

Industrial Relations Legislation Amendment Bill 2024

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Western Australia

LEGISLATIVE ASSEMBLY

Industrial Relations Legislation Amendment Bill 2024

A Bill for

An Act —

- **to amend the *Industrial Relations Act 1979* and the *Minimum Conditions of Employment Act 1993*; and**
- **to make related and consequential amendments to the *Health Services Act 2016*, the *Public Sector Management Act 1994* and other Acts.**

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9
10
11

Part 1 — Preliminary

1. Short title

This is the *Industrial Relations Legislation Amendment Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) Part 2 Division 3 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) the rest of the Act — on 31 January 2025.

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

2 **Division 1 — Preliminary**

3 **3. Act amended**

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

5 **Division 2 — Amendments commencing on 31 January 2025**

6 **4. Section 6 amended**

7 In section 6:

8 (a) delete paragraph (ac) and insert:

9
10 (ac) to promote gender equality in the workplace
11 through equal remuneration and eliminating
12 gender-based undervaluation of work; and

13
14 (b) after paragraph (ca) insert:

15
16 (cb) to prevent and eliminate bullying and sexual
17 harassment in the workplace; and

18
19 (c) delete paragraph (d) and insert:

20
21 (d) to provide for the observance and enforcement
22 of agreements, awards, the LSL Act, the MCE
23 Act and other entitlement provisions; and

24
25 **5. Section 7 amended**

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

27 *constituent authority*

28 *Mines and Metals Association*

- 1 (2) In section 7(1) insert in alphabetical order:
2
3 ***bullying***, at work, means behaviour to which
4 section 51BI(1) applies;
5 ***electronic means*** includes —
6 (a) an electronic database or document
7 management system; or
8 (b) any other means by which a document can be
9 accessed electronically;
10 ***employing authority*** —
11 (a) in relation to a public service officer, another
12 employee to whom the *Public Sector*
13 *Management Act 1994* Part 5 applies or a
14 public sector body — has the meaning given in
15 section 5 of that Act; or
16 (b) in relation to a health services employee — has
17 the meaning given in the *Health Services*
18 *Act 2016* section 103;
19 ***flexible working arrangement dispute*** has the meaning
20 given in section 51D;
21 ***government officer*** has the meaning given in
22 section 36AB;
23 ***health services employee*** means an employee as
24 defined in the *Health Services Act 2016* section 6;
25 ***in connection with work***, in relation to the sexual
26 harassment of a person, has the meaning given in
27 section 51BR(2);
28 ***local government long service leave provision*** means a
29 provision of regulations made under the *Local*
30 *Government Act 1995* section 5.48;

- 1 Note for this definition:
2 Regulations made under the *Local Government Act 1995*
3 section 5.48 provide for the long service leave benefits of —
4 (a) the employees of local governments; and
5 (b) the employees of the Western Australian Local
6 Government Association constituted under
7 section 9.58 of that Act.
- 8 ***minimum condition of employment*** has the meaning
9 given in the MCE Act section 3(1);
10 ***public sector body*** has the meaning given in the *Public*
11 *Sector Management Act 1994* section 3(1);
12 ***reclassification***, of an office held by a government
13 officer, has the meaning given in section 36AD(1);
14 ***sexually harasses*** has the meaning given in
15 section 51BQ;
16 ***worker*** has the meaning given in section 51BH.
17
- 18 (3) In section 7(1) in the definition of ***employee*** in paragraphs (a)
19 and (b) delete “a person” and insert:
20
21 an individual
22
- 23 (4) In section 7(1) at the end of the definition of ***employee*** insert:
24
25 Note for this definition:
26 See section 7A which applies for the purposes of
27 determining whether an individual is an employee of a
28 person.
29

Industrial Relations Legislation Amendment Bill 2024

Part 2 Industrial Relations Act 1979 amended

Division 2 Amendments commencing on 31 January 2025

s. 5

1 (5) In section 7(1) in the definition of *employer* after paragraph (a)
2 insert:

3

4 (aa) in relation to an industrial matter mentioned in
5 section 36AA — the employing authority of a
6 public service officer or health services
7 employee; or
8

9 (6) In section 7(1) at the end of the definition of *employer* insert:

10

11 Note for this definition:

12 See section 7A which applies for the purposes of
13 determining whether a person is an employer of an
14 individual.
15

16 (7) In section 7(1) in the definition of *entitlement provision*:

17 (a) in paragraph (c) delete “employment as defined in the
18 MCE Act section 3(1);” and insert:

19

20 employment; or

21

22 (b) after paragraph (c) insert:

23

24 (d) a local government long service leave
25 provision;
26

27 (8) In section 7(1) in the definition of *industrial matter* after
28 paragraph (g) insert:

29

30 (h) any matter referred to as an industrial matter in
31 section 36AA;

- 1 (ha) any matter relating to a flexible working
2 arrangement dispute;
3
- 4 (9) In section 7(1) in the definition of *public sector award* delete
5 paragraph (a) and insert:
6
- 7 (a) a public sector body;
8
- 9 (10) In section 7(1) in the definition of *record-related civil penalty*
10 *provision* after paragraph (e) insert:
11
- 12 (f) a local government long service leave provision
13 that requires an employer to keep records about
14 employees’ employment that are necessary to
15 calculate the employees’ entitlements to, and
16 payment for, long service leave;
17
- 18 (11) In section 7(1) in the definition of *vary* delete “provision.” and
19 insert:
20
- 21 provision;
22
- 23 (12) Delete section 7(2) and (2A) and insert:
24
- 25 (2) A matter relating to the bullying of a worker at work or
26 the sexual harassment of a person in connection with
27 work is an industrial matter.
28

1 **6. Sections 7A and 7B inserted**

2 At the end of Part I insert:
3

4 **7A. Determining whether individual is employee or**
5 **person is employer**

6 (1) This section applies for determining, for the purposes
7 of this Act, the LSL Act or the MCE Act —

8 (a) whether an individual is an employee of a
9 person; or

10 (b) whether a person is an employer of an
11 individual.

12 (2) The matter is determined by ascertaining the real
13 substance, practical reality and true nature of the
14 relationship between the individual and the person.

15 (3) For the purposes of subsection (2), consideration must
16 be given to the totality of the relationship between the
17 individual and the person, including —

18 (a) the terms of the contract governing the
19 relationship; and

20 (b) other factors relevant to the totality of the
21 relationship, including how the contract is
22 performed in practice.

23 Note for this section:

24 This section was enacted as a response to the decisions of
25 the High Court of Australia in *Construction, Forestry,*
26 *Maritime, Mining and Energy Union v Personnel Contracting*
27 *Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v*
28 *Jamsek* [2022] HCA 2.

29 **7B. Determining whether employee is casual employee**

30 (1) This section applies for determining, for the purposes
31 of this Act, the LSL Act or the MCE Act, whether an
32 employee of an employer is a casual employee.

- 1 (2) The matter is determined by ascertaining the real
2 substance, practical reality and true nature of the
3 relationship between the employee and the employer.
- 4 (3) For the purposes of subsection (2), consideration must
5 be given to the totality of the relationship between the
6 employee and the employer, including —
- 7 (a) the terms of the contract governing the
8 relationship; and
- 9 (b) other factors relevant to the totality of the
10 relationship, including how the contract is
11 performed in practice.

12 Note for this section:

13 This section was enacted as a response to the decision of
14 the High Court of Australia in *WorkPac Pty Ltd v Rossato*
15 [2021] HCA 23.
16

17 **7. Section 13 amended**

- 18 (1) In section 13(b) delete “magistrate;” and insert:
19
20 magistrate.

- 22 (2) Delete section 13(c) and (d).

23 **8. Section 16 amended**

- 24 (1) In section 16(1) delete the definition of *Commission* and insert:

25
26 *Commission* includes the Full Bench and the
27 Commission in Court Session.
28

Industrial Relations Legislation Amendment Bill 2024

Part 2 Industrial Relations Act 1979 amended

Division 2 Amendments commencing on 31 January 2025

s. 9

1 (2) In section 16(1a) delete the passage that begins with “Session”
2 and continues to the end of the subsection and insert:

3

4 Session.

5

6 **9. Section 22A deleted**

7 Delete section 22A.

8 **10. Section 23 amended**

9 (1) Delete section 23(3)(g).

10 (2) After section 23(3) insert:

11

12 (4) To avoid doubt, subsection (3)(h) applies if the
13 Commission, in dealing with an industrial matter under
14 the *Public Sector Management Act 1994* section 78 or
15 the *Health Services Act 2016* section 171, determines
16 that the dismissal of an employee or former employee
17 was harsh, oppressive or unfair.

18

19 **11. Section 24A inserted**

20 After section 24 insert:

21

22 **24A. Onus of proving individual is or was not employee**

23 If, in proceedings before the Commission, a party
24 claims an individual who carries or carried out work
25 for the party is or was not an employee of the party, it
26 is for the party to prove the individual is or was not the
27 party’s employee.

28

1 **12. Section 26 amended**

2 In section 26(2B) in the definition of *public sector entity* delete
3 paragraph (a) and insert:

4
5 (a) a public sector body;

6
7 **13. Section 29 amended**

8 (1) Delete section 29(1)(e) and insert:

9
10 (e) in the case of a matter relating to the bullying
11 of a worker at work — by the worker; and

12 (f) in the case of a matter relating to the sexual
13 harassment of a person in connection with
14 work — by the person; and

15 (g) in the case of a decision mentioned in
16 section 36AA(2)(b) — by a public service
17 officer; and

18 (h) in the case of a claim relating to the
19 reclassification of an office held by a
20 government officer — by the government
21 officer; and

22 (i) in the case of an industrial matter under the
23 *Public Sector Management Act 1994* section 78
24 that is a decision or finding made in relation to
25 an employee or former employee to which
26 Part 5 of that Act applies — by the employee or
27 former employee; and

28 (j) in the case of an industrial matter under the
29 *Health Services Act 2016* section 171 that is a
30 decision or finding made in relation to an
31 employee or former employee to which Part 11
32 of that Act applies — by the employee or
33 former employee; and

Industrial Relations Legislation Amendment Bill 2024

Part 2 Industrial Relations Act 1979 amended

Division 2 Amendments commencing on 31 January 2025

s. 13

- 1 (k) in the case of an industrial matter relating to a
2 flexible working arrangement dispute between
3 an employer and an employee — by the
4 employee.
5
- 6 (2) In section 29(1a):
7 (a) delete the passage that begins with “commissioner” and
8 ends with “Part VID —” and insert:
9
10 commissioner —
11
- 12 (b) in paragraph (a) delete “as so constituted”.
- 13 (3) Delete section 29(2) and insert:
14
- 15 (2) Subject to subsection (3) —
16 (a) a referral under subsection (1)(c) must be made
17 no later than 28 days after the day on which the
18 employee’s employment is terminated; and
19 (b) a referral relating to a decision mentioned in
20 section 36AA(2)(b) must be made no later than
21 28 days after the day on which the decision is
22 made; and
23 (c) a referral relating to a decision or finding that is
24 an industrial matter under the *Public Sector*
25 *Management Act 1994* section 78 or the *Health*
26 *Services Act 2016* section 171 must be made no
27 later than 28 days after the day on which the
28 decision or finding is made.
29

1 (4) In section 29(3) delete “by an employee under subsection (1)(c)
2 that is out of time” and insert:

3

4 that is out of time under subsection (2)

5

6 **14. Section 29C inserted**

7 After section 29B insert:

8

9 **29C. Deciding which organisation to be party to award,**
10 **order or industrial agreement relating to**
11 **government officers**

12 (1) This section applies if —

13 (a) the Commission is dealing with an industrial
14 matter relating to a government officer or group
15 of government officers; and

16 (b) a question arises between 2 or more
17 organisations as to which of them, or whether 1
18 of them, should —

19 (i) be named as a party to an award or
20 order; or

21 (ii) become a party to an industrial
22 agreement.

23 (2) In deciding the question, the Commission must have
24 regard to which organisations were a party to —

25 (a) the awards, orders and industrial agreements
26 that have previously covered the government
27 officer or group of government officers; and

28 (b) relevant unregistered industrial agreements.

29

1 **15. Section 31 amended**

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

3

4 29(1)(c), (d), (e), (f), (g), (i) or (j)

5

6 **16. Section 33A inserted**

7 After section 33 insert:

8

9 **33A. Misconduct before Commission**

10 (1) A person must not insult, obstruct or hinder a
11 commissioner in the performance of the
12 commissioner’s functions as a commissioner.

13 Penalty for this subsection: a fine of \$10 000.

14 (2) A person must not insult, obstruct or hinder a person
15 attending a hearing before the Commission.

16 Penalty for this subsection: a fine of \$10 000.

17 (3) A person must not misbehave at, or interrupt, a hearing
18 before the Commission.

19 Penalty for this subsection: a fine of \$10 000.

20 (4) A person must not obstruct or hinder a person from
21 complying with an order of the Commission or a
22 summons to attend the Commission.

23 Penalty for this subsection: a fine of \$10 000.

24 (5) A person must not use words, in writing or spoken,
25 with the intention of —

26 (a) improperly influencing a commissioner in the
27 performance of the commissioner’s functions as
28 a commissioner; or

- 1 (b) improperly influencing a person attending a
2 hearing before the Commission; or
3 (c) damaging public confidence in the Commission
4 or a commissioner.

5 Penalty for this subsection: a fine of \$10 000.
6

7 **17. Part II Division 2AA inserted**

8 After Part II Division 2 insert:
9

10 **Division 2AA — Certain industrial matters relating to**
11 **public sector employment**

12 **Subdivision 1 — Preliminary**

13 **36AA. Industrial matters relating to public sector**
14 **employment**

- 15 (1) In this section —
16 *conditions of service provision* means a provision of
17 the *Public Sector Management Act 1994* relating to the
18 conditions of service of public service officers, other
19 than the salaries and allowances of public service
20 officers.
21 (2) The industrial matters the Commission has jurisdiction
22 to enquire into and deal with under section 23 include
23 the following —
24 (a) an industrial matter relating to a government
25 officer, a group of government officers or
26 government officers generally;
27 (b) a decision of an employing authority of a public
28 service officer relating to the interpretation of a
29 conditions of service provision;

- 1 (c) a decision or finding that is an industrial matter
2 under the *Public Sector Management Act 1994*
3 section 78 or the *Health Services Act 2016*
4 section 171.
- 5 (3) Without limiting subsection (2)(a), the industrial
6 matters relating to government officers mentioned in
7 that subsection include —
- 8 (a) a claim relating to the reclassification of an
9 office held by a government officer; and
- 10 (b) a claim relating to a decision of an employer to
11 downgrade an office usually held by a
12 government officer that is vacant.

13 **Subdivision 2 — Certain industrial matters relating to**
14 **government officers**

15 **36AB. Meaning of government officer**

- 16 (1) Each of the following is a *government officer* —
- 17 (a) a public service officer;
- 18 (b) a member of the Governor’s Establishment as
19 defined in the *Governor’s Establishment*
20 *Act 1992* section 3;
- 21 (c) a person employed as a member of a
22 department of the staff of Parliament under the
23 *Parliamentary and Electorate Staff*
24 *(Employment) Act 1992*;
- 25 (d) an electorate officer as defined in the
26 *Parliamentary and Electorate Staff*
27 *(Employment) Act 1992* section 3(1);
- 28 (e) another person employed on the salaried staff
29 of a public authority.
- 30 (2) Each of the following is not a *government officer* —
- 31 (a) a teacher;

- 1 (b) a member of the academic staff of a
2 post-secondary education institution;
- 3 (c) a person who holds an office for which the
4 remuneration payable is —
- 5 (i) determined or recommended under the
6 *Salaries and Allowances Act 1975*; or
- 7 (ii) determined by an Act to be at a fixed
8 rate; or
- 9 (iii) determined by the Governor under an
10 Act.
- 11 (3) In subsection (2)(a) —
- 12 **teacher** —
- 13 (a) includes a person employed —
- 14 (i) as a member of the teaching staff
15 referred to in the *School Education*
16 *Act 1999* section 235(1)(b); or
- 17 (ii) at a community kindergarten registered
18 under the *School Education Act 1999*
19 Part 5 as a member of the teaching staff
20 or another person engaged under
21 section 236(2) of that Act;
- 22 but
- 23 (b) does not include a public service officer,
24 whether or not the officer holds or acts in a
25 position that requires a teaching academic
26 qualification.

27 Note for this subsection:

28 For the purposes of paragraph (b), a public service officer
29 mentioned in that paragraph is a government officer under
30 subsection (1)(a).

- 1 **36AC. Commission’s additional power of review for**
2 **industrial matters relating to government officers**
- 3 (1) This section applies if an industrial matter relating to a
4 government officer, a group of government officers or
5 government officers generally is referred to the
6 Commission.
- 7 (2) In exercising its jurisdiction in relation to the matter,
8 the Commission may also, to the extent necessary to
9 deal with the matter —
- 10 (a) review anything done by an employer in
11 exercising a power in relation to a government
12 officer or an office administered by the
13 employer; and
- 14 (b) by order, confirm, vary or set aside the thing
15 done by the employer.
- 16 (3) The additional jurisdiction conferred on the
17 Commission under subsection (2) does not apply to the
18 exercise of a power that is —
- 19 (a) a decision or finding that may be the subject of
20 a referral to the Commission under
21 section 36AA(2)(b) or (c); or
- 22 (b) the dismissal of a government officer from the
23 officer’s employment.
- 24 **36AD. Effective date of reclassification decision**
- 25 (1) In this section —
- 26 ***reclassification***, of an office held by a government
27 officer, means —
- 28 (a) a determination of the salary, range of salary or
29 title allocated to the office; or

- 1 (b) a determination, within the range of salary
2 allocated to the office, of the salary of the
3 officer who holds the office.
- 4 (2) This section applies if the Commission decides a claim
5 relating to the reclassification of an office in favour of
6 the government officer who holds the office.
- 7 (3) The Commission may order that the decision takes
8 effect —
- 9 (a) on the day on which it is made; or
- 10 (b) on an earlier day, but not earlier than the day on
11 which the government officer applied to the
12 officer’s employer for the reclassification the
13 subject of the claim.
- 14 (4) For the purposes of subsection (3)(b), a government
15 officer is taken to have applied for reclassification of
16 an office when the officer provides the officer’s
17 employer with sufficient information for the employer
18 to make a decision about the reclassification applied
19 for.

20 **36AE. No appeal from certain decisions relating to**
21 **government officers**

- 22 Despite section 49, no appeal lies from a decision of
23 the Commission on —
- 24 (a) a claim relating to the reclassification of an
25 office held by a government officer; or
- 26 (b) a claim relating to a decision of an employer to
27 downgrade an office usually held by a
28 government officer that is vacant.

