

Industrial Relations Legislation Amendment Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY

**Industrial Relations Legislation Amendment
Bill 2020**

A Bill for

An Act to amend the Industrial Relations Act 1979, the Long Service Leave Act 1958 and the Minimum Conditions of Employment Act 1993.

The Parliament of Western Australia enacts as follows:

1
2
3
4
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6
7
8
9
10

Part 1 — Preliminary

1. Short title

This is the *Industrial Relations Legislation Amendment Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — 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.

1 **Part 2 — *Industrial Relations Act 1979* amended**

2 **3. Act amended**

3 This Part amends the *Industrial Relations Act 1979*.

4 **4. Section 6 amended**

5 In section 6(ac) delete “remuneration for men and women for
6 work of equal value; and” and insert:

7
8 remuneration; and
9

10 **5. Section 7 amended**

11 (1) In section 7(1) delete the definitions of:

12 *award*

13 *canvasser*

14 *Commonwealth Act*

15 *employee*

16 *employer*

17 *Fair Work Commission*

18 (2) In section 7(1) insert in alphabetical order:

19
20 *award*—

21 (a) means an award made by the Commission
22 under this Act; and

23 (b) for the purposes of section 37C(1), includes an
24 award made under a law of the Commonwealth,
25 another State or a Territory extending to and
26 binding employees;

s. 5

- 1 **employee** means —
- 2 (a) a person who is employed by an employer to do
- 3 work for hire or reward, including as an
- 4 apprentice; or
- 5 (b) a person whose usual status is that of an
- 6 employee;
- 7 **employer** means —
- 8 (a) a person or public authority employing 1 or
- 9 more employees; or
- 10 (b) except as provided in the *Foreign States*
- 11 *Immunities Act 1985* (Commonwealth)
- 12 section 12, a foreign state or consulate
- 13 employing 1 or more employees; or
- 14 (c) a labour hire agency or group training
- 15 organisation that arranges for an employee
- 16 (being a person who is a party to a contract of
- 17 service with the agency or organisation) to do
- 18 work for another person, even though the
- 19 employee is working for the other person under
- 20 an arrangement between the agency or
- 21 organisation and the other person;
- 22 **enterprise award** means an award that extends to and
- 23 binds a single employer who is not a body or entity
- 24 referred to in the definition of public sector award;
- 25 **entitlement provision** means —
- 26 (a) a provision of any of the following —
- 27 (i) an award;
- 28 (ii) an industrial agreement;
- 29 (iii) an employer-employee agreement;
- 30 (iv) an order made by the Commission,
- 31 other than an order made under
- 32 section 23A, 32(8), 44(6) or 66;
- 33 or

- 1 (b) a provision of the LSL Act Part III; or
2 (c) a minimum condition of employment as
3 defined in the MCE Act section 3(1);
- 4 ***equal remuneration*** means equal remuneration for
5 men and women for work of equal or comparable
6 value;
- 7 ***equal remuneration order*** has the meaning given in
8 section 51O(2);
- 9 ***federal organisation*** means an organisation of
10 employees registered under the FW (Registered
11 Organisations) Act;
- 12 ***FW Act*** means the *Fair Work Act 2009*
13 (Commonwealth);
- 14 ***FW Commission*** means the body established by the
15 FW Act section 575;
- 16 ***FW (Registered Organisations) Act*** means the *Fair*
17 *Work (Registered Organisations) Act 2009*
18 (Commonwealth);
- 19 ***FW (Transitional) Act*** means the *Fair Work*
20 *(Transitional Provisions and Consequential*
21 *Amendments) Act 2009* (Commonwealth);
- 22 ***industrial instrument*** means —
- 23 (a) an award; or
24 (b) an order of the Commission under this Act; or
25 (c) an industrial agreement; or
26 (d) for the purposes of section 49D or in relation to
27 a SWIIP — an employer-employee agreement;
- 28 ***LSL Act*** means the *Long Service Leave Act 1958*;
- 29 ***MSI Act*** means the *Mines Safety and Inspection*
30 *Act 1994*;
- 31 ***OSH Act*** means the *Occupational Safety and Health*
32 *Act 1984*;

- 1 **private sector award** means an award other than a
2 public sector award or enterprise award;
- 3 **produce** includes exhibit, send or deliver;
- 4 **public sector award** means an award that only extends
5 to and binds the following —
- 6 (a) a public sector body as defined in the *Public*
7 *Sector Management Act 1994* section 3(1);
- 8 (b) an entity specified in the *Public Sector*
9 *Management Act 1994* Schedule 1 column 2;
- 10 **record-related civil penalty provision** means the
11 following —
- 12 (a) section 49D(1), (6) or (8);
- 13 (b) section 49DA(1) or (3);
- 14 (c) section 49E(1);
- 15 (d) section 102(1)(a);
- 16 (e) the LSL Act section 7I(2), 26(1) or (2)
17 or 26A(1);
- 18 **serious contravention** has the meaning given in
19 section 83EA(2);
- 20 **supported wage industrial instrument provision** or
21 **SWIIP** means a provision of an industrial instrument
22 that —
- 23 (a) applies to an employee with a disability; and
- 24 (b) provides a means (a **wage assessment tool**) for
25 the assessment of whether, and the extent to
26 which, the employee’s productive capacity is
27 reduced because of the disability; and
- 28 (c) provides that the employer may pay a wage
29 that —
- 30 (i) relates to the employee’s productive
31 capacity as assessed using the wage
32 assessment tool; and

- 1 (ii) may be less than the applicable
2 minimum wage in the industrial
3 instrument;

4 **Supported Wage System** or **SWS** means the scheme
5 established by the Commonwealth Government to
6 enable the assessment of whether, and the extent to
7 which, a person's productive capacity is reduced
8 because of a disability;
9

- 10 (3) In section 7(1) in the definition of **industry** delete paragraph (b)
11 and insert:

12
13 (b) the performance of the functions of any public
14 authority;
15

- 16 (4) In section 7(1) in the definition of **public authority** after
17 "means" insert:

18
19 the Crown,
20

- 21 (5) After section 7(1a) insert:
22

23 (2) In subsection (2A) —
24 **bullying** means behaviour to which section 51BI(1)
25 applies;
26 **worker** has the meaning given in section 51BH.

- 27 (2A) A matter relating or pertaining to the bullying of a
28 worker is an industrial matter.
29

- 30 (6) Delete section 7(5).

s. 6

1 (7) In section 7(7) delete “section 29(1)(b)(ii)” and insert:

2

3 section 29(1)(d)

4

5 **6. Section 10 amended**

6 In section 10:

7 (a) delete “attained the age of 65 years” and insert:

8

9 reached 70 years of age

10

11 (b) delete “attaining the age of 65 years.” and insert:

12

13 reaching 70 years of age.

14

15 **7. Section 16 amended**

16 (1) In section 16(1) delete “(1aa)” and insert:

17

18 (1AA)

19

20 (2) Delete section 16(1aa) and insert:

21

22 (1AA) The Chief Commissioner is responsible for matters of
23 an administrative nature relating to the Commission
24 and commissioners, including the following —

25 (a) giving directions about the practices and
26 procedures to be followed by the Commission;

27 (b) developing and implementing performance
28 standards and setting benchmarks for the
29 Commission;

- 1 (c) overseeing the proper use of the resources of
2 the Commission;
- 3 (d) managing the business of the Commission,
4 including by ensuring that the Commission
5 operates efficiently and effectively and
6 continually improves the way in which it
7 carries out its functions;
- 8 (e) providing leadership and guidance to the
9 Commission and engendering cohesiveness and
10 collaboration amongst commissioners;
- 11 (f) being responsible for promoting the training,
12 education and professional development of
13 commissioners.
14

15 (3) Delete section 16(2D) and (2E).

16 (4) After section 16(3) insert:
17

18 (4) The Chief Commissioner may do all things necessary
19 or convenient to be done in the performance of the
20 Chief Commissioner's functions.
21

22 **8. Section 23 amended**

23 In section 23(3)(c) before "make" insert:
24

25 except as provided in section 49K(3),
26

s. 9

1 **9. Section 23A amended**

2 Delete section 23A(2) and insert:

3

4 (2) In determining whether the dismissal of an employee
5 was harsh, oppressive or unfair the Commission must
6 have regard to the following —

7 (a) whether, at the time of the dismissal, the
8 employee —

9 (i) was employed for a probationary period
10 agreed between the employer and
11 employee; and

12 (ii) had been employed on that basis for a
13 period of less than 3 months;

14 (b) whether, at the time of the dismissal, the
15 employee was employed in a private home to
16 provide services directly to the employer or a
17 member of the employer’s family or household.
18

19 **10. Section 26 amended**

20 In section 26(2B) in the definition of *public sector decision*
21 paragraph (c) delete “decision that” and insert:

22

23 decision (except an equal remuneration order) that
24

25 **11. Section 29 amended**

26 (1) Delete section 29(1)(b) and insert:

27

28 (b) except as provided in section 51Q(2), in the
29 case of an equal remuneration order — by an
30 application made by any of the following —

31 (i) an employee to be covered by the order;

- 1 (ii) an organisation in which employees to
2 be covered by the order are eligible to
3 be enrolled as members;
- 4 (iii) an organisation in which employers of
5 employees to be covered by the order
6 are eligible to be enrolled as members;
- 7 (iv) UnionsWA;
- 8 (v) the Chamber;
- 9 (vi) the Minister;
- 10 (vii) the Commissioner for Equal
11 Opportunity;
- 12 and
- 13 (c) in the case of a claim by an employee that the
14 employee has been harshly, oppressively or
15 unfairly dismissed from the employee’s
16 employment — by the employee; and
- 17 (d) in the case of a claim by an employee that the
18 employer has not allowed the employee a
19 benefit, other than a benefit under an award or
20 order, to which the employee is entitled under
21 the contract of employment — by the
22 employee; and
- 23 (e) in the case of an industrial matter mentioned in
24 section 7(2A) — by the worker.

25

26 (2) In section 29(2) and (3) delete “subsection (1)(b)(i)” and insert:

27

28 subsection (1)(c)

29

s. 12

1 **12. Section 31 amended**

2 In section 31(1)(c)(ii) delete “section 29(1)(b)” and insert:

3

4 section 29(1)(c) or (d)

5

6 **13. Section 37 amended**

7 Delete section 37(1) and insert:

8

9 (1) An award has effect according to its terms.

10 (2) Except as provided in its terms, an award operates
11 throughout the State, other than in the areas to which
12 section 3(1) applies.

13

14 Note: The heading to amended section 37 is to read:

15 **Effect, area of operation and duration of award**

16 **14. Sections 37A to 37D inserted**

17 After section 37 insert:

18

19 **37A. Public sector awards and enterprise awards**

20 Except as provided in its terms, a public sector award
21 or enterprise award extends to and binds —

22 (a) employees employed in a calling specified in
23 the award in the industry or industries to which
24 the award applies; and

25 (b) employers employing those employees.

- 1 **37B. Private sector awards: general**
- 2 (1) Except as provided in its terms, a private sector award
- 3 extends to and binds —
- 4 (a) employers —
- 5 (i) of a class or classes specified in the
- 6 award; or
- 7 (ii) specified by name in the award;
- 8 and
- 9 (b) employees who are —
- 10 (i) employees of employers referred to in
- 11 paragraph (a); and
- 12 (ii) of a class or classes specified in the
- 13 award.
- 14 (2) For the purposes of subsection (1)(a)(i) and (b)(ii), the
- 15 class may be described by reference to —
- 16 (a) a particular industry or part of an industry; or
- 17 (b) a particular kind of work.
- 18 (3) A private sector award may be made or varied to —
- 19 (a) prevent any overlap with another award; and
- 20 (b) extend to and bind a labour hire agency, and
- 21 any employees of a labour hire agency,
- 22 conducting business —
- 23 (i) in an industry to which the award
- 24 relates; and
- 25 (ii) in relation to employees to whom a
- 26 classification in the award applies.

- 1 **37C. Private sector awards: limitations on making and**
2 **varying**
- 3 (1) A private sector award must not be made or varied to
4 extend to and bind a class of employees —
- 5 (a) who, because of the nature or seniority of their
6 role, have not had awards (whether made under
7 laws of the State, the Commonwealth, another
8 State or a Territory) extend to and bind them; or
- 9 (b) who perform work that is not of a similar nature
10 to work that has traditionally been regulated by
11 the awards referred to in paragraph (a).
- 12 (2) The scope of a private sector award must not be fixed
13 by reference to an industry or part of an industry
14 carried on by an employer if the Commission makes or
15 varies the private sector award to extend to and bind an
16 employer specified by name in the award.
- 17 (3) A private sector award must not be made or varied to
18 extend to and bind an employee and employer if a
19 public sector award or enterprise award extends to and
20 binds the employee and employer.
- 21 **37D. Private sector awards: variations of the**
22 **Commission’s own motion**
- 23 (1) Except as provided in this section, the Commission
24 may vary the scope of a private sector award of its own
25 motion.
- 26 (2) A variation must not be made in relation to —
- 27 (a) an application under section 50(2) that does not
28 seek the variation of the scope of the private
29 sector award; or
- 30 (b) a State Wage order under section 50A.

- 1 (3) A variation must specify that the scope of the private
2 sector award extends to and binds —
- 3 (a) employers of a class or classes specified in the
4 award, whether or not the employers are also
5 specified by name in the award; and
- 6 (b) employees who are —
- 7 (i) employees of employers referred to in
8 paragraph (a); and
- 9 (ii) of a class or classes specified in the
10 award.
- 11 (4) For the purposes of subsection (3)(a) and (b)(ii), the
12 class may be described by reference to —
- 13 (a) a particular industry or part of an industry; or
14 (b) a particular kind of work.
- 15 (5) A variation that stops the private sector award from
16 extending to and binding particular employers or
17 employees must not be made unless the Commission is
18 satisfied that another appropriate award will extend to
19 and bind them.
- 20 (6) Section 29A(1a), (1b), (2), (2A) and (2b) apply, with
21 necessary modifications, to and in relation to the
22 variation of the scope of a private sector award.
23

24 **15. Section 38 amended**

- 25 (1) In section 38(3):
- 26 (a) delete “an award” and insert:
- 27
- 28 a public sector award or enterprise award
29

s. 16

- 1 (b) delete “shall for the purposes of section 37(1) be
2 expressly limited to that industry.” and insert:
3
4 is expressly limited to that industry for the purposes of
5 section 37A.
6
- 7 (2) In section 38(4) delete “an award” and insert:
8
9 a public sector award or enterprise award
10
- 11 **16. Section 40 amended**
- 12 (1) In section 40(1) delete “sections 29A” and insert:
13
14 sections 29A, 37C, 37D(5)
15
- 16 (2) After section 40(2) insert:
17
- 18 (2A) A variation to the scope of a private sector award must
19 specify that it extends to and binds —
20 (a) employers of a class or classes specified in the
21 award, whether or not the employers are also
22 specified by name in the award; and
23 (b) employees who are —
24 (i) employees of employers referred to in
25 paragraph (a); and
26 (ii) of a class or classes specified in the
27 award.
- 28 (2B) For the purposes of subsection (2A)(a) and (b)(ii), the
29 class may be described by reference to —
30 (a) a particular industry or part of an industry; or

1 (b) a particular kind of work.

2

3 Note: The heading to amended section 40 is to read:

4 **Varying and cancelling awards generally**

5 **17. Part II Division 2F heading amended**

6 In the heading to Part II Division 2F after “**records**” insert:

7

8 **and pay slips**

9

10 **18. Section 49D amended**

11 (1) Delete section 49D(1) and insert:

12

13 (1) Employment records relating to an employee must be
14 kept in accordance with this section.

15

16 (2) In section 49D(2):

17 (a) delete “details are recorded of —” and insert:

18

19 the following employment records are kept —

20

21 (b) in paragraph (a) delete “birth; and” and insert:

22

23 birth;

24

25 (c) after paragraph (a) insert:

26

27 (aa) the employer’s name and Australian Business
28 Number (if any);

29

s. 18

- 1 (d) in paragraph (b) delete “applies; and” and insert:
2
3 applies;
4
- 5 (e) in paragraph (c) delete “employer; and” and insert:
6
7 employer;
8
- 9 (f) after paragraph (d)(iii) delete “and”;
10 (g) in paragraph (e)(ii) delete “the industrial instrument;
11 and” and insert:
12
13 an industrial instrument or the MCE Act and any
14 amount withheld as tax; and
15
- 16 (h) after paragraph (e)(iii) delete “and”;
17 (i) after paragraph (e) insert:
18
19 (ea) any incentive based payment, bonus, loading,
20 penalty rates or another monetary allowance or
21 separately identifiable entitlement;
22
- 23 (j) in paragraph (f) delete “unpaid; and” and insert:
24
25 unpaid;
26
- 27 (k) delete paragraph (g) and insert:
28
29 (fa) any agreement under the MCE Act section 8(1),
30 including details of —
31 (i) the benefit for, and the amount of,
32 annual leave that was foregone; and
33 (ii) when the benefit was paid;

- 1 (g) the information necessary for the calculation of,
2 and payment for, long service leave under the
3 LSL Act, the *Construction Industry Portable*
4 *Paid Long Service Leave Act 1985* or an
5 industrial instrument;
6
- 7 (l) in paragraph (h) delete “the industrial instrument to be
8 recorded; and” and insert:
9
10 an industrial instrument to be recorded;
11
- 12 (m) in paragraph (i) delete “the industrial instrument.” and
13 insert:
14
15 an industrial instrument or other entitlement provision;
16
- 17 (n) after paragraph (i) insert:
18
- 19 (j) the following matters relating to
20 superannuation —
21 (i) the amount of the superannuation
22 contributions made;
23 (ii) the period over which the
24 superannuation contributions were
25 made;
26 (iii) the date on which each superannuation
27 contribution was made;
28 (iv) the name of any fund to which a
29 superannuation contribution was made;
30 (v) how the employer worked out the
31 amount of superannuation owed;
32 (vi) any election made by the employee as to
33 the fund to which the contributions are

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- 1 to be made and the date the election was
2 made;
- 3 (k) termination-related matters, including —
- 4 (i) whether the employee’s employment
5 was terminated by consent, notice,
6 summarily or in some other specified
7 manner; and
- 8 (ii) the name of the person who terminated
9 the employee’s employment.
- 10
- 11 (3) In section 49D(3):
- 12 (a) in paragraph (b) after “to” insert:
13
14 annual and
15
- 16 (b) in paragraph (c) delete “entry” and insert:
17
18 employment record
19
- 20 (4) Delete section 49D(4) and insert:
21
- 22 (4) An employer who enters into an agreement under the
23 MCE Act section 8(1) must ensure that a copy of the
24 agreement is kept as an employment record.
- 25 (5) If the SWS or a SWIIP applies to an employee with a
26 disability, an employer must ensure that the following
27 are kept as employment records in relation to the
28 employee —
- 29 (a) any agreement entered into under the SWS or a
30 SWIIP by the employer and the employee;

- 1 (b) any other document required to be kept by the
2 SWS or a SWIIP relating to the determination
3 of a wage for the employee.
- 4 (6) The employer must, as soon as practicable, lodge with
5 the Registrar a copy of an agreement entered into under
6 the SWS that is required to be kept under
7 subsection (5)(a).
- 8 (7) If an employer makes a payment to an employee in
9 cash, the employer must provide a record of payment
10 to the employee and ensure that a copy of the record of
11 payment is kept as an employment record.
- 12 (8) An employer must not make or keep an employment
13 record for the purposes of this section that the
14 employer knows, or could reasonably be expected to
15 know, is false or misleading.
- 16 (9) Subsection (8) does not apply if the employment record
17 is not false or misleading in a material particular.
18

19 **19. Section 49DA inserted**

20 After section 49D insert:
21

22 **49DA. Employer obligations in relation to pay slips**

- 23 (1) An employer must, in accordance with this section,
24 give a pay slip (in hard copy or electronic form) to each
25 employee within 1 working day after paying an amount
26 to the employee in relation to the performance of work.
- 27 (2) The pay slip must include the following information —
- 28 (a) the employer's name and Australian Business
29 Number (if any);
- 30 (b) the employee's name;
- 31 (c) the period to which the pay slip relates;

