

WESTERN AUSTRALIA

INDUSTRIAL RELATIONS AMENDMENT ACT (No. 4)

No. 119 of 1987

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

[Assented to 31 December 1987]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Industrial Relations Amendment Act (No. 4) 1987*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, 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.]

Section 5 amended

4. Section 5 of the principal Act is amended by inserting after “award” the following—

“ , industrial agreement ”.

Section 7 amended

5. Section 7 (1) of the principal Act is amended in the definition of “employee” by deleting—

“ include—

- (e) any person engaged in domestic service in a private home unless more than 6 boarders or lodgers are therein received for pay or reward; ”

and substituting the following—

“ include any person engaged in domestic service in a private home unless—

- (e) more than 6 boarders or lodgers are therein received for pay or reward; or
- (f) the person so engaged is employed by an employer, who is not the owner or occupier of the private home, but who provides that owner or occupier with the services of the person so engaged; ”.

Section 13 repealed and substituted

6. Section 13 of the principal Act is repealed and the following section is substituted—

Protection of members of Commission and others

“ 13. A person who is—

- (a) a member of the Commission;
- (b) a member of a Board of Reference referred to in section 48; or
- (c) a constituent authority or a member of a constituent authority, as the case requires,

has, in the performance of his functions and duties as such a member or as a constituent authority, as the case requires, the same protection and immunity as a Judge. ”.

Section 23 amended

7. (1) Section 23 of the principal Act is amended in subsection (1) by deleting the passage beginning with “except any matter provided for in paragraph (a):” and ending with “(ii) an officer or employee on the Governor’s Establishment;” and substituting a full stop.

(2) Section 23 of the principal Act is amended in subsection (3) by deleting paragraph (c) and substituting the following paragraph—

- “ (c) make an award or order empowering a representative of an organization to enter any part of—
- (i) the premises of an employer, the principal use of which premises is for habitation by the employer and his household; or
 - (ii) a private home in which a person engaged in domestic service is employed by an employer, who is not the owner or occupier of that private home, but who provides that owner or occupier with the services of the person so engaged; ”.

Section 29A amended

8. Section 29A of the principal Act is amended—

(a) in subsection (2) by—

(i) deleting “Where the reference” and substituting the following—

“ Subject to any direction given under subsection (2a), if the reference ”;

(ii) inserting after “scope of an award” the following—

“ or industrial agreement ”; and

(iii) inserting after “proposed registration” in paragraph (b) the following—

“ or variation ”;

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

“ (2a) The Chief Commissioner may, if the reference of an industrial matter to the Commission seeks—

(a) the issuance of an award or the registration of an industrial agreement in substitution for an existing award or industrial agreement the area of operation and scope of which are the same as those of the award or industrial agreement sought to be issued or registered, as the case requires; or

(b) the registration of an industrial agreement—

(i) the area of operation and scope of which are the same as those of; and

(ii) the parties to which are the same as the named parties to,

an existing award,

direct that those parts of the proposed award or industrial agreement that relate to area of operation and scope—

(c) may, instead of being published in the *Industrial Gazette*, be published in a newspaper circulating throughout the State; or

(d) need not be published at all,

as he thinks fit.

(2b) Nothing in subsection (2a) affects or dispenses with any requirement of subsection (2) that a copy of a claim or application be served on any person, body or authority referred to in paragraph (a) or (b) of subsection (2). ”; and

(c) in subsection (3) by inserting after “award”—

(i) where it occurs for the first time the following—

“ or industrial agreement ”; and

(ii) where it occurs for the second time the following—

“ or the parties to the industrial agreement, as the case requires, ”.

Section 32 amended

9. Section 32 of the principal Act is amended by repealing subsection (5).

Section 44 amended

10. Section 44 of the principal Act is amended—

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

“ (5a) In endeavouring to resolve any matter by conciliation the Commission shall do all such things as appear to it to be right and proper to assist the parties to a conference under this section to reach an agreement on terms for the resolution of the matter. ”;

(b) in subsection (6) by—

(i) deleting “and” at the end of paragraph (b); and

(ii) inserting after paragraph (b) the following paragraphs—

“ (ba) with respect to industrial matters, give such directions and make such orders as will in the opinion of the Commission—

(i) prevent the deterioration of industrial relations in respect of the matter in question until conciliation or arbitration has resolved that matter;

(ii) enable conciliation or arbitration to resolve the matter in question; or

(iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter in question;

(bb) with respect to industrial matters, give any direction or make any order or declaration which the Commission is otherwise authorized to give or make under this Act; and ”;

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

“ (6a) An order made under subsection (6) (ba) or (bb)—

(a) binds only the parties to the relevant conference under this section; and

(b) may vary the operation of an existing award or industrial agreement in respect of the parties referred to in paragraph (a). ”; and

(d) in subsection (7) (a) (i) by deleting “union” and substituting the following—

“ organization ”.