1 **Subdivision 3 — Provisions related to certain substandard**
2 **performance or disciplinary decisions or findings**

3 **36AF. Application of Subdivision**

4 This Subdivision applies if the Commission is
5 exercising its jurisdiction in relation to —

- 6 (a) a decision or finding made in relation to an
7 employee or former employee to which the
8 *Public Sector Management Act 1994* Part 5
9 applies that is an industrial matter under
10 section 78 of that Act; or
11 (b) a decision or finding made in relation to an
12 employee or former employee to which the
13 *Health Services Act 2016* Part 11 applies that is
14 an industrial matter under section 171 of that
15 Act.

16 **36AG. Commission’s powers on exercising jurisdiction in**
17 **relation to certain decisions or findings**

- 18 (1) If it appears to the Commission that the employing
19 authority of the employee or former employee failed to
20 comply with a relevant policy instrument or the rules of
21 procedural fairness in making the decision or finding,
22 the Commission —
23 (a) is not required to decide the industrial matter
24 solely on that basis and may decide the matter
25 on its merits; and
26 (b) may, by order, do all of the following —
27 (i) quash the decision or finding;
28 (ii) remit the matter back to the employing
29 authority;
30 (iii) direct the employing authority to, if the
31 employing authority continues the
32 process that resulted in the decision or

- 1 finding, recommence the process at a
2 specified stage.
- 3 (2) In subsection (1) —
4 ***relevant policy instrument*** means —
- 5 (a) in relation to a decision or finding mentioned in
6 the *Health Services Act 2016* section 171 — the
7 policy framework issued under section 26 of
8 that Act relevant to the decision or finding; or
- 9 (b) in relation to a decision or finding mentioned in
10 the *Public Sector Management Act 1994*
11 section 78 — the Commissioner’s instructions
12 issued under section 22A of that Act relevant to
13 the decision or finding.
- 14 **36AH. Limit on Commission’s powers in relation to lawful**
15 **redeployment direction matters**
- 16 (1) This section applies if the decision or finding relates to
17 a lawful redeployment direction as defined in the
18 *Health Services Act 2016* section 171(2) or the *Public*
19 *Sector Management Act 1994* section 75A.
- 20 (2) Despite section 36AG, the Commission may only
21 decide whether or not the lawful redeployment
22 direction was complied with or was capable of being
23 complied with.
24
- 25 **18. Section 37D amended**
- 26 After section 37D(6) insert:
27
- 28 (7) If the Commission varies the scope of a private sector
29 award under this section, the Commission may also
30 make other changes to the award that are consequential
31 on the variation of the scope.

- 1 (8) The Commission may act under subsection (7) of its
2 own motion or on an application made in relevant
3 proceedings by any of the following persons or
4 bodies —
5 (a) an organisation or association named as a party
6 to the private sector award;
7 (b) an employer bound by the private sector award
8 or who would be bound by the award if the
9 proposed variation to the scope were made;
10 (c) another person or body given notice of the
11 proposed variation under subsection (6)(b).
12 (9) In subsection (8) —
13 *relevant proceedings* means proceedings under this
14 section held to afford the opportunity to be heard
15 mentioned in subsection (6)(c).
16

17 **19. Section 44 amended**

18 Delete section 44(7)(a)(iii) and insert:
19

- 20 (iii) a person in relation to a dispute about
21 the person's entitlement to long service
22 leave as an employee or former
23 employee;
24

25 **20. Section 45 inserted**

26 At the end of Part II Division 2C insert:
27

28 **45. Conference etc. not to be held in relation to certain**
29 **disputes about long service leave entitlement**

- 30 (1) This section applies if a person makes an application in
31 relation to a dispute about the person's entitlement to

- 1 long service leave as an employee or former employee
2 under both —
3 (a) section 44(7)(a)(iii); and
4 (b) another provision of this Act or another written
5 law.
- 6 (2) The Commission must not exercise its jurisdiction
7 under section 44 in relation to the application under
8 that section unless the application under the other
9 provision of this Act or other law is withdrawn or fails
10 for want of jurisdiction.
11

12 **21. Section 48 deleted**

13 Delete section 48.

14 **22. Section 49 amended**

15 Delete section 49(2b) and insert:

- 16
- 17 (2b) An appeal does not lie under this section from a
18 determination of the Commission —
19 (a) under section 97VP, 97XC or 97XQ; or
20 (b) in an arbitration under any EEA dispute
21 provision of the kind referred to in
22 section 97UP.
23

24 **23. Section 49D amended**

25 In section 49D(4) delete “section 8(1)” and insert:

26
27 section 8(1) or (2A) or 32(2)
28

1 **24. Section 49DA amended**

2 After section 49DA(2) insert:

3

4 (2A) However, a pay slip must not include any information
5 that indicates leave taken by an employee, or to which
6 an employee is entitled, is leave required for reasons
7 relating to family violence (as defined in the
8 *Restraining Orders Act 1997* section 5A), whether the
9 leave is paid or unpaid.

10

11 **25. Part II Division 2G Subdivision 1 heading inserted**

12 At the beginning of Part II Division 2G insert:

13

14 **Subdivision 1 — Preliminary**

15

16 **26. Section 49G replaced**

17 Delete section 49G and insert:

18

19 **49G. Terms used**

20 (1) In this Division —

21 *authorised representative*, of an organisation of
22 employees, means an officer or employee of the
23 organisation who holds a right of entry permit;

24 *conviction* —

25 (a) means a finding of guilt by a court, or the
26 acceptance of a plea of guilty by a court,
27 whether or not a conviction is recorded; and

- 1 (b) includes —
- 2 (i) a spent conviction as defined in the
- 3 *Spent Convictions Act 1988*
- 4 section 3(1), regardless of sections 13
- 5 and 25 to 27 of that Act; and
- 6 (ii) a conviction against a law of another
- 7 jurisdiction if, under a law of that
- 8 jurisdiction, the person concerned is
- 9 permitted not to disclose the fact that
- 10 the person was convicted or found
- 11 guilty of the offence;
- 12 ***expiry day***, of a right of entry permit, has the meaning
- 13 given in section 49Q(3);
- 14 ***federal counterpart***, in relation to an organisation,
- 15 means a federal organisation that is —
- 16 (a) a federal counterpart (as defined in the FW
- 17 (Registered Organisations) Act section 9A) of
- 18 the organisation; or
- 19 (b) prescribed to be a federal counterpart of the
- 20 organisation by regulations made by the
- 21 Governor;
- 22 ***fit and proper person criteria*** has the meaning given in
- 23 section 49P(2);
- 24 ***industrial law*** means the following —
- 25 (a) this Act, the LSL Act and the MCE Act;
- 26 (b) the FW Act and the FW (Registered
- 27 Organisations) Act;
- 28 (c) another law of the Commonwealth, or a law of
- 29 another State or a Territory, prescribed to be an
- 30 industrial law by regulations made by the
- 31 Governor;

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1 *nominated official*, in relation to an application under
2 section 49N(1), has the meaning given in
3 section 49N(3);

4 *relevant employee*, when used in connection with the
5 exercise of a power by an authorised representative of
6 an organisation, means an employee who is a member
7 of the organisation or who is eligible to become a
8 member of the organisation;

9 *right of entry permit* means a permit issued by the
10 Commission under Subdivision 3;

11 *work health and safety law* means —

- 12 (a) the *Work Health and Safety Act 2020*;
- 13 (b) a law of the Commonwealth, another State or a
14 Territory prescribed to be a work health and
15 safety law by regulations made by the
16 Governor.

17 (2) In this Division, a reference to an officer or employee
18 of an organisation includes a reference to an officer or
19 employee of a federal counterpart of the organisation.
20

21 **27. Part II Division 2G Subdivision 2 heading inserted**

22 After section 49G insert:
23

24 **Subdivision 2 — Right of entry and inspection**
25

1 **28. Section 49I amended**

2 In section 49I(1) delete the passage that begins with “breach of”
3 and continues to the end of the subsection and insert:
4

5 breach of any of the following —

- 6 (a) this Act, the LSL Act or the MCE Act;
- 7 (b) the *Work Health and Safety Act 2020*;
- 8 (c) the *Construction Industry Portable Paid Long*
9 *Service Leave Act 1985*;
- 10 (d) a local government long service leave
11 provision;
- 12 (e) an award, order, industrial agreement or
13 employer-employee agreement that applies to a
14 relevant employee.
15

16 **29. Section 49J deleted**

17 Delete section 49J.

18 **30. Section 49L amended**

19 In section 49L(1):

20 (a) in paragraph (b) delete “authority,” and insert:

21

22 right of entry permit,

23

24 (b) delete “the authority” and insert:

25

26 the right of entry permit
27

28 Note: The heading to amended section 49L is to read:

29 **Right of entry permit must be shown to occupier on request**

1 **31. Section 49M amended**

2 (1) In section 49M(3) delete “authority issued by the Registrar
3 under this Division.” and insert:

4
5 right of entry permit.
6

7 (2) After section 49M(3) insert:

8
9 (4) A contravention of subsection (1), (2) or (3) is not an
10 offence but those subsections are civil penalty
11 provisions for the purposes of section 83E.
12

13 **32. Sections 49N and 49O deleted**

14 Delete sections 49N and 49O.

15 **33. Part II Division 2G Subdivisions 3 to 5 inserted**

16 At the end of Part II Division 2G insert:

17

18 **Subdivision 3 — Right of entry permits**

19 **49N. Application for right of entry permit**

20 (1) The secretary of an organisation of employees may
21 apply to the Commission for an officer or employee of
22 the organisation to be issued a right of entry permit.

23 (2) The application must comply with any requirements
24 prescribed by the regulations.

25 (3) The officer or employee named in the application is the
26 *nominated official*.

- 1 **49O. Commission may issue right of entry permit**
- 2 (1) The Commission may, on an application under
- 3 section 49N, issue a right of entry permit to the
- 4 nominated official if satisfied that the official is a fit
- 5 and proper person to hold the permit.
- 6 (2) The Commission may decide to issue a right of entry
- 7 permit subject to conditions.
- 8 (3) The Commission cannot issue a right of entry permit to
- 9 the nominated official if, when the Commission is
- 10 deciding the application —
- 11 (a) a right of entry the official had under an
- 12 industrial law or work health and safety law is
- 13 suspended under that law; or
- 14 (b) the official is disqualified under an industrial
- 15 law or work health and safety law from
- 16 exercising, or applying for, a right of entry
- 17 under that law.
- 18 **49P. Deciding whether nominated representative is fit**
- 19 **and proper person**
- 20 (1) In deciding whether a nominated official is a fit and
- 21 proper person to hold a right of entry permit, the
- 22 Commission —
- 23 (a) must consider the fit and proper person criteria
- 24 in relation to the official; and
- 25 (b) may consider any other matters the
- 26 Commission considers relevant.
- 27 (2) The following matters are the *fit and proper person*
- 28 *criteria* in relation to a nominated official —
- 29 (a) whether the official has received appropriate
- 30 training about the rights and responsibilities of
- 31 an authorised representative;

- 1 (b) whether the official has ever been convicted of
2 an offence against an industrial law;
- 3 (c) whether the official has ever been convicted of
4 an offence against a law of the Commonwealth,
5 a State, a Territory or a foreign country
6 involving —
- 7 (i) entry onto premises; or
8 (ii) fraud or dishonesty; or
9 (iii) the intentional use of violence against
10 another person; or
11 (iv) the intentional damage or destruction of
12 property;
- 13 (d) whether the official, or another person, has ever
14 been ordered to pay a penalty under an
15 industrial law in relation to the actions of the
16 official;
- 17 (e) whether a right of entry permit issued to the
18 official has been revoked, suspended or made
19 subject to conditions;
- 20 (f) whether a right of entry for industrial or work
21 health and safety purposes the official had
22 under an industrial law or a work health and
23 safety law has ever been revoked, suspended or
24 had conditions imposed on it;
- 25 (g) whether the official has ever been disqualified
26 under an industrial law or a work health and
27 safety law from exercising, or applying for, a
28 right of entry for industrial or work health and
29 safety purposes under that law.

30 **49Q. Form of right of entry permit**

- 31 (1) This section applies if the Commission, on an
32 application under section 49N, decides to issue a right
33 of entry permit to the nominated official.

- 1 (2) The right of entry permit must state the following
2 information —
- 3 (a) the name of the nominated official;
- 4 (b) the name of the organisation of employees, the
5 secretary of which made the application;
- 6 (c) the conditions, if any, the permit is issued
7 subject to;
- 8 (d) the day on which the permit is issued and its
9 expiry day.
- 10 (3) For the purposes of subsection (2)(d), the *expiry day* of
11 a right of entry permit is the day that is 3 years after the
12 day on which the permit is issued.

13 **49R. Expiry of right of entry permit**

- 14 (1) Unless it is earlier revoked, a right of entry permit
15 expires at the earlier of the following times —
- 16 (a) at the end of the day on its expiry day or, if the
17 Commission decides on a later expiry day
18 under section 49S, the later expiry day;
- 19 (b) when the authorised representative stops being
20 an officer or employee of the relevant
21 organisation.
- 22 (2) In subsection (1) —
- 23 *relevant organisation*, in relation to an authorised
24 representative, means —
- 25 (a) if the authorised representative is an officer or
26 employee of the organisation of employees, the
27 secretary of which applied for the permit —
28 that organisation; or
- 29 (b) if the authorised representative is an officer or
30 employee of a federal counterpart of the
31 organisation referred to in paragraph (a) — the
32 federal counterpart of that organisation.

- 1 **49S. Commission may decide on later expiry day**
- 2 (1) The Commission may decide on another day (the *later*
- 3 *expiry day*), that is later than the expiry day, on which
- 4 a right of entry permit expires if —
- 5 (a) the secretary of the organisation that applied for
- 6 the permit has applied for another right of entry
- 7 permit (the *new permit*) for the authorised
- 8 representative; and
- 9 (b) the application was made at least 1 month
- 10 before the expiry day of the permit; and
- 11 (c) the Commission is satisfied the permit is likely
- 12 to expire before the Commission determines the
- 13 application for the new permit.
- 14 (2) The Commission may act under subsection (1) of its
- 15 own motion or on application by the secretary of the
- 16 organisation.
- 17 (3) The later expiry day must not extend the expiry of the
- 18 permit longer than the period that the Commission
- 19 considers necessary to determine the application.
- 20 (4) The Commission must not decide on a later expiry day
- 21 under subsection (1) if —
- 22 (a) the Commission has requested or required the
- 23 secretary of the organisation or authorised
- 24 representative to provide a document or other
- 25 information in relation to the application; and
- 26 (b) the secretary or representative has not complied
- 27 with the request or requirement; and
- 28 (c) the Commission is satisfied the secretary or
- 29 representative does not have a reasonable
- 30 excuse.

- 1 (5) If the Commission decides on a later expiry day for a
2 right of entry permit —
- 3 (a) the Commission must record the later expiry
4 day on the permit; and
- 5 (b) the permit ceases to have effect from the end of
6 the day on its expiry day until the Commission
7 records the later expiry day under
8 paragraph (a).

9 Note for this subsection:

10 See the obligation in section 49W for a right of entry permit
11 to be returned to the Commission if the Commission
12 decides on a later expiry day for the permit.

13 **Subdivision 4 — Imposing or changing conditions,**
14 **suspending or revoking right of entry permit**

15 **49T. When Commission may impose or change**
16 **conditions, suspend or revoke right of entry permit**

- 17 (1) The Commission in Court Session may, by order —
- 18 (a) impose a condition on or change a condition of
19 a right of entry permit; or
- 20 (b) suspend a right of entry permit for a specified
21 period; or
- 22 (c) revoke a right of entry permit.
- 23 (2) The Commission may act under subsection (1) of its
24 own motion, on application of the Registrar or on
25 application by any person.
- 26 (3) An application for the Commission to act under
27 subsection (1) must state the grounds on which it is
28 made.

- 1 (4) In deciding whether to take action under subsection (1),
2 the Commission must take into account —
- 3 (a) the fit and proper person criteria, applied as if a
4 reference in the criteria to a nominated official
5 were a reference to the authorised
6 representative; and
- 7 (b) whether the authorised representative —
- 8 (i) has acted improperly in exercising a
9 power under Subdivision 2; or
- 10 (ii) has intentionally and unduly hindered
11 an employer or employees during their
12 working time;
- 13 and
- 14 (c) any other matters the Commission considers
15 relevant.
- 16 (5) If the Commission makes an order imposing a
17 condition on or changing a condition of a right of entry
18 permit —
- 19 (a) the Commission must record the new or
20 changed condition on the permit; and
- 21 (b) the permit ceases to have effect until the
22 Commission records the new or changed
23 condition under paragraph (a).

24 Note for this subsection:

25 See the obligation in section 49W for a right of entry permit
26 to be returned to the Commission if a condition is imposed
27 on the permit or changed after it is issued.

28 **49U. When right of entry permit is suspended**

29 The suspension of a right of entry permit does not —

- 30 (a) prevent conditions being imposed on the permit
31 or changed, or the permit being revoked, during
32 the period of the suspension; or

- 1 (b) alter the day on which the permit would
2 otherwise expire.

3 **49V. Revocation of right of entry permit on application**
4 **of secretary of organisation**

- 5 (1) The secretary of an organisation of employees may
6 apply to the Commission for a right of entry permit
7 issued to an officer or employee of the organisation to
8 be revoked.
- 9 (2) The Commission must revoke the right of entry permit
10 unless subsection (3) applies.
- 11 (3) The Commission must not revoke the right of entry
12 permit if —
- 13 (a) proceedings in relation to the permit are
14 commenced under section 49T and are not
15 finally determined or otherwise ended; or
- 16 (b) a decision is made under section 49T in relation
17 to the permit and either —
- 18 (i) the time for instituting an appeal against
19 the decision has not ended; or
- 20 (ii) an appeal is instituted against the
21 decision and has not been finally
22 decided or withdrawn.

23 **Subdivision 5 — Miscellaneous**

24 **49W. Return of right of entry permit**

- 25 (1) An authorised representative must return a right of
26 entry permit to the Commission within 7 days after any
27 of the following things happen —
- 28 (a) the permit is revoked or suspended;

- 1 (b) a condition is imposed on the permit or
2 changed after it is issued;
- 3 (c) the permit expires;
- 4 (d) the Commission decides on a later expiry day
5 for the permit.
- 6 (2) A contravention of subsection (1) is not an offence but
7 that subsection is a civil penalty provision for the
8 purposes of section 83E.
- 9 (3) After the end of a suspension period, the Commission
10 must return a right of entry permit to the authorised
11 representative if —
- 12 (a) the authorised representative, or the secretary of
13 the organisation that applied for the permit,
14 applies to the Commission for the return of the
15 permit; and
- 16 (b) the permit has not expired.
- 17 **49X. Commission’s powers on dispute about right of**
18 **entry or investigation**
- 19 (1) This section applies if the Commission is exercising its
20 jurisdiction under section 44 in relation to a dispute
21 about the exercise of a power under Subdivision 2 by
22 an authorised representative.
- 23 (2) The Commission may, by order, impose a condition on
24 or change a condition of the right of entry permit held
25 by the authorised representative.
- 26 (3) Section 49T(4) applies to the Commission in deciding
27 whether to make an order under subsection (2).

