

Industrial Relations Amendment Bill 2008

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Western Australia

LEGISLATIVE COUNCIL

Industrial Relations Amendment Bill 2008

A Bill for

An Act to amend the *Industrial Relations Act 1979* and to make consequential amendments to various Acts.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Industrial Relations Amendment Act 2008*.

2. Commencement

5 This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Industrial Relations Act 1979* amended

3. The Act amended

The amendments in this Part are to the *Industrial Relations Act 1979*.

5 **4. Section 7 amended**

Section 7(1) is amended as follows:

- (a) in the definition of “Commission in Court Session” by deleting “15(2);” and inserting instead —
“ 15B; ”;
- 10 (b) in the definition of “member of the Commission” by deleting “the President or” in both places where it occurs;
- (c) by deleting the definition of “President”;
- (d) by inserting in the appropriate alphabetical position —
15 “
“**presiding member**”, of the Full Bench, has the meaning given in section 15(1)(a);
”.

5. Section 8 amended

- 20 (1) Section 8(2) is amended as follows:
 - (a) by deleting paragraph (a);
 - (b) after paragraph (c) by deleting “and”.
- (2) After section 8(2) the following subsection is inserted —
“
25 (2AA) In the case of the Full Bench, the Commission includes the presiding member.
”.

s. 6

6. Section 9 amended and consequential amendment to *Legal Profession Act 2008*

- (1) Section 9(1) is repealed.
- (2) Section 9(1aa) is repealed.
- 5 (3) Section 9(1a) is repealed.
- (4) The *Legal Profession Act 2008* section 668(3) is repealed.

[Note: The heading to amended section 9 is to read “**Qualifications for appointment of Chief Commissioner**”.]

7. Section 13 amended

10 Section 13 is amended as follows:

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

“

or

- (aa) the presiding member of the Full Bench; or

15

”;

- (b) after paragraph (ab) by inserting —

“ or ”;

- (c) by deleting “judge.” and inserting instead —

“

20

judge has in the performance of his or her duties as a judge.

”.

8. Section 14 amended

Section 14(1) is repealed.

25

[Note: The heading to amended section 14 is to read “**Exercise of powers and jurisdiction of Commission**”.]

9. Section 15 replaced by sections 15 to 15B

Section 15 is repealed and the following sections are inserted instead —

“

5 **15. Constitution of Full Bench**

(1) The Commission as the Full Bench shall be constituted by —

- 10 (a) a judge assigned by the Chief Justice of Western Australia (the “**presiding member**”);
 and
 (b) not less than 2 commissioners assigned by the Chief Commissioner,

sitting or acting together.

15 (2) An assignment under subsection (1)(a) or (b) may alter the constitution of the Full Bench.

(3) An assignment under subsection (1)(b) may be made notwithstanding that the commissioner assigned is for the time being appointed as or to a constituent authority.

- 20 (4) When it is continuing to deal with and deciding a matter in relation to which its constitution has been altered, the Full Bench can have regard to —
 (a) any record of the proceedings of the Full Bench in relation to the matter before the alteration; or
25 (b) any evidence taken in the proceedings before the alteration.

15A. Matters relating to presiding member of Full Bench

30 (1) The assignment of a person as a presiding member of the Full Bench does not affect the person’s tenure of office as, or status as, a judge nor the payment of the

s. 10

person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.

- 5 (2) A person's service as a presiding member is to be taken for all purposes to be service in the person's office of judge.
- (3) Nothing in this Act prevents a person who is serving as a presiding member from doing anything in the person's capacity as a judge.
- 10 (4) A person serving as the presiding member has the jurisdiction expressly conferred on a presiding member by this Act or by any other Act and in the exercise of that jurisdiction the person constitutes the Commission and has and may exercise such powers of the Commission as may be necessary or appropriate.

15 **15B. Constitution of Commission in Court Session**

The Commission in Court Session shall be constituted by not less than 3 commissioners sitting or acting together.

”.

20 **10. Section 16 amended**

- (1) Section 16(1) is repealed and the following subsection is inserted instead —

“

- 25 (1) In this section —
“**Commission**” includes the Commission in Court Session and a constituent authority.

”.

- (2) Section 16(1aa) is amended by deleting “members of the Commission.” and inserting instead —

“

5 commissioners including a commissioner assigned to the Full Bench.

”.

- (3) Section 16(1a) is amended by deleting “the Full Bench or”.

- (4) Section 16(2) is amended as follows:

- 10 (a) by deleting paragraph (c) and “and” after it;
 (b) after paragraph (b) by inserting —
 “ and ”.