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- 1 (d) the date on which the payment referred to in the
2 pay slip was made;
- 3 (e) the gross and net amounts of the payment and
4 any amount withheld as tax;
- 5 (f) any incentive based payment, or payment of a
6 bonus, loading, penalty rates or another
7 monetary allowance or separately identifiable
8 entitlement;
- 9 (g) if an amount is deducted from the gross amount
10 of the payment —
- 11 (i) the name of the person in relation to
12 whom or which the deduction was
13 made; and
- 14 (ii) if the deduction was paid into a fund or
15 account — the name, or the name and
16 number, of the fund or account; and
- 17 (iii) the purpose of the deduction;
- 18 (h) if the employee is paid at an hourly rate of
19 pay —
- 20 (i) the rate of pay for the employee's
21 ordinary hours; and
- 22 (ii) the number of hours worked during the
23 period to which the pay slip relates; and
- 24 (iii) the amount of the payment made at that
25 rate;
- 26 (i) if the employee is paid at a weekly or an annual
27 rate of pay — the rate as at the latest date to
28 which the payment relates;
- 29 (j) if the employer is required to make
30 superannuation contributions for the benefit of
31 the employee —
- 32 (i) the amount of each contribution that the
33 employer made during the period to

- 1 which the pay slip relates and the name,
2 or the name and number, of any fund to
3 which the contribution was made; or
4 (ii) the amounts of contributions that the
5 employer is liable to make in relation to
6 the period to which the pay slip relates,
7 and the name, or the name and number,
8 of any fund to which the contributions
9 will be made.
- 10 (3) An employer must not give a pay slip for the purposes
11 of this section if the pay slip is false or misleading.
- 12 (4) Subsection (3) does not apply if —
- 13 (a) the employer gives the pay slip without
14 knowing, or being reasonably expected to
15 know, that it is false or misleading; or
16 (b) the pay slip is not false or misleading in a
17 material particular.
18

19 **20. Section 49E amended**

20 In section 49E(2)(a):

- 21 (a) after “the” insert:
22
23 employment
24
- 25 (b) delete “section 49D(3); and” and insert:
26
27 section 49D; and
28

s. 21

1 **21. Section 49F amended**

2 In section 49F delete “section 49D(2), 49D(3)” and insert:

3

4 section 49D(1), (6) or (8), 49DA(1) or (3)

5

6 **22. Section 49I amended**

7 (1) In section 49I(1) delete “*Long Service Leave Act 1958*, the MCE
8 Act, the *Occupational Safety and Health Act 1984*, the *Mines*
9 *Safety and Inspection Act 1994*” and insert:

10

11 LSL Act, the MCE Act, the OSH Act, the MSI Act, the
12 *Construction Industry Portable Paid Long Service Leave*
13 *Act 1985*

14

15 (2) In section 49I(2)(c) delete “view” and insert:

16

17 view, and take photographs, films and audio, video or other
18 recordings of,

19

20 **23. Section 49K replaced**

21 Delete section 49K and insert:

22

23 **49K. No entry to premises used for habitation**

24 (1) Except as provided in subsection (3), an authorised
25 representative does not have authority under this
26 Division to enter any part of premises principally used
27 for habitation by an employer or a member of the
28 employer’s household (*habitation premises*).

1 (2) An authorised representative may apply to the
2 Commission for an order permitting the authorised
3 representative to enter habitation premises under
4 section 49I(1).

5 (3) The Commission may make the order only if it is
6 satisfied that exceptional circumstances exist
7 warranting the making of the order.
8

9 **24. Section 50 amended**

10 After section 50(4) insert:
11

- 12 (5) A General Order that varies the scope of a private
13 sector award must specify that it extends to and
14 binds —
- 15 (a) employers of a class or classes specified in the
16 award, whether or not the employers are also
17 specified by name in the award; and
 - 18 (b) employees —
 - 19 (i) of employers referred to in
20 paragraph (a); and
 - 21 (ii) of a class or classes specified in the
22 award.
- 23 (6) For the purposes of subsection (5)(a) and (b)(ii), the
24 class may be described by reference to —
- 25 (a) a particular industry or part of an industry; or
 - 26 (b) a particular kind of work.
27

1 **25. Section 50A amended**

2 (1) Before section 50A(1) insert:

3

4 (1AA) In this section —

5 *instrument-governed employee with a disability* means
6 an employee —

- 7 (a) whose contract of employment is governed by
8 an industrial instrument that includes a SWIIP
9 that incorporates the SWS; and
10 (b) whose productive capacity has been assessed
11 under the SWS as being reduced because of a
12 disability; and
13 (c) who is not employed by a supported
14 employment service as defined in the *Disability*
15 *Services Act 1986* (Commonwealth) section 7;
16 and
17 (d) who is being paid a weekly rate of pay
18 determined by the SWS under the SWIIP.

19

20 (2) In section 50A(1):

21 (a) in paragraph (a) delete “setting —” and insert:

22

23 setting the following —

24

25 (b) after paragraph (a)(ii) insert:

26

27 (iii) the minimum amount payable under the
28 MCE Act section 17(2);

29

- 1 (c) delete paragraph (d) and insert:
2
- 3 (d) setting out a statement of principles to be
4 applied and followed in relation to the exercise
5 of jurisdiction under this Act to —
- 6 (i) set the wages, salaries, allowances or
7 other remuneration of employees or the
8 prices to be paid in respect of their
9 employment; and
- 10 (ii) ensure employees receive equal
11 remuneration.
12
- 13 (3) After section 50A(1) insert:
14
- 15 (1A) The amount set by the Commission under
16 subsection (1)(a)(iii) must be the same as that set by
17 the FW Commission in the national minimum wage
18 order under the FW Act section 285(2)(c) for an
19 eligible employee whose productive capacity is, under
20 the SWS, assessed as reduced because of a disability.
- 21 (1B) For the purposes of subsection (1)(b), the Commission
22 must, in relation to an instrument-governed employee
23 with a disability —
- 24 (a) order that the minimum amount payable is to be
25 the same as in the previous State Wage order;
26 or
- 27 (b) order that the minimum amount payable is to be
28 the same as that set by the FW Commission in
29 the national minimum wage order under the
30 FW Act section 285(2)(c) for an eligible
31 employee whose productive capacity is, under
32 the SWS, assessed as reduced because of a
33 disability.
34

s. 26

1 (4) In section 50A(3)(a)(vii) delete “remuneration for men and
2 women for work of equal or comparable value;” and insert:

3

4 remuneration;

5

6 **26. Section 50B amended**

7 In section 50B(1) delete “section 50A(1)(a)(ii) and (iii),” and
8 insert:

9

10 section 50A(1)(a)(ii),

11

12 **27. Part II Division 3AA inserted**

13 After Part II Division 3 insert:

14

15 **Division 3AA — Workers bullied at work**

16 **51BF. Terms used**

17 In this Division —

18 ***bullied at work*** has the meaning given in section 51BI;

19 ***person*** conducting a business or undertaking includes a
20 public authority conducting the business or
21 undertaking;

22 ***stop bullying application*** has the meaning given in
23 section 51BJ(1);

24 ***stop bullying order*** has the meaning given in
25 section 51BM(1);

26 ***volunteer*** means a person who is acting on a voluntary
27 basis (irrespective of whether the person receives
28 out-of-pocket expenses);

1 **WA Police** means the Police Force of Western
2 Australia provided for by the *Police Act 1892*;
3 **worker** has the meaning given in section 51BH.

4 **51BG. Person conducting a business or undertaking**

5 (1) A reference in section 51BH to a person conducting a
6 business or undertaking includes a reference to the
7 following —

- 8 (a) a person conducting the business or
9 undertaking —
10 (i) whether alone or with others; and
11 (ii) whether or not for profit or gain;
12 (b) a partnership, or an unincorporated association,
13 conducting the business or undertaking;
14 (c) in the case of a partnership (other than an
15 incorporated partnership) referred to in
16 paragraph (b) — each partner in the
17 partnership.

18 (2) A reference in section 51BH to a person conducting a
19 business or undertaking does not include a reference to
20 the following —

- 21 (a) an individual engaged solely as a worker in the
22 business or undertaking;
23 (b) in the case of a business or undertaking
24 conducted by a local government or a regional
25 local government — a member of the council
26 of the local government or regional local
27 government;
28 (c) a volunteer association;
29 (d) a person of a prescribed class.

- 1 (3) In subsection (2)(c) —
2 **volunteer association** means a group of volunteers
3 working together for 1 or more community purposes
4 where none of the volunteers, whether alone or jointly
5 with any other volunteers, employs any person to carry
6 out work for the volunteer association.

7 **51BH. Worker**

- 8 (1) A person is a **worker** if the person carries out work in
9 any capacity for a person conducting a business or
10 undertaking, including work as any of the following —
11 (a) an employee;
12 (b) a contractor or subcontractor;
13 (c) an employee of a contractor or subcontractor;
14 (d) an employee of a labour hire agency who has
15 been assigned to work in the person's business
16 or undertaking;
17 (e) an outworker;
18 (f) an apprentice or trainee;
19 (g) a student gaining work experience;
20 (h) a volunteer;
21 (i) a person of a prescribed class.
- 22 (2) A police officer is —
23 (a) a worker of WA Police; and
24 (b) at work throughout the time when the officer is
25 on duty or lawfully performing the functions of
26 a police officer, but not otherwise.
- 27 (3) A person conducting the business or undertaking
28 referred to in subsection (1) is also a **worker** if the
29 person is an individual who carries out work in that
30 business or undertaking.

1 **51BI. Worker bullied at work**

- 2 (1) A worker is *bullied at work* if —
- 3 (a) while the worker is at work, an individual, or
- 4 group of individuals, repeatedly behaves
- 5 unreasonably towards —
- 6 (i) the worker; or
- 7 (ii) a group of workers of which the worker
- 8 is a member;
- 9 and
- 10 (b) that behaviour creates a risk to the safety and
- 11 health of the worker.
- 12 (2) Subsection (1) does not apply to reasonable
- 13 management action carried out in a reasonable manner.

14 **51BJ. Stop bullying application**

- 15 (1) A worker who reasonably believes that the worker has
- 16 been bullied at work may make an application (a *stop*
- 17 *bullying application*) to the Commission for a stop
- 18 bullying order.
- 19 (2) The application must be accompanied by any fee
- 20 prescribed by the regulations.

21 **51BK. Dealing with a stop bullying application**

- 22 (1) The Commission must start to deal with a stop bullying
- 23 application within 14 days after the application is
- 24 made.
- 25 (2) Section 44 does not apply to a stop bullying
- 26 application.
- 27 (3) Section 48A(2) or any other enactment providing for
- 28 the resolution of grievances or disputes by workers
- 29 does not limit the power of the Commission to deal
- 30 with a stop bullying application under this Division.

- 1 **51BL. Power to dismiss stop bullying applications**
2 **involving covert operations**
- 3 (1) In this section —
- 4 *exercise of a power* includes the performance of a
5 function.
- 6 (2) The Commission may dismiss a stop bullying
7 application if the Commission considers that the
8 application might involve matters that relate to the
9 exercise of a power of a police officer in circumstances
10 where —
- 11 (a) a covert operation is undertaken by WA Police
12 for the purpose of obtaining information about
13 criminal activity; and
- 14 (b) unless the exercise of the power is secret or
15 confidential, it would be likely that —
- 16 (i) the effectiveness of the exercise of the
17 power is reduced; or
- 18 (ii) a person is exposed to the danger of
19 physical harm arising from the actions
20 of another person.
- 21 **51BM. Commission may make stop bullying orders**
- 22 (1) The Commission may make any order it considers
23 appropriate (other than an order requiring payment of a
24 pecuniary amount by way of compensation to a
25 worker) to prevent a worker from being bullied at work
26 by an individual or group of individuals (a *stop*
27 *bullying order*) if —
- 28 (a) the worker has made a stop bullying
29 application; and

- 1 (b) the Commission is satisfied that —
2 (i) the worker has been bullied at work by
3 an individual or group of individuals;
4 and
5 (ii) there is a risk that the worker will
6 continue to be bullied at work by the
7 individual or group of individuals.
- 8 (2) In considering the terms of the order, the Commission
9 must take into account —
- 10 (a) if the Commission is aware of any final or
11 interim outcomes arising out of an investigation
12 into the matter that is being, or has been,
13 undertaken by another person or body — those
14 outcomes; and
- 15 (b) if the Commission is aware of any procedure
16 available to the worker to resolve grievances or
17 disputes — that procedure; and
- 18 (c) if the Commission is aware of any final or
19 interim outcomes arising out of any procedure
20 available to the worker to resolve grievances or
21 disputes — those outcomes; and
- 22 (d) any matters that the Commission considers
23 relevant.

24 **51BN. Contravening stop bullying order**

- 25 (1) A person to whom a stop bullying order applies must
26 not contravene a term of the order.
- 27 (2) A contravention of subsection (1) is not an offence but
28 the subsection is a civil penalty provision for the
29 purposes of section 83E.
30

1 **28. Part II Division 3B replaced**

2 Delete Part II Division 3B and insert:

3

4 **Division 3B — Equal remuneration**

5 **51O. Equal remuneration orders**

6 (1) In this section —

7 *statement of principles* means the statement of
8 principles referred to in section 50A(1)(d)(ii).

9 (2) On an application under section 29(1)(b), the
10 Commission must make an order (an *equal*
11 *remuneration order*) to ensure that an employee
12 receives equal remuneration if the Commission is
13 satisfied that the employee does not receive that
14 remuneration.

15 (3) The equal remuneration order may relate to any matter
16 the Commission considers appropriate, including (but
17 not limited to) the following —

18 (a) reclassifying work;

19 (b) establishing new career paths;

20 (c) implementing changes to incremental pay
21 scales;

22 (d) providing for increases in remuneration rates,
23 including —

24 (i) minimum rates of pay in awards,
25 industrial agreements and enterprise
26 orders; and

27 (ii) new allowances;

28 (e) reassessing definitions and descriptions of work
29 to properly reflect the value of the work.

- 1 (4) The Commission must apply the statement of
2 principles, with any necessary modifications, in —
3 (a) determining whether an employee receives
4 equal remuneration; and
5 (b) deciding the terms of an equal remuneration
6 order.
- 7 (5) For the purposes of subsection (3), this Division
8 prevails over the statement of principles to the extent of
9 any inconsistency.
- 10 (6) An equal remuneration order may introduce measures
11 to ensure equal remuneration —
12 (a) immediately; or
13 (b) progressively, in stages specified in the order.

14 **51P. Employer not to reduce remuneration**

- 15 (1) An employer must not reduce an employee's
16 remuneration because an equal remuneration order, or
17 an application for the order, has been made in relation
18 to the employee.
- 19 (2) The purported reduction is of no effect.

20 **51Q. Alternative remedies**

- 21 (1) Except as provided in subsection (3), this Division does
22 not limit a right a person might otherwise have to a
23 remedy (an *alternative remedy*) to secure equal
24 remuneration under another provision of this Act or
25 another enactment.
- 26 (2) A person who has applied for an alternative remedy in
27 relation to an employee cannot apply for an equal
28 remuneration order in relation to the employee unless
29 the proceedings for the alternative remedy have been
30 withdrawn or determined.

s. 28

- 1 (3) A person who has applied for an equal remuneration
2 order in relation to an employee cannot commence
3 proceedings for an alternative remedy in relation to the
4 employee unless the application for the equal
5 remuneration order has been withdrawn or determined.
- 6 (4) Subsection (3) does not prevent an organisation from
7 commencing proceedings —
- 8 (a) that relate, in part or as a whole, to the securing
9 of equal remuneration for the employee; and
- 10 (b) that comprise any of the following —
- 11 (i) an application to vary an award under
12 section 40;
- 13 (ii) an application for the registration of an
14 industrial agreement under section 41;
- 15 (iii) an initiation of bargaining under
16 section 42(1);
- 17 (iv) an application under section 42G for an
18 order regarding provisions of an
19 industrial agreement;
- 20 (v) an application under section 42I for an
21 enterprise order.

22 **51R. Remuneration-related action**

- 23 (1) In this section —
- 24 *remuneration-related action* means —
- 25 (a) the registration of an industrial agreement
26 under section 41; or
- 27 (b) the making of an award under this Act; or
- 28 (c) the making of an order under this Act.

- 1 (2) The Commission must not take remuneration-related
2 action that —
3 (a) prohibits or restricts the making of an
4 application for an equal remuneration order; or
5 (b) is inconsistent with, or prohibits or restricts the
6 application of, an equal remuneration order.
7

8 **29. Section 52 amended**

- 9 (1) In section 52 insert in alphabetical order:
10

11 *counterpart federal body* has the meaning given in
12 section 52A;

13 *State organisation* means an organisation that is
14 registered under this Division.
15

- 16 (2) In section 52 in the definition of *postal ballot* delete “him.” and
17 insert:
18

19 the person;
20

21 **30. Section 52A inserted**

22 After section 52 insert:
23

24 **52A. Counterpart federal body**

- 25 (1) In this section —

26 *rules*, of a branch of a federal organisation, means —

- 27 (a) rules relating to the qualifications of persons for
28 membership; and
29 (b) rules prescribing the offices that exist within
30 the branch.

s. 30

- 1 (2) A Western Australian branch of a federal organisation
2 is a *counterpart federal body* in relation to a State
3 organisation if the rules of the branch are, or in
4 accordance with section 71(2) or (4) are taken to be,
5 the same as the rules of the State organisation relating
6 to the corresponding subject matter.
- 7 (3) A federal organisation is a *counterpart federal body* of
8 a State organisation even though the body does not
9 have or comprise a Western Australian branch of the
10 federal organisation if the Commission in Court
11 Session is of the opinion that the federal organisation is
12 a counterpart federal body in relation to a State
13 organisation.
- 14 (4) The Commission in Court Session may form the
15 opinion referred to in subsection (3) only if —
- 16 (a) a substantial number of members of the State
17 organisation are —
- 18 (i) members or eligible to be members of
19 the federal organisation; or
- 20 (ii) engaged in the same work, in aspects of
21 the same work or in similar work as
22 members of the federal organisation; or
- 23 (iii) employed in the same or similar work
24 by employers engaged in the same
25 industry as members of the federal
26 organisation; or
- 27 (iv) engaged in work or in industries for
28 which there is a community of interest
29 between the federal organisation and the
30 State organisation;
- 31 or

- 1 (b) there is an agreement in force under the FW
2 (Registered Organisations) Act section 151
3 between the federal organisation and the State
4 organisation.
- 5 (5) The Commission in Court Session may form the
6 opinion referred to in subsection (3) despite the fact
7 that a person who is eligible to be a member of the
8 State organisation is, by reason of being a member of a
9 particular class of persons, ineligible to be a member of
10 that State organisation's counterpart federal body.
- 11 (6) The Commission in Court Session may form the
12 opinion referred to in subsection (3) despite the fact
13 that a person who is eligible to be a member of the
14 counterpart federal body is, by reason of being a
15 member of a particular class of persons, ineligible to be
16 a member of the State organisation.
- 17 (7) A State organisation may apply to the Commission in
18 Court Session for a declaration that, for the purposes of
19 subsection (2) or (3), a Western Australian branch of a
20 federal organisation, or a federal organisation, is a
21 counterpart federal body in relation to the State
22 organisation.
23

24 **31. Section 59 amended**

25 In section 59(3) delete "Federal body under that section." and
26 insert:

27
28 federal body.
29

s. 32

1 **32. Section 71 amended**

2 (1) Delete section 71(1) and (2) and insert:

3

4 (2) The rules, as defined in section 52A(1), of the State
5 organisation and a counterpart federal body described
6 in section 52A(2) are taken to be the same if the rules
7 of the organisation and body —

8 (a) relate to the qualifications of persons for
9 membership; and

10 (b) are, in the opinion of the Commission in Court
11 Session, substantially the same.

12

13 (2) Delete section 71(4) and insert:

14

15 (4) The rules, as defined in section 52A(1), of the State
16 organisation and a counterpart federal body described
17 in section 52A(2) are taken to be the same if —

18 (a) the rules prescribe the offices existing in the
19 body; and

20 (b) for every office in the organisation there is a
21 corresponding office in the body.