Section 48 amended

11. Section 48 of the principal Act is amended in subsection (11) by deleting “union” and substituting the following—

“ organization ”.

Section 49 amended

12. Section 49 of the principal Act is amended in subsection (4) (a) by deleting “or, in the case of an appeal from a direction, order or declaration given or made under section 32, on the circumstances set out in the preamble prefacing that direction, order or declaration”.

Section 51 amended

13. Section 51 of the principal Act is amended in subsection (2) by inserting after “awards” the following—

“ and industrial agreements ”.

Heading of Division 4 of Part II amended

14. The heading of Division 4 of Part II of the principal Act is amended by deleting “*Unions*” and substituting the following—

“ *Organizations* ”.

Section 52 amended

15. Section 52 of the principal Act is amended in the definitions of “collegiate electoral system” and “direct voting system” by deleting “a union” and substituting in each case the following—

“ an organization ”.

Section 60 amended

16. Section 60 of the principal Act is amended in subsection (3) by deleting “in a duly registered letter” and substituting the following—

“ by certified mail ”.

Section 66 amended

17. Section 66 of the principal Act is amended in subsection (2) (a) (i) and (iii) by deleting “order, or direction made” and substituting in each case the following—

“ industrial agreement, order or direction made, registered ”.

Section 71 amended

18. Section 71 of the principal Act is amended in subsection (9) (c) by inserting after "award" the following—

“ , industrial agreement ”.

Section 73 amended

19. Section 73 of the principal Act is amended in subsection (8) by inserting after—

(a) "For the purposes of subsection (7)" the following—

“ and notwithstanding anything in this Act, ”;

and

(b) "award" in both places where it occurs in paragraph (b) the following—

“ , industrial agreement ”.

Section 78 amended

20. Section 78 of the principal Act is amended—

(a) in subsection (1) (b) by inserting after subparagraph (iii) the following subparagraph—

“ (iiia) an appeal by a teacher (not being a person to whom subsection (1a) applies) against his dismissal, or reduction to a position carrying a lower salary or remuneration, for inefficiency under any regulations relating to the assessment of efficiency and made under the *Education Act 1928*; ”; and

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

“ (1a) This subsection applies to a person who is—

(a) a teacher appointed on probation; or

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

Section 84A amended

21. Section 84A of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsection—

“ (1) Subject to this section, if a person contravenes or fails to comply with—

(a) any provision of this Act (other than section 44 (3)) or an order or direction made or given under section 66—

(i) the Minister;

(ii) the Registrar or a Deputy Registrar;

(iii) an Industrial Inspector; or

(iv) any organization, association or employer with a sufficient interest in the matter;

or

(b) section 44 (3) or a direction, order or declaration given or made under section 32 or 44, the Registrar or a Deputy Registrar at the direction of the Commission,

may make application in the prescribed manner to the Full Bench for the enforcement of that provision, order, direction, declaration or section. ”.

Section 90 amended

22. Section 90 of the principal Act is amended by inserting after subsection (3) the following subsection—

“ (4) The Court may at any time, if it considers that to do so will not prejudice any party to an appeal under this section—

(a) correct clerical mistakes in its judgments or orders, or errors arising in its judgments or orders from accidental slips or omissions; and

(b) generally correct any minor irregularities in its proceedings. ”.

Section 93 amended

23. Section 93 of the principal Act is amended—

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

“ Subject to subsection (6a), the Registrar ”;

and

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

“ (6a) The Registrar shall, during the period beginning on the commencement of section 23 of the *Industrial Relations Amendment Act (No. 4) 1987* and ending on such day as is prescribed by regulations for the purposes of this subsection—

- (a) maintain at the premises of the Commission up to date consolidations of all awards and industrial agreements;

- (b) provide the Government Printer with copies of up to date consolidations of those 50 awards and industrial agreements determined by him to be most in demand for printing and sale at a price per copy sufficient to defray the costs incurred by—

(i) the Registrar in complying with the requirements of this subsection; and

(ii) the Government Printer in printing and selling those consolidations;

and

- (c) from time to time review and adjust the price referred to in paragraph (b). ”.

Section 114 amended

24. Section 114 of the principal Act is amended by inserting after “award” wherever it occurs the following—

“ , industrial agreement ”.