11. Section 17 amended

- (1) Section 17(1) is amended by deleting “acting President,”.
(2) Section 17(1a) and (1b) are repealed.
15 (3) Section 17(2) is amended by deleting “acting President or”.

12. Section 18 amended

Section 18(3) and (4) are repealed and the following subsections are inserted instead —

“

- 20 (3) The continuation in office of a retired member of the Commission under subsection (1) does not prevent the appointment of a person to fill the office from which the member retired.
- 25 (4) The continuation in office of an acting member of the Commission under subsection (1) does not prevent the appointment of another person to act in the office in which the acting member acted.
- (5) The Governor may extend the period of office of a person who held office as the President or acting

s. 13

5 President immediately before the commencement of
the *Industrial Relations Amendment Act 2008* section 4
for such further period as the Governor determines, in
order to enable the person to complete all matters,
proceedings or inquiries that the person had entered
upon and not completed before the commencement of
that section.

”.

13. Section 20 amended

- 10 (1) Section 20(1) is repealed.
- (2) Section 20(2) is amended by deleting “, other than the
President”.
- (3) Section 20(8c) and (8d) are repealed.
- 15 (4) Section 20(11) to (13) are repealed and the following subsection
is inserted instead —

“

- 20 (11) Despite the repeal of subsections (12) and (13) by the
Industrial Relations Amendment Act 2008 section 13,
subsections (12) and (13) continue to apply in relation
to a person who held office as President or acting
President before the commencement of the *Industrial
Relations Amendment Act 2008* section 4 or the
surviving spouse, de facto partner or child of such a
person.

25

”.

14. Section 27 amended

Section 27(1) is amended as follows:

- (a) in paragraph (t) by deleting “thereof” and inserting
instead —

“
of the matter, including any question of
interpretation of the rules of an organisation,
”;

- 5 (b) in paragraph (u) by deleting “with the consent of the President”;
- (c) in paragraph (u) by deleting “including any” and inserting instead —
 “ other than a ”.

10 **15. Section 34 amended**

- (1) Section 34(1) is repealed and the following subsection is inserted instead —

“

- 15 (1) The decision of the Commission shall be in the form of an award, order or declaration and shall be signed and delivered —
- (a) in the case of a decision of the Commission constituted by a single commissioner — by the commissioner; or
- 20 (b) in the case of a decision of the Commission in Court Session — by the senior commissioner among the commissioners constituting the Commission in Court Session; or
- 25 (c) in the case of a decision of the Full Bench or its presiding member — by the presiding member.

”.

- (2) Section 34(3) and (4) are amended by deleting “President, the Full Bench,” and inserting instead —

“ Full Bench, or its presiding member, ”.

s. 16

16. Section 49 amended

(1) Section 49(1) is amended by deleting “In this section” and inserting instead —

“ In subsections (2) to (6a) ”.

5 (2) Section 49(7) is repealed.

(3) Section 49(8) and (9) are amended by deleting “President” and inserting instead —

“ presiding member ”.

10 (4) Section 49(12) is amended by deleting “President.” and inserting instead —

“ presiding member of the Full Bench. ”.

17. Section 53 amended

Section 53(2) is amended by deleting “Full Bench if the Full Bench” and inserting instead —

15 “ Commission in Court Session if it ”.

18. Section 54 amended

Section 54(2) is amended by deleting “Full Bench if the Full Bench” and inserting instead —

“ Commission in Court Session if it ”.

20 **19. Section 66 amended**

Section 66(7) and (8) are repealed.

[Note: The heading to amended section 66 is to read “**Power of Chief Commissioner to deal with complaint by members, certain other persons or Registrar against organisation**”.]

25 **20. Section 72A amended**

(1) Section 72A(5) is amended as follows:

- 5 (a) by deleting “The Full Bench” and inserting instead —
 “ The Commission in Court Session ”;
- (b) by deleting “the opinion of the Full Bench,” and
 inserting instead —
6 “ its opinion, ”.
- (2) Section 72A(6) is amended as follows:
- (a) by deleting “Full Bench is to refer” and inserting
 instead —
 “ Commission in Court Session is to refer ”;
- 10 (b) by deleting “the Full Bench is satisfied” and inserting
 instead —
 “ it is satisfied ”.
- (3) Section 72A(7) is amended by deleting “President’s” and
 inserting instead —
15 “ Chief Commissioner’s ”.

21. Section 76 repealed

Section 76 is repealed.