22

23 (3) In section 71(5)(a) delete “Federal body, holds the
24 corresponding office in that body; and” and insert:

25

26 federal body, holds an office described in subsection (5A) in
27 that body; and

28

1 (4) After section 71(5) insert:
2

3 (5A) The office referred to in subsection (5)(a) is —

- 4 (a) in the case of a counterpart federal body
5 referred to in section 52A(2) — the
6 corresponding office in the body;
- 7 (b) in the case of a counterpart federal body
8 referred to in section 52A(3) — an office that is
9 specified in the rules of the State organisation
10 for the purposes of this subsection and in
11 relation to which the members of the State
12 organisation are, under the rules of the
13 counterpart federal body, entitled to —
- 14 (i) nominate a person to be the office
15 holder; and
- 16 (ii) vote for a person to be the office holder.
17

18 (5) In section 71(6):

19 (a) after “State organisation” insert:
20

21 referred to in section 52A(2) or (3)
22

23 (b) delete “organisation of which the State organisation’s
24 counterpart Federal body is the Branch,” and insert:

25
26 branch or organisation that is the State organisation’s
27 counterpart federal body,
28

29 Note: The heading to amended section 71 is to read:

30 **Rules of State and federal organisations as to membership and**
31 **offices**

s. 33

1 **33. Section 71A amended**

2 (1) Delete section 71A(1).

3 (2) After section 71A(2)(b) insert:

4

5 (ba) a rule described in section 71(5)(a) relating to
6 an office described in section 71(5A)(b); and

7 (bb) a rule described in section 71(5A)(b); and

8

9 Note: The heading to amended section 71A is to read:

10 **State organisation may adopt rules of federal organisation**

11 **34. Part IIAA inserted**

12 After section 80 insert:

13

14 **Part IIAA — Employers declared not to be**
15 **national system employers**

16 **Division 1 — Declarations**

17 **80A. Employers declared not to be national system**
18 **employers**

19 (1) This section applies to an employer who, under the FW
20 Act section 14(2), may be declared by or under a law
21 of the State not to be a national system employer.

22 (2) The regulations may —

23 (a) declare the employer not to be a national
24 system employer for the purposes of the FW
25 Act; and

26 (b) fix a day (the *relevant day*) for the purposes of
27 that declaration.

Division 2 — Change from federal to State system

80B. Terms used

In this Division —

declared employee means a person employed by a declared employer;

declared employer means an employer declared not to be a national system employer under section 80A(2)(a);

federal award means —

- (a) a modern award under the FW Act; or
- (b) an award under the repealed Workplace Act continued in existence under the FW (Transitional) Act;

federal industrial authority means —

- (a) the Australian Industrial Relations Commission under the repealed Workplace Act; or
- (b) the FW Commission;

federal industrial instrument means a fair work instrument under the FW Act;

national fair work legislation means —

- (a) the FW Act; or
- (b) the FW (Transitional) Act;

new State instrument has the meaning given in section 80BB(2);

old federal instrument has the meaning given in section 80BB(1)(b);

relevant day has the meaning given in section 80A(2)(b);

repealed Workplace Act means the *Workplace Relations Act 1996* (Commonwealth);

terms includes conditions, restrictions and other provisions.

- 1 **80BA. Operation of awards, industrial agreements or**
2 **orders**
- 3 (1) The regulations may provide that, on and from the
4 relevant day, an award, industrial agreement or order
5 specified in the regulations applies to the employees of
6 a declared employer specified in the regulations.
- 7 (2) If regulations are made under subsection (1), on and
8 from the relevant day the award, industrial agreement
9 or order applies to each of the following —
- 10 (a) the declared employer;
- 11 (b) the declared employees of the declared
12 employer;
- 13 (c) an organisation that is a party to the award or
14 industrial agreement or that is bound by the
15 order.
- 16 **80BB. New State instruments**
- 17 (1) This section applies —
- 18 (a) to the extent section 80BA does not provide for
19 a declared employee of a declared employer;
20 and
- 21 (b) if, immediately before the relevant day, a
22 federal industrial instrument (the *old federal*
23 *instrument*) applies to, or purports to apply to,
24 the declared employee.
- 25 (2) On the relevant day, an industrial agreement (the *new*
26 *State instrument*) applies to the declared employer and
27 declared employees.
- 28 (3) The new State instrument is taken —
- 29 (a) to have been registered under this Act on the
30 relevant day; and

- 1 (b) except as provided in this section or
2 section 80BC, to have the same terms as the old
3 federal instrument including those terms as
4 added to or modified by any of the following —
5 (i) terms of a federal award incorporated by
6 the old federal instrument;
7 (ii) orders of a federal industrial authority;
8 (iii) another instrument under the national
9 fair work legislation or the repealed
10 Workplace Act;
11 and
12 (c) to have a nominal expiry date that is the earlier
13 of the following —
14 (i) a day that is 2 years after the relevant
15 day;
16 (ii) the day that, immediately before the
17 relevant day, was the nominal expiry
18 day of the old federal instrument.
- 19 (4) This Act applies in relation to the new State instrument
20 subject to any modifications or exclusions prescribed
21 by regulations for this subsection.
- 22 (5) The new State instrument applies except as provided in
23 the MCE Act.

24 **80BC. Amendment of new State instruments**

- 25 (1) A declared employer, a declared employee or an
26 organisation may apply to the Commission to amend a
27 new State instrument.
- 28 (2) On the application, the Commission may make the
29 amendment if it is satisfied it is fair and reasonable to
30 do so in the circumstances.

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- 1 (3) The amendment may be provided to take effect —
2 (a) immediately; or
3 (b) progressively, in stages specified in the
4 amendment.

5 **80BD. Ability to carry over matters**

6 The Commission may, in connection with the operation
7 of this Part, or any matter arising directly or indirectly
8 out of the operation of this Part —

- 9 (a) accept, recognise, adopt or rely on any step
10 taken under, or for, the national fair work
11 legislation; and
12 (b) accept or rely on anything (including in the
13 nature of evidence presented for the purpose of
14 any proceedings) that has been presented, filed
15 or provided under, or for, the national fair work
16 legislation; and
17 (c) give effect in any other way to any other thing
18 done under, or for, the national fair work
19 legislation.

20 **80BE. References in new State instruments to federal**
21 **industrial authority and General Manager**

- 22 (1) In this section —
23 **General Manager** means the General Manager under
24 the FW Act.
25 (2) On and from the relevant day, a term of a new State
26 instrument expressed to confer a power or function on
27 a federal industrial authority has effect as if it conferred
28 the power or function on the Commission.
29 (3) On and from the relevant day, a term of a new State
30 instrument expressed to confer a power or function on

1 the General Manager has effect as if it conferred the
2 power or function on the Registrar.

3 **80BF. References in new State instruments to provisions of**
4 **Commonwealth laws**

5 (1) In this section —

6 *corresponding provision of this Act*, to a provision of
7 the FW Act, means —

8 (a) if paragraph (b) does not apply — a provision
9 of this Act that is of similar effect to the
10 provision of the FW Act; or

11 (b) a provision of this Act declared by regulations
12 to be a corresponding provision.

13 (2) On and from the relevant day, a term of a new State
14 instrument expressed to refer to a provision of the FW
15 Act is taken to refer to the corresponding provision of
16 this Act.

17 **80BG. References in new State instruments to federal**
18 **organisations**

19 (1) In this section —

20 *federal counterpart* has the meaning given in the FW
21 (Registered Organisations) Act section 9A.

22 (2) On and from the relevant day, a term of a new State
23 instrument expressed to refer to a federal organisation
24 is taken to refer to an organisation under this Act of
25 which the federal organisation is a federal counterpart.

26 (3) If the federal organisation is not a federal counterpart
27 of an organisation under this Act, the federal
28 organisation is taken to be an organisation under this
29 Act representing the declared employees of the relevant
30 declared employer in proceedings or other matters
31 arising under this Act.

- 1 (4) Subsection (3) ceases to apply to the federal
2 organisation when the new State instrument ceases to
3 apply to the relevant declared employer and declared
4 employees.

5 **80BH. Named parties to new State instruments**

- 6 (1) An organisation of employees, or an industrial
7 association of employees registered under section 67,
8 may apply to the Commission to make an order naming
9 the organisation or association as a party to a new State
10 instrument.
- 11 (2) On the application, the Commission must grant the
12 order if, in the opinion of the Commission, the
13 instrument applies to an employee who is eligible to be
14 a member of the organisation or industrial association.

15 **80BI. Employment under old federal instrument**

- 16 (1) Subsection (2) applies in relation to deciding the
17 entitlements of a declared employee under a new State
18 instrument.
- 19 (2) Employment of the declared employee with a declared
20 employer before the relevant day that counted under
21 the old federal instrument also counts as employment
22 of the declared employee with the declared employer
23 under the new State instrument.
- 24 (3) If, before the relevant day, the declared employee has
25 already had the benefit of an entitlement determined by
26 reference to a period of service, the period of service
27 cannot be counted again under subsection (2) for
28 calculating the declared employee's entitlements of
29 that type under the new State instrument.

1 **80BJ. Leave accrued immediately before relevant day**

2 (1) This section applies to any paid or unpaid leave
3 accrued under an old federal instrument, the national
4 fair work legislation or a law of this State.

5 (2) Leave accrued immediately before the relevant day by
6 a declared employee to whom a new State instrument
7 applies is taken to have accrued under the new State
8 instrument.

9 **80BK. Leave taken under old federal instrument**

10 (1) A declared employee who was, immediately before the
11 relevant day, taking a period of leave under the old
12 federal instrument or under the FW Act is entitled to
13 continue on that leave under the new State instrument
14 or a law of this State for the remainder of the period.

15 (2) A declared employee who has, before the relevant day,
16 taken a step under the old federal instrument or the FW
17 Act that the employee is required to take so the
18 employee can, on and from the relevant day, take a
19 period of leave under the old federal instrument or the
20 FW Act, is taken to have taken the step under the new
21 State instrument or a law of this State.

22 (3) The regulations may deal with other matters relating to
23 how a new State instrument applies to leave that,
24 immediately before the relevant day, is being, or is to
25 be, taken by a declared employee under the old federal
26 instrument or the FW Act.
27

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1 **35. Section 80E amended**

2 In section 80E(1) delete “Subject to Division 3 of Part II” and
3 insert:

4

5 Except as provided in Part II Divisions 3, 3AA and 3B

6

7 **36. Section 80I amended**

8 In section 80I(1)(c) delete “subsection (1)(b)” and insert:

9

10 subsection (1)

11

12 **37. Part III Division 1 heading inserted**

13 At the beginning of Part III insert:

14

15 **Division 1 — Industrial magistrate’s court**

16

17 **38. Section 81G inserted**

18 After section 81F insert:

19

20 **81G. Industrial inspectors may assist industrial**
21 **magistrate’s court**

22 (1) An industrial inspector may, with the leave of the
23 industrial magistrate’s court, assist the court.

24 (2) The industrial magistrate’s court may grant the leave in
25 respect of —

26 (a) proceedings that, in the opinion of the court,
27 have significant implications for the

- 1 administration of this Act, the LSL Act or the
2 MCE Act; or
3 (b) proceedings that involve special circumstances
4 that satisfy the court that it would be in the
5 public interest for the industrial inspector to
6 assist the court.
7

8 **39. Part III Division 2 heading inserted**

9 Before section 82 insert:
10

11 **Division 2 — Enforcement generally**
12

13 **40. Section 83 amended**

14 (1) Before section 83(1) insert:
15

16 (1A) In this section —
17 *contravene*, in relation to an entitlement provision,
18 includes fail to comply with that provision.
19

20 (2) In section 83(1):

21 (a) delete “where a person contravenes or fails to comply
22 with a provision of an instrument to which this section
23 applies” and insert:
24

25 if a person contravenes an entitlement provision,
26

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- 1 (b) delete paragraph (e) and insert:
2
- 3 (e) a person —
4 (i) who is a party to the award, agreement
5 or order or to whom the award,
6 agreement or order applies; or
7 (ii) to whom the entitlement provision
8 applies under the LSL Act or MCE Act;
9
- 10 (3) Delete section 83(2) and insert:
11
- 12 (2) A person who is involved in a contravention of an
13 entitlement provision is taken to contravene that
14 provision.
- 15 (2A) A person is *involved in* a contravention of an
16 entitlement provision if, and only if, the person —
17 (a) aids, abets, counsels or procures the
18 contravention; or
19 (b) induces the contravention, whether by threats or
20 promises or otherwise; or
21 (c) is in any way, by act or omission, directly or
22 indirectly, knowingly concerned in or party to
23 the contravention; or
24 (d) conspires with others to effect the
25 contravention.
26
- 27 (4) In section 83(3) delete “instrument to which this section applies
28 shall” and insert:
29
- 30 entitlement provision must
31

- 1 (5) In section 83(4):
2 (a) in paragraph (a) delete “or failure to comply”;
3 (b) delete paragraph (a)(ii) and insert:
4
5 (ii) impose a pecuniary penalty in
6 accordance with subsection (4A);
7
- 8 (6) After section 83(4) insert:
9
- 10 (4A) The pecuniary penalty may be an amount not
11 exceeding —
12 (a) in the case of a body corporate —
13 (i) if the contravention is a serious
14 contravention — \$600 000; or
15 (ii) if the contravention is not a serious
16 contravention — \$60 000;
17 and
18 (b) in the case of an individual —
19 (i) if the contravention is a serious
20 contravention — \$120 000; or
21 (ii) if the contravention is not a serious
22 contravention — \$12 000.
23
- 24 (7) In section 83(5):
25 (a) delete “or failure to comply with a provision of an
26 instrument to which this section applies” and insert:
27
28 of an entitlement provision
29

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1 (b) delete “or failure to comply with” (second occurrence)
2 and insert:

3

4 of

5

6 (8) In section 83(8) delete the Penalty and insert:

7

8 Penalty for this subsection:

9 (a) a fine of \$12 000;

10 (b) a daily penalty of a fine of \$1 000 for each
11 day or part of a day during which the offence
12 continues.

13

14 (9) After section 83(8) insert:

15

16 (9) A contravention of an entitlement provision is not an
17 offence and section 83E(8) applies to the contravention
18 as if it were a contravention of a civil penalty
19 provision.

20

21 **41. Section 83A amended**

22 (1) In section 83A(1):

23 (a) delete “an employer” and insert:

24

25 a person

26

27 (b) delete “of that employer has not been paid by that
28 employer” and insert:

29

30 has not been paid

31

1 (c) delete “instrument to which that section applies” and
2 insert:

3

4 entitlement provision,

5

6 (d) delete “employer to” and insert:

7

8 person to

9

10 (2) In section 83A(2):

11 (a) in paragraph (b) delete “employer” and insert:

12

13 person

14

15 (b) in paragraph (b)(iii) delete “employer’s” and insert:

16

17 person’s

18

19 **42. Section 83B amended**

20 (1) In section 83B(3) and (4) after “contravention” (each
21 occurrence) insert:

22

23 of

24

25 (2) In section 83B(5):

26 (a) in paragraph (a) delete “\$5 000; and” and insert:

27

28 \$12 000; and

29

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- 1 (b) in paragraph (b) after “contravention” insert:
2
3 of
4
- 5 (3) In section 83B(10) delete the Penalty and insert:
6
7 Penalty for this subsection:
8 (a) a fine of \$12 000;
9 (b) a daily penalty of a fine of \$1 000 for each
10 day or part of a day during which the offence
11 continues.
12

13 **43. Section 83C amended**

14 Delete section 83C(2) and insert:
15

- 16 (2) In proceedings under section 83 or 83B costs must not
17 be given to any party to the proceedings for the
18 services of a legal practitioner or agent of that party
19 unless —
20 (a) the industrial magistrate’s court finds that the
21 other party has committed a serious
22 contravention; or
23 (b) in the opinion of the industrial magistrate’s
24 court, the proceedings have been frivolously or
25 vexatiously instituted or defended, as the case
26 requires, by the other party.
27

1 **44. Section 83E amended**

2 (1) Delete section 83E(1) and insert:

3

4 (1) If a person contravenes a civil penalty provision, the
5 industrial magistrate's court may, on an application to
6 the court, make an order imposing a pecuniary penalty
7 on the person, not exceeding —

8 (a) in the case of a body corporate —

9 (i) if the contravention is a serious
10 contravention — \$600 000; or

11 (ii) if the contravention is not a serious
12 contravention — \$60 000;

13 (b) in the case of an individual —

14 (i) if the contravention is a serious
15 contravention — \$120 000; or

16 (ii) if the contravention is not a serious
17 contravention — \$12 000.

18 (1A) A person who is involved in a contravention of a civil
19 penalty provision is taken to contravene that provision.

20 (1B) A person is *involved in* a contravention of a civil
21 penalty provision if, and only if, the person —

22 (a) aids, abets, counsels or procures the
23 contravention; or

24 (b) induces the contravention, whether by threats or
25 promises or otherwise; or

26 (c) is in any way, by act or omission, directly or
27 indirectly, knowingly concerned in or party to
28 the contravention; or

29 (d) conspires with others to effect the
30 contravention.
31

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- 1 (2) In section 83E(3) delete “section 49D(2) or (3),” and insert:
2
3 section 49D(1) or (8) or section 49DA(1) or (3), or the LSL Act
4 section 26(1) or (2),
5
- 6 (3) In section 83E(6a) delete “section 8(3), 44(3) or 45(1) of the
7 MCE Act or of section 26(2) or 26A(1) of the *Long Service*
8 *Leave Act 1958.*” and insert:
9
- 10 the MCE Act section 8(3) or the LSL Act section 7I(2), 26(1)
11 or (2) or 26A(1).
12
- 13 (4) In section 83E(9) delete the Penalty and insert:
14
- 15 Penalty for this subsection:
16 (a) a fine of \$12 000;
17 (b) a daily penalty of a fine of \$1 000 for each
18 day or part of a day during which the offence
19 continues.
20
- 21 (5) Delete section 83E(12) and insert:
22
- 23 (12) In proceedings under this section costs must not be
24 given to any party to the proceedings for the services of
25 a legal practitioner or agent of that party unless —
26 (a) the industrial magistrate’s court finds that the
27 other party has committed a serious
28 contravention; or

- 1 (b) in the opinion of the industrial magistrate's
2 court, the proceedings have been frivolously or
3 vexatiously instituted or defended, as the case
4 requires, by the other party.
5

6 **45. Sections 83EA and 83EB inserted**

7 After section 83E insert:
8

9 **83EA. Serious contravention of entitlement provision or**
10 **civil penalty provision**

- 11 (1) In this section —
12 *contravention* means a contravention of or failure to
13 comply with —
14 (a) a civil penalty provision; or
15 (b) an entitlement provision.
- 16 (2) A contravention by a person is a *serious contravention*
17 if —
18 (a) the person knowingly commits the
19 contravention; and
20 (b) the person's conduct constituting the
21 contravention is part of a systematic pattern of
22 conduct relating to 1 or more other persons.
- 23 (3) For the purposes of subsection (2), a body corporate
24 knowingly commits a contravention if the body
25 corporate expressly, tacitly or impliedly authorises the
26 contravention.

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- 1 (4) In determining whether the person's conduct
2 constituting the contravention was part of a systematic
3 pattern of conduct, the industrial magistrate's court
4 may have regard to all or any of the following —
- 5 (a) the number of contraventions (the *relevant*
6 *contraventions*) committed by the person;
- 7 (b) the period over which the relevant
8 contraventions were committed;
- 9 (c) the number of other persons affected by the
10 relevant contraventions;
- 11 (d) the person's response, or failure to respond, to
12 any complaints made about the relevant
13 contraventions;
- 14 (e) unless the provision contravened is a
15 record-related civil penalty provision —
16 whether the person also failed to comply with a
17 record-related civil penalty provision relating to
18 the conduct constituting the relevant
19 contraventions.
- 20 (5) Subsection (4) does not limit the matters to which the
21 industrial magistrate's court may have regard.
- 22 (6) A person (the *involved person*) who is involved in a
23 contravention by another person (the *principal*)
24 commits a serious contravention only if —
- 25 (a) the principal's contravention is a serious
26 contravention; and
- 27 (b) the involved person knows that the principal's
28 contravention is a serious contravention.
- 29 (7) Subsection (8) applies in proceedings for an order in
30 relation to a serious contravention.

