement in its place;

or

(d) to deal with any matter affecting, relating to or arising out of —

(i) the relationship of that employer and that employee while that agreement is in force; or

(ii) that agreement after it has expired, unless the agreement provides for the Commission to do so.

(2) Without limiting paragraph (b) of subsection (1), that subsection ceases to apply to an agreement that has been lodged as mentioned in paragraph (a) of that subsection —

(a) on the refusal of registration and the expiration of the time for appeal against that refusal; or

- (b) if such an appeal is commenced, on the disposition of the appeal that does not result in registration of the agreement or on the appeal being discontinued or dismissed for want of prosecution.

Section 114 affected

7E. A workplace agreement is not a contract to which section 114 applies.

Parties may submit question of interpretation to Commission

7F. (1) The parties to a workplace agreement may by agreement in writing refer to the Commission for determination any question or dispute that has arisen between the parties about the meaning or effect of the agreement, including any provisions implied in the agreement by the *Minimum Conditions of Employment Act 1993*.

(2) In allocating the work of the Commission under section 16, the Chief Commissioner is to allocate any matter referred for determination under this section to a Commissioner.

(3) If the parties have requested that a particular Commissioner should make the determination the matter is to be allocated to that Commissioner.

(4) If the Chief Commissioner considers that it is not practicable to comply with that request, he is to notify the parties of that fact and the referral is stayed by the giving of that notice and is not to be resumed unless the Chief Commissioner and the parties agree that the matter be allocated to some other Commissioner.

(5) Where a question or dispute is referred to the Commission under subsection (1) the Commission —

- (a) shall determine the meaning or effect of the agreement;
- (b) does not have any function other than to make that determination, and shall not exercise any of its powers under this Act in respect of industrial matters;
- (c) shall in making the determination follow the practice and procedure that is provided for by regulations made under section 7H.

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

(7) Section 49 (2) does not apply to a determination made by the Commission under this section.

Referral of claim of unfair dismissal

7G. (1) Where —

- (a) a person who was a party to a workplace agreement as an employee claims to have been harshly, oppressively or unfairly dismissed from employment in breach of the provision implied in the agreement by section 18 of the *Workplace Agreements Act 1993*; and
- (b) the workplace agreement provides for referral of such claims to the Commission under this section,

the person dismissed may, within the time allowed by section 29 (2), refer the claim to the Commission for determination.

(2) The Commission is to enquire into and deal with any claim referred under subsection (1) as if it were an industrial matter referred to it under section 29 (b) (i).

Regulations

7H. The Governor may make regulations providing for —

- (a) the practice and procedure to be followed by the Commission for the purposes of section 7F;
- (b) an appeal to a body provided for by this Act from a determination under section 7F and the practice and procedure to be followed on an appeal; and
- (c) the payment of fees to the Commission by a party to a workplace agreement where —
 - (i) the Commission performs any function under section 7F or 7G; or
 - (ii) an appeal is brought under regulations made under paragraph (b),

and the amount or method of calculating the fees, and for their collection.

”.

Section 23 amended

6. Section 23 (3) of the principal Act is amended —

- (a) by deleting “or” after paragraph (f);
- (b) by deleting the fullstop at the end of paragraph (g) and inserting a semicolon; and
- (c) by inserting after paragraph (g) the following paragraph —

“

- (h) on a referral of a claim of harsh, oppressive or unfair dismissal under section 29 (b) (i), make any order except an order that is authorized by section 23A.

”

Section 23A inserted

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

“

Powers of Commission on claims of unfair dismissal

23A. (1) On a referral to the Commission of a claim of harsh, oppressive or unfair dismissal under section 29 (b) (i), the Commission may —

- (a) order the payment to the claimant of any amount to which the claimant is entitled;
- (b) order the employer to reinstate or re-employ a claimant who has been harshly, oppressively or unfairly dismissed; and

- (c) make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this subsection.

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

(3) If an employer fails to comply with an order under subsection (1) (b) the Commission may, upon further application, revoke that order and, subject to subsection (4), make an order for the payment of compensation for loss or injury caused by the dismissal.