- 1 (4) If the Commission makes an order imposing a
2 condition on or changing a condition of a right of entry
3 permit —
4 (a) the Commission must record the new or
5 changed condition on the permit; and
6 (b) the permit ceases to have effect until the
7 Commission records the new or changed
8 condition under paragraph (a).

9 Note for this subsection:

10 See the obligation in section 49W for a right of entry permit
11 to be returned to the Commission if a condition is imposed
12 on the permit or changed after it is issued.

13 **49Y. Limit on Commission’s jurisdiction in relation to**
14 **awards, orders and agreements**

- 15 (1) The Commission cannot make an award or order, or
16 register an agreement, that —
17 (a) confers a power of entry or inspection that is in
18 addition to, or inconsistent with, the powers of
19 entry and inspection under Division 2F and this
20 Division; or
21 (b) provides for the exercise of a power of entry or
22 inspection in a way that is in addition to, or
23 inconsistent with, the provisions of those
24 Divisions about the exercise of those powers.
- 25 (2) Subsection (1) does not apply to an award, order or
26 agreement to the extent that it specifies the period of
27 notice an authorised representative is required to give
28 an employer before entering premises where relevant
29 employees work.

Industrial Relations Legislation Amendment Bill 2024

Part 2 Industrial Relations Act 1979 amended

Division 2 Amendments commencing on 31 January 2025

s. 34

- 1 (3) If a provision of an award, order or industrial
2 agreement contravenes subsection (1), the provision
3 has no effect to the extent of the inconsistency.
4

5 **34. Section 50A amended**

- 6 (1) In section 50A(1AA) insert in alphabetical order:
7

8 *supported employment service* means a service to
9 support the paid employment of persons with
10 disability, being persons —

- 11 (a) for whom competitive employment at or above
12 the wage payable under the relevant award is
13 unlikely; and
14 (b) who, because of their disability, need
15 substantial ongoing support to obtain or retain
16 paid employment.
17

- 18 (2) In section 50A(1AA) in the definition of *instrument-governed*
19 *employee with a disability*:

20 (a) in paragraph (c) delete “service as defined in the
21 *Disability Services Act 1986* (Commonwealth) section 7;
22 and” and insert:

23
24 service; and

25
26 (b) in paragraph (d) delete “SWIIP.” and insert:

27
28 SWIIP;
29

1 **35. Part II Division 3AA heading replaced**

2 Delete the heading to Part II Division 3AA and insert:

3

4 **Division 3AA — Bullying at work and sexual**
5 **harassment in connection with work**

6

7 **36. Part II Division 3AA Subdivision 1 heading inserted**

8 At the beginning of Part II Division 3AA insert:

9

10 **Subdivision 1 — Preliminary**

11

12 **37. Section 51BF amended**

13 (1) In section 51BF delete the definitions of:

14 *sexually harassed*

15 *stop bullying or sexual harassment application*

16 *stop bullying or sexual harassment order*

17 *worker*

18 (2) In section 51BF insert in alphabetical order:

19

20 *sexual harassment proceeding* means, as the case
21 requires, a stop sexual harassment application, a sexual
22 harassment referral, or both;

23 *sexual harassment referral* has the meaning given in
24 section 51BT(1)(b);

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

27 *stop bullying order* has the meaning given in
28 section 51BM(2);

1 *stop sexual harassment application* has the meaning
2 given in section 51BT(1)(a);

3 *stop sexual harassment order* has the meaning given
4 in section 51BX(2);

5

6 (3) In section 51BF in the definition of **WA Police** delete “*Police*
7 *Act 1892;*” and insert:

8

9 *Police Act 1892.*

10

11 **38. Section 51BH amended**

12 Before section 51BH(1) insert:

13

14 (1A) In this section —

15 *outworker* means an individual who performs work at
16 residential premises or at other premises that would not
17 conventionally be regarded as being business premises,
18 either —

19 (a) as an employee who performs the work for the
20 purpose of the business of the individual’s
21 employer; or

22 (b) as an individual who performs the work in the
23 textile, clothing or footwear industry under a
24 contract for the provision of services.

25

26 **39. Sections 51BI to 51BN deleted**

27 Delete sections 51BI to 51BN.

1 **40. Part II Division 3AA Subdivisions 2 and 3 inserted**

2 At the end of Part II Division 3AA insert:

3

4 **Subdivision 2 — Bullying at work**

5 **51BI. Worker bullied at work**

6 (1) A worker is *bullied* at work if, while the worker is at
7 work —

8 (a) a person, whether as an individual or as part of
9 a group of individuals, repeatedly behaves
10 unreasonably towards —

11 (i) the worker; or

12 (ii) a group of workers of which the worker
13 is a member;

14 and

15 (b) that behaviour creates a risk to the health or
16 safety of the worker.

17 (2) Subsection (1) does not apply to reasonable
18 management action carried out in a reasonable manner.

19 **51BJ. Worker may make stop bullying application**

20 (1) A worker who reasonably believes that the worker has
21 been bullied at work may make an application (a *stop*
22 *bullying application*) to the Commission for a stop
23 bullying order.

24 (2) The *Work Health and Safety Act 2020* section 115 does
25 not apply in relation to a stop bullying application.

1 **51BK. Dealing with stop bullying application**

2 (1) The Commission must start to deal with a stop bullying
3 application within 14 days after the application is
4 made.

5 Note for this subsection:

6 See Part II Division 2 for the Commission's general
7 jurisdiction and powers in relation to a stop bullying
8 application.

9 (2) Section 44 does not apply to a stop bullying
10 application.

11 (3) Section 48A(2) or any other written law providing for
12 the resolution of a grievance or dispute by workers
13 does not limit the Commission's power to deal with a
14 stop bullying application.

15 **51BL. Power to dismiss stop bullying applications**
16 **involving covert operations**

17 The Commission may dismiss a stop bullying
18 application if the Commission considers that the
19 application might involve matters that relate to a police
20 officer performing a function in circumstances in
21 which —

22 (a) a covert operation is undertaken by WA Police
23 for the purpose of obtaining information about
24 criminal activity; and

25 (b) unless the performance of the function is secret
26 or confidential, it would be likely that —

27 (i) the effectiveness of the performance of
28 the function is reduced; or

29 (ii) a person is exposed to the danger of
30 physical harm arising from the actions
31 of another person.

1 **51BM. Commission may make stop bullying order**

- 2 (1) This section applies if —
- 3 (a) a worker makes a stop bullying application; and
- 4 (b) the Commission is satisfied that —
- 5 (i) a person bullied the worker at work; and
- 6 (ii) there is a risk the person will continue to
- 7 do so.
- 8 (2) The Commission may make an order (a *stop bullying*
- 9 *order*) it considers appropriate to prevent the person
- 10 bullying the worker at work.
- 11 (3) Despite subsection (2), the Commission cannot make
- 12 an order requiring the payment of compensation to the
- 13 worker.

14 **51BN. Matters to be taken into account in considering**

15 **terms of stop bullying order**

- 16 (1) In considering the terms of a stop bullying order under
- 17 section 51BM(2) in relation to the bullying of a
- 18 worker, the Commission must, to the extent the
- 19 Commission is aware of the following matters, take
- 20 them into account —
- 21 (a) the final or interim outcomes of any
- 22 investigation into the bullying that is being, or
- 23 has been, undertaken by another person or
- 24 body;
- 25 (b) any procedure available to the worker to
- 26 resolve grievances or disputes;
- 27 (c) the final or interim outcomes arising out of any
- 28 procedure referred to in paragraph (b) in
- 29 relation to the bullying.
- 30 (2) The Commission may also take into account any other
- 31 matter the Commission considers relevant.

1 **51BO. Person must comply with stop bullying order**

2 (1) A person to whom a stop bullying order applies must
3 comply with the order.

4 (2) A contravention of subsection (1) is not an offence but
5 that subsection is a civil penalty provision for the
6 purposes of section 83E.

7 **51BP. Enforcement of contravention of stop bullying**
8 **order**

9 (1) This section applies if, on an application under
10 section 83E, the industrial magistrate's court
11 determines that a person contravened a stop bullying
12 order made in relation to the bullying of a worker.

13 (2) The court may make 1 or more of the following
14 orders —

15 (a) an order that the person pay the worker
16 compensation for loss or injury suffered as a
17 result of the contravention;

18 (b) an order that the person do a thing or cease an
19 activity specified in the stop bullying order;

20 (c) any other order the court considers appropriate.

21 (3) The industrial magistrate's court may make an order
22 under this section in addition to imposing a penalty, or
23 making another order, under section 83E.

24 (4) A person must comply with an order made against the
25 person under subsection (2).

26 Penalty for this subsection:

27 (a) a fine of \$13 000;

28 (b) a daily penalty of a fine of \$1 000 for each
29 day or part of a day during which the offence
30 continues.

1 **Subdivision 3 — Sexual harassment in connection with work**

2 **51BQ. Meaning of sexually harasses**

- 3 (1) A person (the *first person*) *sexually harasses* another
4 person (the *second person*) if the first person, whether
5 as an individual or as part of a group of individuals —
- 6 (a) makes an unwelcome sexual advance, or an
7 unwelcome request for sexual favours, to the
8 second person in circumstances a reasonable
9 person, having regard to all the circumstances,
10 would have anticipated the possibility that the
11 second person would be offended, humiliated
12 or intimidated; or
- 13 (b) engages in other unwelcome conduct of a
14 sexual nature in relation to the second person in
15 circumstances a reasonable person, having
16 regard to all the circumstances, would have
17 anticipated the possibility that the second
18 person would be offended, humiliated or
19 intimidated.
- 20 (2) In subsection (1)(b) —
- 21 *conduct of a sexual nature*, of the first person in
22 relation to the second person, includes —
- 23 (a) making to, or in the presence of, the second
24 person or another person a statement of a
25 sexual nature concerning the second person,
26 whether by visual, oral, written or electronic
27 communication; or
- 28 (b) publishing a statement of a sexual nature
29 concerning the second person on the Internet or
30 in any other form of communication.

- 1 **51BR. Sexual harassment in connection with work**
2 **prohibited**
- 3 (1) A person must not sexually harass another person (the
4 *person*) in connection with the person —
5 (a) being a worker; or
6 (b) seeking to become a worker in a particular
7 business or undertaking.
- 8 (2) Sexual harassment that happens in connection with the
9 circumstances in subsection (1) is sexual harassment *in*
10 *connection with work*.
- 11 (3) A contravention of subsection (1) is not an offence but
12 that subsection is a civil penalty provision for the
13 purposes of section 83E.
- 14 **51BS. Vicarious liability for sexual harassment in**
15 **connection with work**
- 16 (1) In this section —
17 *principal* means a person who —
18 (a) employs an employee; or
19 (b) engages another person as an agent.
- 20 (2) If an employee or agent, in connection with the
21 employee’s employment or with the agent’s duties,
22 sexually harasses a person in connection with work,
23 this Act applies in relation to the principal of the
24 employee or agent as if the principal had also sexually
25 harassed that person.
- 26 (3) Subsection (2) does not apply if the principal proves
27 that the principal took all reasonable steps to prevent
28 the employee or agent doing acts that would
29 contravene section 51BR.
- 30 (4) Subsection (2) does not limit section 83E(1A) or (1B).

1 **51BT. Aggrieved person may commence sexual**
2 **harassment proceeding**

- 3 (1) If a person (the *aggrieved person*) alleges they have
4 been sexually harassed in connection with work by 1 or
5 more other persons, the aggrieved person may do either
6 or both of the following —
- 7 (a) make an application to the Commission for a
8 stop sexual harassment order (a *stop sexual*
9 *harassment application*);
- 10 (b) refer the matter to the Commission under
11 section 29 (a *sexual harassment referral*).

12 Note for this subsection:

13 See section 51BZD for the restriction on also commencing
14 proceedings under section 83E in relation to a
15 contravention of section 51BR(1), or under
16 anti-discrimination legislation as defined in that section, in
17 relation to the same allegation of sexual harassment in
18 connection with work.

- 19 (2) Two or more aggrieved persons may act jointly under
20 subsection (1) in relation to the same or a related
21 allegation of sexual harassment in connection with
22 work.
- 23 (3) The *Work Health and Safety Act 2020* section 115 does
24 not apply in relation to a stop sexual harassment
25 application.
- 26 (4) Subsection (3) applies whether or not the aggrieved
27 person has also made a sexual harassment referral in
28 relation to the same or a related allegation of sexual
29 harassment in connection with work.

30 **51BU. Time for commencing sexual harassment**
31 **proceeding**

32 The Commission may dismiss a sexual harassment
33 proceeding commenced more than 24 months after an

1 alleged instance, or the last alleged instance, of sexual
2 harassment in connection with work that is the subject
3 of the proceeding.

4 **51BV. Dealing with sexual harassment proceeding**

5 (1) The Commission must start to deal with a stop sexual
6 harassment application within 14 days after the
7 application is made.

8 Note for this subsection:

9 See Part II Division 2 for the Commission's general
10 jurisdiction and powers in relation to a sexual harassment
11 referral.

12 (2) Section 44 does not apply to a sexual harassment
13 proceeding.

14 (3) Section 48A(2) or any other written law providing for
15 the resolution of a grievance or dispute by workers
16 does not limit the Commission's power to deal with a
17 sexual harassment proceeding.

18 **51BW. Power to dismiss stop sexual harassment**
19 **application involving covert operations**

20 The Commission may dismiss a stop sexual harassment
21 application if the Commission considers that the
22 application might involve matters that relate to a police
23 officer performing a function in circumstances in
24 which —

25 (a) a covert operation is undertaken by WA Police
26 for the purpose of obtaining information about
27 criminal activity; and

28 (b) unless the performance of the function is secret
29 or confidential, it would be likely that —

30 (i) the effectiveness of the performance of
31 the function is reduced; or

- 1 (ii) a person is exposed to the danger of
2 physical harm arising from the actions
3 of another person.

4 **51BX. Commission may make stop sexual harassment**
5 **order**

- 6 (1) This section applies if —
- 7 (a) a person (the *aggrieved person*) makes a stop
8 sexual harassment application; and
- 9 (b) the Commission is satisfied that —
- 10 (i) a person (the *respondent*) sexually
11 harassed the aggrieved person in
12 connection with work; and
- 13 (ii) there is a risk that the respondent will
14 continue to do so.
- 15 (2) The Commission may make an order (a *stop sexual*
16 *harassment order*) it considers appropriate to prevent
17 the respondent sexually harassing the aggrieved person
18 in connection with work.
- 19 (3) Despite subsection (2), the Commission cannot make
20 an order requiring the payment of compensation to the
21 aggrieved person.

22 **51BY. Matters to be taken into account in considering**
23 **terms of stop sexual harassment order**

- 24 (1) In considering the terms of a stop sexual harassment
25 order under section 51BX(2) in relation to the sexual
26 harassment of a person in connection with work, the
27 Commission must, to the extent the Commission is
28 aware of the following matters, take them into
29 account —
- 30 (a) the final or interim outcomes of any
31 investigation into the sexual harassment that is

- 1 being, or has been, undertaken by another
2 person or body;
- 3 (b) any procedure available to the person to resolve
4 grievances or disputes;
- 5 (c) the final or interim outcomes arising out of a
6 procedure referred to in paragraph (b) in
7 relation to the sexual harassment.
- 8 (2) The Commission may also take into account any other
9 matters the Commission considers relevant.

10 **51BZ. Commission may make declarations and orders for**
11 **referrals**

- 12 (1) This section applies if —
- 13 (a) a referral (including a sexual harassment
14 referral) has been made to the Commission
15 under section 29 in relation to an allegation that
16 a person (the *respondent*) sexually harassed
17 another person (the *aggrieved person*) in
18 connection with work; and
- 19 (b) on the referral, the Commission determines the
20 respondent sexually harassed the aggrieved
21 person in connection with work.
- 22 (2) The Commission may make 1 or more of the following
23 orders —
- 24 (a) an order that the respondent or another person
25 pay compensation to the aggrieved person for
26 loss or injury the aggrieved person suffered
27 because of the sexual harassment;
- 28 (b) an order that the respondent or another person
29 pay an amount to an aggrieved person for
30 remuneration lost, or likely to have been lost,
31 by the aggrieved person because of the sexual
32 harassment;

- 1 (c) an order requiring the respondent or another
2 person to do a specified thing or cease a
3 specified activity to redress loss or injury
4 suffered by the aggrieved person because of the
5 sexual harassment;
- 6 (d) an order the Commission considers appropriate
7 to prevent any future sexual harassment of the
8 aggrieved person in connection with work by
9 the respondent or another person;
- 10 (e) any other order the Commission thinks
11 appropriate.
- 12 (3) The Commission may make either or both of the
13 following declarations —
- 14 (a) a declaration that the respondent sexually
15 harassed the aggrieved person in connection
16 with work;
- 17 (b) a declaration that the respondent sexually
18 harassed the aggrieved person in connection
19 with work because of the operation of
20 section 51BS.
- 21 (4) In enquiring into and dealing with a sexual harassment
22 referral, the Commission may make a declaration that it
23 would be inappropriate for any further action to be
24 taken in the matter.

25 **51BZA. Person must comply with order made by**
26 **Commission**

- 27 (1) A person to whom a stop sexual harassment order or an
28 order made under section 51BZ(2) applies must
29 comply with the order.
- 30 (2) A contravention of subsection (1) is not an offence but
31 that subsection is a civil penalty provision for the
32 purposes of section 83E.

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51BZB. Enforcement of contravention of order

- (1) This section applies if, on an application under section 83E, the industrial magistrate’s court determines that a person (the *first person*) contravened —
 - (a) a stop sexual harassment order; or
 - (b) an order made under section 51BZ(2).
- (2) The industrial magistrate’s court may make 1 or more of the following orders —
 - (a) an order that the first person pay compensation to a person (the *second person*) for loss or injury the second person suffered in relation to the contravention of the order;
 - (b) an order that the first person do a thing or cease an activity specified in the order contravened;
 - (c) any other order the court considers appropriate.
- (3) The industrial magistrate’s court may make an order under this section in addition to imposing a penalty, or making another order, under section 83E.
- (4) A person to whom an order made under subsection (2) applies must comply with the order.
Penalty for this subsection:
 - (a) a fine of \$13 000;
 - (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

1 **51BZC. Enforcement of contravention of prohibition on**
2 **sexual harassment**

- 3 (1) This section applies if —
- 4 (a) a person or organisation makes an application
5 under section 83E to enforce a contravention of
6 section 51BR(1) as a civil penalty provision;
7 and
- 8 (b) on the application, the industrial magistrate’s
9 court determines that a person (the *respondent*)
10 sexually harassed another person (the *aggrieved*
11 *person*) in connection with work.