22. Section 80E amended

Section 80E(6) is amended as follows:

- 20 (a) in paragraph (a) by deleting “or any part of that
 industrial matter” and inserting instead —
 “
 , any part of an industrial matter or any
 question of interpretation of the rules of an
25 organisation,
 ”;
- (b) in paragraph (b) by deleting “with the consent of the
 President”;

s. 23

- (c) in paragraph (b) by deleting “including any” and inserting instead —
“ other than a ”.

23. Section 80R amended

5 Section 80R(3) is amended as follows:

- (a) in paragraph (a) by deleting “or any part of that industrial matter” and inserting instead —
“
10 , any part of an industrial matter or any question of interpretation of the rules of an organisation,
”;
- (b) in paragraph (b) by deleting “with the consent of the President”;
- 15 (c) in paragraph (b) by deleting “including any” and inserting instead —
“ other than a ”.

24. Section 81B amended

20 Section 81B(2) and (4) are amended by deleting “joint recommendation of the President and” and inserting instead —
“ recommendation of ”.

25. Section 90 amended

25 Section 90(1) and (3) are amended by deleting “President, the Full Bench,” and inserting instead —
“ Full Bench, or its presiding member, ”.

26. Section 92 amended

Section 92(4) is repealed and the following subsection is inserted instead —

“

- 5 (4) The presiding member of the Full Bench, when presiding on the Full Bench or sitting or acting alone, has and may exercise like powers as are conferred on the Court by this section.

”.

10 **27. Section 106 amended**

Section 106(a)(ii) is amended by deleting “President,” and inserting instead —

“ presiding member of the Full Bench, ”.

28. Various references to President amended

15 Each provision listed in the Table to this section is amended by deleting “President” in each place where it occurs and inserting instead —

“ Chief Commissioner ”.

Table

s. 62(3)	s. 66(1), (2), (3) and (9)
s. 72A(6), (7) and (8)	s. 73(2)
s. 80H(3)(a)	

20 **29. Various references to Full Bench amended**

Each provision listed in the Table to this section is amended by deleting “Full Bench” in each place where it occurs and inserting instead —

“ Commission in Court Session ”.

s. 30

Table

s. 7(1) (defn. of “office” and “registration”)	s. 53(1)
s. 54(1)	s. 55(2)(c), (3), (4) and (5)
s. 58(1), (2) and (3)	s. 59(1) and (3)
s. 60(1)	s. 62(2)
s. 66(9)	s. 68
s. 69(12)	s. 71(2), (3), (7), (8), (9)(a) and (10)
s. 72(1)	s. 72A(2), (3), (4) and (7)
s. 73(1), (6), (7), (7a)(c), (7b), (8), (9), (10) and (12)	

[Note: The heading to amended section 68 is to read “**Declaration by Commission in Court Session as to certain functions**”.]

30. Schedule 1 amended

- 5 (1) Schedule 1 clause 2 is amended as follows:
- (a) by deleting paragraph (c) and inserting instead —
- “
- (c) presiding members;
- ”;
- 10 (b) after paragraph (e) by deleting “and”.
- (2) Schedule 1 clause 6 is amended by deleting “, the President,”.

Part 3 — Amendments to other Acts

31. *Coal Industry Tribunal of Western Australia Act 1992* amended

- 5 (1) The amendments in this section are to the *Coal Industry Tribunal of Western Australia Act 1992*.
- (2) Section 18(1) is amended by deleting “President of the Commission” and inserting instead —
“ presiding member of the Full Bench ”.

32. *Constitution Acts Amendment Act 1899* amended

- 10 (1) The amendment in this section is to the *Constitution Acts Amendment Act 1899*.
- (2) Schedule V Part 1 Division 1 is amended by deleting “President of The Western Australian Industrial Relations Commission.”.

33. *Equal Opportunity Act 1984* amended

- 15 (1) The amendment in this section is to the *Equal Opportunity Act 1984*.
- (2) Section 66ZN(2)(g) is amended by deleting “President or”.

34. *Juries Act 1957* amended

- (1) The amendment in this section is to the *Juries Act 1957*.
- 20 (2) The Second Schedule Part I clause 1(c) is amended by deleting “President or commissioner of the” and inserting instead —
“ commissioner of the Western Australian ”.

35. *Police Act 1892* amended

- (1) The amendments in this section are to the *Police Act 1892*.
- 25 (2) Section 33S is amended in the Table to the section as follows:

s. 35

- (a) in the item dealing with s. 34 by deleting “President, the Full Bench, ” in each place where it occurs and inserting instead —
- “ Full Bench, or its presiding member, ”;
- 5 (b) in the item dealing with s. 90 by deleting “President, the Full Bench,” and inserting instead —
- “ Full Bench, or its presiding member, ”.

=====