(4) The amount ordered to be paid under subsection (3) is not to exceed 6 months' remuneration of the claimant, and for the purposes of this subsection the Commission may calculate the amount on the basis of an average rate received during any relevant period of employment.

”.

Section 24 amended

8. Section 24 of the principal Act is amended by inserting after subsection (2) the following subsection —

“ (3) This section has effect subject to section 7C. ”.

Section 26A inserted

9. After section 26 of the principal Act the following section is inserted —

“

Workplace agreements not to be taken into account

26A. In the exercise of its jurisdiction the Commission shall not —

- (a) receive in evidence or inform itself of any workplace agreement or any provision of a workplace agreement; or
- (b) award particular conditions of employment to employees who are not parties to a workplace agreement merely because those conditions apply to any other employees who are parties to a workplace agreement.

”

Section 29 amended

10. Section 29 of the principal Act is amended —

- (a) by inserting after the section designation “29.” the subsection designation “(1)”;
- (b) in paragraph (b) (i), by inserting after “has been” the following —

“ harshly, oppressively or ”; and

(c) by inserting the following subsection —

“

(2) A referral by an employee under subsection (1) (b) (i) cannot be made more than 28 days after the day on which the employee's employment terminated.

”

Section 37A inserted

11. After section 37 of the principal Act the following section is inserted —

“

Minister may suspend award where Commonwealth award applies

37A. (1) If in the opinion of the Minister a number of the employees to whom a particular award under this Act (“**the State award**”) extends are bound by an award under the Commonwealth Act the Minister may by order published in the *Industrial Gazette* suspend “the State award”.

(2) An award may be wholly or partially suspended by an order under subsection (1) and the nature and effect of the suspension shall be set out in the order.

(3) The Minister may at any time revoke an order under subsection (1) by further order published in the *Industrial Gazette*.

(4) An order under this section shall be laid before each House of Parliament under section 42 of the *Interpretation Act 1984* as if it were a regulation.

(5) While an order is in force under this section in respect of an award the Commission does not have power under this Act —

- (a) to make an award that extends to employees to whom the award would apply if the order were not in force; or
- (b) to make an order that would have a like effect.

(6) The Commission may, on application by the Minister, cancel an award that is wholly suspended under this section.

”

Section 38 amended

12. Section 38 of the principal Act is amended by inserting after subsection (1) the following subsections —

“

(1a) If after the commencement of section 12 of the *Industrial Relations Amendment Act 1993* —

- (a) any party to proceedings in which an award is made, other than the Council, the Chamber, the Mines and Metals Association and the Minister, is not listed in the award as a named party as required by subsection (1); and
- (b) the Commission has not ordered that the party is not to be a party to the award,

the party is to be taken to be a named party to the award.

(1b) In subsections (1) and (1a) “**party**” does not include an intervener.

”

Section 41 amended

13. Section 41 of the principal Act is amended —

(a) by repealing subsection (2) and substituting the following subsection —

“ (2) Subject to subsection (3) and section 41A, where the parties to an agreement referred to in subsection (1) apply to the Commission for registration of the agreement as an industrial agreement the Commission shall register the agreement as an industrial agreement.

”;

and

(b) in subsection (3) by deleting the whole of the subsection after “desirable” and substituting the following —

“ for the purpose of giving clear expression to the true intention of the parties.

”.

Section 41A inserted

14. After section 41 of the principal Act the following section is inserted —

“ **Restriction on power to register industrial agreements**

41A. (1) The Commission shall not under section 41 register an agreement as an industrial agreement if —

(a) the agreement applies to more than a single enterprise; and

- (b) any term of the agreement is contrary to this Act or any General Order made under section 51, or any principles formulated in the course of proceedings in which a General Order is made under section 51.

(2) For the purposes of subsection (1)(a) an agreement applies to more than a single enterprise if it applies to —

- (a) more than one business, project or undertaking; or
- (b) the activities carried on by more than one public authority.

”

Section 42 repealed

15. (1) Section 42 of the principal Act is repealed.

(2) Any proceedings under the section repealed by subsection (1) that are in progress immediately before the repeal are by force of this subsection discontinued.

Section 43 amended

16. (1) Section 43 of the principal Act is amended by repealing subsection (2).