12 Note for this subsection:

13 See section 51BZD for the restriction on also commencing
14 proceedings under section 29 in relation to a contravention
15 of section 51BR(1), or under anti-discrimination legislation
16 as defined in that section, in relation to the same allegation
17 of sexual harassment in connection with work.

- 18 (2) In addition to imposing a penalty or making an order
19 under section 83E, the court may make 1 or more of
20 the following orders —
- 21 (a) an order that the respondent or another person
22 pay compensation to the aggrieved person for
23 loss or injury suffered because of the
24 contravention;
- 25 (b) an order that the respondent or another person
26 pay an amount to the aggrieved person for
27 remuneration lost, or likely to have been lost,
28 by the aggrieved person because of the
29 contravention;
- 30 (c) an order requiring the respondent or another
31 person to do a specified thing or cease a
32 specified activity to redress loss or injury

- 1 suffered by the aggrieved person because of the
2 contravention;
- 3 (d) an order the industrial magistrate’s court
4 considers appropriate to prevent any future
5 contravention in relation to the aggrieved
6 person by the respondent or another person;
- 7 (e) any other order the court considers appropriate.
- 8 (3) A person to whom an order made under subsection (2)
9 applies must comply with the order.
- 10 Penalty for this subsection:
- 11 (a) a fine of \$13 000;
- 12 (b) a daily penalty of a fine of \$1 000 for each
13 day or part of a day during which the offence
14 continues.

15 **51BZD. Restrictions on multiple actions**

- 16 (1) In this section —
- 17 *anti-discrimination legislation* means any of the
18 following —
- 19 (a) the *Anti-Discrimination Act 1977* (New South
20 Wales);
- 21 (b) the *Anti-Discrimination Act 1991*
22 (Queensland);
- 23 (c) the *Anti-Discrimination Act 1992* (Northern
24 Territory);
- 25 (d) the *Anti-Discrimination Act 1998* (Tasmania);
- 26 (e) the *Australian Human Rights Commission*
27 *Act 1986* (Commonwealth);
- 28 (f) the *Discrimination Act 1991* (Australian Capital
29 Territory);

- 1 (g) the *Equal Opportunity Act 1984*;
- 2 (h) the *Equal Opportunity Act 1984* (South
3 Australia);
- 4 (i) the *Equal Opportunity Act 2010* (Victoria);
- 5 (j) the *Fair Work Act 2009* (Commonwealth);
- 6 (k) the *Sex Discrimination Act 1984*
7 (Commonwealth);
- 8 ***particular allegation*** means a particular allegation by a
9 person that the person was sexually harassed in
10 connection with work.
- 11 (2) A referral cannot be made under section 29 in relation
12 to a particular allegation —
- 13 (a) if the allegation is the subject of an application
14 made under section 83E to enforce a
15 contravention of section 51BR(1); and
- 16 (b) unless the application is withdrawn or fails for
17 want of jurisdiction.
- 18 (3) An application cannot be made under section 83E to
19 enforce a contravention of section 51BR(1) as a civil
20 penalty provision in relation to a particular
21 allegation —
- 22 (a) if a referral has been made under section 29 in
23 relation to the allegation; and
- 24 (b) unless the referral is withdrawn or fails for
25 want of jurisdiction.
- 26 (4) A referral under section 29, or an application under
27 section 83E to enforce a contravention of
28 section 51BR(1) as a civil penalty provision, cannot be
29 made in relation to a particular allegation —
- 30 (a) if a complaint or application has been made
31 under any anti-discrimination legislation in
32 relation to the allegation; and

1 (b) unless the complaint or application is
2 withdrawn or fails for want of jurisdiction.

3 (5) This section applies despite any other provision of this
4 Act.

5 **51BZE. Other laws not excluded or limited**

6 (1) This Subdivision does not exclude or limit the
7 operation of other written laws or a law of the
8 Commonwealth, another State or a Territory that is
9 capable of operating concurrently with this
10 Subdivision, including a law that —

11 (a) makes an act or omission an offence or subject
12 to a civil penalty and that (or any similar) act or
13 omission constitutes a contravention of a civil
14 penalty provision in this Subdivision; or

15 (b) allows for an application to be made to a
16 person, court or body for an order or other
17 direction (however described) —

18 (i) to prevent a person from being sexually
19 harassed in connection with work; or

20 (ii) to deal with a dispute relating to an
21 allegation that a person has been
22 sexually harassed in connection with
23 work (whether or not by arbitration).

24 (2) For the purposes of subsection (1), it is irrelevant
25 whether —

26 (a) sexual harassment in connection with work has
27 a different meaning for the purposes of the law
28 to the meaning it has for the purposes of this
29 Act; or

- 1 (b) the law describes the conduct prevented, or to
2 which the dispute relates, as sexual harassment
3 in connection with work.
4

5 **41. Part II Division 3A heading amended**

6 In the heading to Part II Division 3A delete “**functions**” and
7 insert:

8
9 **matters**
10

11 **42. Section 51C replaced**

12 Delete section 51C and insert:

13
14 **51C. Terms used**

- 15 (1) In this Division —
16 *flexible working arrangement order* has the meaning
17 given in section 51G(5);
18 *flexible working arrangement request* has the meaning
19 given in the MCE Act section 39F(1);
20 *respond*, in relation to a flexible working arrangement
21 request, means respond to the request under the MCE
22 Act section 39H.
- 23 (2) If a term used in this Act is given a meaning in the
24 MCE Act, it has the same meaning in this Division.
25

1 **43. Part II Division 3A Subdivision 2 inserted**

2 After Part II Division 3A Subdivision 1 insert:

3

4 **Subdivision 2 — Disputes relating to flexible working**
5 **arrangement requests**

6 **51D. Flexible working arrangement dispute**

7 *A flexible working arrangement dispute* is a dispute
8 between an employer and an employee that relates to a
9 flexible working arrangement request made by the
10 employee if —

11 (a) the employer either —

12 (i) failed to respond to the employee’s
13 request as required under the MCE Act
14 section 39H; or

15 (ii) refused the employee’s request;

16 and

17 (b) the employer and employee have made
18 reasonable attempts to resolve the dispute under
19 the MCE Act section 39K.

20 **51E. Restriction on application for compulsory**
21 **conference**

22 (1) This section applies if a flexible working arrangement
23 dispute has been referred to the Commission under
24 section 29.

25 (2) An organisation, association or employer cannot make
26 an application to the Commission under
27 section 44(7)(a)(i) in relation to the flexible working
28 arrangement dispute unless the referral under

1 section 29 is withdrawn or fails for want of
2 jurisdiction.

3 Note for this section:

4 See section 51HC which restricts actions being commenced
5 before the Commission and the industrial magistrate's court
6 in relation to the same flexible working arrangement
7 request.

8 **51F. Commission may make certain declarations on**
9 **deciding dispute by arbitration**

- 10 (1) If the Commission decides, by arbitration, an industrial
11 matter relating to a dispute between an employer and
12 an employee about a flexible working arrangement
13 request, the Commission may declare —
- 14 (a) if the employer has not responded to the
15 flexible working arrangement request — that
16 the employer refused the request;
- 17 (b) if the employer refused the flexible working
18 arrangement request — that the grounds on
19 which the employer refused the request are, or
20 are not, reasonable business grounds.
- 21 (2) The employer and employee are bound by a declaration
22 made under subsection (1).

23 **51G. Commission may make flexible working**
24 **arrangement order**

- 25 (1) This section applies if the Commission decides, by
26 arbitration, an industrial matter relating to a dispute
27 between an employer and an employee about a flexible
28 working arrangement request.
- 29 (2) If the Commission is satisfied that the employer did not
30 respond, or did not respond adequately, to the
31 employee's flexible working arrangement request, the
32 Commission may order the employer to take specified

- 1 action, having regard to the matters in the MCE Act
2 sections 39H to 39J.
- 3 (3) If the Commission is satisfied there is no reasonable
4 prospect of the dispute being resolved otherwise, the
5 Commission may —
- 6 (a) order the employer to grant the flexible
7 working arrangement request; or
- 8 (b) order the employer to make a specified change
9 in the employee’s working arrangements, other
10 than the change requested in the flexible
11 working arrangement request, to accommodate,
12 to any extent, the circumstances mentioned in
13 the MCE Act section 39F(2).
- 14 (4) In making an order under subsection (3), the
15 Commission must take into account fairness between
16 the employer and the employee.
- 17 (5) An order made against an employer under
18 subsection (2) or (3) is a *flexible working arrangement*
19 *order*.
- 20 **51H. Employer must comply with flexible working**
21 **arrangement order**
- 22 (1) An employer must comply with a flexible working
23 arrangement order made against the employer.
- 24 (2) A contravention of subsection (1) is not an offence but
25 that subsection is a civil penalty provision for the
26 purposes of section 83E.
- 27 **51HA. Enforcement of contravention of order**
- 28 (1) If, on an application under section 83E, the industrial
29 magistrate’s court determines that an employer has
30 contravened a flexible working arrangement order, the

- 1 court may make either or both of the following
2 orders —
- 3 (a) that the employer pay compensation to the
4 employee for loss or injury suffered as a result
5 of the contravention;
- 6 (b) that the employer do a specified thing or cease
7 a specified activity.
- 8 (2) The industrial magistrate’s court may make an order
9 under subsection (1) in addition to imposing a penalty,
10 or making another order, under section 83E.

11 **51HB. Enforcement of minimum condition of employment**
12 **relating to flexible working arrangement request**

- 13 (1) This Subdivision does not limit the MCE Act section 7
14 as it applies to enforcing a minimum condition of
15 employment that relates to an employee’s flexible
16 working arrangement request.

17 Note for this subsection:

18 The MCE Act section 7 provides for a minimum condition of
19 employment to be enforced under section 83 of this Act as
20 an entitlement provision.

- 21 (2) In proceedings under section 83 to enforce the
22 minimum employment condition, the onus is on the
23 employer to prove that the employer’s refusal of an
24 employee’s flexible working arrangement request
25 complied with the MCE Act Part 4A.
- 26 (3) This section is subject to section 51HC.

27 **51HC. Restriction on multiple actions**

- 28 (1) A person or organisation cannot apply to the industrial
29 magistrate’s court under section 83 to enforce a
30 minimum condition of employment in relation to a
31 flexible working arrangement request —

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- 1 (a) if proceedings for a flexible working
2 arrangement dispute related to the same request
3 have been commenced in the Commission
4 under section 29 or 44; and
- 5 (b) unless the proceedings before the Commission
6 are withdrawn or fail for want of jurisdiction.
- 7 (2) A person or organisation cannot refer a flexible
8 working arrangement dispute to the Commission under
9 section 29, or make an application relating to the
10 dispute under section 44(7)(a)(i) —
- 11 (a) if proceedings to enforce a minimum condition
12 of employment in relation to the flexible
13 working arrangement request that is the subject
14 of the dispute have been commenced in the
15 industrial magistrate’s court under section 83;
16 and
- 17 (b) unless the proceedings before the industrial
18 magistrate’s court are withdrawn or fail for
19 want of jurisdiction.

20 Note for this section:

21 See section 51E which restricts action being commenced
22 before the Commission under section 44 in relation to a
23 flexible working arrangement dispute that has been referred
24 to the Commission under section 29.
25

26 **44. Section 51I amended**

27 (1) In section 51I(1):

- 28 (a) delete “Subject to subsection (2), the Commission” and
29 insert:

30
31 The Commission in Court Session
32

1 (b) delete “20%” and insert:

2

3 25%

4

5 (2) In section 51I(2)(a) delete “Chamber, the Mines and Metals
6 Association” and insert:

7

8 Chamber

9

10 **45. Part II Division 3A Subdivision 4 heading deleted**

11 Delete the heading to Part II Division 3A Subdivision 4.

12 **46. Section 51J amended**

13 In section 51J:

14 (a) delete “this Division” and insert:

15

16 section 51I

17

18 (b) in paragraph (a) delete “the Mines and Metals
19 Association,”.

20 Note: The heading to amended section 51J is to read:

21 **Notice of hearings**

22 **47. Section 51K amended**

23 In section 51K:

24 (a) delete “this Division” and insert:

25

26 section 51I

27

1 (b) delete “the Mines and Metals Association,”.

2 Note: The heading to amended section 51K is to read:

3 **Right to be heard before order made**

4 **48. Section 51L amended**

5 In section 51L delete “this Division” and insert:

6

7 section 51I

8

9 Note: The heading to amended section 51L is to read:

10 **Limits on orders made under section 51I**

11 **49. Section 51M amended**

12 In section 51M delete “all orders made under this Division.” and
13 insert:

14

15 an order made under section 51I.

16

17 **50. Part II Division 4 heading amended**

18 In the heading to Part II Division 4 delete “**Industrial**” and
19 insert:

20

21 **Registered**

22

23 **51. Section 53 amended**

24 (1) In section 53(1) delete “Subject to this Act, any” and insert:

25

26 An

27

1 (2) In section 53(2) delete “Subject to this Act, an” and insert:

2

3 An

4

5 (3) After section 53(2) insert:

6

7 (3) For the purposes of subsection (1) or (2), it does not
8 matter whether the organisation is incorporated or not.

9

10 Note: The heading to amended section 53 is to read:

11 **Organisations of employees that may be registered**

12 **52. Section 54 amended**

13 (1) In section 54(1) delete “Subject to this Act, an” and insert:

14

15 An

16

17 (2) In section 54(2) delete “Subject to this Act an” and insert:

18

19 An

20

21 (3) After section 54(2) insert:

22

23 (3) For the purposes of subsection (1) or (2), it does not
24 matter whether the organisation is incorporated or not.

25

26 Note: The heading to amended section 54 is to read:

27 **Organisations of employers that may be registered**

28 **53. Sections 64A to 64D deleted**

29 Delete sections 64A to 64D.

1 **54. Section 72A amended**

2 In section 72A(1) in the definition of *organisation* delete
3 “Western Australian Branch of the Australian Medical
4 Association Incorporated.” and insert:

5

6 Australian Medical Association (WA) Incorporated.

7

8 Note: The heading to amended section 72A is to read:

9 **Orders as to the employees represented by employee**
10 **organisation**

11 **55. Section 72B amended**

12 (1) In section 72B(1) in the definition of *WA Branch of the AMA*
13 delete “Western Australian Branch of the Australian Medical
14 Association Incorporated.” and insert:

15

16 Australian Medical Association (WA) Incorporated.

17

18 (2) In section 72B(2)(b) delete “Divisions 2 and 3 of Part II,
19 sections 80C(4) and 80F” and insert:

20

21 Part II Divisions 2, 2AA and 3

22

23 **56. Section 80BH amended**

24 (1) In section 80BH(1) delete “employees, or an industrial
25 association of employees registered under section 67,” and
26 insert:

27

28 employees or an association of employees

29

30 (2) In section 80BH(2) delete “industrial”.

1 **57. Part IIA deleted**

2 Delete Part IIA.

3 **58. Section 80ZH amended**

4 In section 80ZH(3) delete “or by a constituent authority”.

5 **59. Sections 81A and 81AA replaced**

6 Delete sections 81A and 81AA and insert:

7

8 **81A. Jurisdiction of industrial magistrate’s court**

9 An industrial magistrate’s court has the jurisdiction
10 conferred on it under this Act and the following
11 laws —

- 12 (a) the *Construction Industry Portable Paid Long*
13 *Service Leave Act 1985* sections 53 and 54A;
14 (b) the LSL Act Part IV;
15 (c) the *Children and Community Services Act 2004*
16 section 196(2).

17 **81AA. Terms used**

18 In this Division —

19 ***general jurisdiction*** means the jurisdiction of an
20 industrial magistrate’s court under section 81A other
21 than the prosecution jurisdiction;

22 ***prosecution jurisdiction*** means the jurisdiction of an
23 industrial magistrate’s court under —

- 24 (a) section 83D; or
25 (b) the *Children and Community Services Act 2004*
26 section 196(2).
27

1 **60. Section 81CA amended**

2 Delete section 81CA(1).

3 **61. Section 81CAA inserted**

4 After section 81CA insert:

5

6 **81CAA. Onus of proving individual is or was not employee**

7 If, in proceedings before an industrial magistrate's
8 court, a party claims an individual who carries or
9 carried out work for the party is or was not an
10 employee of the party, it is for the party to prove the
11 individual is or was not the party's employee.
12

13 **62. Section 81CB amended**

14 In section 81CB(1) delete the definition of *general jurisdiction*.

15 **63. Section 81F amended**

16 In section 81F(1) and (2) delete "jurisdiction (as defined in
17 section 81CA)," and insert:

18

19 jurisdiction,
20

21 **64. Section 81G amended**

22 In section 81G(2):

23 (a) in paragraph (a) after "court, have" insert:

24

25 broad or
26

- 1 (b) in paragraph (a) after “administration” insert:
2
3 or operation
4
5 (c) in paragraph (b) delete “court.” and insert:
6
7 court; or
8
9 (d) after paragraph (b) insert:
10
11 (c) proceedings in which, in the opinion of the
12 court, the orders sought or likely to be sought
13 may, to a significant extent, affect the rights or
14 entitlements of employees who are not parties
15 to the proceedings.
16

17 **65. Section 82A amended**

18 In section 82A delete “from the time of the alleged
19 contravention or failure to comply.” and insert:

21 after the day on which the contravention or failure to comply is
22 alleged to have taken place.
23

24 **66. Section 83 amended**

25 (1) In section 83(1)(e)(ii) delete “Act or MCE Act;” and insert:

27 Act, the MCE Act or a local government long service leave
28 provision;
29

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- 1 (2) Delete section 83(4)(a) and insert:
2
3 (a) if the contravention is proved — impose a
4 pecuniary penalty under subsection (4A); or
5
6 (3) Delete section 83(4A)(a) and (b) and insert:
7
8 (a) in the case of a body corporate —
9 (i) if the contravention is a serious
10 contravention — \$930 000; or
11 (ii) if the contravention is not a serious
12 contravention — \$93 000;
13 and
14 (b) in the case of an individual —
15 (i) if the contravention is a serious
16 contravention — \$180 000; or
17 (ii) if the contravention is not a serious
18 contravention — \$18 000.
19

20 **67. Section 83E amended**

- 21 (1) Delete section 83E(1)(a) and (b) and insert:
22
23 (a) in the case of a body corporate —
24 (i) if the contravention is a serious
25 contravention — \$930 000; or
26 (ii) if the contravention is not a serious
27 contravention — \$93 000;
28 and

- 1 (b) in the case of an individual —
2 (i) if the contravention is a serious
3 contravention — \$180 000; or
4 (ii) if the contravention is not a serious
5 contravention — \$18 000.
6

7 (2) In section 83E(6):

8 (a) delete “(6a)” and insert:

9
10 (6a), (6B)

11
12 (b) after paragraph (b) insert:

13
14 (ba) in the case of a contravention of
15 section 100(1) — any organisation or
16 association; or
17

18 (3) After section 83E(6a) insert:

19
20 (6B) In the case of a contravention of section 84T(1), an
21 application under this section may only be made by an
22 industrial inspector.
23

24 Note: The heading to amended section 83E is to read:

25 **Proceedings for contravening civil penalty provisions**

26 **68. Section 83EA amended**

27 (1) In section 83EA(2):

28 (a) in paragraph (a) delete “contravention; and” and insert:

29
30 contravention; or
31

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- 1 (b) delete paragraph (b) and insert:
2
3 (b) the person is reckless as to whether the
4 contravention would occur.
5
6 (2) Delete section 83EA(4) and (5) and insert:
7
8 (4) For the purposes of subsection (2)(b), a person is
9 reckless as to whether a contravention would occur
10 if —
11 (a) the person is aware of a substantial risk that the
12 contravention would occur; and
13 (b) having regard to the circumstances known to
14 the person, it is unjustifiable to take the risk.
15

16 **69. Section 83EB amended**

17 In section 83EB(1)(a) delete “Act or the LSL Act” and insert:

18

19 Act, the LSL Act or a local government long service leave
20 provision
21

22 **70. Section 84A amended**

23 In section 84A(5)(a)(ii) delete “\$10 000; or” and insert:

24

25 \$13 000; or
26

1 **71. Section 84C amended**

2 After section 84C(4) insert:

3

- 4 (5) A civil infringement notice may be given by electronic
5 means and, in that case, the requirement in
6 section 84D(1)(l) for the notice to be signed is satisfied
7 by an electronic signature.