- 1 (8) The industrial magistrate's court may, instead of
2 imposing a pecuniary penalty on a person for the
3 serious contravention, impose a pecuniary penalty on
4 the person for the contravention if the court —
5 (a) is not satisfied that the person has committed a
6 serious contravention; but
7 (b) is satisfied that the person has committed a
8 contravention.

9 **83EB. Employer to have burden of disproving certain**
10 **allegations by applicant under s. 83**

- 11 (1) In proceedings under section 83, the employer has the
12 burden of disproving an allegation by an applicant in
13 relation to a matter if the employer —
14 (a) was required under this Act or the LSL Act
15 to —
16 (i) make or keep a record in relation to the
17 matter; or
18 (ii) give a pay slip in relation to the matter;
19 or
20 (iii) make available for inspection a record
21 in relation to the matter;
22 and
23 (b) failed to comply with the requirement.
- 24 (2) Subsection (1) does not apply if the employer provides
25 a reasonable excuse for the failure to comply with the
26 requirement.
27

1 **46. Section 84 amended**

2 Delete section 84(5) and insert:

3

4 (5) In proceedings under this section costs must not be
5 given to any party to the proceedings for the services of
6 a legal practitioner or agent of that party except —

7 (a) in respect of an appeal from proceedings under
8 section 83 or 83E — to the party that was the
9 applicant in those proceedings, if the Full
10 Bench finds, or upholds a finding, that the other
11 party has committed a serious contravention; or

12 (b) if, in the opinion of the Full Bench, the
13 proceedings have been frivolously or
14 vexatiously instituted or defended, as the case
15 requires, by the other party.
16

17 **47. Section 84AA inserted**

18 After section 84 insert:

19

20 **84AA. Illegal contracts of employment may be treated as**
21 **valid**

22 (1) In this section —

23 *contravention* means a contravention of or failure to
24 comply with —

25 (a) a civil penalty provision; or

26 (b) an entitlement provision.

- 1 (2) If in any proceedings under section 83 or 83E the
2 industrial magistrate's court finds that an employee
3 was engaged under an illegal contract at the time a
4 contravention occurred, the court may nonetheless deal
5 with the matter as if the contract was valid.
6

7 **48. Section 84A amended**

8 In section 84A(5)(a)(ii) delete "\$2 000 in the case of an
9 employer, organisation, or association and \$500 in any other
10 case; or" and insert:

11
12 \$10 000; or
13

14 **49. Part III Divisions 3 to 5 inserted**

15 At the end of Part III insert:
16

17 **Division 3 — Civil infringement notices**

18 **84B. Terms used**

19 In this Division —

20 *civil infringement notice* has the meaning given in
21 section 84C(2);

22 *civil infringement notice penalty* has the meaning
23 given in section 84C(2);

24 *nominated person* means the person to whom a
25 recipient can apply —

- 26 (a) to have a civil infringement notice withdrawn;
27 or
28 (b) to be allowed more time to pay a civil
29 infringement notice penalty;

1 *recipient* means a person to whom a civil infringement
2 notice is given under section 84C(2).

3 **84C. Giving civil infringement notice**

- 4 (1) This section applies if an industrial inspector
5 reasonably believes that a person has committed 1 or
6 more contraventions of a record-related civil penalty
7 provision other than section 49D(8) or 49DA(3).
- 8 (2) The industrial inspector may give to the person a notice
9 (a *civil infringement notice*) relating to the alleged
10 contravention or contraventions inviting the person, as
11 an alternative to proceedings under section 83E, to pay
12 to the Treasurer a penalty specified in the notice (a *civil*
13 *infringement notice penalty*).
- 14 (3) The civil infringement notice must be given within
15 12 months after the day on which the contravention or
16 contraventions are alleged to have taken place.
- 17 (4) This section does not authorise the giving of 2 or more
18 civil infringement notices to a person in relation to
19 contraventions of a record-related civil penalty
20 provision that allegedly —
- 21 (a) took place on the same day; and
22 (b) relate to the same action or conduct by the
23 person.

24 **84D. Content of civil infringement notice**

- 25 (1) A civil infringement notice must —
- 26 (a) specify the recipient's full name; and
27 (b) specify the recipient's address; and

- 1 (c) specify the name of the industrial inspector who
2 issued it; and
- 3 (d) specify its date of issue; and
- 4 (e) set out brief details of the alleged contravention
5 or contraventions, including the record-related
6 civil penalty provision that has been allegedly
7 contravened; and
- 8 (f) specify the civil infringement notice penalty;
9 and
- 10 (g) state how the civil infringement notice penalty
11 can be paid; and
- 12 (h) specify the maximum penalty that the industrial
13 magistrate's court could impose on the
14 recipient for the alleged contravention or
15 contraventions; and
- 16 (i) identify the nominated person; and
- 17 (j) explain how the recipient can apply to the
18 nominated person —
- 19 (i) to have the civil infringement notice
20 withdrawn; or
- 21 (ii) to be allowed more time to pay the civil
22 infringement notice penalty;
- 23 and
- 24 (k) state the effect of the recipient paying the civil
25 infringement notice penalty within the required
26 time, as explained in section 84I; and
- 27 (l) be signed by the industrial inspector who issued
28 it.

1 (2) The civil infringement notice may contain any other
2 information that the industrial inspector who issues it
3 thinks necessary.

4 **84E. Amount of civil infringement notice penalty**

5 A civil infringement notice penalty must not exceed
6 one-tenth of the statutory penalty that the industrial
7 magistrate’s court could have ordered the recipient to
8 pay under section 83E(1) for contravening the
9 record-related civil penalty provision specified in the
10 civil infringement notice.

11 **84F. Time for payment of civil infringement notice**
12 **penalty**

13 (1) A civil infringement notice penalty must be paid within
14 28 days after the day on which the notice is served on
15 the recipient unless subsection (2), (3) or (4) applies.

16 (2) If the recipient applies for a further period of time in
17 which to pay the civil infringement notice penalty and
18 the application is granted, the penalty must be paid
19 within the further period allowed.

20 (3) If the recipient applies for a further period of time in
21 which to pay the civil infringement notice penalty and
22 the application is refused, the penalty must be paid
23 within 7 days after the notice of the refusal is served on
24 the recipient.

25 (4) If the recipient applies for the notice to be withdrawn
26 and the application is refused, the civil infringement
27 notice penalty must be paid within 28 days after the
28 notice of the refusal is served on the recipient.

- 1 **84G. Extension of time to pay civil infringement notice**
2 **penalty**
- 3 (1) Before the end of 28 days after receiving a civil
4 infringement notice, the recipient may apply, in
5 writing, to the nominated person for a further period of
6 up to 28 days in which to pay the civil infringement
7 notice penalty.
- 8 (2) Within 14 days after receiving the application, the
9 nominated person must —
- 10 (a) grant or refuse a further period not longer than
11 the period sought (but less than 28 days); and
- 12 (b) notify the recipient in writing of the decision
13 and, if the decision is a refusal, the reasons for
14 the decision.
- 15 **84H. Withdrawal of civil infringement notice**
- 16 (1) Before the end of 28 days after receiving the civil
17 infringement notice, the recipient may apply, in
18 writing, to the nominated person for the civil
19 infringement notice to be withdrawn.
- 20 (2) Within 14 days after receiving the application, the
21 nominated person must —
- 22 (a) withdraw or refuse to withdraw the civil
23 infringement notice; and
- 24 (b) notify the recipient in writing of the decision
25 and, if the decision is a refusal, the reasons for
26 the decision.
- 27 (3) If the nominated person has not approved the
28 withdrawal of the civil infringement notice within the
29 period allowed by subsection (2), the application is
30 taken to have been refused.

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- 1 (4) The inspector who issued it may also withdraw the
2 civil infringement notice at any time by serving a
3 notice of withdrawal on the recipient.
- 4 (5) A notice of the withdrawal of a civil infringement
5 notice under subsection (4) must —
- 6 (a) specify the recipient's full name; and
7 (b) specify the recipient's address; and
8 (c) specify its date of issue; and
9 (d) state that the civil infringement notice is
10 withdrawn.

11 **84I. Effect of payment of civil infringement notice**
12 **penalty**

- 13 If a civil infringement notice is not withdrawn and the
14 recipient pays the civil infringement notice penalty —
- 15 (a) any liability of the recipient for the alleged
16 contravention is discharged; and
- 17 (b) no proceedings may be brought against the
18 recipient, by any person, for the alleged
19 contravention; and
- 20 (c) the recipient is not taken to have admitted to
21 having contravened the record-related civil
22 penalty provision; and
- 23 (d) the recipient is not taken to have committed a
24 contravention of the provision in relation to
25 which the civil infringement notice was issued.

26 **84J. Refund of civil infringement notice penalty**

27 If a civil infringement notice is withdrawn after the
28 civil infringement notice penalty has been paid, the
29 Treasurer must refund the amount of the penalty to the
30 person who paid it.

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Division 4 — Enforceable undertakings

84K. Terms used

In this Division —

contravention means a contravention of or failure to comply with —

- (a) a civil penalty provision; or
- (b) an entitlement provision.

enforceable undertaking has the meaning given in section 84M(1).

84L. Application of Division

This Division applies if an industrial inspector reasonably believes that a person has committed a contravention.

84M. Enforceable undertaking

- (1) Except as provided by subsection (4), an industrial inspector may accept a written undertaking (an *enforceable undertaking*) given by a person in relation to a contravention.
- (2) The person may withdraw or vary the enforceable undertaking at any time, but only with the industrial inspector's consent.
- (3) An industrial inspector must not apply for an order under section 83 or 83E in relation to the contravention unless the enforceable undertaking has been —
 - (a) withdrawn; or
 - (b) cancelled under section 84N(2)(c).
- (4) The industrial inspector must not accept an enforceable undertaking in relation to a contravention if the person

1 has been given a compliance notice as defined in
2 section 84Q in relation to the contravention.

3 **84N. Enforcement of enforceable undertakings**

4 (1) If an industrial inspector considers that a person who
5 gave an enforceable undertaking has contravened any
6 of its terms, the industrial inspector may apply to the
7 industrial magistrate's court for an order under
8 subsection (2).

9 (2) If the industrial magistrate's court is satisfied that the
10 person has contravened a term of the enforceable
11 undertaking, the court may make 1 or more of the
12 following orders —

- 13 (a) an order directing the person to comply with
14 the term of the undertaking;
- 15 (b) an order awarding compensation for loss that a
16 person has suffered because of the
17 contravention;
- 18 (c) an order varying or cancelling the enforceable
19 undertaking;
- 20 (d) any other order that the court considers
21 appropriate.

22 **Division 5 — Compliance notices**

23 **84O. Terms used**

24 In this Division —

25 *compliance notice* has the meaning given in
26 section 84Q;

27 *contravention* means a contravention of or failure to
28 comply with an entitlement provision.

1 **84P. Application of Division**

2 This Division applies if an industrial inspector (the
3 *industrial inspector*) reasonably believes that a person
4 has contravened an entitlement provision.

5 **84Q. Giving compliance notice**

6 (1) Except as provided in section 84R, the industrial
7 inspector may give the person a notice (a *compliance*
8 *notice*) requiring the person to do either or both of the
9 following within a reasonable time specified in the
10 notice —

- 11 (a) take specified action to remedy the direct
12 effects of the contravention;
13 (b) produce reasonable evidence of the person’s
14 compliance with the notice.

15 (2) The compliance notice must also set out all of the
16 following —

- 17 (a) the name of the person to whom the notice is
18 given;
19 (b) the name of the industrial inspector who gave
20 the notice;
21 (c) brief details of the contravention;
22 (d) an explanation that a failure to comply with the
23 notice may contravene a civil penalty
24 provision;
25 (e) an explanation that the person may apply to the
26 industrial magistrate’s court for a review of the
27 notice on either or both of the following
28 grounds —
29 (i) the person has not committed a
30 contravention set out in the notice;
31 (ii) the notice does not comply with
32 subsection (1) or this subsection;

- 1 (f) any other matters prescribed by the regulations.
- 2 **84R. Relationship with enforceable undertakings**
- 3 The industrial inspector must not give a person a
4 compliance notice in relation to a contravention if —
- 5 (a) the person has given an enforceable
6 undertaking as defined in section 84M(1) in
7 relation to the contravention; and
- 8 (b) the undertaking has not been withdrawn under
9 section 84M(2) or cancelled under
10 section 84N(2)(c).
- 11 **84S. Relationship with proceedings under s. 83**
- 12 (1) The industrial inspector must not apply for an order
13 under section 83 in relation to a contravention by a
14 person if —
- 15 (a) the inspector has given the person a compliance
16 notice in relation to the contravention; and
- 17 (b) the compliance notice has not been withdrawn;
18 and
- 19 (c) either of the following applies —
- 20 (i) the person has complied with the notice;
- 21 (ii) the person has made an application
22 under section 84U(1) in relation to the
23 compliance notice and that application
24 has not been completely dealt with.
- 25 (2) A person who complies with a compliance notice is not
26 taken to have —
- 27 (a) admitted to contravening an entitlement
28 provision to which the compliance notice
29 relates; or

- 1 (b) been found to have contravened an entitlement
2 provision to which the compliance notice
3 relates.

4 **84T. Person must comply with compliance notice**

- 5 (1) A person must comply with a compliance notice.
6 (2) A contravention of subsection (1) is not an offence but
7 the subsection is a civil penalty provision for the
8 purposes of section 83E, except that the pecuniary
9 penalty cannot exceed —
10 (a) in the case of a body corporate — \$30 000;
11 (b) in the case of an individual — \$6 000.
12 (3) Subsection (1) does not apply if the person has a
13 reasonable excuse.

14 **84U. Review of compliance notices**

- 15 (1) A person who has been given a compliance notice may
16 apply to the industrial magistrate's court for a review
17 of the notice on either or both of the following
18 grounds —
19 (a) the person has not committed a contravention
20 set out in the notice;
21 (b) the notice does not comply with section 84Q.
22 (2) At any time after the application has been made, the
23 industrial magistrate's court may stay the operation of
24 the notice on the terms and conditions that the court
25 considers appropriate.
26 (3) In an application made on the ground referred to in
27 subsection (1)(a), the person making the application
28 has the burden of proving that the person has not
29 committed the contravention.

- 1 (4) The industrial magistrate's court may confirm, cancel
2 or vary the notice after reviewing it.

3 **84V. Withdrawal of compliance notice**

- 4 (1) The industrial inspector may withdraw the compliance
5 notice at any time by serving a notice of withdrawal on
6 the person (the *recipient*) who has been given the
7 compliance notice.
- 8 (2) The notice of withdrawal must —
- 9 (a) specify the full name of the recipient; and
10 (b) specify the recipient's address; and
11 (c) specify its date of issue; and
12 (d) state that the compliance notice is withdrawn.
13

14 **50. Section 86 amended**

15 Delete section 86(2).

16 **51. Section 91A inserted**

17 After section 91 insert:
18

19 **91A. Court's power to order costs and expenses**

- 20 (1) Except as provided in subsection (2), in the exercise of
21 its jurisdiction under this Act the Court may make such
22 orders as it thinks just as to the costs and expenses
23 (including the expenses of witnesses) of proceedings
24 before the Court, including proceedings dismissed for
25 want of jurisdiction.

- 1 (2) Costs for the services of any legal practitioner or agent
2 of any party to the proceedings must not be given to
3 that party except as follows —
- 4 (a) costs can be given to that party if, in the
5 opinion of the Court, the proceedings have been
6 frivolously or vexatiously instituted or
7 defended, as the case requires, by the other
8 party;
- 9 (b) in respect of an appeal from proceedings under
10 section 83 or 83E — costs can be given to the
11 party that was the applicant in those
12 proceedings, if the Court finds, or upholds a
13 finding, that the other party has committed a
14 serious contravention.
15

16 **52. Section 93 amended**

- 17 (1) In section 93(6) delete “Subject to subsection (6a), the” and
18 insert:

19
20 The
21

- 22 (2) Delete section 93(6a).

23 **53. Section 96 amended**

24 In section 96(2)(a) delete “section 29(1)(b);” and insert:

25

26 section 29(1)(c) or (d);
27

1 **54. Part VIB inserted**

2 After section 96L insert:
3

4 **Part VIB — Protection of employee rights**

5 **Division 1 — Preliminary**

6 **97. Terms used**

7 In this Part —

8 ***damaging action***, against an employee, means —

9 (a) in the case of an employee —

- 10 (i) dismissing the employee; or
11 (ii) altering the employee's position to the
12 employee's disadvantage; or
13 (iii) refusing to promote or transfer the
14 employee; or
15 (iv) otherwise injuring the employee in
16 relation to the employee's employment
17 with the employer or another person; or
18 (v) threatening to do anything referred to in
19 subparagraphs (i) to (iv);

20 and

21 (b) in the case of a prospective employee —

- 22 (i) refusing to employ the prospective
23 employee; or
24 (ii) discriminating against the prospective
25 employee in the terms or conditions on
26 which the employer offers to employ the
27 prospective employee; or
28 (iii) threatening to do anything referred to in
29 subparagraphs (i) and (ii);

1 *employee* includes a prospective employee;
2 *employer* includes a former employer or prospective
3 employer.

4 **Division 2 — Damaging action**

5 **97A. Damaging action because of inquiry or complaint**

- 6 (1) An employer must not take damaging action against an
7 employee for the reason, or for reasons that include,
8 that the employee is able to make an
9 employment-related inquiry or complaint to the
10 employer or another person.
- 11 (2) In any proceedings for a contravention of
12 subsection (1), if it is proved that an employer took the
13 damaging action against the employee, it is for the
14 employer to prove that the employer did not do so
15 because the employee made the inquiry or complaint or
16 proposed to make the inquiry or complaint.
- 17 (3) A contravention of subsection (1) is not an offence but
18 that subsection is a civil penalty provision for the
19 purposes of section 83E.

20 **97B. Court orders to employers**

- 21 (1) This section applies if the industrial magistrate's court
22 determines that an employer has contravened
23 section 97A(1) in respect of an employee.
- 24 (2) Except as provided in subsection (5), the industrial
25 magistrate's court may order the employer to do 1 or
26 more of the following —
- 27 (a) if the employee was dismissed from
28 employment — to reinstate the employee;
- 29 (b) if the employee was refused employment — to
30 employ the employee;

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- 1 (c) to pay to the employee compensation for any
2 loss or injury suffered as a result of the
3 contravention.
- 4 (3) The employer must comply with the order.
5 Penalty for this subsection:
6 (a) a fine of \$12 000;
7 (b) a daily penalty of a fine of \$1 000 for each
8 day or part of a day during which the offence
9 continues.
- 10 (4) The industrial magistrate's court may make the order in
11 addition to imposing a penalty under section 83E.
- 12 (5) The industrial magistrate's court must not make the
13 order if the employee has applied under another
14 provision of this Act or any other written law for relief
15 in relation to the same damaging action unless the
16 proceedings for that relief have been withdrawn or
17 failed for want of jurisdiction.
- 18 (6) The employee is not entitled to compensation for the
19 same damaging action under both subsection (2)(c) and
20 another provision of this Act or any other written law.
- 21 **97C. Court orders to third parties**
- 22 (1) In this section —
23 *third party*, in relation to proceedings for a
24 contravention of section 97A(1), means a person, other
25 than the employer, on whom a copy of the application
26 under section 83E(1) has been served.
- 27 (2) This section applies if the industrial magistrate's court
28 determines that an employer has contravened
29 section 97A(1) in respect of an employee.

- 1 (3) The industrial magistrate's court may order a third
2 party —
3 (a) to refrain from taking any damaging action
4 against the employee; and
5 (b) to take any action necessary or desirable to give
6 effect to an order under section 97B(2).
- 7 (4) The third party must comply with the order.
8 Penalty for this subsection:
9 (a) a fine of \$12 000;
10 (b) a daily penalty of a fine of \$1 000 for each
11 day or part of a day during which the offence
12 continues.