(2) Any proceedings under the subsection repealed by subsection (1) that are in progress immediately before the repeal are by force of this subsection discontinued.

Section 44 amended

17. Section 44 of the principal Act is amended by inserting after subsection (13) the following subsection —

“ (14) This section has effect subject to section 7D. ”.

Section 50 amended and saving provision

18. (1) Section 50 of the principal Act is amended —

(a) in subsection (2) (a) by deleting “, including the prescription of a minimum wage for adult employees,”;

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

“

(2a) The Commission does not have power under this section to prescribe minimum conditions as to any matter if a minimum condition for that matter is prescribed by the *Minimum Conditions of Employment Act 1993*.

”;

and

(c) by repealing subsections (5) and (6).

(2) Despite the repeal effected by subsection (1) (c) the Long Service Leave General Order continues in force in the form in which it existed immediately before the repeal as if the repeal had not occurred, but may be cancelled by order made by the Minister and published in the *Industrial Gazette*.

(3) In subsection (2) “**Long Service Leave General Order**” means the order relating to long service leave made by the Commission on 27 January 1978 and published in the *Industrial Gazette* on 22 February 1978 at page 120 and the

Schedule attached to that order published in that *Gazette* on 25 January 1978 at pages 1 to 6.

Section 51 amended

19. Section 51 of the principal Act is amended —

(a) in subsection (2) by deleting “and industrial agreements” and substituting the following —

“ and, subject to subsection (2a), in industrial agreements ”;

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

“ (2a) The reference in subsection (2) to industrial agreements is to industrial agreements that, in accordance with section 41A (2), apply to more than a single enterprise. ”;

and

(c) by repealing subsection (3).

Section 72A inserted

20. After section 72 of the principal Act the following section is inserted —

“

Coverage of employee organizations

72A. (1) In this section —

“enterprise” means —

(a) a business, or part of a business, that is carried on by a single employer;

- (b) a business, or part of a business, that is carried on by 2 or more employers as a joint venture or single enterprise;
- (c) activities carried on by a public authority, or part of those activities; or
- (d) a single project, undertaking or place of work;

“organization” means an organization of employees.

(2) An organization, an employer or the Minister may apply to the Full Bench for an order —

- (a) that an organization has the right, to the exclusion of another organization or other organizations, to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization;
- (b) that an organization that does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise has that right;
- (c) that an organization does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization.

(3) The Full Bench shall not hear an application under subsection (2) until the application has been published in the *Industrial Gazette* and 30 days have expired since the day of publication.

(4) On an application under subsection (2), the Full Bench may make one or more of the orders applied for, and may make any such order subject to any condition or limitation.

(5) The Full Bench shall not make any order described in subsection (2) without giving persons who, in the opinion of the Full Bench, have a sufficient interest in the matter an opportunity of being heard.

(6) Where an order is made under subsection (4), the Full Bench is to refer the matter to the President unless the Full Bench is satisfied that the rules of the organizations concerned do not need to be altered.

(7) On a referral under subsection (6) the President shall, after giving the organizations concerned an opportunity of being heard, make such alterations (if any) to the rules of the organizations as are, in the President's opinion, necessary to reflect the order made by the Full Bench.

(8) An alteration shall be made by instrument in writing signed by the President and shall take effect on a day specified in the instrument.

Section 73 amended

21. (1) Section 73 (1) of the principal Act is amended by inserting after "as the case may be" the following —

“

, either generally or with respect to any employee or group or class of employees

”

(2) Section 73 (3) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (a) where the request is made by the Minister and is accompanied by a declaration made by him that in his opinion —
 - (i) the safety, health, or welfare of the community or a part of it is at risk; or
 - (ii) a number of a group or class of employees who are, or are eligible to be, members of the organization is bound by an award under the Commonwealth Act; or
 - (iii) there is sufficient evidence of breaches by the organization of section 67, 68, 69, 70 or 71 of the *Workplace Agreements Act 1993*,

the Commission shall give a direction under that subsection; and

”

(3) Section 73 (7) of the principal Act is repealed and the following subsections are substituted —

“

(7) On the return of the summons (not being a summons to which subsection (7b) applies) if it appears to the Full Bench that by reason of the conduct of the organization or its officers or members or any of them, either generally or in any particular case, the continuance of the registration is not consistent with or will not serve the objects of this Act, the Full Bench —

- (a) shall make one of the orders described in subsection (7a); and

- (b) may make one or both of the orders described in subsection (8).