8

9 **72. Section 84F amended**

10 In section 84F(1), (3) and (4) delete “served on” and insert:

11

12 given to

13

14 **73. Section 84H amended**

15 In section 84H(4):

- 16 (a) after “The” insert:

17

18 nominated person or the

19

- 20 (b) delete “serving a notice of withdrawal on” and insert:

21

22 giving a notice of withdrawal to

23

1 **74. Section 84M amended**

2 In section 84M(4) delete the passage that begins with “if the
3 person” and continues to the end of the subsection and insert:
4

5 if —

6 (a) the person has been given a compliance notice
7 as defined in section 84Q in relation to the
8 contravention; and

9 (b) the compliance notice has not been —

10 (i) cancelled under section 84U(4); or

11 (ii) withdrawn under section 84V.
12

13 **75. Section 84Q amended**

14 (1) In section 84Q(1)(a) delete “contravention;” and insert:
15

16 contravention, including, for example, to calculate and pay the
17 amount of any underpayment;
18

19 (2) After section 84Q(2) insert:
20

21 (3) The compliance notice must be given within 6 years
22 after the day on which the contravention is alleged to
23 have taken place.

24 (4) A compliance notice may be given by electronic
25 means.
26

1 **76. Section 84T amended**

2 (1) In section 84T(2) delete the passage that begins with
3 “section 83E,” and continues to the end of the subsection and
4 insert:

5
6 section 83E.

7
8 (2) After section 84T(3) insert:

9
10 (4) If an industrial magistrate’s court determines under
11 section 83E that a person has contravened
12 subsection (1), the court may —

13 (a) order the person to comply with the compliance
14 notice, wholly or in part; or

15 (b) if the compliance notice requires the person to
16 pay an amount to an employee — order the
17 person to pay the amount to an industrial
18 inspector.

19 Note for this subsection:

20 Proceedings under section 83E for a contravention must be
21 commenced within 6 years after the day on which the
22 contravention is alleged to have taken place. See
23 section 82A.

24 (5) The court may make an order under this section in
25 addition to imposing a penalty, or making another
26 order, under section 83E.

27 (6) A person must comply with an order made against the
28 person under this section.

29 Penalty for this subsection:

30 (a) a fine of \$13 000;

- 1 (b) a daily penalty of a fine of \$1 000 for each
2 day or part of a day during which the offence
3 continues.
4

5 **77. Section 84V amended**

6 In section 84V(1):

- 7 (a) delete “The” and insert:

8

9 An

10

- 11 (b) delete “serving a notice of withdrawal on” and insert:

12

13 giving a notice of withdrawal to

14

15 **78. Section 96 amended**

- 16 (1) Delete section 96(2)(c) and insert:

17

18 (c) right of entry permits under Part II Division 2G,
19 including —

20 (i) an application relating to a permit under
21 section 49N, 49S(2) or 49V; and

22 (ii) the return of a permit under
23 section 49W.
24

- 25 (2) In section 96(3):

26 (a) in paragraph (c) delete “section 40B,” and insert:

27

28 section 40B; and

29

1 (b) after paragraph (c) insert:

2

3 (d) to make an order under section 49T,

4

5 **79. Section 96A amended**

6 In section 96A in the definition of *organisation of employees*
7 delete paragraph (b) and insert:

8

9 (b) an association of employees; or

10

11 **80. Section 97U amended**

12 (1) In section 97U(1) delete the definition of *relevant industrial*
13 *authority*.

14 (2) In section 97U(1) in the definition of *employment services for*
15 *persons with disabilities* in paragraph (b) delete “*Disability*
16 *Services Act 1986* (Commonwealth);” and insert:

17

18 *Disability Services and Inclusion Act 2023* (Commonwealth);

19

20 **81. Section 97VS amended**

21 In section 97VS delete the note and insert:

22

23 Note for this subsection:

24 The MCE Act section 5(2) provides that a provision in, or
25 condition of, an industrial instrument or contract of
26 employment that is less favourable to the employee than a
27 minimum condition of employment has no effect, and the
28 minimum condition is taken to be the term of the industrial
29 instrument or contract of employment instead.

30

1 **82. Section 98 amended**

2 In section 98(2) delete the passage that begins with “observance
3 of” and continues to the end of the subsection and insert:

4
5 observance of the following, as the Minister directs —

- 6 (a) the provisions of this Act;
- 7 (b) the provisions of an instrument to which this
8 section applies;
- 9 (c) an entitlement provision that is —
- 10 (i) a provision of the LSL Act or the MCE
11 Act; or
- 12 (ii) a local government long service leave
13 provision.
14

15 **83. Section 100 inserted**

16 After section 99 insert:
17

18 **100. False or misleading statement about right to**
19 **represent industrial interests**

- 20 (1) A person or entity must not make a statement to
21 someone else that the person or entity knows, or could
22 reasonably be expected to know, is false or misleading
23 about either of the following matters —
- 24 (a) that the person or entity has the right to
25 represent the industrial interests of a person or a
26 particular class or group of persons;
- 27 (b) that, in relation to the industrial interests of a
28 person or a particular class or group of persons,
29 the person or entity has the right to take

- 1 specified action under this Act or an industrial
2 instrument.
- 3 (2) For the purposes of subsection (1) —
- 4 (a) a reference to a person or entity does not
5 include a reference to an organisation; and
- 6 (b) an entity does not have the right to represent the
7 industrial interests of a person or a particular
8 class or group of persons only because the
9 entity’s rules state that it has that right.
- 10 (3) A contravention of subsection (1) is not an offence but
11 that subsection is a civil penalty provision for the
12 purposes of section 83E.
13

14 **84. Section 107 amended**

15 In section 107 delete “instituted pursuant to a direction given”.

16 **85. Section 113 amended**

- 17 (1) In section 113(1):
- 18 (a) after paragraph (d)(ii) insert:
- 19
- 20 (iii) a sexual harassment proceeding
21 commenced under section 51BT;
22
- 23 (b) delete paragraph (da).
- 24 (2) Delete section 113(2).

1 **86. Part 8 heading and Part 8 Division 1 heading inserted**

2 After section 115 insert:
3

4 **Part 8 — Transitional and savings provisions**

5 **Division 1 — Transitional provisions for *Industrial***
6 ***Relations Amendment Act 2018***
7

8 **87. Part 8 Division 2 heading inserted**

9 After section 116 insert:
10

11 **Division 2 — Savings and transitional provision for**
12 ***Industrial Relations Legislation Amendment Act 2021***
13

14 **88. Part 8 Division 3 inserted**

15 After section 117 insert:
16

17 **Division 3 — Transitional provisions for *Industrial***
18 ***Relations Legislation Amendment Act 2024***

19 **118. Terms used**

20 In this Division —

21 ***amended***, in relation to this Act or a provision of this
22 Act, means the Act or provision as in force on and
23 from the commencement day;

24 ***commencement day*** means 31 January 2025;

25 ***repeal***, in relation to a provision of this Act, means the
26 repeal of the provision by the *Industrial Relations*
27 *Legislation Amendment Act 2024*;

1 *repealed*, in relation to a provision of this Act, means
2 that provision as in force from time to time before the
3 commencement day.

4 **119. *Interpretation Act 1984 not affected***

5 This Division applies in addition to the *Interpretation*
6 *Act 1984* and does not limit or otherwise affect the
7 operation of the provisions of that Act.

8 **120. Representation of parties to proceedings**

9 Amended section 31 applies in relation to proceedings
10 commenced before the commencement day.

11 **121. Boards of Reference abolished**

12 (1) In this section —

13 *Board of Reference* means a Board of Reference for an
14 award established under repealed section 48.

15 (2) If, immediately before the commencement day, a
16 Board of Reference had not finished dealing with a
17 particular matter, repealed section 48 continues to
18 apply in relation to the Board of Reference and the
19 matter as if the *Industrial Relations Legislation*
20 *Amendment Act 2024* section 21 had not been enacted.

21 (3) A person who, immediately before the commencement
22 day, held office as the chairperson or a member of a
23 Board of Reference goes out of office —

24 (a) if subsection (2) applies to the board — on the
25 day after the day on which the board finishes
26 dealing with the matter mentioned in that
27 subsection; or

28 (b) otherwise — on the commencement day.

1 (4) A right to appeal against a decision of a Board of
2 Reference, or an appeal made in exercise of that right,
3 under repealed section 48(11) is not affected by the
4 repeal of that section, regardless of whether the
5 decision was made —

6 (a) before the commencement day; or

7 (b) on or after the commencement day in relation
8 to a matter to which subsection (2) applies.

9 (5) Despite subsections (2) and (4), the Commission
10 cannot make an order mentioned in repealed
11 section 48(15) after the commencement day.

12 **122. Existing authorities for entry and inspection by**
13 **authorised representatives**

14 (1) This section applies in relation to an authority issued to
15 a person under repealed section 49J(1) if the authority
16 is in effect immediately before the commencement day.

17 (2) On and from the commencement day, the authority is
18 taken to —

19 (a) be a permit issued by the Commission under
20 Part II Division 2G Subdivision 3; and

21 (b) have an expiry day of the day that is 1 year
22 after the commencement day.

23 Note for this subsection:

24 For the purposes of paragraph (a), *right of entry permit* is
25 defined as a permit issued by the Commission under Part II
26 Division 2G Subdivision 3. See section 49G(1).

27 (3) Subsection (2) applies regardless of whether the person
28 who holds the authority is an officer or employee of the
29 organisation of employees, the secretary of which
30 applied for the authority.

- 1 **123. Bullying and sexual harassment at work before**
2 **commencement day**
- 3 (1) In this section —
- 4 *former Act* means this Act as in force from time to
5 time before the commencement day;
- 6 *post-commencement behaviour* means behaviour
7 referred to in amended section 51BI or 51BR that
8 happened on or after the commencement day;
- 9 *pre-commencement behaviour* means behaviour
10 referred to in section 51BI of the former Act that
11 happened before the commencement day.
- 12 (2) The former Act continues to apply in relation to
13 pre-commencement behaviour as if the *Industrial*
14 *Relations Legislation Amendment Act 2024* had not
15 been enacted.
- 16 (3) Without limiting subsection (2) —
- 17 (a) a worker may make a stop bullying or sexual
18 harassment application in relation to
19 pre-commencement behaviour; and
- 20 (b) the Commission may deal with, or continue to
21 deal with, a stop bullying or sexual harassment
22 application —
- 23 (i) referred to in paragraph (a); or
- 24 (ii) made, but not finally dealt with or
25 withdrawn, before the commencement
26 day;
- 27 and
- 28 (c) sections 51BN and 83E of the former Act
29 continue to apply in relation to a stop bullying
30 or sexual harassment order made before the
31 commencement day or by the Commission
32 under paragraph (b).

- 1 (4) The amended Act does not apply in relation to
2 pre-commencement behaviour.
- 3 (5) However, if the Commission or the industrial
4 magistrate's court is dealing with an application made
5 or a proceeding commenced in relation to
6 post-commencement behaviour, the Commission or
7 court may take pre-commencement behaviour into
8 account.

9 **124. Office of public service arbitrator abolished**

- 10 (1) In this section —
11 *Arbitrator* has the meaning given in repealed
12 section 80C(1).
- 13 (2) If, immediately before the commencement day, an
14 industrial matter referred to an Arbitrator has not been
15 finally dealt with or withdrawn, the Arbitrator may
16 start or continue to enquire into and deal with the
17 matter under repealed Part IIA as if the *Industrial*
18 *Relations Legislation Amendment Act 2024* section 57
19 had not been enacted.
- 20 (3) A commissioner appointed as an Arbitrator stops
21 holding office as a public service arbitrator —
- 22 (a) if subsection (2) applies in relation to 1 or more
23 industrial matters — on the day after the day on
24 which the last of the matters is finally dealt
25 with or withdrawn; or
- 26 (b) if the Arbitrator is a member of a Board
27 established for the purposes of 1 or more
28 appeals to which section 125(2) applies — on
29 the day after the day on which the last of the
30 appeals is finally determined or withdrawn; or
- 31 (c) otherwise — on the commencement day.

- 1 **125. Public Service Appeal Board abolished**
- 2 (1) In this section —
- 3 *appeal* means an appeal instituted under repealed
- 4 section 80I;
- 5 *Board* has the meaning given in repealed
- 6 section 80C(1).
- 7 (2) If, immediately before the commencement day, an
- 8 appeal has not been finally determined or withdrawn,
- 9 repealed Part IIA continues to apply in relation to the
- 10 appeal as if the *Industrial Relations Legislation*
- 11 *Amendment Act 2024* section 57 had not been enacted.
- 12 (3) Without limiting subsection (2) —
- 13 (a) a Board may be established under repealed
- 14 section 80H for the purposes of the appeal; and
- 15 (b) a Board may start, or continue, to hear and
- 16 determine the appeal.
- 17 **126. Railways Classification Board abolished**
- 18 The Railways Classification Board is abolished on the
- 19 commencement day.
- 20 **127. No costs to be awarded under section 107**
- 21 Amended section 107 applies in relation to proceedings
- 22 that commenced before the commencement day.
- 23 **128. Deletion of references to Mines and Metals**
- 24 **Association**
- 25 (1) In this section —
- 26 *relevant provision* means each of the following
- 27 provisions —
- 28 (a) sections 51I, 51J and 51K;

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- 1 (b) a provision of this Act amended by the
2 *Industrial Relations Legislation Amendment*
3 *Act 2024* section 91.
- 4 (2) This section applies if, before the commencement
5 day —
- 6 (a) the Commission took action in relation to a
7 matter under this Act; and
- 8 (b) the employers represented by the Mines and
9 Metals Association’s members were not
10 employers of employees affected or covered by
11 the matter; and
- 12 (c) before or after the action was taken, a
13 requirement under a relevant provision relating
14 to the Mines and Metals Association was not
15 complied with.
- 16 (3) The action taken by the Commission is taken to be, and
17 to have always been, as lawful, valid and effective as it
18 would be, or would have been, had the requirement
19 mentioned in subsection (2)(c) been complied with.
20

21 **89. Schedule 1 amended**

22 In Schedule 1:

- 23 (a) in item 2(e) delete “magistrates; and” and insert:
24
25 magistrates.
26
- 27 (b) delete item 2(f);
28 (c) delete item 5.

29 **90. Schedule 3 amended**

- 30 (1) Delete Schedule 3 clause 1.

- 1 (2) Delete Schedule 3 clause 2(2)(a) and (b) and insert:
2
3 (a) the police officer were a government officer; and
4 (b) the Commissioner of Police were the employer of
5 the police officer,
6

- 7 (3) In Schedule 3 clause 2(3) delete “an Arbitrator” and insert:
8

9 the Commission
10

11 **91. Various references to “Mines and Metals Association”**
12 **deleted**

13 In the provisions listed in the Table:

- 14 (a) delete “Chamber, the Mines and Metals Association”
15 and insert:

16
17 Chamber
18

- 19 (b) delete “UnionsWA, the Chamber and the Mines and
20 Metals Association” and insert:

21
22 UnionsWA and the Chamber
23

- 24 (c) delete “the Mines and Metals Association,”.
25

Table

s. 29A(2)(a)(i) and (b)	s. 31(1)(c)(i)
s. 37D(6)(b)(i)	s. 38(1) and (1a)(a)
s. 40B(2) and (3)(a)	s. 47(5)(a)

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s. 50(2)	s. 51BA(1)(a)
s. 97VZ(3) def. of <i>peak industrial body</i>	

1 **92. Various references to “relevant industrial authority” and**
2 **“authority” amended**

- 3 (1) In the provisions listed in the Table:
- 4 (a) delete “A relevant industrial authority” and insert:
- 5
6 The Commission constituted by a commissioner
- 7
- 8 (b) delete “a relevant industrial authority” and insert:
- 9
10 the Commission constituted by a commissioner
- 11
- 12 (c) delete “the relevant industrial authority” and insert:
- 13
14 the Commission constituted by a commissioner
- 15

16 **Table**

s. 97UP	s. 97VM(1)
s. 97WH the def. of <i>arbitrator</i> paragraph (b)	s. 97WI(1)

- 17 (2) In the provisions listed in the Table:
- 18 (a) delete “the relevant industrial authority” and insert:
- 19
20 the Commission
- 21

- 1 (b) delete “a relevant industrial authority” and insert:
 2
 3 the Commission
 4
 5 (c) delete “The relevant industrial authority” and insert:
 6
 7 The Commission
 8

Table

s. 97UN(2)	s. 97VH(2)(b)
s. 97VL(2)(b)	s. 97VN(2)
s. 97VO(1), (2)(b) and (3)(a)	s. 97VP(1), (2) (each occurrence) and (3)
s. 97VQ(2)	s. 97VY(b)
s. 97WI(2)	s. 97WK(2), (4), (5) and (6)
s. 97WN(1)(b)	s. 97WP(2)

- 9
 10 (3) In the provisions listed in the Table:
 11 (a) delete “the authority” and insert:
 12
 13 the Commission
 14
 15 (b) delete “that authority” and insert:
 16
 17 the Commission
 18

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1 (c) delete “an arbitrator that is a relevant industrial
2 authority” and insert:

3

4 a Commissioner

5

6

Table

s. 97VN(2)(a)	s. 97VO(2) and (3)
s. 97VQ(2)	s. 97WI(1) and (2)(b)
s. 97WK(6)(a)	s. 97WP(1)

7

Table

Amended section	Section heading
s. 97UP	Commission may be specified as arbitrator
s. 97VN	Commission to notify parties of certain deficiencies in EEA
s. 97WI	Arbitration jurisdiction of Commission
s. 97WK	Referral of alleged delay in dispute resolution to Commission

8

Note: The heading to section 67 is to read:

9

Registering associations

10

Note: The heading to section 117 is to read:

11

Transitioned private sector awards

12

Division 3 — Amendments commencing on proclamation

13

93. Section 7 amended

14

In section 7(1) insert in alphabetical order:

15

16

breach of public sector standards claim has the
17 meaning given in section 36AJ;

18

1 **94. Section 23 amended**

2 In section 23(2a):

3 (a) delete “Notwithstanding” and insert:

4

5 Despite

6

7 (b) delete “that Act.” and insert:

8

9 that Act, other than a breach of public sector standards
10 claim.