13 **Division 3 — Sham contracts for services**

14 **97D. Misrepresenting contract of employment as**
15 **contract for services**

- 16 (1) An employer must not represent to an employee that a
17 contract of employment is a contract for services.
- 18 (2) Subsection (1) does not apply if the employer proves
19 that, when the representation was made, the employer
20 did not know, and could not reasonably be expected to
21 have known, that the contract was a contract of
22 employment rather than a contract for services.
- 23 (3) A contravention of subsection (1) is not an offence but
24 that subsection is a civil penalty provision for the
25 purposes of section 83E.

26 **97E. Dismissing to engage under contract for services**

- 27 (1) An employer must not dismiss or threaten to dismiss an
28 employee performing particular work for the employer
29 in order to engage the employee to perform the same,

- 1 or substantially the same, work under a contract for
2 services.
- 3 (2) In any proceedings for a contravention of
4 subsection (1), if it is proved that an employer
5 dismissed, or threatened to dismiss, the employee, it is
6 for the employer to prove that the employer did not do
7 so in order to engage the employee under the contract
8 for services.
- 9 (3) A contravention of subsection (1) is not an offence but
10 that subsection is a civil penalty provision for the
11 purposes of section 83E.
- 12 **97F. False statement to engage under contract for**
13 **services**
- 14 (1) An employer must not make a statement that the
15 employer knows, or could reasonably be expected to
16 know, is false in order to persuade or influence an
17 employee performing particular work for the employer
18 to enter into a contract for services under which the
19 employee will perform the same, or substantially the
20 same, work.
- 21 (2) In any proceedings for a contravention of
22 subsection (1), if it is proved that an employer made
23 the statement, it is for the employer to prove that the
24 employer did not do so in order to persuade or
25 influence the employee to enter into the contract for
26 services.
- 27 (3) A contravention of subsection (1) is not an offence but
28 that subsection is a civil penalty provision for the
29 purposes of section 83E.
- 30 **97G. Court orders to employers**
- 31 (1) This section applies if an industrial magistrate's court
32 determines that an employer has contravened

- 1 section 97D(1), 97E(1) or 97F(1) in respect of an
2 employee.
- 3 (2) Except as provided in subsection (5), the industrial
4 magistrate's court may order the employer to do 1 or
5 more of the following —
- 6 (a) if the employee was dismissed from
7 employment — to reinstate the employee;
- 8 (b) if the employee was refused employment — to
9 employ the employee;
- 10 (c) to pay to the employee compensation for any
11 loss or injury suffered as a result of the
12 contravention.
- 13 (3) The employer must comply with the order.
14 Penalty for this subsection:
- 15 (a) a fine of \$12 000;
- 16 (b) a daily penalty of a fine of \$1 000 for each
17 day or part of a day during which the offence
18 continues.
- 19 (4) The court may make the order in addition to imposing
20 a penalty under section 83E.
- 21 (5) The industrial magistrate's court must not make the
22 order if the employee has applied under another
23 provision of this Act or any other written law for relief
24 in relation to the same act or omission unless the
25 proceedings for that relief have been withdrawn or
26 failed for want of jurisdiction.
- 27 (6) The employee is not entitled to compensation for the
28 same act or omission under both subsection (2)(c) and
29 another provision of this Act or any other written law.

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Division 4 — Miscellaneous

97H. Certain advertising prohibited

- (1) A person must not advertise the availability of employment at a rate of pay that is less than the minimum wage applicable to the position under the MCE Act or an award, order of the Commission or an industrial agreement.
- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

55. Section 97U amended

- (1) In section 97U(1) delete the definitions of:
supported wage provisions
Supported Wage System
- (2) In section 97U(1) in the definition of *section 97UM signatory* delete “97UM(2);” and insert:

97UM(2).

56. Section 97UF amended

- In section 97UF(3)(a) delete “supported wage provisions; and” and insert:

a SWIIP; and

1 **57. Section 97YA amended**

2 In section 97YA(1)(a) delete “supported wage provisions” and
3 insert:

4
5 a SWIIP
6

7 **58. Section 98 amended**

8 (1) In section 98(3):

9 (a) delete paragraph (a) and insert:

10
11 (a) with or without giving notice to the owner or
12 occupier, enter —

13 (i) a place (*industrial location*) at which
14 there are reasonable grounds to suspect
15 that an industry is being or has been
16 carried on or any work is being done or
17 has been done or commenced in relation
18 to an industry; or

19 (ii) a place (*business premises*) at which
20 there are reasonable grounds to suspect
21 that records relevant to an industry are
22 kept or can be accessed;

23 and
24

25 (b) in paragraph (b) delete “location; and” and insert:

26
27 location or business premises, or any record accessible
28 from a computer kept at the industrial location or
29 business premises; and
30

- 1 (c) delete paragraphs (c) to (f) and insert:
2
- 3 (c) take with the inspector into an industrial
4 location or business premises any person or
5 persons the inspector considers necessary to
6 provide assistance to the inspector; and
- 7 (d) require (either alone or in the presence, or with
8 the assistance, of some other person) any
9 person the inspector finds in an industrial
10 location or business premises to answer
11 questions by the inspector —
- 12 (i) orally; or
13 (ii) if the inspector thinks fit — in writing;
14 and
- 15 (e) by notice in writing or orally require a person
16 having the control of, or access to, a record to
17 produce the record for inspection by the
18 inspector; and
- 19 (f) in relation to a record referred to in
20 paragraph (b) or (e), do all or any of the
21 following —
- 22 (i) seize the record;
23 (ii) retain the record for as long as is
24 necessary for the purposes of carrying
25 out the function to which the record is
26 relevant;
27 (iii) take extracts from or copies of the
28 record;
29 and

- 1 (fa) post at an industrial location, in a place where it
2 may be viewed by employees at the location, a
3 notice containing information regarding any of
4 the following —
- 5 (i) the rights and obligations under any law
6 of the State or Commonwealth relating
7 to employment (an *employment law*) of
8 the employees or their employer;
- 9 (ii) a conviction of the employer of an
10 offence under an employment law;
- 11 (iii) a finding that the employer has
12 contravened an entitlement provision or
13 civil penalty provision under this Act or
14 a civil remedy provision under the FW
15 Act;
- 16 and
17
- 18 (d) In paragraph (h) delete “(f)” and insert:
19
20 (f), (fa)
21
- 22 (2) After section 98(3) insert:
23
- 24 (3A) If an industrial inspector proposes to exercise the
25 power under subsection (3)(a) to enter an industrial
26 location or business premises that also comprises
27 premises principally used for habitation, the inspector
28 must give the owner or occupier of the location or
29 premises at least 24 hours’ written notice of the
30 proposed entry unless —
- 31 (a) the owner or occupier is carrying on an industry
32 at the location or premises; or

- 1 (b) the Commission has made an order waiving the
2 requirement under this subsection to give the
3 notice.
- 4 (3B) An industrial inspector may apply to the Commission
5 for an order under subsection (3A)(b).
- 6 (3C) The application may be heard in the absence of the
7 owner or occupier of the industrial location or business
8 premises.
- 9 (3D) The Commission may make the order if it is satisfied
10 that a notice under subsection (3A) would defeat the
11 purpose for which the power in subsection (3)(a) is
12 intended to be exercised.
13
- 14 (3) Delete section 98(5) and insert:
15
- 16 (5) The power of an industrial inspector under
17 subsection (3)(e) may be exercised —
18 (a) whether or not the industrial inspector has
19 entered, or proposes to enter, an industrial
20 location or business premises; and
21 (b) if exercised when the industrial inspector has
22 entered an industrial location or business
23 premises — in relation to any record whether or
24 not it is kept at the location or premises.
- 25 (5A) The regulations may prescribe the form and manner in
26 which records may be produced for inspection under
27 subsection (3)(e).
28
- 29 (4) In section 98(6) delete the definition of *conveyance*.

1 (5) In section 98(7) delete “subsection (2), (3) or (5)” and insert:

2

3 subsection (2) or (3)

4

5 **59. Section 98A inserted**

6 After section 98 insert:

7

8 **98A. Information obtained under s. 98 not to be disclosed**

9 (1) This section applies to a person who is —

10

(a) an industrial inspector; or

11

(b) a person assisting an industrial inspector under
section 98(3)(c) or (d).

12

13

(2) The person must not, directly or indirectly, record,
disclose or make use of information obtained in the
course of performing functions under section 98
except —

14

15

16

17

(a) in the course of performing those functions; or

18

(b) as required or allowed by this Act or any other
written law or a law of the Commonwealth,
another State or a Territory; or

19

20

21

(c) to assist in the administration or enforcement of
a written law or a law of the Commonwealth,
another State or a Territory; or

22

23

24

(d) for the purpose of proceedings in a court; or

25

(e) with the written authority of each person to
whom the information relates; or

26

27

(f) in other circumstances prescribed by the
regulations.

28

29

Penalty for this subsection: a fine of \$5 000.

30

1 **60. Section 102 amended**

2 (1) After section 102(2) insert:

3

4 (2A) For the purposes of subsection (2)(a), a person who
5 destroys, defaces, alters, takes, or otherwise interferes
6 with a notice posted at an industrial location by an
7 industrial inspector under section 98(3)(fa) is taken to
8 obstruct the industrial inspector in the performance of
9 the inspector's function under that section.

10

11 (2) After section 102(3) insert:

12

13 (4) If in proceedings under section 83E an industrial
14 magistrate's court is required to consider whether a
15 contravention of subsection (1)(a) has occurred it may,
16 as an alternative, determine that a contravention of a
17 record-related civil penalty provision has occurred.

18 (5) If in proceedings under section 83E an industrial
19 magistrate's court is required to consider whether a
20 contravention of a record-related civil penalty
21 provision has occurred it may, as an alternative,
22 determine that a contravention of subsection (1)(a) has
23 occurred.

24

25 **61. Section 103 amended**

26 In section 103(3) in the definition of *breach* after
27 "contravention" (first occurrence) insert:

28

29 of

30

1 **62. Section 117 inserted**

2 At the end of Part VII insert:

3

4 **117. Savings and transitional provisions for *Industrial***
5 ***Relations Legislation Amendment Act 2020***

6 (1) In this section —

7 *commencement day* means the day on which the
8 *Industrial Relations Legislation Amendment Act 2020*
9 section 13 comes into operation;

10 *former section* means a section of this Act as in
11 operation immediately before the commencement day;

12 *transitioned private sector award* means a private
13 sector award that was in force immediately before the
14 commencement day.

15 (2) On and after the commencement day, former
16 section 37(1) continues in operation in relation to a
17 transitioned private sector award until the award is —

18 (a) cancelled; or

19 (b) varied under section 37D, 40(2A) or 50(5).

20 (3) Sections 37B and 37C do not apply to a transitioned
21 private sector award until it is varied under
22 section 37D, 40(2A) or 50(5).

23 (4) This section does not affect the operation of the
24 *Interpretation Act 1984* Part V.

25

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1 **63. Schedule 4 amended**

2 Delete Schedule 4 clause 1(2)(a) and insert:

3

4 (a) there is no industrial instrument containing a SWIIP
5 that extends to the employee; and
6

7 **64. Various penalties amended**

8 (1) Amend the provisions listed in the Table as set out in the Table.

9

Table

Provision	Delete	Insert
s. 48B(4)	Penalty individual, \$1 000 case, \$5 000	Penalty for this subsection individual — a fine of \$1 000 case — a fine of \$5 000
s. 73(14) s. 97WF(1) s. 97XV(1) s. 111(2) s. 112A(2)	Penalty:	Penalty for this subsection: a fine of
s. 99A(3)	Penalty	Penalty for this subsection
Sch. 5 cl. 2 Sch. 5 cl. 3	\$2 000	a fine of \$2 000

Provision	Delete	Insert
Sch. 5 cl. 4(1) and (2)	Penalty:	Penalty for this subclause: a fine of

- 1 (2) In section 78 delete “is guilty of an offence and liable to a
2 penalty of \$5 000 and a daily penalty of \$500.” and insert:
3
- 4 commits an offence.
5
- 6 (3) At the end of section 78 insert:
7
- 8 Penalty:
- 9 (a) a fine of \$5 000;
10 (b) a daily penalty of a fine of \$500 for each day
11 or part of a day during which the offence
12 continues.
13
- 14 (4) At the end of the provisions listed in the Table insert:
15
- 16 Penalty for this subsection:
- 17 (a) in the case of an individual — a fine of not
18 less than \$400 or more than \$5 000;
19 (b) in any other case —
- 20 (i) a fine of not less than \$1 000 or more
21 than \$10 000;
22 (ii) a daily penalty of a fine of \$500 for
23 each day or part of a day during which
24 the offence continues.
25

s. 64

Table

s. 96C(1) and (2)	s. 96D(1) and (2)
s. 96E(1) and (2)	

(5) In section 96C(3) delete the Penalty.

(6) In section 96D(3) delete the Penalty and insert:

Penalty for this subsection:

(a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;

(b) in any other case —

(i) a fine of not less than \$1 000 or more than \$10 000;

(ii) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

(7) In section 96E(3) delete the Penalty and insert:

Penalty for this subsection:

(a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;

(b) in any other case —

(i) a fine of not less than \$1 000 or more than \$10 000;

(ii) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

1 (8) In section 97YC(4) delete the Penalty and insert:
2

3 Penalty for this subsection:

- 4 (a) a fine of \$5 000;
5 (b) a daily penalty of a fine of \$500 for each day
6 or part of a day during which the offence
7 continues.
8

9 (9) In section 97YG(7) delete the Penalty and insert:
10

11 Penalty for this subsection:

- 12 (a) a fine of \$5 000;
13 (b) a daily penalty of a fine of \$500 for each day
14 or part of a day during which the offence
15 continues.
16

17 **65. Various references to “Federal” amended**

18 In the provisions listed in the Table delete “Federal” (each
19 occurrence) and insert:
20

21 federal
22

23 **Table**

s. 71(3)(a) and (b)	s. 71(7)
s. 71(9)(b) and (c)	s. 71A(2)
s. 71A(4)(b)	

s. 66

1 Note: The heading to the amended sections listed in the Table are to read as
 2 set out in the Table.

3

Table

Amended section	Section heading
s. 14A	Dual federal and State appointments
s. 14B	Performance of duties by dual federal and State appointees

4 **66. Various references to titles amended**

5 Amend the provisions listed in the Table as set out in the Table.

6

Table

Provision	Delete	Insert
s. 31(1)(c)(i) s. 73(3)(a)(ii) and (7b) s. 80ZJ(1) s. 97VS(5)(a)	<i>Fair Work Act 2009</i> (Commonwealth)	FW Act
s. 73(3)(a)(ii) and (7b) s. 97VS(5)(a)	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Commonwealth)	FW (Transitional) Act
s. 7(1) def. of <i>secondary office</i> s. 14A s. 14B s. 22(2)(c)	Fair Work Commission (each occurrence)	FW Commission

Provision	Delete	Insert
s. 29AA(1) and (2) s. 80ZF def. of <i>Fair Work Commission</i> s. 80ZG(1)(a), (b) and (c), (2) and (3) s. 80ZH(1), (2) and (4) s. 80ZI(2) and (3)		
s. 80ZF def. of <i>Fair Work Commission</i>	<i>Fair Work Commission</i>	<i>FW Commission</i>
s. 80H(6)	<i>Fair Work (Registered Organisations) Act 2009 (Commonwealth)</i>	FW (Registered Organisations) Act
s. 81AA(ba) s. 81CA(1)(b)	Part IV of the <i>Long Service Leave Act 1958</i>	the LSL Act Part IV
s. 8(3A)(b) s. 113(1)(d)(ii)(II)	<i>Mines Safety and Inspection Act 1994</i>	MSI Act
s. 7(3)(b)	section 102(1) of the <i>Mines Safety and Inspection Act 1994</i>	the MSI Act section 102(1)
s. 7(3)(c)	clause 69(1) of Schedule 1 to the <i>Petroleum and Geothermal Energy</i>	the <i>Petroleum and Geothermal Energy Resources Act 1967</i> Schedule 1

s. 66

Provision	Delete	Insert
	<i>Resources Act 1967</i> , clause 69(1) of Schedule 1 to the <i>Petroleum Pipelines Act 1969</i> , or clause 70(1) of Schedule 5 to the <i>Petroleum (Submerged Lands) Act 1982</i>	clause 69(1), the <i>Petroleum Pipelines Act 1969</i> Schedule 1 clause 69(1), or the <i>Petroleum (Submerged Lands) Act 1982</i> Schedule 5 clause 70(1)
s. 7(3) s. 8(3A)(b) s. 16(2A) and (2C) s. 113(1)(d)(ii)(I)	<i>Occupational Safety and Health Act 1984</i>	OSH Act
s. 97VS(6) Note Sch. 4 cl. 1(1)(f) Note	<i>Minimum Conditions of Employment Act 1993</i>	MCE Act

1
2
3

Note: The heading to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 80ZF	Term used: FW Commission
s. 80ZG	Joint proceedings of Commission and FW Commission
s. 80ZH	Referring matters to FW Commission for determination under this Act
s. 80ZJ	Commission may exercise powers conferred by FW Act or prescribed enactments

67. Various references to “shall” replaced

(1) In the provisions listed in the Table delete “shall”.

Table

s. 67(3)	s. 72(3)
s. 80G(1)	s. 80L(1)
s. 80W(1)	

(2) In the provisions listed in the Table delete “shall” and insert:

must

Table

s. 3(5)	s. 9(2)
s. 12(1) and (2) (each occurrence)	s. 14B(2), (3) and (4) (each occurrence)
s. 15(2)	s. 16(2)(b)
s. 20(9)	s. 23(3)
s. 26(1)(a), (b), (c) and (d) and (3)	s. 27(1a)
s. 29A(1), (2), (3) and (4)	s. 32(1), (2), (4) and (7)
s. 33(1)(a), (c) and (e), (3), (4) and (5) (each occurrence)	s. 38(1)
s. 40(3)(b)	s. 40A(1) (each occurrence)
s. 40B(2) and (3)	s. 41(2) and (4)

s. 67

s. 41A(1) and (2)	s. 42B(1)
s. 42C(2) and (5)	s. 44(3), (5), (5a), (11) and (12d) (each occurrence)
s. 46(2)	s. 47(3) and (5)
s. 48(2), (8), (9) and (12) (each occurrence)	s. 48A(1) and (1a)
s. 48B(2) and (4) (each occurrence)	s. 49(3), (4)(a) and (b) and (6)
s. 50(7)	s. 50A(1), (3), (4) and (7)
s. 50B(3)	s. 51A(4) and (5)
s. 51BA(1)	s. 51BB
s. 51BE	s. 51J
s. 51K	s. 51L
s. 51M	s. 55(1), (2), (3) and (4)(e)(i)
s. 56(1) (each occurrence)	s. 56(3) (1 st occurrence)
s. 56A(3)	s. 57(1)
s. 59(2)	s. 62(2) and (3)
s. 63(1), (2), (3), (6) and (7)	s. 64(2)
s. 64A(2)	s. 64D
s. 65	s. 66(2)(f)(ii) and (4) (each occurrence)

s. 69(3), (4), (6), (8), (9) and (11) (each occurrence)	s. 70(1) and (2)
s. 71(5) (1 st occurrence)	s. 71(9)(a)
s. 71A(5)(a)	s. 72(2) (each occurrence)
s. 72B(4), (5) and (6)	s. 73(3)(a) and (b), (4), (5), (7)(a), (7b)(a), (11), (12a), (13) and (14) (each occurrence)
s. 77(6) and (7)	s. 80C(2) and (4)
s. 80J(a)	s. 80K(3) (each occurrence)
s. 80M(3) (1 st and 3 rd occurrences)	s. 80N(3), (4) and (5)(a)
s. 80U(3)	s. 80V(2) (each occurrence)
s. 80ZE(1)	s. 81(2) and (4) (each occurrence)
s. 81C(2)	s. 81D(1) (1 st occurrence)
s. 82(2)	s. 82A
s. 83(8)	s. 83A(1)
s. 83A(3) (2 nd occurrence)	s. 83B(6)(a) and (10)
s. 83F(1)	s. 84(3)
s. 84A(4)(a) and (b) and (7)	s. 85(4) and (5) (each occurrence)
s. 87(1)	s. 90(2) and (3a)

s. 67

s. 93(3), (4), (5) and (6) (each occurrence)	s. 95(2) (2 nd occurrence)
s. 96F(4)(b) and (c)	s. 96J(2)(a)
s. 98(2) (each occurrence)	s. 102(1) and (2)
s. 103(2)	s. 106
s. 109	s. 110(1)
s. 111(1) and (2)	s. 112(2)
s. 112A(4)	s. 113(2)
s. 113(3b) (2 nd occurrence)	s. 114(2) (2 nd occurrence)

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2
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4
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7

Note: The heading to amended section 41A is to read:

Which industrial agreements must not be registered under s. 41

(3) In the provisions listed in the Table delete “shall be” and insert:

is

Table

s. 8(3)(c)	s. 31(2)
s. 33(1)(b)	s. 34(4)
s. 56A(5)	s. 80H(1)
s. 80H(4) (2 nd occurrence)	s. 80M(2)
s. 80N(1) and (2)(a), (b) and (c) (each occurrence)	s. 80ZG(3)

s. 80ZH(3)	s. 81B(1)
s. 81CA(8)	s. 81D(1) (2 nd occurrence)
s. 83A(3) (1 st occurrence)	s. 84A(8)
s. 85(2)(a) and (b) and (3a)	s. 92(2)
s. 96I(1) and (2)	s. 114(2) (1 st occurrence)

1 (4) In the provisions listed in the Table delete “shall be” and insert:

2

3 are

4

5

Table

s. 27(1)(c)	s. 29B
s. 56(3)	s. 61 (each occurrence)
s. 72(5)(b)	s. 80H(4) (1 st occurrence)
s. 80M(3)	s. 85(2)(c) and (3) (each occurrence)
s. 93(2)	s. 96F(4)(d)
s. 114(1)	

6 (5) In the provisions listed in the Table delete “shall not” and insert:

7

8 cannot

9

s. 67

1

Table

s. 34(3)	s. 51N(2)
s. 83D(3)	s. 84A(6)

2

(6) In the provisions listed in the Table delete “shall” and insert:

3

can

4

5

6

Table

s. 83C(1)	s. 83E(11)
s. 84A(5)	s. 107

7

(7) In the provisions listed in the Table delete “shall” and insert:

8

is

9

10

11

Table

s. 71(9)(c)	s. 80ZH(4)
s. 80ZJ(2)	s. 105

12

(8) Amend the provisions listed in the Table as set out in the Table.

