

INDUSTRIAL RELATIONS AMENDMENT ACT

No. 99 of 1990

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

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Industrial Relations Amendment Act 1990*.

Commencement

2. (1) Subject to subsections (2) and (3), this Act shall come into operation on the 28th day after the day on which this Act receives the Royal Assent.

(2) Section 10 shall come into operation on the day on which sections 4 and 5 of the *Education Amendment Act 1988* come into operation.

(3) Section 14 shall come into operation on such day as is fixed by proclamation.

Principal Act

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

[**Reprinted as at 12 May 1985 and amended by Acts Nos. 42 and 98 of 1985, 82, 83 and 119 of 1987 and 7 of 1988.*]

Section 7 amended

4. Section 7 of the principal Act is amended—

(a) in subsection (1)—

(i) in the definition of “Australian Commission” by deleting “Conciliation and Arbitration” and substituting the following—

“ Industrial Relations ”;

(ii) in the definition of “Commonwealth Act” by deleting “Conciliation and Arbitration Act 1904” and substituting the following—

“ *Industrial Relations Act 1988* ”;

(iii) in the first definition of “industrial matter” by deleting “, subject to subsection (2),”; and

(iv) by inserting after the definition of “repealed Act” the following definition—

“ “secondary office”, in relation to a person who holds an office of member of the Commission and is subsequently appointed to an office of the Australian Commission pursuant to section 14A, means the office of member of the Australian Commission; ”;

and

(b) by repealing subsection (2).

Section 9 amended

5. Section 9 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (1a) The President during the term of his or her office—

(a) is entitled to the style and title of The Honourable (*name*), President of The Western Australian Industrial Relations Commission; and

(b) in appropriate circumstances—

(i) may be addressed as “Your Honour”; and

(ii) may be referred to as “His Honour” or “Her Honour”, as the case may be. ”.

Sections 14A and 14B inserted

6. After section 14 of the principal Act the following sections are inserted—

Dual Federal and State Appointments

“ 14A. A person who is a member of the Commission may be appointed as a member of the Australian Commission, and a person so appointed may, subject to section 22 (2) (c), at the same time hold the offices of member of the Commission and member of the Australian Commission but not otherwise.

Performance of duties by dual Federal and State appointees

14B. (1) As agreed from time to time by the Chief Commissioner and the President of the Australian Commission, a person who holds an office of member of the Commission and an office of member of the Australian Commission—

(a) may perform the duties of the secondary office; and

(b) may exercise, in relation to a particular matter—

- (i) any powers that the person has as a member of the Commission; and
- (ii) any powers that the person has as a member of the Australian Commission.

(2) The Minister may give directions in writing to the Chief Commissioner with respect to agreements under subsection (1) and the Chief Commissioner shall give effect to every such direction and shall not enter into any agreement under subsection (1) that is contrary to those directions.

(3) Directions under subsection (2) shall be limited to matters of administration and shall not deal with matters of conciliation or arbitration.

(4) The Minister shall cause a copy of any direction given under subsection (2) to be laid before each House of Parliament within 15 sitting days of that House after the date on which the direction was given. ”.

Section 20 amended

7. Section 20 of the principal Act is amended—

- (a) in subsection (8) by deleting “member of the Commission” and substituting the following—

“ Commissioner ”;

- (b) in subsection (8a) by deleting “member of the Commission” wherever it occurs and substituting in each case the following—

“ Commissioner ”;

- (c) by inserting after subsection (8b) the following subsections—

“ (8c) If a person is a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* immediately before that person is appointed the President, that

person may continue to be such a contributor notwithstanding that appointment.

(8d) While a person to whom subsection (8c) applies continues to be a contributor under the *Superannuation and Family Benefits Act 1938*, that Act applies to and in relation to that person, and if that person ceases to be a contributor—

- (a) before attaining the age of 60 years that person shall be deemed to have resigned;
- (b) on or after attaining the age of 60 years but before attaining the age of 65 years that person shall be deemed to have elected to retire; or
- (c) on attaining 65 years that person shall be deemed to have retired,

under that Act on the day that person so ceases to be a contributor and, in each case referred to in paragraphs (b) and (c), a pension is payable to that person, and that person's widow or widower and children after the death of that person, but the pension otherwise payable under the last-mentioned Act to him or her, and that person's widow or widower and children after his or her death, shall be reduced in accordance with that Act by the amount of the State share of the first-mentioned pension paid to him or her, and that person's widow or widower and children after his or her death. ”;

- (d) in subsection (9) by deleting “member of the Commission” in both places where it occurs and substituting in each case the following—

“ Commissioner ”;

- (e) in subsection (10) by deleting “member of the Commissioner” and substituting the following—

“ Commissioner ”; and

- (f) by repealing subsections (11) and (12) and substituting the following subsections—

“ (11) The President is entitled to the same conditions in respect of leave of absence as a Judge.