11

12 **95. Section 29 amended**

13 (1) In section 29(1):

14 (a) in paragraph (k) delete “employee.” and insert:

15

16 employee; and

17

18 (b) after paragraph (k) insert:

19

20 (l) in the case of a breach of public sector
21 standards claim — by the person who made the
22 claim to a public sector body.

23

24 (2) In section 29(2):

25 (a) in paragraph (c) delete “is made.” and insert:

26

27 is made; and

28

- 1 (b) after paragraph (c) insert:
2
3 (d) a referral of a breach of public sector standards
4 claim must be made no later than 28 days after
5 the end of the agency resolution period
6 mentioned in section 36AJ(c) for the claim.
7

8 **96. Section 31 amended**

9 In section 31(1)(c)(ii) delete “(i) or (j)” and insert:
10

11 (i), (j) or (l)
12

13 **97. Section 36AA amended**

14 In section 36AA(2):

15 (a) in paragraph (c) delete “section 171.” and insert:
16

17 section 171;
18

19 (b) after paragraph (c) insert:
20

21 (d) a breach of public sector standards claim.
22

23 **98. Section 36AC amended**

24 Delete section 36AC(3)(a) and insert:
25

26 (a) a decision, finding or claim that may be the
27 subject of a referral to the Commission under
28 section 36AA(2)(b), (c) or (d); or
29

1 **99. Part II Division 2AA Subdivision 4 inserted**

2 At the end of Part II Division 2AA insert:

3

4 **Subdivision 4 — Breach of public sector standards claims**

5 **36AI. Terms used**

6 In this Subdivision —

7 ***human resource management activity*** means a human
8 resource management activity relating to employees
9 prescribed under the *Public Sector Management*
10 *Act 1994* section 21(1)(a)(ii);

11 ***public sector body*** includes an employing authority of
12 the public sector body;

13 ***specified public sector standard*** means a public sector
14 standard (as defined in the *Public Sector Management*
15 *Act 1994* section 3(1)) that relates to 1 or more of the
16 following —

- 17 (a) the transfer of employees;
- 18 (b) the performance management of employees;
- 19 (c) the redeployment of employees;
- 20 (d) the termination of employment of employees;
- 21 (e) if grievance resolution is a human resource
22 management activity — grievance resolution;
- 23 (f) another human resource management activity
24 relating to employees that is prescribed as a
25 specified public sector standard by regulations
26 made by the Governor;

27 ***taking action*** includes —

- 28 (a) making a decision; and
- 29 (b) failing to take, or delaying taking, action.

1 **36AJ. Breach of public sector standards claim**

2 A *breach of public sector standards claim* is a claim
3 for relief —

- 4 (a) made by a person to a public sector body on the
5 ground that the public sector body breached a
6 specified public sector standard in taking action
7 to which the standard applies; and
- 8 (b) made in accordance with procedures prescribed
9 under the *Public Sector Management Act 1994*
10 section 98(a); and
- 11 (c) that is not resolved by agreement or withdrawn
12 within the period of 21 days starting on the day
13 after the day on which the claim was made (the
14 *agency resolution period*).

15 **36AK. Particular matters applicable to transfer decisions**

16 (1) This section applies if —

- 17 (a) a breach of public sector standards claim
18 relating to a decision of a public sector body to
19 transfer an employee is referred to, or the
20 subject of an application made to, the
21 Commission; and
- 22 (b) in accordance with procedures prescribed under
23 the *Public Sector Management Act 1994*
24 section 98(a), the decision to transfer the
25 employee has not been given effect.

26 (2) The operation of the decision is stayed pending the
27 Commission's decision on the claim, unless the claim
28 is withdrawn.

29 (3) Despite subsection (2), the Commission may, on the
30 application of the public sector body, make an interim

1 order allowing the transfer to be given effect pending
2 the Commission’s decision on the claim.

3 (4) The Commission may dismiss the claim if the
4 Commission is satisfied the claim is solely about the
5 competitive merit of the employee.

6 **36AL. Commission’s powers on breach of specified public**
7 **sector standards claim**

8 (1) The Commission may make an order under this section
9 if the Commission decides that a public sector body
10 breached a specified public sector standard in taking
11 action to which the standard applied.

12 (2) The Commission may —

13 (a) by order —

14 (i) quash the action; or

15 (ii) remit the process for taking the action
16 back to the public sector body to be
17 recommended from the start or from a
18 specific stage; or

19 (iii) direct the public sector body to take
20 specified steps in the recommended
21 process;

22 or

23 (b) order the public sector body to take specified
24 action.

25 (3) However, the Commission cannot make an order
26 requiring the payment of an amount to a person as
27 compensation for loss or injury caused by the breach.
28

1 **100. Section 42B amended**

2 Delete section 42B(8) and insert:

3

4 (8) This section does not limit section 97J.

5 Notes for this subsection:

6 1. Section 97J requires a person who carries on business
7 providing industrial advocacy services, and the person's
8 officers and employees, to be registered industrial agents or
9 legal practitioners.

10 2. **Industrial advocacy services** is defined in section 97I and
11 includes appearing as an agent under section 31, 81E or
12 91.
13

14 **101. Part 6C inserted**

15 After section 97H insert:

16

17 **Part 6C — Industrial agents**

18 **97I. Terms used**

19 In this Part —

20 **industrial advocacy services** means —

- 21 (a) appearing for a party, person or body as an
22 agent under section 31, 81E or 91; or
23 (b) providing advice or other services in relation to
24 industrial matters;

25 **prescribed** means prescribed by regulations made
26 under section 97N;

27 **registered industrial agent** means a person registered
28 as an industrial agent under regulations made under
29 section 97N.

- 1 **97J. Industrial agents**
- 2 (1) A person must not carry on business providing
- 3 industrial advocacy services, or represent that the
- 4 person is carrying on business providing industrial
- 5 advocacy services, unless the person is a registered
- 6 industrial agent or a legal practitioner.
- 7 (2) A person who carries on business providing industrial
- 8 advocacy services must not permit an officer or
- 9 employee of the person to provide industrial advocacy
- 10 services unless the officer or employee is a registered
- 11 industrial agent or a legal practitioner.
- 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 section 83E.
- 15 (4) Subsections (1) and (2) do not apply to any of the
- 16 following —
- 17 (a) an organisation, UnionsWA or the Chamber;
- 18 (b) an officer or employee of an organisation,
- 19 UnionsWA or the Chamber performing the
- 20 officer’s or employee’s functions;
- 21 (c) a public sector body, local government or
- 22 regional local government;
- 23 (d) an employee of a public sector body, local
- 24 government or regional local government
- 25 performing the employee’s functions;
- 26 (e) a person who acts as a bargaining agent as
- 27 provided in section 42B, 97UJ or 97WJ.

- 1 **97K. Authorisation for *Legal Profession Uniform Law***
2 **(WA)**
- 3 (1) Despite the *Legal Profession Uniform Law (WA)*
4 section 10, the following persons are authorised to
5 provide industrial advocacy services —
- 6 (a) a registered industrial agent;
- 7 (b) an officer or employee of an organisation,
8 UnionsWA, the Chamber or a prescribed body
9 performing the officer’s or employee’s
10 functions;
- 11 (c) an employee of a public sector body, local
12 government or regional local government
13 performing the employee’s functions.
- 14 (2) Subsection (1) does not apply to a person who is
15 disqualified from legal practice.
- 16 (3) A person is *disqualified from legal practice* if —
- 17 (a) the person is a disqualified person as defined in
18 the *Legal Profession Uniform Law (WA)*
19 section 6(1); or
- 20 (b) the person’s Australian practising certificate is
21 varied in a way that adversely affects the
22 person’s entitlement to engage in legal practice
23 under the Law; or
- 24 (c) the person’s name has been removed from an
25 official roll of lawyers (whether admitted,
26 practising or otherwise) kept in a foreign
27 country.
- 28 (4) Despite subsection (3)(a), a person is not *disqualified*
29 *from legal practice* if the person’s Australian
30 practising certificate is suspended or has been
31 cancelled (and not replaced by the grant of a later

- 1 Australian practising certificate) other than because of
2 action taken —
- 3 (a) under the *Legal Profession Uniform Law (WA)*
4 by a designated local regulatory authority,
5 designated tribunal or a court; or
- 6 (b) under a corresponding law by a corresponding
7 authority.
- 8 (5) In subsections (3) and (4), each of the following terms
9 has the meaning given in the *Legal Profession Uniform*
10 *Law (WA)* section 6(1) —
- 11 *Australian practising certificate*
12 *corresponding authority*
13 *corresponding law*
14 *designated local regulatory authority*
15 *designated tribunal*
16 *engage in legal practice*
- 17 **97L. Eligibility for registration as industrial agent**
- 18 (1) A person is eligible for registration as an industrial
19 agent if —
- 20 (a) the person meets the prescribed criteria for
21 registration; and
- 22 (b) the person is not disqualified under this Act
23 from applying for registration, or being
24 registered, as an industrial agent.
- 25 (2) A person is disqualified from being registered as an
26 industrial agent if the person is disqualified from legal
27 practice as specified in section 97K(3).
- 28 (3) Regulations made under section 97N may prescribe
29 other matters that disqualify a person from being
30 registered as an industrial agent.

- 1 **97M. Professional indemnity insurance**
- 2 (1) A person is not eligible to be registered as an industrial
3 agent unless the person can demonstrate that —
- 4 (a) the person has, or on registration will have,
5 professional indemnity insurance that complies
6 with the prescribed requirements; or
- 7 (b) the person is an officer or employee of a
8 registered industrial agent.
- 9 (2) A registered industrial agent must maintain
10 professional indemnity insurance that complies with
11 the prescribed requirements.
- 12 (3) Subsection (2) does not apply to a registered industrial
13 agent who is an officer or employee of another
14 registered industrial agent.
- 15 (4) A contravention of subsection (2) is not an offence but
16 that subsection is a civil penalty provision for the
17 purposes of section 83E.
- 18 **97N. Regulations may provide for registration**
- 19 (1) The Governor may make regulations —
- 20 (a) to provide for a scheme of registration of
21 persons as industrial agents; and
- 22 (b) that are required or permitted to be made, or
23 necessary or convenient, for giving effect to the
24 scheme.
- 25 (2) Without limiting subsection (1), regulations may
26 provide for the following —
- 27 (a) the process for registration, including applying
28 for registration and the renewal of registration
29 and assessing applications;
- 30 (b) qualifications, experience and other criteria for
31 registration;

- 1 (c) imposing conditions or restrictions on
- 2 registration;
- 3 (d) disqualification from registration;
- 4 (e) requirements that apply to professional
- 5 indemnity insurance;
- 6 (f) fees.

7 **97O. Disciplinary inquiry by Registrar**

- 8 (1) The Registrar may inquire into the conduct of a
- 9 registered industrial agent to determine whether there
- 10 are grounds for disciplinary action against the
- 11 industrial agent.

- 12 (2) There are grounds for disciplinary action against a
- 13 registered industrial agent if —
- 14 (a) the industrial agent’s registration was
- 15 improperly obtained; or
- 16 (b) the industrial agent has contravened —
- 17 (i) a provision of this Act; or
- 18 (ii) a condition or restriction of the
- 19 industrial agent’s registration;
- 20 or
- 21 (c) the industrial agent has done or omitted to do
- 22 something, or engaged in conduct, that makes
- 23 the person unfit to be a registered industrial
- 24 agent; or
- 25 (d) the industrial agent has engaged in conduct as a
- 26 registered industrial agent that falls short of the
- 27 standard of competence and diligence that a
- 28 member of the public is entitled to expect of a
- 29 reasonably competent registered industrial
- 30 agent.

1 (3) For the purposes of conducting an inquiry under
2 subsection (1), the Registrar or a delegate of the
3 Registrar is an authorised person within the meaning of
4 that term in Schedule 5.

5 (4) If, on completion of the inquiry, the Registrar is
6 satisfied there are grounds for disciplinary action
7 against the registered industrial agent, the Registrar
8 must refer the matter to the Full Bench to hear and
9 determine.

10 **97P. Disciplinary action by Full Bench**

11 (1) If the Full Bench hears a matter referred to it under
12 section 97O(4) and determines there are grounds for
13 disciplinary action against a registered industrial agent,
14 the Full Bench may do 1 or more of the following —

- 15 (a) decline to make an order;
16 (b) caution or reprimand the industrial agent;
17 (c) impose a condition or restriction on the
18 registration of the industrial agent or amend an
19 existing condition or restriction;
20 (d) impose a penalty of an amount it considers just,
21 but not exceeding \$13 000;
22 (e) order that the registration of the industrial agent
23 be suspended for a period, not exceeding
24 12 months, specified in the order;
25 (f) order that the industrial agent's registration be
26 cancelled.

27 (2) In subsection (1) —
28 ***grounds for disciplinary action*** means the grounds for
29 disciplinary action stated in section 97O(2).
30

1 **102. Section 97UJ amended**

2 Delete section 97UJ(6) and insert:

3

4 (6) This section does not limit section 97J.

5 Notes for this subsection:

6 1. Section 97J requires a person who carries on business
7 providing industrial advocacy services, and the person's
8 officers and employees, to be registered industrial agents or
9 legal practitioners.

10 2. **Industrial advocacy services** is defined in section 97I and
11 includes appearing as an agent under section 31, 81E
12 or 91.
13

14 **103. Section 112A deleted**

15 Delete section 112A.

16 **104. Sections 129 and 130 inserted**

17 At the end of Part 8 Division 3 insert:

18

19 **129. Existing breach of public sector standards claims**

20 (1) In this section —

21 **agency resolution period**, in relation to a claim
22 mentioned in subsection (2)(a) or (4)(a), means the
23 period of 21 days starting on the day after the day on
24 which the claim is made;

25 **commencement day** means the day on which the
26 *Industrial Relations Legislation Amendment Act 2024*
27 section 99 comes into operation;

28 **prescribed procedures** means procedures prescribed
29 under the *Public Sector Management Act 1994*
30 section 98(a) as in force from time to time before the
31 commencement day;

- 1 **Public Sector Commissioner** means the Commissioner
2 as defined in the *Public Sector Management Act 1994*
3 section 3(1).
- 4 (2) Subsection (3) applies if, before the commencement
5 day —
- 6 (a) a person made a claim for relief to a public
7 sector body mentioned in section 36AJ(a) in
8 accordance with the prescribed procedures; and
- 9 (b) under the prescribed procedures, the public
10 sector body sent the person’s claim to the
11 Public Sector Commissioner; and
- 12 (c) the Public Sector Commissioner had not
13 finished dealing with the claim.
- 14 (3) The Public Sector Commissioner may continue to deal
15 with the claim under the prescribed procedures —
- 16 (a) as if the *Industrial Relations Legislation*
17 *Amendment Act 2024* section 99 had not been
18 enacted; and
- 19 (b) if the prescribed procedures are amended on or
20 after the commencement day in relation to
21 breaches of public sector standards claims — as
22 if the prescribed procedures had not been
23 amended.
- 24 (4) Subsection (5) applies if —
- 25 (a) before the commencement day, a person made
26 a claim for relief to a public sector body
27 mentioned in section 36AJ(a) in accordance
28 with the prescribed procedures; and
- 29 (b) on the commencement day —
- 30 (i) the agency resolution period for the
31 claim had not ended; or

- 1 (ii) the agency resolution period for the
2 person's claim had ended but the public
3 sector body had not sent the claim to the
4 Public Sector Commissioner under the
5 prescribed procedures.
- 6 (5) The person's claim for relief is taken to be a breach of
7 public sector standards claim as defined in
8 section 36AJ and the amended Act applies in relation
9 to the claim.

10 **130. Industrial agents: transitional regulations**

11 Regulations made under section 97N may deal with
12 matters of a savings or transitional nature that arise as a
13 result of —

- 14 (a) the enactment of the *Industrial Relations*
15 *Legislation Amendment Act 2024* or the coming
16 into operation of section 101 of that Act; or
17 (b) the coming into operation of Part 6C or
18 regulations made under that Part; or
19 (c) the repeal of section 112A.
20

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1 **Part 3 — *Minimum Conditions of Employment Act 1993***
2 **amended**

3 **105. Act amended**

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

6 **106. Section 2A inserted**

7 After section 2 insert:
8

9 **2A. Objects of Act**

10 The objects of this Act are —

- 11 (a) to provide for fair and enforceable minimum
12 conditions of employment; and
13 (b) to assist families to balance work and family
14 responsibilities, including by providing for
15 minimum conditions of employment related to
16 an employee requesting a flexible working
17 arrangement.
18

19 **107. Section 3 amended**

20 (1) In section 3(1) delete the definitions of:

21 *award*

22 *employee*

23 *employer-employee agreement*

24 *industrial instrument*

25 *medical practitioner*

26 *public holiday*

- 1 (2) In section 3(1) insert in alphabetical order:
2
- 3 **award** has the meaning given in the IR Act
4 section 7(1);
- 5 **Commission** has the meaning given in the IR Act
6 section 7(1);
- 7 **compensated employee** has the meaning given in
8 section 18B(1)(b);
- 9 **compensated employee rate**, in relation to a
10 compensated employee, has the meaning given in
11 section 18B(2);
- 12 **employee** has the meaning given in the IR Act
13 section 7(1);
- 14 Note for this definition:
- 15 See also the IR Act sections 7A and 7B, which apply for the
16 purposes of determining, for this Act, whether an individual
17 is an employee or a casual employee of a person.
- 18 **entitled to receive income compensation**, in relation to
19 an employee, has the meaning given in
20 section 18B(1)(a);
- 21 **family and domestic violence** means family violence as
22 defined in the *Restraining Orders Act 1997* section 5A;
- 23 **flexible working arrangement dispute** has the meaning
24 given in the IR Act section 51D;
- 25 **flexible working arrangement request** has the meaning
26 given in section 39F(1);
- 27 **income compensation** has the meaning given in the
28 *Workers Compensation and Injury Management*
29 *Act 2023* section 5;
- 30 **industrial instrument** means —
- 31 (a) an award; or
- 32 (b) an employer-employee agreement as defined in
33 the IR Act section 7(1); or

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- 1 (c) an industrial agreement registered under the
2 IR Act Part II Division 2B; or
3 (d) an order of the Commission under the IR Act;
4 **organisation** has the meaning given in the IR Act
5 section 7(1);

6 **paid family and domestic violence leave** means —

- 7 (a) paid family and domestic violence leave to
8 which a non-national system employee is
9 entitled under the *Fair Work Act 2009*
10 (Commonwealth) Part 6-3 Division 2A; or
11 (b) paid leave for reasons relating to family and
12 domestic violence to which an employee is
13 entitled under an industrial instrument or
14 contract of employment;

15 **public holiday**, in relation to an employee, means a day
16 mentioned in Schedule 1 that is a public holiday in the
17 area of the State where the employee is based for work
18 purposes;

19 **year of service** does not include any period of unpaid
20 leave.