13

Table

Provision	Delete	Insert
s. 3(2)	An employer shall, for the purposes of subsection (1), be	For the purposes of subsection (1), an employer is

Provision	Delete	Insert
s. 3(4)	process	process is, in the absence of proof to the contrary, taken to be proved if it is either of the following
s. 3(4)(b)	(3),	(3).
s. 3(4)	shall, in the absence of proof to the contrary, be deemed to be proved.	
s. 3(6)	Effect shall be given to subsections (1), (2), and (3)	Subsections (1), (2), and (3) have effect
s. 7(4)	no regard shall	regard must not
s. 20(8)	shall, while he holds his office, be deemed	holding office is taken
s. 20(8a)	1938 the duration of	1938, the following are taken to be increased by 100%
s. 20(8a)(a)	any	the period of any
s. 20(8a)(c)(ii)	duties,	duties.
s. 20(8a)	shall be deemed to be increased by 100%.	

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s. 67

Provision	Delete	Insert
s. 20(10)	shall be not	cannot be
s. 29A(1b)	(2A)	(2A), the following must be published in the required manner
s. 29A(1b)(b)	agreement,	agreement.
s. 29A(1b)	shall be published in the required manner.	
s. 33(1)(d)	whenever it shall appear	if the Commission considers it
s. 34(3)	shall they	can they
s. 35(3)	shall, at a time fixed by the Commission, be	are, at a time fixed by the Commission,
s. 37(4)	An award, and any provision of an award, whether or not it has been made for a specified term, shall, subject to any variation made under this Act, remain	Subject to any variation made under this Act, an award, and any provision of an award, whether or not it has been made for a specified term, remains
s. 37(4)	shall cease	ceases
s. 41(5)	shall operate	operates
s. 41(6)	shall, subject to this Act, continue	continues

Provision	Delete	Insert
s. 41(7)	such filing, and such party shall on the expiration of that period cease	the filing, and, on the expiration of that period, the party ceases
s. 44(12c)	no appeal shall	an appeal does not
s. 48(1)	shall be	is established
s. 50(3) s. 80G(2) s. 99	shall	does
s. 60(1)	shall, upon and during registration, become and be,	is, upon and during registration,
s. 62(1) s. 71A(5)(b)	shall not be or become	is not
s. 71(5)(d)	shall, for all purposes, be	are, for all purposes,
s. 73(9)	shall	will
s. 80D(4) s. 80O(1)(a) and (b)	shall hold	holds
s. 80E(5)	shall affect or interfere	affects or interferes

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Industrial Relations Act 1979 amended

s. 67

Provision	Delete	Insert
s. 80H(2) s. 80N(2) s. 85(2)	shall consist	consists
s. 80L(2)	shall apply	applies
s. 80M(2)	shall have and enjoy	has and enjoys
s. 80O(5)	shall become	becomes
s. 80R(2)(c)	shall be advanced	advance
s. 80U(2) s. 87(2) s. 114(1)	shall not be	is not
s. 81B(5)	An industrial magistrate or acting industrial magistrate shall, if the industrial magistrate's court constituted by him	If an industrial magistrate's court constituted by an industrial magistrate or acting industrial magistrate
s. 85(3)	shall nominate	nominates
s. 85(3)	such judges as the Chief Justice of Western Australia shall from time to time nominate	judges the Chief Justice of Western Australia from time to time nominates
s. 85(3b)	shall	is to
s. 93(1a)	shall appoint	may appoint

Provision	Delete	Insert
s. 93(1a)	shall not be	are not
s. 93(7)	shall forthwith	must immediately
s. 95(1) and (2)	shall have	has
s. 98(4)	shall for all purposes be deemed (each occurrence)	is taken
s. 102A(1) s. 104(4)	his own motion, and shall, if he is	the Registrar's or deputy registrar's own motion, and must, if
s. 108	shall not, on and from the date of its registration, and while so registered, be	is not, on and from the date of its registration, and while so registered,
s. 113(3b)	what fees shall	the fees to
s. 114(1)	shall, to that extent, be null and void	is, to that extent, void

- 1 **68. Various references to gender removed**
- 2 (1) In the provisions listed in the Table delete “chairman” and
- 3 insert:
- 4
- 5 chairperson
- 6

s. 68

1

Table

s. 7(1) def. of <i>principal executive officer</i>	s. 44(6)(a) (each occurrence)
s. 48(2), (5), (8) and (9)	s. 80H(4)(a)
s. 80K(1) and (2)	s. 80M(1) def. of <i>member</i>
s. 80N(2)(a)	s. 80O(1)(a), (2), (3), (7) and (8)(a)
s. 80V(1) and (3)	Sch 1 it. 5

2

(2) In the provisions listed in the Table delete “he” and insert:

3

4

the person

5

6

Table

s. 9(2)(a) and (b)	s. 33(1)(b) and (c) and (2)
s. 44(2)(b)	s. 69(5)
s. 70(1)(d)	s. 80O(9)
s. 80P(1)	s. 102(1)(d)

7

(3) In the provisions listed in the Table delete “his”.

8

Table

s. 16(3)	s. 20(8a)(b)
s. 44(11)(a)	s. 80D(4)
s. 80M(1) def. of <i>head of branch</i> and <i>sub-head of branch</i>	s. 80O(1)(a)

s. 91(1)(a)	s. 93(10)
s. 111(1)	

1 (4) In the provisions listed in the Table delete “his” and insert:

2

3 the person’s

4

5 **Table**

s. 20(8a)(c) (each occurrence)	s. 33(1)(a) (each occurrence)
s. 70(1)(h)	s. 102(1)(b)
s. 114(1)	

6 (5) In the provisions listed in the Table delete “him” and insert:

7

8 the person

9

10 **Table**

s. 33(1)(c) and (2)	s. 44(3)
s. 56(1)(b)	s. 69(5)(c)
s. 80P(1)	s. 114(1)

11 (6) In the provisions listed in the Table delete “his” and insert:

12

13 the Registrar’s

14

s. 68

1

Table

s. 48(9)	s. 56(2) and (3)
s. 57(3)	s. 73(11)
s. 93(3)	

2

(7) In the provisions listed in the Table delete “his or her” and insert:

3

4

5

the employee’s

6

7

Table

s. 49D(2)(a)	s. 49E(4) def. of <i>relevant person</i> para. (b)
s. 83(1)(f)	s. 97U def. of <i>party</i> para. (b)
s. 97UF(2)(b)	s. 97UG(1)(b) and (4)(a)
s. 97UH(b)(i)	s. 97UL(1)(d)(ii) and (3)(b)
s. 97UU(1)(b)	s. 97UY(6) def. of <i>day of execution</i> para. (a)(ii)
s. 97VA(1)(b)	s. 97VK(1)(b)
s. 97VS(1) and (6)	s. 97VV
s. 97YF(b) and (d)	

1 (8) In the provisions listed in the Table delete “he or she” and
2 insert:

3

4 the person

5

6

Table

s. 49L(1)	s. 97WY(1)
s. 97XI(2)(b)	s. 97XZ(1)(b)
s. 97YG(2)(a)	

7 (9) In the provisions listed in the Table delete “his or her” and
8 insert:

9

10 the person’s

11

12

Table

s. 49L(1)(b)	s. 83E(6)(a)
s. 97WV(2)	

13 (10) In the provisions listed in the Table delete “he” and insert:

14

15 the Registrar

16

17

Table

s. 56(2)	s. 57(3)
s. 64(1) (each occurrence)	s. 69(3), (4) and (11)
s. 93(6) and (7)	

s. 68

1 (11) In the provisions listed in the Table delete “him or her” and
2 insert:

3

4 the person

5

6

Table

s. 83(8)	s. 83E(9)
s. 97YC(4)	s. 97YG(7)

7 (12) In the provisions listed in the Table delete “he or she” and
8 insert:

9

10 the Registrar

11

12

Table

s. 97WZ(1)	s. 97XA
s. 97XN(1)	s. 97XP

13 (13) Amend the provisions listed in the Table as set out in the Table.

14

Table

Provision	Delete	Insert
s. 7(1) def. of <i>public authority</i>	his or her	the Governor’s
s. 7(1a)	his	the employee’s

Provision	Delete	Insert
s. 11(2) s. 14(2) s. 44(11)	he (each occurrence)	the commissioner
s. 16(3)	himself	
s. 18(2)	him he	the Governor the Governor
s. 20(9)	his appointment he retains his existing his service	being appointed the commissioner retains any existing the service
s. 23(3)(c)(i) s. 80E(5) (1 st occurrence)	his	the employer's
s. 25(1)(c) s. 44(12) s. 93(1a)	he (each occurrence)	the Chief Commissioner
s. 27(1)(i)	his	the expert's
s. 29AA(4)	his or her	an
s. 30(1) s. 73(3)(a)	his	the Minister's
s. 41(7)	his	the party's
s. 44(3)	his	that

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s. 68

Provision	Delete	Insert
s. 44(7)(a)(iii)	his	an
s. 44(11)	his (1 st occurrence)	the commissioner's
s. 44(11)(b)	him	the commissioner
s. 48(9) s. 80K(1) s. 80V(1)	him	the chairperson
s. 49E(2)(b)	him or her	the employee
s. 56(1)(b) s. 80C(3)	he	the officer
s. 56(1)(b)	his being so	the person is
s. 56(2) and (3) s. 63(7)	him	the Registrar
s. 63(1)(a)	financial status of each member in respect of his	status of each member in respect of the financial requirements for
s. 73(3)(a) s. 80N(3)	him	the Minister
s. 73(12a)	him or her	the Registrar
s. 80D(5)(a)	he	the arbitrator
s. 80D(5)(b)	his appointment	the appointment of the commissioner

Provision	Delete	Insert
s. 80E(2)(a) s. 94	him (each occurrence)	the officer
s. 80E(5)	by him of his	of the Arbitrator's
s. 80F(2) s. 80J(b)	his (each occurrence)	the officer's
s. 80G(1)	his	the Arbitrator's
s. 80N(4)	him	the Electoral Commissioner
s. 80N(5)(b)	he	the Minister
s. 80O(2)(a)	he	the chairperson
s. 80O(2)(b)	his	the chairperson's
s. 80O(5)(b), (c) and (e) s. 87(3)	he	the member
s. 80O(5)(d), (6) and (9)(a) s. 85(6)	his	the member's
s. 80O(6) s. 80ZH(4)	him	the member
s. 80O(9)	his (1 st occurrence)	the person's
s. 80P(1)	member (1 st occurrence)	person as a member

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s. 68

Provision	Delete	Insert
s. 80P(2)	him he	the Chief Commissioner or Governor the Chief Commissioner or Governor
s. 80R(2)(d)	his or their	of the relevant
s. 80R(2)(f)	his or their position	of the relevant position or positions
s. 80S(2)	on his or their behalf	
s. 80ZH(1)	where in his opinion	if
s. 80ZH(3)	him under subsection (2), the member of the Fair Work Commission	the member of the FW Commission under subsection (2), the member
s. 81B(3)	when	when the industrial magistrate
s. 81B(3)(a)	he	
s. 81B(3)(b)	he resigns his	resigns from
s. 81B(4)	his	
s. 81B(5)	he	the magistrate
s. 85(6)	him he (each occurrence)	the judge the judge

Provision	Delete	Insert
s. 95(1)(a) and (b)	him	the deputy registrar
s. 96(3)(b)	his or her (1 st occurrence)	an
s. 96(3)(b) s. 97UM(4)	he or she	the employee
s. 96(3)(b)	his or her (2 nd occurrence)	a
s. 96(11)	his or her	the Chief Commissioner's
s. 96L(1)(a)(i)	he or she	the complainant
s. 96L(1)(a)(iii)	him or her	the complainant
s. 97UD(2) s. 97XJ(2)	his or her	the represented person's
s. 97UG(1) s. 97YH	he or she	the employer
s. 97UH	him or her	the employer
s. 97UJ(1)	his or her	a
s. 97UJ(1)(d)	him or her	the employer or employee
s. 97V(1) s. 97VJ(1)	he or she	the party

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s. 68

Provision	Delete	Insert
s. 97VB	satisfy himself or herself that	consider whether
s. 97VC(3)	his or her	the party's
s. 97VD(2)(a) s. 97WZ(2)	his or her	the Registrar's
s. 97WJ	his or her	a
s. 97WN(3)(b) and (4)(c)	he or she	the arbitrator
s. 97WS(3) s. 97XF(2)	he or she	the representative
s. 97WU(1)	he or she	the Public Advocate
s. 97WX(2) s. 97XM(7) Sch. 4 it. 1(h)(i)	his or her	
s. 97WZ(3)(a) s. 97XN(2)(a)	he or she	the applicant
s. 97XB(1)	his or her	that person's
s. 97XD(1)	his or her	performing
s. 97XF(1)	his or her	the representative's
s. 97XH(1)	of his or her wish	that the representative wishes

Provision	Delete	Insert
s. 97XI(2)(a) and (3)(c) s. 97XK(1)(b)	his or her behalf	behalf of the represented person
s. 98(3) s. 102A(2) s. 104(3)	his (each occurrence)	the inspector's
s. 98(3)(g)	he	the inspector
s. 98(3)(h)	him	the inspector
s. 102(1)(c)	his	the returning officer's
s. 103(2)	he	the applicant
s. 107	by him	
s. 112(1)	his	a
s. 112A(2)	holds himself out as	represents that the person is
s. 114(2)	his (1 st occurrence) his (2 nd occurrence) him he	the employee's the the employee the employee
Sch. 4 it. 1(g) Sch. 4 it. 1(h)	he or she (each occurrence)	the employee
Sch. 4 it. 1(i)	his or her	that party's

s. 69

Provision	Delete	Insert
Sch. 5 it. 1(c)	he or she	the authorised person

1 **69. Various other modernisations**

2 (1) In the provisions listed in the Table delete “of the
3 Commonwealth” and insert:

4

5 (Commonwealth)

6

7

Table

s. 3(2)(c)(iii)	s. 48B(1) def. of <i>complying superannuation fund or scheme</i> para. (a)
s. 65(a)	s. 96H(3) def. of <i>corporation</i>
s. 97U(1) def. of <i>employment services for persons with disabilities</i>	

8 (2) In the provisions listed in the Table delete “hereby”.

9

Table

s. 4	s. 8(1)
s. 85(1)	s. 114(2)

10 (3) In the provisions listed in the Table delete “deemed” and insert:

11

12 taken

13

1

Table

s. 20(8a)(b)	s. 31(2)
s. 44(2)(b)	s. 56(3)
s. 66(2)(f)(ii)	s. 71A(3)
s. 80M(2) and (3)	s. 80ZH(3)
s. 92(2)	s. 96F(4)(d)

2

(4) In the provisions listed in the Table delete “thereto”.

3

Table

s. 27(1)(d)	s. 41(3)
s. 43(1)	s. 44(8) and (11)

4

(5) In the provisions listed in the Table delete “any matter or thing”
and insert:

5

6

7

anything

8

9

Table

s. 27(1)(p)	s. 48(6)(a) and (b) and (15)
s. 112A(5)(e)	

10

(6) In the provisions listed in the Table delete “be deemed” and
insert:

11

12

13

taken

14

s. 69

1

Table

s. 71(9)(c)	s. 80ZH(4)
s. 80ZJ(2)	s. 96F(4)(c)

2

(7) Amend the provisions listed in the Table as set out in the Table.