(7a) The orders referred to in subsection (7) (a) are —

- (a) an order cancelling the registration of the organization;
- (b) an order cancelling the rights of the organization under this Act either generally or with respect to any employee or group or class of employees specified in the order; or
- (c) an order suspending for a time specified in the order or without limit of time and, in either case, subject to such conditions or exceptions, or both, as the Full Bench thinks fit, that registration or those rights.

(7b) On the return of a summons issued following a declaration by the Minister under subsection (3) (a) (ii), if it appears to the Full Bench that a number of a group or class of employees who are, or are qualified to be, members of an organization is bound by an award under the Commonwealth Act, the Full Bench —

- (a) shall make an order cancelling the rights of the organization under this Act with respect to that group or class of employees; and
- (b) may make an order under subsection (8) (a).

(4) After section 73 (8) of the principal Act the following subsection is inserted —

“

(8a) For the purposes of this section a breach of section 67, 68, 69, 70 or 71 of the *Workplace Agreements Act 1993* —

(a) that is committed by an officer, employee or member of an organization is also committed by the organization if —

(i) it is proved that the organization or the committee of management of the organization instigated or encouraged the breach; or

(ii) where subparagraph (i) does not apply, the organization does not prove that it took all reasonable steps available to it to prevent the breach;

or

(b) that is committed by a person who is eligible to be a member of an organization is also committed by the organization if it is proved that the organization or the committee of management of the organization instigated or encouraged the breach.

”.

(5) Section 73 (12) of the principal Act is amended by deleting “may” and substituting the following —

“ shall ”.

(6) After section 73 (12) of the principal Act the following subsection is inserted —

“

(12a) The Registrar shall make an application under subsection (12) in every case where it appears to him or her that there are sufficient grounds for doing so.

”.

(7) After section 73 (13) of the principal Act the following subsection is inserted —

“

(14) During any period in which —

(a) an organization of employees is not registered; or

(b) the registration of an organization of employees is suspended,

an employer shall not deduct from the wages of any employee any amount for or in respect of membership of the organization.

Penalty: \$2 000.

”.

Section 80ZE amended

22. Section 80ZE of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) This section has effect subject to section 7C.

”.

Section 81A amended

23. Section 81A of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsections —

“

(1) An industrial magistrate's court is a court of summary jurisdiction with jurisdiction to —

(a) hear and determine any application made to it under section 83 (1); and

(b) hear and determine under the *Justices Act 1902* (but not including Part VIII of that Act) complaints for any contravention or failure to comply with this Act that constitutes an offence.

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

”;

- (b) in subsection (6), by deleting “A” and substituting the following —

“ Subject to subsection (7), a ”; and

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

“

(7) An order or other decision of an industrial magistrate's court made in exercise of the jurisdiction referred to in subsection (1) (b) shall be enforced in accordance with the *Justices Act 1902*.

”.

Section 81AA inserted

24. After section 81A of the principal Act the following section is inserted —

“

Jurisdiction under *Workplace Agreements Act 1993* etc.

81AA. In addition to its jurisdiction under this Act, an industrial magistrate's court has the jurisdiction conferred on it by —

- (a) Division 1 of Part 5 of the *Workplace Agreements Act 1993*;
- (b) section 100 of that Act; and
- (c) section 46 of the *Minimum Conditions of Employment Act 1993*.

”.

Section 81D amended

25. Section 81D of the principal Act is amended —

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

“

Except where subsection (4) applies, the clerk

”;

and

- (b) by inserting after subsection (3) the following subsection —

“

(4) For the purposes of the jurisdiction referred to in section 81AA (a), the clerk of an industrial magistrate's court has in relation to that court like powers to those

of a clerk of a Local Court acting under the
Local Courts Act 1904 in relation to the
Local Court to which he is attached.