- 21
22 (3) In section 3(1) in the definition of **continuous service** delete
23 “employer-employee agreement, an award,” and insert:

24
25 industrial instrument,
26

- 27 (4) In section 3(1) at the end of the definition of **employer** insert:
28

29 Note for this definition:

30 See also the IR Act section 7A, which applies for the
31 purposes of determining, for this Act, whether a person is
32 an employer of an individual.
33

- 1 (5) In section 3(1) in the definition of *member of the employee’s*
2 *family or household*:
- 3 (a) in paragraph (b) after “employee” insert:
4
5 or the employee’s spouse or de facto partner
6
- 7 (b) in paragraphs (c) and (d) delete “employee;” and insert:
8
9 employee or the employee’s spouse or de facto partner;
10
- 11 (6) In section 3(1) in the definition of *minimum condition of*
12 *employment*:
- 13 (a) in paragraph (a) delete “this Act; or” and insert:
14
15 Part 3; or
16
- 17 (b) in paragraph (b) delete “this Act; or” and insert:
18
19 Part 3A; or
20
- 21 (c) delete paragraphs (c) and (d) and insert:
22
- 23 (c) an entitlement prescribed by Part 4 relating to
24 paid personal leave, unpaid personal leave, paid
25 annual leave, paid bereavement leave or unpaid
26 family and domestic violence leave; or
27 (d) the use, in a manner prescribed by Part 4, of an
28 entitlement to leave referred to in paragraph (c),
29 including in relation to —
30 (i) taking leave; or
31 (ii) payment for leave; or

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- 1 (iii) proof of entitlement to leave;
2 or
3
- 4 (d) in paragraph (f) delete “39E(1);” and insert:
5
6 39E(1); or
7
- 8 (e) after paragraph (f) insert:
9
- 10 (g) an entitlement prescribed by Part 4 relating to a
11 public holiday, including —
12 (i) to be absent from work on a public
13 holiday; or
14 (ii) to be paid if absent from work on a
15 public holiday; or
16 (iii) to refuse (on reasonable grounds) a
17 request to work on a public holiday;
18 or
- 19 (h) an entitlement prescribed by Part 4 relating to a
20 day or part of a day that is substituted for a
21 public holiday; or
- 22 (i) an entitlement or obligation prescribed by
23 Part 4A relating to a flexible working
24 arrangement request, including —
25 (i) an entitlement to make a request in any
26 of the circumstances referred to in
27 section 39F(2); or
28 (ii) an obligation to respond to that request.
29

1 **108. Section 5 amended**

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

3

4 (1) The minimum conditions of employment extend to and
5 bind all employees and employers and cannot be
6 displaced by an industrial instrument or contract of
7 employment.

8

9 (2) In section 5(2):

10 (a) delete “employer-employee agreement, an award” and
11 insert:

12

13 industrial instrument

14

15 (b) delete “effect.” and insert:

16

17 effect and the minimum condition is taken to be the term
18 of the industrial instrument or contract of employment
19 instead.

20

21 Note: The heading to amended section 5 is to read:

22

23 **Minimum conditions extend to and bind all employers and**

24 **employees**

24 **109. Section 6 amended**

25 (1) In subsection (1):

26 (a) delete “Where under section 3 of the IR Act” and insert:

27

28 Where, under the IR Act section 3,

29

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1 (b) in paragraph (b) delete “subsection (4) of that section”
2 and insert:

3
4 the IR Act section 3(4)
5

6 (2) After section 6(2) insert:
7

8 (3) Subsection (1) has effect only where this Act or any
9 provision of this Act would not otherwise apply as a
10 law of the State, or be applied as a law of the
11 Commonwealth, to or in relation to any person,
12 circumstance, thing or place.
13

14 **110. Section 6A inserted**

15 After section 6 insert:
16

17 **6A. Application to police officers**

18 This Act applies to a police officer as if —

- 19 (a) the police officer were an employee; and
20 (b) the Commissioner of Police were the employer
21 of the police officer.
22

23 **111. Section 7 amended**

24 In section 7(b) delete “implied in an industrial instrument —”
25 and insert:
26

27 taken to be a term of an industrial instrument under
28 section 5(2) —
29

1 **112. Section 8 amended**

2 (1) In section 8(1) before “annual leave” (each occurrence) insert:

3

4 paid

5

6 (2) Delete section 8(2) and insert:

7

8 (2) A benefit is not equivalent to forgone paid annual leave
9 unless the employee is paid at least the amount the
10 employee would have been paid had the employee
11 taken the forgone leave.

12 (2A) The employer and employee may make a subsequent
13 agreement in relation to the same year of service.

14 (2B) Subsection (1) applies to a subsequent agreement as if
15 a reference to the amount of paid annual leave in
16 subsection (1)(a) were a reference to the total amount
17 of paid annual leave forgone under all agreements
18 made in relation to that year of service.

19 (2C) An agreement referred to in subsection (1) or (2A) is of
20 no effect if —

21 (a) the employer’s offer of employment was made
22 on the condition that the employee would be
23 required to enter into the agreement; or

24 (b) it does not comply with subsection (1) or (2B).

25

26 (3) In section 8(3)(a) and (b) before “annual” insert:

27

28 paid

29

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

31 **Cashing out accrued paid annual leave**

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1 **113. Section 11 amended**

2 In section 11(2) in the definition of *prescribed percentage*:

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

4

5 (a) 25%; or

6

7 (b) in paragraph (b) delete “20%” and insert:

8

9 25%

10

11 **114. Section 13 amended**

12 In section 13 delete “up”.

13 **115. Section 15 amended**

14 (1) In section 15 insert in alphabetical order:

15

16 *supported employment service* means a service to
17 support the paid employment of persons with
18 disability, being persons —

19 (a) for whom competitive employment at or above
20 the wage payable under the relevant award is
21 unlikely; and

22 (b) who, because of their disability, need
23 substantial ongoing support to obtain or retain
24 paid employment;

25

26 (2) In section 15 in the definition of *instrument-governed employee*
27 *with a disability* paragraph (c) delete “service as defined in the

1 *Disability Services Act 1986 (Commonwealth) section 7; and*
2 and insert:

3

4 service; and

5

6 **116. Section 17BA amended**

7 In section 17BA(8) delete “award, employer-employee
8 agreement” and insert:

9

10 industrial instrument

11

12 **117. Section 17C amended**

13 In section 17C(1)(d) delete “the employer-employee agreement,
14 award” and insert:

15

16 an industrial instrument

17

18 Note: The heading to amended section 17C is to read:

19 **Methods for paying employee**

20 **118. Section 17D amended**

21 (1) In section 17D(1)(b) delete “the employer-employee agreement,
22 award” and insert:

23

24 an industrial instrument

25

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- 1 (2) In section 17D(2):
2 (a) delete “so deducted” and insert:
3
4 deducted under subsection (1)
5
6 (b) delete “employer-employee agreement, award,” and
7 insert:
8
9 industrial instrument,
10

11 **119. Section 17E amended**

12 In section 17E(1), (3) and (4) delete “award,
13 employer-employee agreement” and insert:
14
15 industrial instrument
16

17 **120. Note for Part 4 inserted**

18 At the beginning of Part 4 insert:
19

20 Note for this Part:
21 This Part does not provide for entitlements to parental
22 leave. The *Fair Work Act 2009* (Commonwealth) Part 6-3
23 Division 2 extends unpaid parental leave and related
24 entitlements to non-national system employees.
25

1 **121. Section 18 replaced**

2 Delete section 18 and insert:

3

4 **18. Rate of pay and average weekly hours for paid leave**

5 (1) An employee must be paid for paid leave at the rate the
6 employee would have received as payment under an
7 industrial instrument or contract of employment
8 (whichever provides for the higher rate) at the time the
9 employee takes the leave.

10 (2) If the number of hours an employee is entitled to be
11 paid for a period of paid leave cannot be determined,
12 the hours are to be worked out by averaging, as hours
13 worked each week, the total number of hours the
14 employee worked during the shorter of the following
15 periods —

16 (a) the 365 days immediately before the leave is
17 taken;

18 (b) the period of employment immediately before
19 the leave is taken.

20 (3) The following periods are not to be counted as part of a
21 period referred to in subsection (2)(a) or (b) —

22 (a) a period of unpaid leave;

23 (b) a period during which the employee is stood
24 down in accordance with an industrial
25 instrument, contract of employment or written
26 law;

27 (c) a period during which the employee is or was a
28 compensated employee.

29 (4) Payments for overtime, penalty rates or any kind of
30 allowance are not required to be included in a rate of
31 pay under subsection (1).

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- 1 (5) Despite subsection (4), casual loading payable under an
2 industrial instrument or contract of employment may
3 be included in the rate of pay for bereavement leave
4 under section 27 or 27A.
- 5 (6) Matters in relation to payment for leave under this Part
6 or Part 5 may be prescribed by the regulations.
- 7 (7) This section is subject to sections 18A and 18B.
- 8 **18A. Rate of pay for paid leave for employee paid wholly**
9 **by commission or percentage reward or at piece**
10 **rates**
- 11 (1) An employee paid wholly by commission or
12 percentage reward or at piece rates must be paid for
13 paid leave at the highest of the following rates —
- 14 (a) the rate payable under an industrial instrument
15 or contract of employment (whichever provides
16 for the higher rate);
- 17 (b) the rate calculated according to the employee's
18 average weekly earnings during the 365 days
19 immediately before the leave is taken, not
20 counting any period referred to in
21 section 18(3)(a) to (c);
- 22 (c) the minimum rate of pay applicable to the
23 employee under section 10.
- 24 (2) Payments for overtime, penalty rates or any kind of
25 allowance are not required to be included in a rate of
26 pay under subsection (1).
- 27 (3) Despite subsection (2), casual loading payable under an
28 industrial instrument or contract of employment may
29 be included in the rate of pay for bereavement leave
30 under section 27 or 27A.

- 1 **18B. Rate of pay for paid leave for employee entitled to**
2 **receive income compensation**
- 3 (1) For the purposes of this Part —
- 4 (a) an employee is *entitled to receive income*
5 *compensation* if the employee is entitled to be
6 paid income compensation under the *Workers*
7 *Compensation and Injury Management*
8 *Act 2023* Part 2 Division 3; and
- 9 (b) an employee who is entitled to receive income
10 compensation is a *compensated employee*,
11 whether or not the employee also performs
12 work for the employee’s employer while
13 entitled to receive income compensation.
- 14 (2) A compensated employee must be paid for paid leave
15 at the higher of the following rates (the *compensated*
16 *employee rate* for the leave) —
- 17 (a) the compensated employee’s rate of pay at the
18 time the leave is taken;
- 19 (b) the compensated employee’s rate of pay
20 immediately before the employee became
21 entitled to receive income compensation.
- 22 (3) For the purposes of subsection (2), the employee’s *rate*
23 *of pay* is the rate that the employee would have been
24 entitled to receive as payment under an industrial
25 instrument or contract of employment (whichever
26 provides for the higher rate), had the employee not
27 become entitled to receive income compensation.
- 28 (4) A compensated employee’s *average weekly hours* are
29 the average hours the employee worked each week
30 during the shorter of the following periods —
- 31 (a) the 365 days immediately before the employee
32 became entitled to receive income
33 compensation;

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1 (b) the period of employment immediately before
2 the employee became entitled to receive
3 income compensation.

4 (5) A period referred to in section 18(3) is not to be
5 counted as part of a period referred to in
6 subsection (4)(a) or (b).
7

8 **122. Section 20 replaced**

9 Delete section 20 and insert:
10

11 **20. Entitlement to paid personal leave**

12 (1) For each year of service, an employee (other than a
13 casual employee) is entitled to paid personal leave for
14 the number of hours the employee is ordinarily
15 required to work in a 2-week period during that year,
16 up to a maximum of 76 hours.

17 (2) An employee's entitlement to paid personal leave —
18 (a) accrues pro rata on a weekly basis; and
19 (b) is cumulative.

20 (3) For the purposes of subsection (1), the hours an
21 employee is ordinarily required to work in relation to a
22 particular year of service must not include a period
23 during which the employee is or was a compensated
24 employee.

25 Note for this subsection:

26 See the *Workers Compensation and Injury Management*
27 *Act 2023* section 61(2)(d) in relation to a worker accruing
28 entitlements to sick leave for any period for which the
29 worker is entitled to receive income compensation.

30 (4) If the hours a compensated employee would ordinarily
31 work in a 2-week period in a particular year of service
32 cannot be determined, the employee's hours for each

1 week in that period are the average weekly hours under
2 section 18B(4).

3 **20A. Taking paid personal leave**

4 (1) An employee may take paid personal leave if the
5 employee is unable to work as a result of personal
6 circumstances.

7 Note for this subsection:

8 See the *Workers Compensation and Injury Management*
9 *Act 2023* section 61(2)(c) for a limit to a worker's
10 entitlement to take personal leave while receiving income
11 compensation.

12 (2) However, the employee is not entitled to be paid for
13 any period of absence from work resulting from
14 personal circumstances involving personal illness or
15 injury affecting the employee if the circumstances are
16 attributable to either of the following in the course of
17 the employee's employment —

- 18 (a) the employee's serious and wilful misconduct;
- 19 (b) the employee's gross and wilful neglect.

20 (3) If, while on paid personal leave, an employee takes
21 paid family and domestic violence leave, the employee
22 is taken not to be on paid personal leave for the period
23 of the paid family and domestic violence leave.

24 (4) This section is subject to the *Workers Compensation*
25 *and Injury Management Act 2023* section 61.

26
27 **123. Section 21 amended**

28 In section 21(2)(b) delete “during the period under section 20.”
29 and insert:

30
31 under section 20A.
32

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1 **124. Part 4 Division 3 replaced**

2 Delete Part 4 Division 3 and insert:

3

4 **Division 3 — Paid annual leave**

5 **23. Entitlement to paid annual leave**

6 (1) For each year of service, an employee (other than a
7 casual employee) is entitled to paid annual leave for the
8 number of hours the employee is ordinarily required to
9 work in a 4-week period during that year, up to a
10 maximum of 152 hours.

11 (2) An employee's entitlement to paid annual leave —

12 (a) accrues pro rata on a weekly basis; and

13 (b) is cumulative.

14 (3) For the purposes of subsection (1), the hours an
15 employee is ordinarily required to work in relation to a
16 particular year of service must not include a period
17 during which the employee is or was a compensated
18 employee.

19 Note for this subsection:

20 See the *Workers Compensation and Injury Management*
21 *Act 2023* section 61(2)(d) for an employee's entitlements in
22 relation to accruing annual leave while entitled to receive
23 income compensation.

24 (4) If the hours a compensated employee would ordinarily
25 work in a 4-week period in a particular year of service
26 cannot be determined, the employee's hours for each
27 week in that period are the average weekly hours under
28 section 18B(4).

- 1 **24. Taking paid annual leave**
- 2 (1) If an employer and an employee have not agreed when
- 3 the employee is to take paid annual leave, the employer
- 4 must not refuse the employee taking, at a time suitable
- 5 to the employee, a period of paid annual leave the
- 6 employee became entitled to more than 12 months
- 7 before that time.
- 8 (2) The employee is to give the employer at least 2 weeks’
- 9 notice of the period during which the employee intends
- 10 to take paid annual leave.
- 11 (3) If, while on paid annual leave, an employee takes paid
- 12 family and domestic violence leave, the employee is
- 13 taken not to be on paid annual leave for the period of
- 14 the paid family and domestic violence leave.

15 Note for this section:

16 See the *Workers Compensation and Injury Management*

17 Act 2023 section 61(2)(a) for an employee’s entitlement to

18 take annual leave while entitled to receive income

19 compensation.

20 **25. When employee must be paid for paid annual leave**

- 21 (1) An employee must be paid for paid annual leave at the
- 22 time payment is made in the normal course of the
- 23 employment.
- 24 (2) However, if an employee taking paid annual leave
- 25 requests in writing, the employee must be paid for the
- 26 leave before it starts.

27 **26. Paying out paid annual leave when employment**

28 **ends**

- 29 (1) An employee is entitled to be paid out for all untaken
- 30 paid annual leave when the employee’s employment
- 31 ends.

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- 1 (2) However, an employee is not entitled to be paid out for
2 untaken paid annual leave that relates to a partly
3 completed year of service if the employee’s
4 employment is ended —
5 (a) unlawfully by the employee; or
6 (b) by the employer because of the fault of the
7 employee.
- 8 (3) Despite subsection (2), if an employee’s employment is
9 ended by the employer because of the employee’s
10 misconduct, the employee is not entitled to be paid out
11 for untaken paid annual leave that relates to a year of
12 service completed after the misconduct.
- 13 (4) An employee must be paid out for untaken paid annual
14 leave at a rate as follows —
15 (a) if the employee is a compensated employee
16 when the employment is ended — the
17 compensated employee rate;
18 (b) in any other case — the rate the employee
19 would have received as payment for that leave
20 under an industrial instrument or contract of
21 employment (whichever provides for the higher
22 rate) at the time the leave is paid out.
23

24 **125. Heading to Part 4 Division 4 replaced**

25 Delete the heading to Part 4 Division 4 and insert:
26

27 **Division 4 — Paid bereavement leave**
28

1 **126. Section 27 amended**

2 In section 27(3) delete “Bereavement” and insert:

3

4 Paid bereavement

5

6 Note: The heading to amended section 27 is to read:

7

Entitlement to paid bereavement leave

8 **127. Section 27A inserted**

9 After section 27 insert:

10

11 **27A. Paid bereavement leave for compensated employee**

12 (1) This section applies to a compensated employee who
13 has a partial incapacity for work and is performing paid
14 work for the employee’s employer.

15 Note for this subsection:

16 See the *Workers Compensation and Injury Management*
17 Act 2023 section 48 in relation to an employee who has a
18 partial incapacity for work.

19 (2) On the death of a member of the employee’s family or
20 household, the employee is entitled to take paid
21 bereavement leave in accordance with section 27.

22 (3) The employee must be paid for that leave at the
23 compensated employee rate.