3

Table

Provision	Delete	Insert
s. 3(1)	industrial matter or industrial action related thereto extends thereto	related industrial matter or industrial action extends to the matter or action
s. 6(b)	agreement, thereby	agreement and
s. 7(1) def. of <i>industrial matter</i> para. (c) s. 73(9)	therein (each occurrence)	
s. 7(1) def. of <i>industrial matter</i>	therein	in the industry
s. 7(1) def. of <i>industrial matter</i> para. (e)	thereof	of an organisation or association
s. 27(1)(a)	thereof (1 st and 3 rd occurrence) thereof (2 nd occurrence)	of it

Provision	Delete	Insert
s. 27(1)(d) s. 80E(6) s. 80R(3)	thereof	of the matter
s. 27(1)(h) s. 49(3)(a) s. 84(3) s. 90(2)(a)	wherein	in which
s. 27(1)(p)	whatsoever, wherein of a matter before the Commission or is related thereto	in, of, or related to, a matter before the Commission
s. 27(1)(q)	thing whatsoever	other thing
s. 32(4)(a) s. 47(5)	thereafter	
s. 32(4)(c)	(8) and of the preamble thereto	(8), and of any preamble to it,
s. 33(5)	therefrom	from the documents
s. 35(4)	therein prescribed	prescribed in this section
s. 40(3)	thereof	of it

Industrial Relations Legislation Amendment Bill 2020**Part 2**

Industrial Relations Act 1979 amended

s. 69

Provision	Delete	Insert
s. 41(1)	disputes, disagreements, or questions relating thereto	any related disputes, disagreements, or questions
s. 41(5)(a) and (b)	therein	in the agreement
s. 41(6) and (7)	thereto therefrom	to the agreement from the agreement
s. 44(2)(b)	shall, in any proceedings under this Act relating thereto, be	is, in any proceedings under this Act relating to the summons,
s. 44(3)	thereat	
s. 44(6)	the foregoing	this subsection,
s. 44(11) s. 56(3)	thereupon	
s. 46(1)(b)	therein or of giving fuller effect thereto	in, or giving fuller effect to, the provision
s. 48(10)	as prescribed therein	in accordance with that subsection
s. 51A(1)(a)	matter related thereto	related matter
s. 55(2)(b)	thereof	of this paragraph

Provision	Delete	Insert
s. 55(4)(d) s. 62(3)(b)(i)	therefor	for the alteration
s. 63(2)	therein	in the records
s. 64(2)	therewith	with the direction
s. 65(a)	in this section called	
s. 66(2) s. 87(3)	the foregoing	this subsection
s. 66(2)(ca) s. 80E(5)	any act, matter or thing	anything
s. 66(2)(e)(ii)	thereof	of the irregularity
s. 69(9)	therefrom	from it
s. 69(10)	therein	in the register
s. 71(7)	howsoever	however
s. 73(4)	therewith	with the summons
s. 80M(3)	Forthwith under the hands of thereafter	Immediately by
s. 80ZE(1)	thereon	
s. 80ZI(3)	of the Commonwealth	

Industrial Relations Legislation Amendment Bill 2020**Part 2**

Industrial Relations Act 1979 amended

s. 69

Provision	Delete	Insert
s. 81B(5)	be deemed notwithstanding that cessation	the magistrate is, despite the cessation, taken
s. 85(3)	such of those members as	members
s. 93(7)	Industrial	
s. 93(8)	deems	considers
s. 94	any act or thing act or	anything
s. 96C(3)	whereby	by which
s. 96F(2)	forthwith	immediately
s. 96F(4)(d) s. 98(3)(h)	thereunder	under this Act
s. 98(3)(b)	thing whatsoever	other thing
s. 105	be evidence therein	evidence in it
s. 109	thereof (each occurrence)	
s. 109 s. 110(1) and (2)	represented therein	
s. 113(1)(c)	the generality thereof	this paragraph

Provision	Delete	Insert
s. 113(1)(e)	any act or thing	anything
s. 113(2)	thereto of such	of
s. 113(3)	in respect thereof	
s. 114(1)	deemed to be severable from any provisions hereby annulled	taken to be severable from any voided provisions

1 **Part 3 — Long Service Leave Act 1958 amended**

2 **70. Act amended**

3 This Part amends the *Long Service Leave Act 1958*.

4 **71. Part II Division 1 heading inserted**

5 At the beginning of Part II insert:
6

7 **Division 1 — General**
8

9 **72. Section 4 amended**

10 (1) In section 4(1) delete the definitions of:

11 *employee*

12 *employer*

13 *industrial inspector*

14 *ordinary pay*

15 (2) In section 4(1) insert in alphabetical order:

16
17 *continuous employment* has the meaning given in
18 section 6;

19 *employee* —

20 (a) means —

21 (i) a person who is employed by an
22 employer to do work for hire or reward,
23 including as an apprentice; or

24 (ii) a person whose usual status is that of an
25 employee;

26 and

27 (b) includes a casual or seasonal employee;

1 **employer** includes any of the following employing 1 or
2 more employees —

- 3 (a) a person or public authority as defined in the
4 IR Act;
- 5 (b) except as provided in the *Foreign States*
6 *Immunities Act 1985* (Commonwealth)
7 section 12, a foreign state or consulate;
- 8 (c) a related body corporate of the employer if the
9 employer is itself a body corporate;

10 **employer-employee agreement** has the meaning given
11 in the IR Act section 7(1);

12 **industrial inspector** has the meaning given in the
13 IR Act section 7(1);

14 **IR Act** means the *Industrial Relations Act 1979*;

15 **MCE Act** means the *Minimum Conditions of*
16 *Employment Act 1993*;

17 **ordinary pay** has the meaning given in Division 2;

18 **related body corporate**, of an employer that is a body
19 corporate, has the meaning given in the *Corporations*
20 *Act 2001* (Commonwealth) section 9.

21

- 22 (3) In section 4(1) in the definitions of **award**, **industrial agreement**
23 and **industrial magistrate’s court** delete “*Industrial Relations*
24 *Act 1979*,” and insert:

25

26 IR Act;

27

- 28 (4) Delete section 4(2) and (3).

29 Note: The heading to amended section 4 is to read:

30 **Terms used**

s. 73

1 **73. Sections 5 and 6 replaced**

2 Delete sections 5 and 6 and insert:

3

4 **4A. Employees with equivalent separate LSL**
5 **entitlements**

6 (1) In this section —

7 ***award, agreement or enactment*** means —

8 (a) an award or industrial agreement; or

9 (b) an agreement between an employer and
10 employee (including an employer-employee
11 agreement); or

12 (c) an enactment of the State, the Commonwealth,
13 another State or a Territory;

14 ***entitlement***, in relation to long service leave or
15 payment on termination instead of long service leave,
16 includes an eligibility to become entitled to the long
17 service leave or payment on termination instead of long
18 service leave;

19 ***WA LSL*** means long service leave, or payment on
20 termination instead of long service leave, under
21 Part III.

22 (2) For the purposes of this section, a ***separate LSL***
23 ***entitlement*** is an entitlement to long service leave, or a
24 payment on termination instead of long service leave,
25 under an award, agreement or enactment.

26 (3) For the purposes of this section, a payment (whether in
27 the form of a loading, other additional incremental
28 payment or otherwise) instead of an entitlement under
29 subsection (2) is not a ***separate LSL entitlement***.

30 (4) This Act does not apply to an employee who has a
31 separate LSL entitlement to take long service leave or
32 to be paid on termination instead of long service leave

1 that is at least equivalent to the entitlement to WA LSL
2 to take long service leave or to be paid on termination
3 instead of long service leave.

- 4 (5) Subsection (6) applies to an employee —
5 (a) who becomes entitled to WA LSL in relation to
6 employment with an employer; and
7 (b) who, immediately before becoming entitled to
8 WA LSL, had a separate LSL entitlement in
9 relation to employment with the employer.

10 (6) Any long service leave taken by, or payment on
11 termination instead of long service leave made to, the
12 employee under the separate LSL entitlement must be
13 taken into account in the calculation of the employee's
14 entitlement to WA LSL as if it were taken, or paid on
15 termination, as WA LSL.

16 **5. Cashing out of accrued long service leave**

- 17 (1) An employer and an employee may agree that the
18 employee may forgo the employee's entitlement, or
19 part of the employee's entitlement, to long service
20 leave under section 8(2)(a) or (b) if —
21 (a) the employee is given an adequate benefit
22 instead of the entitlement; and
23 (b) the agreement is in writing, signed by the
24 employer and employee.
- 25 (2) For the purposes of subsection (1), a benefit is not
26 adequate unless the employee is paid at least the
27 amount of ordinary pay the employee would have
28 received had the employee taken the long service leave
29 or part of the leave.
- 30 (3) Nothing in this section enables the employer and
31 employee to reach the agreement before the

1 employee's entitlement to long service leave has
2 accrued.

3 **6. Continuous employment**

4 (1) An employee's *continuous employment* with an
5 employer includes an absence from work by the
6 employee comprising any of the following, whether
7 paid or unpaid and irrespective of the duration —

- 8 (a) annual leave;
- 9 (b) leave for illness or injury, or carer's leave;
- 10 (c) long service leave;
- 11 (d) parental leave;
- 12 (e) compassionate leave;
- 13 (f) bereavement leave;
- 14 (g) public holidays;
- 15 (h) any other form of leave provided as part of the
16 employee's employment.

17 (2) An employee's *continuous employment* with an
18 employer also includes any of the following absences
19 from work, whether paid or unpaid and irrespective of
20 the duration —

- 21 (a) a period following the termination of the
22 employee's employment by the employer if the
23 termination has been made with the intention of
24 avoiding —
 - 25 (i) obligations under this Act in respect of
26 long service leave; or
 - 27 (ii) obligations in respect of annual leave
28 under an award, industrial agreement,
29 employer-employee agreement, order of
30 the Commission, the MCE Act or any
31 other enactment;

- 1 (b) if the employee resumes employment with the
2 employer as soon as practicable after the
3 absence — a period during which the
4 employment is interrupted by service as a
5 member of the naval, military or air forces of
6 the Commonwealth other than as a member of
7 the Permanent Forces of the Commonwealth of
8 Australia.
- 9 (3) An employee has *continuous employment* with an
10 employer despite an absence from work comprising
11 any of the following, whether paid or unpaid and
12 irrespective of the duration —
- 13 (a) an absence other than that referred to in
14 subsection (1) or (2) which is authorised by the
15 employer;
- 16 (b) a standing-down of the employee in accordance
17 with the provisions of —
- 18 (i) an award, agreement, order or
19 determination in force under the IR Act;
20 or
- 21 (ii) the *Fair Work Act 2009*
22 (Commonwealth) or an enterprise
23 agreement under that Act; or
- 24 (iii) any other enactment;
- 25 (c) an absence arising directly or indirectly from an
26 industrial dispute if the employee returns to
27 work in accordance with the terms of settlement
28 of the dispute;
- 29 (d) a reasonable absence from work on legitimate
30 union business in respect of which the
31 employee has requested and been refused leave;
- 32 (e) an absence for a reason not specified in
33 subsection (1) or (2) or in this subsection unless
34 the employer gives, during or within 14 days

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- 1 after the absence, written notice to the
2 employee that the continuity of the employment
3 has been broken by the absence.
- 4 (4) An employee has *continuous employment* with an
5 employer despite a termination of the employment by
6 the employer —
- 7 (a) on any ground other than slackness of trade —
8 if the employee is re-employed by the employer
9 within a period not exceeding 2 months from
10 the date of the termination;
- 11 (b) on the ground of slackness of trade — if the
12 employee is re-employed by the employer
13 within a period not exceeding 6 months from
14 the date of the termination.
- 15 (5) A casual or seasonal employee has *continuous*
16 *employment* with an employer despite an absence from
17 work comprising any of the following, irrespective of
18 the duration —
- 19 (a) an absence under the terms of the employment;
20 (b) an absence caused by seasonal factors;
21 (c) any other absence after which the employee
22 has, due to the regular and systematic nature of
23 the employment, a reasonable expectation of
24 returning to work for the employer.
- 25 (6) In addition, a casual or seasonal employee has
26 *continuous employment* with an employer despite the
27 fact that the employee —
- 28 (a) is employed by the employer under 2 or more
29 contracts of employment; or
30 (b) is also employed by another person during the
31 period of employment with the employer.
- 32 (7) If an employee enters into a contract of employment
33 with an employer within 52 weeks after completing an

1 apprenticeship with the employer, the period of
2 apprenticeship is taken to be a part of the employee's
3 *continuous employment* with the employer.

4 **6A. Calculating length of continuous employment**

- 5 (1) When calculating the length of continuous employment
6 for the purposes of this Act, a period is counted if it is
7 any of the following —
- 8 (a) leave referred to in section 6(1) that is paid;
 - 9 (b) an absence referred to in section 6(2);
 - 10 (c) an absence referred to in section 6(5).
- 11 (2) When calculating the length of continuous employment
12 for the purposes of this Act, a period is not counted if it
13 is any of the following —
- 14 (a) leave referred to in section 6(1) that is unpaid;
 - 15 (b) an absence referred to in section 6(3);
 - 16 (c) a period between a termination and
17 re-employment referred to in section 6(4);
 - 18 (d) in respect of an employee to whom section 6(7)
19 applies, any period between —
 - 20 (i) the completion of the employee's
21 apprenticeship; and
 - 22 (ii) the employment of the employee by the
23 employer;
 - 24 (e) a period during the transfer of business as
25 defined in section 7D where —
 - 26 (i) the employment of an employee of the
27 old employer as defined in section 7D
28 has terminated; and
 - 29 (ii) the employee has not yet been employed
30 by the new employer as defined in
31 section 7D.
- 32

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1 **74. Part II Division 2 heading inserted**

2 Before section 7 insert:

3

4 **Division 2 — Ordinary pay**

5

6 **75. Section 7 replaced**

7 Delete section 7 and insert:

8

9 **7. Ordinary pay: general**

- 10 (1) Except as provided in subsection (4), an employee's
11 *ordinary pay* is the employee's remuneration for the
12 employee's normal weekly number of hours of work
13 calculated on the ordinary time rate of pay applicable
14 to the employee as at the time when any period of long
15 service leave granted to the employee under this Act
16 commences, or is taken to commence.
- 17 (2) For the purposes of subsection (1), the normal weekly
18 number of hours of work of an employee whose hours
19 have varied during a period of employment is the
20 average weekly hours worked by the employee during
21 the period, calculated by reference to ascertainable
22 hours worked by the employee during the period.
- 23 (3) For the purposes of subsection (1), the rate of pay of an
24 employee whose leave, or any portion of it, is
25 postponed to meet the convenience of the employee by
26 agreement between the employer and employee is the
27 rate of pay applicable to the employee —
- 28 (a) on the day on which the leave accrues; or
- 29 (b) if the employer and employee agree — on the
30 day on which the employee commences the
31 leave.

- 1 (4) The *ordinary pay* of an employee employed on
2 piecework, commission, bonus work, percentage
3 reward or any other system of payment by results, is
4 the employee's average weekly rate of pay earned
5 while in employment during the period of 12 months —
- 6 (a) if the employee is in employment — ending on
7 the day immediately before the day on which
8 the employee commences long service leave or
9 would, but for payment instead of long service
10 leave under section 5, have commenced long
11 service leave; or
- 12 (b) if the employee is not in employment — ending
13 on the day immediately before the day on
14 which the employee was last in employment; or
- 15 (c) if the employee is dead — ending on the day
16 immediately before the day on which the
17 employee died.

18 **7A. Ordinary pay: shift premiums, overtime, penalty**
19 **rates or allowances**

20 Except as provided in section 7B, an employee's
21 *ordinary pay* does not include shift premiums,
22 overtime, penalty rates, allowances or any similar
23 payments.

24 **7B. Ordinary pay: casual employees' loading**

25 A casual employee's *ordinary pay* includes any casual
26 loading payable under any of the following —

- 27 (a) an award, industrial agreement,
28 employer-employee agreement or order of the
29 Commission;
- 30 (b) a modern award, enterprise agreement or
31 national minimum wage order made by the Fair
32 Work Commission under the *Fair Work*
33 *Act 2009* (Commonwealth);

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- 1 (c) a contract of employment;
2 (d) an enactment.
- 3 **7C. Ordinary pay: board and lodging**
- 4 (1) An employee's *ordinary pay* includes the cash value of
5 board and lodging during a period of long service leave
6 if the board and lodging —
- 7 (a) is provided to the employee by the employer;
8 but
- 9 (b) is not provided to, and taken by, the employee
10 during the period of long service leave.
- 11 (2) For the purposes of subsection (1), the cash value of
12 board and lodging provided to an employee is —
- 13 (a) if the value is fixed by or under the conditions
14 of the employee's employment — that value; or
- 15 (b) if the value is not fixed by or under the
16 conditions of the employee's employment — a
17 value calculated by reference to a rate
18 prescribed in the regulations.
19

20 **76. Part II Division 3 inserted**

21 At the end of Part II insert:
22

23 **Division 3 — Transfer of business**

24 **7D. Terms used**

25 In this Division —

26 *connection between the old employer and the new*
27 *employer* has the meaning given in section 7G;

1 *new employer* has the meaning given in section 7E;
2 *old employer* has the meaning given in section 7E;
3 *transfer of business* has the meaning given in
4 section 7E;
5 *transferring employee* has the meaning given in
6 section 7F;
7 *transferring work* has the meaning given in section 7E.

8 **7E. Transfer of business, old employer, new employer,**
9 **transferring work**

10 There is a *transfer of business* from an employer (the
11 *old employer*) to another employer (the *new employer*)
12 if the following requirements are satisfied —

- 13 (a) the employment of an employee of the old
14 employer has terminated;
15 (b) within 3 months after the termination, the
16 employee becomes employed by the new
17 employer;
18 (c) the work (the *transferring work*) the employee
19 performs for the new employer is the same, or
20 substantially the same, as the work the
21 employee performed for the old employer;
22 (d) there is a connection between the old employer
23 and the new employer.

24 **7F. Transferring employee**

25 An employee in relation to whom the requirements in
26 section 7E(a), (b) and (c) are satisfied is a *transferring*
27 *employee*.

- 1 **7G. Connection between old employer and new**
2 **employer**
- 3 (1) There is a *connection between the old employer and*
4 **the new employer** if, in accordance with an
5 arrangement between them, the new employer owns or
6 has the beneficial use of some or all of the assets
7 (whether tangible or intangible) that —
- 8 (a) the old employer owned or had the beneficial
9 use of; and
- 10 (b) relate to, or are used in connection with, the
11 transferring work.
- 12 (2) There is a *connection between the old employer and*
13 **the new employer** if, because the old employer has
14 outsourced the transferring work to the new employer,
15 the transferring work is performed by 1 or more
16 transferring employees as employees of the new
17 employer.
- 18 (3) There is a *connection between the old employer and*
19 **the new employer** if —
- 20 (a) because the new employer had outsourced the
21 transferring work to the old employer, the
22 transferring work had been performed by 1 or
23 more transferring employees, as employees of
24 the old employer; and
- 25 (b) because the new employer has ceased to
26 outsource the work to the old employer, the
27 transferring work is performed by those
28 transferring employees, as employees of the
29 new employer.

- 1 (4) There is a *connection between the old employer and*
2 *the new employer* if the new employer is a related
3 body corporate of the old employer when the
4 transferring employee becomes employed by the new
5 employer.

6 **7H. Status of transferring employees on transfer of**
7 **business**

8 For the purposes of this Act, on a transfer of
9 business —

- 10 (a) a transferring employee’s employment before
11 and after the transfer is taken to be a single
12 period of continuous employment; and
13 (b) the new employer is taken to have been the
14 transferring employee’s sole employer for the
15 entire period.

16 **7I. Transfer of employment records**

- 17 (1) In this section —
18 *employment records* means employment records
19 required to be kept by an employer under section 26(1).
20 (2) On the transfer of a business, the old employer must
21 transfer copies of all transferring employees’
22 employment records to the new employer.
23 (3) A contravention of subsection (2) is not an offence but
24 that subsection is a civil penalty provision for the
25 purposes of the IR Act section 83E.
26 (4) In proceedings under the IR Act section 83E for a
27 contravention of subsection (2), an industrial
28 magistrate’s court may, as an alternative, determine
29 that a contravention of section 26(1) or (2) has
30 occurred.
31

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1 **77. Part III heading amended**

2 In the heading to Part III delete “**in lieu thereof**” and insert:

3

4 **on termination instead**

5

6 **78. Section 8 amended**

7 (1) In section 8(1) delete the passage that begins with “continuous
8 employment” and continues to the end of the subsection and
9 insert:

10

11 the length of continuous employment calculated under
12 section 6A with the same employer.

13

14 (2) Delete section 8(3)(b) and insert:

15

16 (b) in any circumstances other than by the
17 employer for serious misconduct,

18

19 **79. Section 9 amended**

20 (1) In section 9(1):

21 (a) in paragraph (a) delete “subject to any agreement
22 between the employer and the employee,” and insert:

23

24 except as provided in subsection (1AA),

25

26 (b) in paragraph (b) delete “periods of not less than one
27 week.” and insert:

28

29 periods.

30

1 (2) After section 9(1) insert:
2

3 (1AA) The employee and employer may agree when the
4 employee will take long service leave.
5

6 (3) After section 9(1b) insert:
7

8 (1C) The employee may request the employer to grant the
9 employee a period of long service leave —

10 (a) twice as long as the period to which the
11 employee would otherwise be entitled; and

12 (b) at a rate of pay equal to half the employee's
13 ordinary pay.