”.

Section 84 amended

26. Section 84 of the principal Act is amended, in subsection (1), by inserting after “magistrate’s court” the following —

“

, but does not include a decision made by such a court in the exercise of the jurisdiction conferred on it by —

- (a) section 96J;
- (b) Division 1 of Part 5 of the *Workplace Agreements Act 1993*; or
- (c) section 100 of that Act.

”.

Section 86 amended

27. Section 86 (1) of the principal Act is amended by deleting “section 90” and substituting the following —

“ sections 90 and 96K ”.

Part VIA repealed and a Part substituted

28. Part VIA of the principal Act is repealed and the following Part is substituted —

“

PART VIA — FREEDOM OF ASSOCIATION

Definitions for this Part

96A. In this Part, unless the contrary intention appears —

“organization” means an organization of employers or an organization of employees;

“organization of employees” means —

- (a) an organization of employees, whether constituted, incorporated or registered under this Act or any other Act or under any Commonwealth Act and by whatever name called;
- (b) an industrial association of employees registered under section 67; or
- (c) an association, society or other body that has applied to be constituted, incorporated or registered as an organization of employees referred to in paragraph (a).

Certain requirements relating to membership of organizations to have no effect

96B. (1) An award, industrial agreement or order under this Act, or any arrangement between persons relating to employment must not —

(a) require a person —

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

or

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

(2) The prohibition in subsection (1) extends to awards, industrial agreements, orders and arrangements that are in force at the commencement of section 28 of the *Industrial Relations Amendment Act 1993*.

(3) A requirement that is contrary to this section is of no effect.

Discrimination because of membership of organization

96C. (1) A person must not, in relation to any contract of employment or contract for services, treat another person less favourably or more favourably according to whether or not the person is, or will become or cease to be, a member or officer of an organization.

(2) A person must not conspire with another person to commit an offence against subsection (1).

(3) It is not an offence against subsection (1) for a person to treat another person more favourably as part of a scheme whereby the cost of services provided to members of an organization is less than the cost ordinarily charged by the person for those services.

Penalty applicable to subsections (1) and (2):

- (a) in the case of an individual, not less than \$400 nor more than \$5 000;
- (b) in any other case, not less than \$1 000 nor more than \$10 000; and a daily penalty of \$500.

Refusal to employ and discriminatory and injurious acts against persons performing work for employers because of membership or non-membership of employee organization

96D. (1) A person must not refuse to employ another person on any ground that is forbidden for the purposes of this section.

(2) A person, including an organization of employees, must not on any ground that is forbidden for the purposes of this section —

- (a) intimidate, prejudice, or threaten to prejudice, or attempt to induce another person to intimidate or prejudice, a person who performs work for an employer;
- (b) intimidate or induce, whether by threats or promises or otherwise, an employer to prejudice a person who performs or wishes to perform work for the employer; or
- (c) directly or indirectly hinder or prevent the employment of a person or the promotion of an employee.

(3) A person must not conspire with another person to commit an offence against subsection (1) or (2).

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual, not less than \$400 nor more than \$5 000;
- (b) in any other case, not less than \$1 000 nor more than \$10 000; and a daily penalty of \$500.

(4) The grounds that are forbidden for the purposes of this section are —

- (a) that the person is or is intending to become a member or officer of an organization of employees; or

- (b) that the person is not, or is intending to not remain, a member or officer of an organization of employees.

(5) For the purposes of subsection (2) a person is prejudiced if —

- (a) the person is dismissed from employment; or
- (b) the person is demoted or fails to get a promotion that the person could have reasonably expected; or
- (c) the person's employment position is detrimentally altered; or
- (d) the person's pay or other terms and conditions of employment are detrimentally altered.

Discriminatory and injurious acts against persons because of non-membership of employee organization

96E. (1) A person, including an organization of employees, must not threaten that —

- (a) discriminatory action will or may be taken against a second person; or
- (b) the free and lawful exercise of a second person's trade, profession or occupation will or may be interfered with,

by reason of the circumstance that the second person or a third person is not a member of an organization of employees.