(12) The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions apply, with such modifications as are necessary, to and in relation to the President, and to and in relation to the widow or widower and children of the President after the death of the President, in the same manner as they apply to and in relation to a Judge to whom that Act applies, and to and in relation to the widow or widower and children of such a Judge, and for that purpose the term “Judge” in that Act includes the President.

(13) In subsections (11) and (12) “President” includes any person who acted or held office as President after the coming into operation of section 3 of the *Industrial Arbitration Amendment Act (No. 2) 1984*. ”.

Section 22 amended

8. Section 22 of the principal Act is amended—

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

“ (1) Subject to subsections (2) (c) and (3), the members ”;
and

- (b) in subsection (2)—

(i) by deleting “or” at the end of paragraph (a);

(ii) in paragraph (b) by deleting “section 21.” and substituting the following—

“ section 21; or

(c) except with the approval of the Governor, he accepts the office of member of the Australian Commission. ”.

Section 71A inserted

9. After section 71 of the principal Act the following section is inserted—

Adoption of rules of Federal organizations

“ **71A.** (1) In this section—

“Counterpart Federal Body” and “State organization” have the same respective meanings as in section 71.

(2) Subject to this section, a State organization may alter its rules (in this section referred to as “the State rules”) by including in the State rules a provision (in this section referred to as “the adopting provision”) stating that all of the rules of its Counterpart Federal Body other than—

- (a) a rule relating to the name of the State organization;
- (b) a rule relating to the qualifications of persons for membership; and
- (c) any rule specifically excluded in the adopting provision,

are by force of this section adopted as rules of the State organization.

(3) Subject to subsection (5) where a State organization alters its rules under subsection (2) the rules adopted by that State organization are by force of this section, and notwithstanding anything to the contrary in section 62, deemed to be rules of the State organization.

(4) The rules adopted under subsection (2) include, unless provision to the contrary is made by the State organization in the adopting provision—

- (a) any amendments made to those rules; and
- (b) any further rules made by the Counterpart Federal Body,

after the coming into operation of the adopting provision.

(5) Where a State organization makes an adopting provision under subsection (2)—

- (a) the Registrar shall register that adopting provision as an alteration to the rules of that State organization; and
- (b) that adopting provision shall not be or become effective until registered under paragraph (a).

(6) Section 62 does not apply to or in relation to the alteration of State rules under or by force of this section. ”.

Section 73A amended

10. Section 73A of the principal Act is amended—

- (a) in subsection (1), in the definition of “chief executive officer” by deleting “means” and substituting the following—

“ means, subject to subsection (1a), ”; and

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

“ (1a) A reference in this Part to “chief executive officer” shall, with respect to any act, person, matter or thing relating to technical and further education under the *Education Act 1928*, be read and construed as a reference to the officer designated as the designated officer under section 8 (2) of that Act. ”.

Section 78 amended

11. Section 78 of the principal Act is amended—

- (a) in subsection (1) by inserting after “Division 3 of Part II” the following—

“ and subsection (4) of this section ”; and

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

“ (4) Notwithstanding subsection (1) the Tribunal may—

(a) with the consent of the Chief Commissioner refer an industrial matter referred to in subsection (1) (a) (i) or any part of that industrial matter to the Commission in Court Session for hearing and determination by the Commission in Court Session; and

(b) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organization, arising in a matter before the Tribunal,

and the Commission in Court Session or the Full Bench, as the case may be, may hear and determine the matter, or part thereof, or question, so referred. ”.

Section 80E amended

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

(a) in subsection (1) by inserting after “Division 3 of Part II” the following—

“ and subsection (6) of this section ”;

(b) by repealing subsections (3) and (4); and

(c) by inserting after subsection (5) the following subsection—

“ (6) Notwithstanding subsection (1) an Arbitrator may—

(a) with the consent of the Chief Commissioner refer an industrial matter referred to in subsection (1) or any part of that industrial matter to the Commission in Court Session for hearing and determination by the Commission in Court Session; and

- (b) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organization, arising in a matter before the Arbitrator,

and the Commission in Court Session or the Full Bench, as the case may be, may hear and determine the matter, or part thereof, or question, so referred. ”.

Section 80R amended

13. Section 80R of the principal Act is amended—

- (a) in subsection (1) by inserting after “Division 3 of Part II” the following—

“ and subsection (3) of this section ”; and

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

“ (3) Notwithstanding subsection (1) the Board may—

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

and the Commission in Court Session or the Full Bench, as the case may be, may hear and determine the matter, or part thereof, or question, so referred. ”.

Section 80X amended

14. Section 80X of the principal Act is amended—

- (a) in subsection (1) by deleting paragraph (e) of the definition of “office” and substituting the following paragraph—

“ (e) any office or position, or offices or positions of a class, declared under subsection (1a); ”;

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

“ (1a) For the purposes of paragraph (e) of the definition of “office” in subsection (1) the Minister may by notice published in the *Gazette* declare that the definition of “office” does not include an office or position, or offices or positions of a class, specified in the notice.”;

and

- (c) in subsection (6) by deleting “subsection (5)” and substituting the following—

“ subsections (1a) and (5) ”.