14 (1D) The employee may request the employer to grant the
15 employee a period of long service leave —

16 (a) half as long as the period to which the
17 employee would otherwise be entitled; and

18 (b) at a rate of pay equal to twice the employee's
19 ordinary pay.
20

21 (4) In section 9(3) after “a period of” insert:
22

23 accrued
24

25 Note: The heading to amended section 9 is to read:

26 **Taking long service leave**

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1 **80. Section 11 amended**

2 (1) In section 11(1):

3 (a) in paragraph (b) delete “payment in lieu of long service
4 leave;” and insert:

5

6 payment on termination instead of long service leave;

7

8 (b) in paragraph (c) delete “rate of”;

9 (c) in paragraph (d) delete “in order to avoid or to attempt”
10 and insert:

11

12 with the intention of avoiding or attempting

13

14 (d) in paragraph (e) delete “in lieu of” and insert:

15

16 instead of

17

18 (2) After section 11(2) insert:

19

20 (3) Jurisdiction granted under subsection (1) is in addition
21 to jurisdiction an industrial magistrate’s court has —

22 (a) under the IR Act section 83(1)(e) to enforce a
23 provision of Part III as an entitlement provision
24 as defined in the IR Act section 7(1); and

25 (b) under the IR Act section 83E to enforce a
26 provision of this Act that is a civil penalty
27 provision as defined in the IR Act section 7(1).
28

- 1 **81. Section 26 amended**
- 2 (1) In section 26(1):
- 3 (a) delete “details are recorded of —” and insert:
- 4
- 5 the following employment records are kept —
- 6
- 7 (b) after paragraph (a) insert:
- 8
- 9 (aa) the employer’s name and Australian Business
- 10 Number (if any);
- 11 (ab) the date of any transfer of business as defined
- 12 in section 7D during the employment of the
- 13 employee;
- 14
- 15 (c) after paragraph (b) insert:
- 16
- 17 (ba) the weekly hours worked by the employee;
- 18
- 19 (d) delete paragraph (e) and insert:
- 20
- 21 (e) any agreement made under section 5, including
- 22 details of —
- 23 (i) the benefit for, and the amount of, long
- 24 service leave that was foregone; and
- 25 (ii) when the benefit was paid;
- 26
- 27 (e) in paragraph (f) delete “Act; and” and insert:
- 28
- 29 Act;
- 30

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- 1 (2) In section 26(2):
2 (a) in paragraph (a) before “records” insert:
3
4 employment
5
6 (b) in paragraph (b) delete “entry” and insert:
7
8 employment record
9
- 10 (3) Delete section 26(3) and (4) and insert:
11
- 12 (3) A contravention of subsection (1) or (2) is not an
13 offence but those subsections are civil penalty
14 provisions for the purposes of the IR Act section 83E.
15
- 16 **82. Section 26A amended**
- 17 (1) In section 26A(1):
18 (a) in paragraph (a) before “records” insert:
19
20 employment
21
22 (b) in paragraph (b) before “records.” insert:
23
24 employment
25
- 26 (2) In section 26A(1a) delete “*Industrial Relations Act 1979*” and
27 insert:
28
29 IR Act
30
- 31 (3) Delete section 26A(1b).

- 1 (4) In section 26A(3):
2 (a) in paragraph (a) before “record” insert:
3
4 employment
5
6 (b) in paragraph (c)(i) and (ii) before “records;” insert:
7
8 employment
9

10 Note: The heading to amended section 26A is to read:
11 **Access to employment records kept by employer**

12 **83. Section 39 amended**

13 In section 39 delete “*Industrial Relations Act 1979*” and insert:

14
15 IR Act
16

17 Note: The heading to amended section 39 is to read:
18 **Application to this Act of certain regulations made under the IR**
19 **Act**

20 **84. Part VIII inserted**

21 After section 39 insert:
22

23 **Part VIII — Savings provisions for *Industrial***
24 ***Relations Legislation Amendment Act 2020***

25 **40. Terms used**

26 In this Part —
27 ***commencement day*** means the day on which the
28 ***Industrial Relations Legislation Amendment Act 2020***
29 section 73 comes into operation;

s. 85

1 *former section* means a section of this Act as in
2 operation immediately before the commencement day.

3 **41. Business transmitted before commencement day**

4 (1) This section applies in relation to the transmission, as
5 defined in former section 6(5), of a business before the
6 commencement day.

7 (2) For the purposes of determining whether an employee
8 in the business has had continuous employment with an
9 employer, on and after the commencement day —

10 (a) former sections 6 and 8 continue in operation;
11 and

12 (b) Part II Division 3 does not apply.
13

14 **85. Various references to “shall” replaced**

15 Amend the provisions listed in the Table as set out in the Table.

16

Table

Provision	Delete	Insert
s. 8(3) s. 9(2) s. 27(2)	shall be (each occurrence)	is
s. 9(2)	employer shall	employer must
s. 10(1)	shall not become	is not
s. 27(1)	shall	must
s. 27(2)	shall thereupon forfeit his	forfeits the

Provision	Delete	Insert
s. 27(3)	shall	do
s. 39	shall	

1 **86. Various references to gender removed**

2 Amend the provisions listed in the Table as set out in the Table.

3 **Table**

Provision	Delete	Insert
s. 8(2)(c)(i) s. 8(3)(a)	his	the employee's
s. 8(2)(c)(ii)	his	the
s. 8(5)	his or her	
s. 8(9)	his or her	the employee's
s. 9(2) s. 27(3)	his	
s. 9(2) s. 10(2) s. 27(1) and (2)	he (each occurrence)	the employee
s. 12	his or her	the inspector's
s. 38(1)	him to	

s. 87

1 **87. Various other modernisations**

2 Amend the provisions listed in the Table as set out in the Table.

3

Table

Provision	Delete	Insert
s. 4(1) def. of <i>business</i>	thereof	of it
s. 8(2)	such continuous employment, as is referred to in subsection (1),	continuous employment
s. 8(3)	of such continuous employment since the commencement thereof, but less than 10 years	but less than 10 years of continuous employment
s. 9(2) s. 27(3)	deemed (each occurrence)	taken
s. 9(2)	hereunder (each occurrence)	under this subsection
s. 10(1)	thereto	
s. 10(1)	hereunder	
s. 10(2)	thereto (1 st occurrence)	
s. 10(2)	prior thereto	before
s. 11(1)	the foregoing	this subsection

Provision	Delete	Insert
s. 26(2)(b)	7 years thereafter	7 years after that
s. 27(2)	hereunder	
s. 39	deemed	

1 **Part 4 — *Minimum Conditions of Employment Act 1993***
2 **amended**

3 **88. Act amended**

4 This Part amends the *Minimum Conditions of Employment*
5 *Act 1993*.

6 **89. Section 3 amended**

7 (1) In section 3(1) delete the definition of *employee*.

8 (2) In section 3(1) insert in alphabetical order:

9
10 *employee* means —

11 (a) a person who is employed by an employer to do
12 work for hire or reward, including as an
13 apprentice; or

14 (b) a person whose usual status is that of an
15 employee;

16 *industrial instrument* means an award or
17 employer-employee agreement;
18

19 **90. Section 5 amended**

20 (1) Delete section 5(1) and insert:

21
22 (1) The minimum conditions of employment extend to and
23 bind all employees and employers and are taken to be
24 implied —

25 (a) in an industrial instrument; or

26 (b) if a contract of employment is not governed by
27 an industrial instrument — in that contract.
28

1 (2) In section 5(5) delete “sections 8 and 9(1).” and insert:

2

3 section 8.

4

5 **91. Section 7 replaced**

6 Delete section 7 and insert:

7

8 **7. Enforcement of minimum conditions**

9 A minimum condition of employment may be enforced
10 under the IR Act section 83 —

11 (a) as an entitlement provision; or

12 (b) if the condition is implied in an industrial
13 instrument — as a provision of the instrument.

14

15 **92. Section 8 amended**

16 In section 8(1)(c) delete “writing.” and insert:

17

18 writing, signed by the employer and the employee.

19

20 Note: The heading to amended section 8 is to read:

21 **Cashing out of accrued annual leave**

22 **93. Section 9 deleted**

23 Delete section 9.

24 **94. Section 9A amended**

25 (1) In section 9A(4) delete the definition of *industrial instrument*.

s. 95

1 (2) In section 9A(4) in the definition of *authorised leave*
2 paragraph (c) delete “Commonwealth;” and insert:

3

4 Commonwealth.

5

6 **95. Section 9B amended**

7 In section 9B(2)(a) delete “health and safety” and insert:

8

9 safety and health

10

11 **96. Part 3 Division 1 heading inserted**

12 At the beginning of Part 3 insert:

13

14 **Division 1 — General**

15

16 **97. Section 10 amended**

17 (1) In section 10:

18 (a) delete “An” and insert:

19

20 (1) Except as provided in section 16, an

21

22 (b) delete “13, 14 or 15,” and insert:

23

24 13 or 14,

25

1 (2) At the end of section 10 insert:

2

3 (2) Nothing in this section prevents an industrial
4 instrument from providing for minimum rates of pay
5 for an employee with a disability.
6

7 **98. Part 3 Division 2 inserted**

8 At the end of Part 3 insert:

9

10 **Division 2 — Employees with disabilities**

11 **15. Terms used**

12 In this Division —

13 *employee with a disability* means an employee whose
14 productive capacity —

15 (a) has been assessed under —

16 (i) the SWS; or

17 (ii) a supported wage industrial instrument
18 provision;

19 and

20 (b) is assessed as being reduced because of a
21 disability;

22 *instrument-free employee with a disability* means an
23 employee —

24 (a) whose contract of employment is not governed
25 by an industrial instrument; and

26 (b) whose productive capacity has been assessed
27 under the SWS as being reduced because of a
28 disability;

- 1 ***instrument-governed employee with a disability*** means
2 an employee —
- 3 (a) whose contract of employment is governed by
4 an industrial instrument that includes a SWIIP
5 that incorporates the SWS; and
- 6 (b) whose productive capacity has been assessed
7 under the SWS as being reduced because of a
8 disability; and
- 9 (c) who is not employed by a supported
10 employment service as defined in the *Disability*
11 *Services Act 1986* (Commonwealth) section 7;
12 and
- 13 (d) who is being paid a weekly rate of pay
14 determined by the SWS under the SWIIP;
- 15 ***supported wage industrial instrument provision*** or
16 ***SWIIP*** means a provision of an industrial instrument
17 that —
- 18 (a) applies to an employee with a disability; and
- 19 (b) provides a means (a ***wage assessment tool***) for
20 the assessment of whether, and the extent to
21 which, the employee’s productive capacity is
22 reduced because of the disability; and
- 23 (c) provides that the employer may pay a wage
24 that —
- 25 (i) relates to the employee’s productive
26 capacity as assessed using the wage
27 assessment tool; and
- 28 (ii) may be less than the applicable
29 minimum wage in the industrial
30 instrument;

1 **Supported Wage System** or *SWS* means the scheme
2 established by the Commonwealth Government to
3 enable the assessment of whether, and the extent to
4 which, a person’s productive capacity is reduced
5 because of a disability.

6 **16. Application of Act to employee with disability**

7 (1) Section 10 does not apply to an employee with a
8 disability who has been assessed under the SWS or a
9 SWIIP and is being paid a rate of pay in accordance
10 with that assessment.

11 (2) A person eligible to be employed under the SWS may
12 be employed under its provisions for the purposes of
13 this Act.

14 **17. Minimum pay for employee with disability**

15 (1) This section applies to the following —
16 (a) an instrument-free employee with a disability;
17 (b) an instrument-governed employee with a
18 disability;
19 (c) an employee who is employed for a trial period
20 for the purpose of an assessment under the
21 SWS as to whether the employee will become
22 an employee referred to in paragraph (a) or (b).

23 (2) Except as provided in subsection (3), the minimum
24 amount payable for each week worked by the
25 employee is an amount not less than the amount
26 in effect at that time under the IR Act
27 section 50A(1)(a)(iii), regardless of the number of
28 hours worked by the employee during the relevant
29 week.

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- 1 (3) An instrument-free employee with a disability is
2 entitled to be paid the higher of the following
3 amounts —
- 4 (a) for each hour worked by the employee in a
5 week, an amount calculated by —
- 6 (i) determining the weekly rate of pay
7 applicable to the employee by reference
8 to the percentage of the rate referred to
9 in section 12 that corresponds to the
10 employee's assessed productive
11 capacity under the SWS, rounded up to
12 the nearest 10 cents; and
- 13 (ii) dividing that weekly rate by 38;
- 14 (b) the amount referred to in subsection (2).
15

16 **99. Section 17B amended**

17 Delete section 17B(2) and (3) and insert:
18

- 19 (2) In proceedings by an employee for recovery of any
20 amount due as the employee's pay, anything given or
21 provided by the employer contrary to subsection (1) is
22 to be treated as if it had never been given or provided.
23

24 **100. Section 17BA inserted**

25 After section 17B insert:
26

27 **17BA. Employee and prospective employees not to be**
28 **unreasonably compelled to spend or pay amount**

- 29 (1) In this section —

- 1 ***party related***, in relation to an employer or prospective
2 employer, means a relative of the employer or
3 prospective employer;
- 4 ***relative***, of an employer, means —
- 5 (a) each of the following people, whether the
6 relationship is established by, or traced through,
7 consanguinity, marriage, a de facto
8 relationship, a written law or a natural
9 relationship —
- 10 (i) a parent, grandparent or other ancestor;
- 11 (ii) a step-parent;
- 12 (iii) a sibling;
- 13 (iv) an uncle or aunt;
- 14 (v) a cousin;
- 15 (vi) a spouse or de facto partner;
- 16 or
- 17 (b) in the case of an employer who is an Aboriginal
18 person or Torres Strait Islander — a person
19 regarded under the customary law or tradition
20 of the employer’s community as the equivalent
21 of a person mentioned in paragraph (a).
- 22 (2) An employer must not directly or indirectly require an
23 employee to spend, or pay to the employer or another
24 person, an amount of the employee’s money or the
25 whole or any part of an amount payable to the
26 employee in relation to the performance of work, if —
- 27 (a) the requirement is unreasonable in the
28 circumstances; and

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- 1 (b) in the case of a payment — the payment is
2 directly or indirectly for the benefit of the
3 employer or a party related to the employer.
- 4 (3) An employer (the *prospective employer*) must not
5 directly or indirectly require another person (the
6 *prospective employee*) to spend, or pay to the
7 prospective employer or any other person, an amount
8 of the prospective employee's money if —
- 9 (a) the requirement is in connection with
10 employment or potential employment of the
11 prospective employee by the prospective
12 employer; and
- 13 (b) the requirement is unreasonable in the
14 circumstances; and
- 15 (c) in the case of a payment — the payment is
16 directly or indirectly for the benefit of the
17 prospective employer or a party related to the
18 prospective employer.
- 19 (4) The regulations may prescribe circumstances in which
20 a requirement referred to in subsection (2) or (3) is or is
21 not reasonable.
- 22 (5) A contravention of subsection (2) or (3) is not an
23 offence but that subsection is a civil penalty provision
24 for the purposes of the IR Act section 83E.
- 25 (6) In proceedings under the IR Act section 83E for a
26 contravention of subsection (2), an industrial
27 magistrate's court may, as an alternative, determine
28 that a contravention of an entitlement provision has
29 occurred for the purposes of the IR Act section 83.
- 30 (7) If the industrial magistrate's court determines that an
31 employer has contravened subsection (2) or (3) in
32 respect of an employee or prospective employee, the
33 industrial magistrate's court may order the employer to

1 pay to the employee or prospective employee
2 compensation for any loss or injury suffered as a result
3 of the contravention.

4 (8) The industrial magistrate’s court may make an order
5 under subsection (7) in addition to imposing a penalty
6 under section 83E.

7
8 **101. Section 18 amended**

9 (1) In section 18(2):

10 (a) delete “determined under subsection (1),” and insert:

11
12 determined, or have varied over the period of
13 employment, for the purpose of payment for leave under
14 subsection (1),

15
16 (b) delete “in the 52 weeks” and insert:

17
18 during the period prescribed in subsection (2A)

19
20 (2) After section 18(2) insert:

21
22 (2A) For the purposes of subsection (2), the period
23 prescribed is the shorter of the following —

24 (a) 52 weeks;

25 (b) the period of employment.

26
27 **102. Part 6 deleted**

28 Delete Part 6.

1 **103. Part 8 inserted**

2 After section 47 insert:

3

4 **Part 8 — Transitional provisions for *Industrial***
5 ***Relations Legislation Amendment Act 2020***

6 **48. Term used: commencement day**

7 In this Part —

8 *commencement day* means the day on which the
9 *Industrial Relations Legislation Amendment Act 2020*
10 section 89 comes into operation.

11 **49. Employees remunerated wholly by percentage**
12 **reward or at piece rates**

13 (1) This section applies to an employee —

- 14 (a) whose services were, immediately before the
15 commencement day, remunerated wholly —
16 (i) by commission or percentage reward; or
17 (ii) at piece rates;
18 and

19 (b) in relation to whom an industrial instrument or
20 contract of employment did not specify the rate
21 of pay the employee was entitled to when on a
22 period of leave.

23 (2) For the purposes of section 18, the employee's contract
24 of employment is, on and after the commencement day,
25 taken to specify the employee's weekly rate of pay as
26 the minimum weekly rate of pay applicable under
27 section 12, 13 or 14.

- 1 **50. Employees with disabilities**
- 2 (1) In this section —
- 3 *assessment* means assessment of an employee’s
- 4 productive capacity under the SWS as defined in
- 5 section 15;
- 6 *assessment period* means a period starting on the
- 7 commencement day and ending on the earlier of the
- 8 following —
- 9 (a) the day on which an assessment of the
- 10 employee’s productive capacity is completed
- 11 for the purposes of determining the employee’s
- 12 minimum rate of pay under section 17(3)(a);
- 13 (b) the day that is 6 months after the
- 14 commencement day.
- 15 (2) This section applies to a person who, immediately
- 16 before the commencement day, was an employee with
- 17 a disability whose contract of employment was not
- 18 governed by an industrial instrument.
- 19 (3) During the assessment period the employee is entitled
- 20 to be paid, for each week worked by the employee, the
- 21 higher of the following —
- 22 (a) the employee’s weekly wage immediately
- 23 before the commencement day;
- 24 (b) the amount referred to in section 17(2).
- 25 (4) If the employee’s assessment is completed, and the
- 26 employee’s wage is determined, within the assessment
- 27 period, subsection (3) ceases to apply to the employee
- 28 on the day of completion.
- 29 (5) If the employee is not assessed, or the employee’s
- 30 assessment is not completed, within the assessment
- 31 period, then on and after the expiry of the assessment
- 32 period the employee is entitled to be paid in accordance

1 with section 10(1) until such time as the employee's
2 productive capacity is determined, on an assessment, to
3 be reduced by a disability.

4 **51. "Under rate employee" provisions in awards**

5 (1) In this section —

6 *assessment* means assessment of an employee's
7 productive capacity under the SWS or a SWIIP, as
8 those terms are defined in section 15;

9 *assessment period* means the period ending 6 months
10 after the commencement day;

11 *pre-commencement day wage* means the weekly wage
12 that an under rate employee was entitled to be paid
13 immediately before the commencement day;

14 *under rate employee* means an employee who was,
15 immediately before the commencement day, entitled to
16 be paid under an under rate employee provision by
17 reason of infirmity;

18 *under rate employee provision* means a provision in an
19 award to the effect that an employee who by reason of
20 old age or infirmity is unable to earn the minimum
21 wage may be paid a lesser wage as is agreed in writing
22 between a union and the employer.

23 (2) On and from the commencement day each under rate
24 employee provision is of no effect to the extent to
25 which it applies to an employee who by reason of
26 infirmity or old age is unable to earn the minimum
27 wage.

28 (3) During the assessment period, an under rate employee
29 is entitled to be paid, for each week worked by the
30 employee, the higher of the following amounts —

31 (a) the employee's pre-commencement day wage;

32 (b) the amount referred to in section 17(2).

- 1 (4) If an employee's assessment is completed, and the
2 employee's wage is determined, within the assessment
3 period, subsection (3) ceases to apply to the employee
4 on the day of completion.
- 5 (5) If an employee is not assessed, or the employee's
6 assessment is not completed, within the assessment
7 period, then on and after the expiry of the assessment
8 period the employee is entitled to be paid in accordance
9 with the rate of pay applicable under the award until
10 such time as the employee's productive capacity is
11 determined, on an assessment, to be reduced by a
12 disability.
13

14 **104. Various references to gender removed**

- 15 (1) In the provisions listed in the Table delete "his or her" and
16 insert:

17

18 the employee's
19

20

Table

s. 3(3)(a)	s. 17B(1)
s. 33(2)(b)	s. 35
s. 36(1)	s. 37(1)
s. 38(2)	

- 21 (2) In the provisions listed in the Table delete "he or she" and
22 insert:

23

24 the employee
25

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1

Table

s. 11(1)	s. 24(1), (2) and (3)
s. 30	s. 33(2)
s. 38(1)	s. 43(1)

2

(3) In the provisions listed in the Table delete “his or her”.

3

Table

s. 17C(1)	s. 18(1)
s. 24(2)(a) and (3)(a)	s. 25(1) and (2)

4