(2) A person, including an organization of employees, must not advise, encourage or incite a second person to take discriminatory action against a third person by reason of the circumstance that the third person or a fourth person is not a member of an organization of employees.

(3) A person, including an organization of employees, must not take, or threaten to take, industrial action against an employer —

- (a) with intent to coerce the employer to take discriminatory action against a second person by reason of the circumstance that the second person or a third person is not a member of an organization of employees; or
- (b) with intent to coerce the employer to join an organization of employees.

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual not less than \$400 nor more than \$5 000;
 - (b) in any other case, not less than \$1 000 nor more than \$10 000; and a daily penalty of \$500.
- (4) In this section —

“discriminatory action”, in relation to a person, means —

- (a) refusing to make use of, or refusing to agree to make use of, any service offered by the person;

- (b) refusing to receive, or refusing to agree to receive, any goods offered by the person; or
- (c) refusing to supply, or refusing to agree to supply, goods or services to the person.

Further provision as to penalties under sections 96C, 96D and 96E

96F. (1) The minimum penalties referred to in sections 96C, 96D and 96E are irreducible in mitigation notwithstanding anything in the *Justices Act 1902*, *The Criminal Code* and the *Offenders Community Corrections Act 1963*.

(2) Subject to subsection (3), if a penalty is imposed on an organization of employees for an offence against section 96C, 96D or 96E and the organization does not forthwith pay the penalty, the rights of the organization and its members referred to in subsection (4) are suspended until the penalty is paid.

(3) An industrial magistrate's court may permit an organization of employees on which a penalty referred to in subsection (2) is imposed to pay that penalty within such period not exceeding 7 days from that imposition as the court thinks fit, in which case the rights referred to in subsection (2) are, if that penalty is not paid within that period, suspended from the end of that period until the penalty is paid.

(4) In and with respect to any period during which rights are suspended under subsection (2) or (3) —

- (a) a proceeding of any kind may not be instituted under this Act by or on behalf of the organization concerned or any of its members;
- (b) the organization concerned shall not be joined as an applicant in any proceeding referred to in paragraph (a);
- (c) an award or order shall not be made or be deemed to have been made for the benefit of the organization concerned or any of its members; and
- (d) rights or entitlements shall be deemed not to become due to the organization or its members under this Act or any award or order in force thereunder.

Responsibility of employee organizations and officers and members

96G. (1) If an organization of employees is guilty of an offence against section 96C, 96D or 96E, any officer or member of the organization who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.

(2) If an officer or member of an organization of employees is guilty of an offence against section 96C, 96D or 96E, the organization is also guilty of that offence unless it is proved that all reasonable steps

were taken by the organization to prevent the commission by the organization or its officers or members of offences against section 96C, 96D or 96E.

Responsibility of corporations and their officers

96H. (1) If a corporation is guilty of an offence against section 96C, 96D or 96E any officer of the corporation who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.

(2) If an officer of a corporation is guilty of an offence against section 96C, 96D or 96E, the corporation is also guilty of that offence unless it is proved that all reasonable steps were taken by the corporation to prevent the commission by the corporation or its officers of offences under section 96C, 96D or 96E.

(3) In this section “**corporation**” has the same meaning as it has in the Corporations Law.

Onus of proof in certain cases

96I. (1) Where in any proceedings for an offence against section 96C (1) it is proved that a person was treated less favourably or more favourably in relation to any contract of employment or contract for services —

- (a) while the person was or was not a member or officer of an organization; or
- (b) after the person disclosed an intention to become or cease to be a member or officer of an organization,

it shall be taken to be proved, unless the contrary is shown, that the person was treated less favourably or more favourably in contravention of section 96C (1).

(2) Where in any proceedings for an offence against section 96D (1) or (2) it is proved that a person was refused employment, or prejudiced (within the meaning of that section) or that the employment or promotion of a person was hindered or prevented —

- (a) while the person was or was not a member or officer of an organization of employees; or
- (b) after the person disclosed an intention to become or cease to be a member or officer of an organization of employees,

it shall be taken to be proved, unless the contrary is shown, that the person was refused employment, or prejudiced, or that the employment or promotion of the person was hindered or prevented in contravention of section 96D (1) or (2) as the case may require.

(3) Where in any proceedings for an offence against section 96E all the relevant facts and circumstances, other than the reason or intent of the action alleged in the complaint, are proved, it lies on the defendant to prove that that action was not actuated by that reason or taken with that intent.

Industrial magistrate's court may order compliance

96J. (1) Where a person claims to have been affected by another person's failure to comply with section 96C, 96D or 96E the person may bring an

action in an industrial magistrate's court against that other person for an order requiring the other person —

- (a) to do any specified thing; or
- (b) to cease any specified activity,

for the purpose of preventing any further breach of that section.

(2) On an application under subsection (1), the industrial magistrate's court may make one or more of the orders applied for and —

- (a) shall specify a time within which the order is to be obeyed (which time may be extended by the court); and
- (b) may make the order subject to any terms and conditions it thinks appropriate.

(3) Section 81A does not apply to proceedings under this section and, except as otherwise prescribed, the practice and procedure to be observed in such proceedings are those provided for by the *Local Courts Act 1904* as if the proceedings were an action within the meaning of that Act.

(4) A person who fails to comply with an order under this section is to be taken to commit a contempt of the Industrial Appeal Court and is punishable by that Court under section 92.

Appeal against decision under section 96J

96K. (1) A party to proceedings under section 96J may appeal to the Industrial Appeal Court against a decision of the industrial magistrate's court in those

proceedings in the manner and in the time prescribed by regulations made by the Industrial Appeal Court under section 113.

(2) On the hearing of the appeal the Industrial Appeal Court may —

- (a) confirm the decision;
- (b) vary the decision; or
- (c) set aside the decision and if it thinks fit —
 - (i) make a decision in substitution for that decision; or
 - (ii) remit the matter for rehearing by the industrial magistrate's court with any direction that the Court thinks fit.

Power of industrial magistrate's court to make certain orders after conviction

96L. (1) When a person has been convicted of an offence against section 96C, 96D or 96E the industrial magistrate's court by which the person was convicted may —

- (a) if the person so convicted is an employer, order the employer —
 - (i) to reinstate the complainant if he or she was dismissed from employment;
 - (ii) to pay to the complainant such sum of money as the court considers adequate as compensation for loss of employment or loss of earnings; or

(iii) both to reinstate the complainant and to pay him or her the sum of money referred to in subparagraph (ii),

as the court thinks fit; or

(b) if the person so convicted is a person other than an employer, order that person to pay the complainant such sum of money as the court thinks fit,

but the complainant is not entitled to compensation both under this section and otherwise for the same loss of employment or loss of earnings.

(2) In subsection (1) “**complainant**” means the person against whom the offence referred to in subsection (1) was committed.

Who may prosecute

96M. (1) A prosecution for an offence against section 96C, 96D or 96E may only be brought —

(a) by the Minister or an Industrial Inspector;
or

(b) by a person who comes within subsection (2).

(2) Any person may make a complaint of an offence against section 96C, 96D or 96E but, except where subsection (1) (a) applies, a complaint cannot be prosecuted unless the court is satisfied that the complainant has been affected by the conduct complained of.

Section 114 amended

29. Section 114 of the principal Act is amended by inserting after subsection (2) the following subsection —

“ (3) This section has effect subject to section 7E. ”.

Schedule 1 amended

30. Schedule 1 to the principal Act is amended, in item 2, by deleting “(f) Boards of Reference.” and substituting the following —

“ (f) Boards of Reference,

but this item does not apply to any decision or reasons for decision of an industrial magistrate’s court exercising jurisdiction to hear and determine complaints for offences or under section 70 (2) or Division 1 of Part 5 of the *Workplace Agreements Act 1993* or of the Commission exercising jurisdiction under section 7F of this Act.

”.

Amendment of references to Confederation

31. The provisions of the principal Act set out in the following Table are amended by deleting “Confederation” and substituting in each case —

“ Chamber ”.

Table

Section 29A (2) (a) (i)	Section 47 (5) (a)
Section 29A (2) (b)	Section 50 (2)
Section 31 (1) (c) (i)	Section 50 (10)
Section 38 (1)	