24

25 **128. Section 28 amended**

26 In section 28 delete “paid leave under section 27(1)” and insert:

27

28 paid bereavement leave under this Division

29

1 **129. Sections 30 and 31 replaced**

2 Delete sections 30 and 31 and insert:

3

4 **29. Application of Division**

5 This Division is subject to the *Workers Compensation*
6 *and Injury Management Act 2023* section 60.

7 **30. Employee entitled to be absent from work on public**
8 **holiday**

- 9 (1) An employee is entitled to be absent from work on a
10 day or part of a day that is a public holiday.
- 11 (2) However, an employer may request that an employee
12 work on a day or part of a day that is a public holiday if
13 the request is reasonable.
- 14 (3) If an employer makes a request, the employee may
15 refuse the request if —
- 16 (a) the request is not reasonable; or
17 (b) the refusal is reasonable.
- 18 (4) In determining whether a request or refusal is
19 reasonable, the following must be taken into
20 account —
- 21 (a) the nature and conduct of the employer’s
22 business or operations;
23 (b) the nature of the employee’s work;
24 (c) the employee’s personal circumstances,
25 including family responsibilities;
26 (d) whether the employee could reasonably expect
27 that the employer might request work on the
28 public holiday;

- 1 (e) whether the employee is entitled to receive
2 overtime payments, penalty rates or other
3 compensation (including compensation in the
4 form of an annualised salary) for, or a level of
5 remuneration that reflects an expectation of,
6 work on the public holiday;
- 7 (f) the type of employment of the employee (for
8 example, whether full-time, part-time, casual or
9 shift work);
- 10 (g) the amount of notice in advance of the public
11 holiday given —
- 12 (i) by the employer when making the
13 request; or
- 14 (ii) by the employee when refusing the
15 request.
- 16 (5) Subsection (4) does not limit the matters that may be
17 taken into account in determining whether a request or
18 refusal is reasonable.

19 **31. Employee entitled to be paid for public holiday**

- 20 (1) This section applies to an employee who is absent from
21 work on a day or part of a day that is a public holiday
22 in accordance with section 30, other than —
- 23 (a) a casual employee; or
24 (b) an employee who would not ordinarily work on
25 the public holiday; or
26 (c) an employee who is on unpaid leave on the
27 public holiday.
- 28 (2) The employee is entitled to be paid —
- 29 (a) as if the employee were required to work their
30 ordinary hours on the public holiday; and

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- 1 (b) at the rate the employee would have received as
2 payment for those hours under an industrial
3 instrument or contract of employment,
4 whichever provides for the higher rate.
- 5 (3) No penalty rate or allowance is required to be taken
6 into account in determining any rate of pay for the
7 purposes of subsection (2)(b).
- 8 (4) This section and section 30 do not require an employer
9 to pay a penalty rate for work done by an employee on
10 a public holiday.
- 11 **32. Substituted public holiday**
- 12 (1) An industrial instrument may provide for an employer
13 and employee to agree to substitute —
- 14 (a) another day for a day that is a public holiday; or
15 (b) part of another day for part of a day that is a
16 public holiday.
- 17 (2) An employer and an employee whose employment is
18 not governed by an industrial instrument may agree to
19 substitute —
- 20 (a) another day for a day that is a public holiday; or
21 (b) part of another day for part of a day that is a
22 public holiday.
- 23 (3) An agreement under subsection (2) must be —
- 24 (a) in writing; and
25 (b) signed by the employer and the employee.
- 26 (4) If another day or part of another day is substituted for a
27 public holiday —
- 28 (a) the substituted day or part of the day is taken to
29 be the public holiday; and

- 1 (b) the employee has the same entitlements and
2 obligations under this Division in relation to the
3 substituted day or part of the day as to the
4 public holiday.

5 **33. Employee taken not to be on paid annual leave or**
6 **paid personal leave on public holiday**

- 7 (1) This section applies if the period during which an
8 employee takes paid annual leave or paid personal
9 leave includes a public holiday that falls on a day the
10 employee would ordinarily have worked.
- 11 (2) The employee —
- 12 (a) is taken not to be on paid annual leave or paid
13 personal leave on that public holiday; and
- 14 (b) is entitled to be absent from work on that public
15 holiday; and
- 16 (c) is entitled to be paid for that public holiday in
17 accordance with section 31.
- 18

19 **130. Part 4 Division 6 deleted**

20 Delete Part 4 Division 6.

21 **131. Note for Part 4 Division 7 heading inserted**

22 At the beginning of Part 4 Division 7 insert:

23

24

Note for this Division:

25

26

27

28

The *Fair Work Act 2009* (Commonwealth) Part 6-3
Division 2A extends entitlements to paid family and
domestic violence leave to non-national system employees.

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1 **132. Section 39A replaced**

2 Delete section 39A and insert:

3

4 **39A. Term used: unpaid family and domestic violence**
5 **leave**

6 In this Division —

7 *unpaid family and domestic violence leave* means
8 leave required for reasons relating to family and
9 domestic violence that is unpaid leave.

10

11 **133. Part 4A inserted**

12 After section 39E insert:

13

14 **Part 4A — Flexible working arrangement**
15 **requests**

16 **39F. Employee may request flexible working**
17 **arrangement**

18 (1) If an employee would like to change their working
19 arrangements because any of the circumstances
20 referred to in subsection (2) apply to the employee, the
21 employee may make a request to the employer for a
22 change in working arrangements relating to those
23 circumstances (a *flexible working arrangement*
24 *request*).

25 (2) The circumstances are as follows —

- 26 (a) the employee is pregnant;
- 27 (b) the employee is the parent of, or has
28 responsibility for the care of, a child;

- 1 (c) the employee is a carer as defined in the *Carers*
2 *Recognition Act 2004* section 5;
- 3 (d) the employee has a disability;
- 4 (e) the employee is 55 years of age or older;
- 5 (f) the employee is experiencing family and
6 domestic violence;
- 7 (g) the employee provides care or support to a
8 member of the employee’s family or household
9 who requires care or support because the
10 member is experiencing family and domestic
11 violence.
- 12 (3) In subsection (2) —
13 **child** means a child who is of compulsory school age in
14 accordance with the *School Education Act 1999* or who
15 is younger than that age.
- 16 (4) A flexible working arrangement request may include
17 changes to —
- 18 (a) the employee’s hours of work, including
19 working on fewer days or for fewer hours, or
20 both; or
- 21 (b) the employee’s pattern of work, including
22 working on different days or at different times,
23 or both; or
- 24 (c) the location of the employee’s work.
- 25 (5) The employee is not entitled to make the request
26 unless —
- 27 (a) for an employee other than a casual
28 employee — immediately before making the
29 request, the employee has completed at least
30 12 months of continuous service with the
31 employer; or

- 1 (b) for a casual employee, the employee —
2 (i) immediately before making the request,
3 has been employed by the employer on
4 a regular and systematic basis for a
5 sequence of periods of employment
6 during a period of at least 12 months;
7 and
8 (ii) has a reasonable expectation of
9 continuing employment with the
10 employer on a regular and systematic
11 basis.

12 **39G. Formal requirements**

13 A flexible working arrangement request must be in
14 writing and set out the following details —

- 15 (a) the flexible working arrangement sought;
16 (b) the reasons for seeking that arrangement;
17 (c) which of the circumstances in section 39F(2)
18 apply to the employee.

19 **39H. Responding to flexible working arrangement**
20 **request**

- 21 (1) If an employee makes a flexible working arrangement
22 request, the employer must give the employee a written
23 response to the request within 21 days.
- 24 (2) The response must —
25 (a) state that the employer grants the request; or
26 (b) if, following discussions, the employer and the
27 employee agree to alternative changes to the
28 employee's working arrangements from those
29 set out in the request — set out the agreed
30 changes; or

- 1 (c) subject to subsection (3) — state that the
2 employer refuses the request and include the
3 matters required by section 39J.
- 4 (3) The employer may refuse the request only if —
- 5 (a) the employer has —
- 6 (i) discussed the request with the
7 employee; and
- 8 (ii) genuinely tried to reach an agreement
9 with the employee about making
10 changes to the employee’s working
11 arrangements to accommodate the
12 circumstances referred to in
13 section 39F(2);
- 14 and
- 15 (b) the employer and the employee have not
16 reached an agreement; and
- 17 (c) the employer has considered the consequences
18 of the refusal for the employee; and
- 19 (d) there are reasonable business grounds for
20 refusing the request.
- 21 (4) To avoid doubt, subsection (3)(a)(ii) does not require
22 the employer to agree to a flexible working
23 arrangement if the employer would have reasonable
24 business grounds for refusing the request.
- 25 (5) Despite subsection (3), the employer may refuse a
26 request if agreeing to the request would contravene a
27 provision of an industrial instrument which extends to
28 and binds the employer and employee.

1 **39I. Reasonable business grounds for refusing request**

2 For the purpose of section 39H(3)(d), reasonable
3 business grounds for refusing a flexible working
4 arrangement request include the following —

- 5 (a) the requested arrangement would be too costly
6 for the employer;
- 7 (b) there is no capacity to change the working
8 arrangements of other employees to
9 accommodate the requested arrangement;
- 10 (c) it would be impracticable to change the
11 working arrangements of other employees, or
12 recruit new employees, to accommodate the
13 requested arrangement;
- 14 (d) the requested arrangement would be likely to
15 result in a significant loss to the employer’s
16 efficiency or productivity;
- 17 (e) the requested arrangement would be likely to
18 have a significant negative impact on customer
19 service.

20 **39J. Employer must explain grounds for refusal**

21 If the employer refuses the request, the employer’s
22 written response under section 39H(1) must —

- 23 (a) include details of the reasons for the refusal;
24 and
- 25 (b) set out the employer’s particular business
26 grounds for refusing the request and explain
27 how those grounds apply to the request; and
- 28 (c) either —
- 29 (i) set out the changes in the employee’s
30 working arrangements (other than the
31 requested changes) that the employer
32 would be willing to make to

- 1 accommodate, to any extent, the
2 employee's circumstances referred to in
3 section 39F(2); or
4 (ii) state that there are no such changes;
5 and
6 (d) advise the employee of the process in
7 section 39K and the IR Act Part II Division 3A
8 Subdivision 2 in relation to a flexible working
9 arrangement dispute.

10 **39K. Employer and employee must attempt to resolve**
11 **dispute by discussions at workplace level**

- 12 (1) Before making a referral under the IR Act section 29 in
13 relation to a flexible working arrangement dispute, the
14 employer and employee must make reasonable
15 attempts to resolve the dispute by discussions at the
16 workplace level.

17 Note for this section:

18 The IR Act section 29(1) provides for the referral of an
19 industrial matter relating to a flexible working arrangement
20 dispute to the Commission.

- 21 (2) A party to a dispute may authorise a person or
22 organisation to support or represent the party in the
23 discussions.
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Part 4 — Other Acts amended

Division 1 — *Equal Opportunity Act 1984* amended

134. Act amended

This Division amends the *Equal Opportunity Act 1984*.

135. Section 83B inserted

After section 83A insert:

83B. Restrictions on multiple actions relating to sexual harassment in connection with work

(1) In this section —

particular allegation means a particular allegation by a person that the person was sexually harassed in connection with work as defined in the *Industrial Relations Act 1979* section 51BR(2).

(2) A complaint cannot be made under section 83 in relation to a particular allegation —

(a) if either of the following have been made under the *Industrial Relations Act 1979* in relation to the allegation —

(i) a referral under section 29; or

(ii) an application to the industrial magistrate’s court under section 83E to enforce a contravention of section 51BR(1) of that Act;

and

1 (b) unless the referral or application is withdrawn
2 or fails for want of jurisdiction.

3 (3) This section applies despite any other provision of this
4 Act.
5

6 **Division 2 — *Health Services Act 2016* amended**

7 **136. Act amended**

8 This Division amends the *Health Services Act 2016*.

9 **137. Section 160 replaced**

10 Delete section 160 and insert:
11

12 **160. Term used: lawful redeployment breach of**
13 **discipline**

14 In this Division —

15 *lawful redeployment breach of discipline* means a
16 breach of discipline arising out of disobedience to, or
17 disregard of, a lawful redeployment direction as
18 defined in section 171(2).
19

20 **138. Section 163 amended**

21 In section 163(3)(a) and (b) delete “section 173(2)” and insert:
22

23 lawful redeployment
24

1 **139. Section 165 amended**

2 In section 165(5)(a)(i) and (ii) and (c) delete “section 173(2)”
3 and insert:

4
5 lawful redeployment
6

7 **140. Section 166 amended**

8 In section 166(a) and (b) delete “section 173(2)” and insert:

9
10 lawful redeployment
11

12 **141. Part 11 Division 4 replaced**

13 Delete Part 11 Division 4 and insert:

14

15 **Division 4 — Industrial matters for purposes of**
16 ***Industrial Relations Act 1979***

17 **171. Certain decisions and findings are industrial**
18 **matters for purposes of *Industrial Relations***
19 ***Act 1979***

20 (1) Subject to section 118, each of the following is an
21 industrial matter for the purposes of the *Industrial*
22 *Relations Act 1979* —

23 (a) a decision under section 147, 148 or 164(1)(a)
24 to suspend an employee or former employee on
25 partial pay or without pay;

26 (b) a decision under section 150(1), 163(3)(b) or
27 166(b) to take disciplinary action in relation to
28 an employee or former employee;

- 1 (c) a decision under section 159(1)(b) or (c) in
2 relation to an employee or former employee;
- 3 (d) a finding mentioned in section 165(5)(a)(ii)
4 made in relation to an employee or former
5 employee;
- 6 (e) a decision under section 168(1) to terminate the
7 employment of an employee or former
8 employee;
- 9 (f) if proceedings have been taken under this Part
10 against an employee or former employee for a
11 suspected breach of discipline arising out of
12 alleged disobedience to, or disregard of, a
13 lawful redeployment direction —
- 14 (i) a finding mentioned in
15 section 163(3)(a), 165(5)(a)(i) or 166(a)
16 made in relation to the employee or
17 former employee; or
- 18 (ii) a decision under section 164(1)(a) to
19 suspend the employee or former
20 employee on partial pay or without pay.

21 Note for this section:

22 See the *Industrial Relations Act 1979* section 36AA and
23 Part II Division 2AA Subdivision 3 for the jurisdiction of the
24 Commission (as defined in the *Industrial Relations Act 1979*
25 section 7(1)) to hear and determine an industrial matter
26 mentioned in this section.

- 27 (2) In subsection (1) —
- 28 ***lawful redeployment direction*** means a direction
29 which is a lawful order for the purposes of
30 section 161(a) by virtue of section 174A.
31

1 **142. Section 174 amended**

2 In section 174(2):

3 (a) in paragraph (a) delete “173(2)” and insert:

4

5 174A

6

7 (b) delete paragraph (b) and insert:

8

9 (b) the reference in the PSM Act section 95(1)
10 definition of *section 94 decision* to “a lawful
11 redeployment direction” is to be read as “a
12 lawful redeployment direction as defined in the
13 *Health Services Act 2016* section 171(2)”.

14

15 **143. Section 174A inserted**

16 At the end of Part 12 insert:

17

18 **174A. Lawful directions under applied provisions**

19 (1) In this section —

20 *applied section*, in relation to a numbered section,
21 means the section of the PSM Act of that number as
22 applied under section 174;

23 *Industrial Commission* means the Commission as
24 defined in the *Industrial Relations Act 1979*
25 section 7(1).

- 1 (2) A direction referred to in applied section 94(2)(b)
2 or (3)(c)(i) is a lawful order for the purposes of
3 section 161(a) if —
4 (a) the direction is given to the employee
5 concerned in accordance with the relevant
6 regulations referred to in applied section 94;
7 and
8 (b) either —
9 (i) the direction is upheld by the Industrial
10 Commission on a referral under applied
11 section 95(2); or
12 (ii) the period referred to in applied
13 section 95(3) expired without the
14 direction being referred.
15 (3) This section does not limit the meaning of lawful order
16 in section 161(a).
17

18 **Division 3 — *Long Service Leave Act 1958* amended**

19 **144. Act amended**

20 This Division amends the *Long Service Leave Act 1958*.

21 **145. Section 4 amended**

- 22 (1) In section 4(1) at the end of the definition of *employee* insert:
23

24 Note for this definition:

25 See also the *Industrial Relations Act 1979* sections 7A
26 and 7B, which apply for the purposes of determining, for
27 this Act, whether an individual is an employee or a casual
28 employee of a person.
29

1 (2) In section 4(1) at the end of the definition of *employer* insert:

2

3

Note for this definition:

4

See also the *Industrial Relations Act 1979* section 7A,
which applies for the purposes of determining, for this Act,
whether a person is an employer of an individual.

5

6

7

8 **146. Section 11 amended**

9 Delete section 11(2) and insert:

10

11 (2) Jurisdiction granted under subsection (1) —

12

(a) does not limit —

13

(i) a person's right under the IR Act
section 44(7)(a)(i) or (iii) to apply to the
Commission in relation to a dispute
about an entitlement to long service
leave under this Act; or

14

15

16

17

18

(ii) the jurisdiction of the Commission
under the IR Act in relation to an
application made under
section 44(7)(a)(i) or (iii) of that Act;

19

20

21

22

and

23

24

(b) is otherwise exclusive of any other court except
where an appeal lies to that other court.

25

26

1 **Division 4 — *Public Sector Management Act 1994* amended**

2 **147. Act amended**

3 This Division amends the *Public Sector Management Act 1994*.

4 **148. Section 29 amended**

5 (1) In section 29(1)(h)(i) delete “1979 employer-employee
6 agreement under Part VID of the *Industrial Relations Act 1979*;
7 and” and insert:

8
9 *1979*; and

10
11 (2) After section 29(1)(h)(i) insert:

12
13 (ia) the requirements of an
14 employer-employee agreement under
15 the *Industrial Relations Act 1979* Part
16 VID; and
17

18 **149. Section 75A inserted**

19 At the beginning of Part 5 Division 1 insert:

20
21 **75A. Term used: lawful redeployment direction**

22 In this Part —

23 ***lawful redeployment direction*** means a direction
24 which is a lawful order for the purposes of
25 section 80(a) by virtue of section 94(4).
26

1 **150. Section 76 amended**

2 In section 76(3) delete “direction which is by virtue of
3 section 94(4) a lawful order for the purposes of section 80(a),”
4 and insert:

5

6 lawful redeployment direction,
7

8 **151. Section 78 replaced**

9 Delete section 78 and insert:
10

11 **78. Certain decisions and findings are industrial**
12 **matters for purposes of *Industrial Relations***
13 ***Act 1979***

14 Subject to section 52, each of the following is an
15 industrial matter for the purposes of the *Industrial*
16 *Relations Act 1979* —

- 17 (a) a decision made in relation to an employee or
18 former employee under section 79(3)(b) or (c)
19 or (4);
- 20 (b) a decision made under section 82 to suspend an
21 employee or former employee on partial pay or
22 without pay;
- 23 (c) a decision to take disciplinary action in relation
24 to an employee or former employee made under
25 section 82A(3)(b)(i), 88(b)(i) or 92(1);
- 26 (d) a finding made in relation to an employee or
27 former employee in the exercise of a power
28 under section 87(3)(a)(ii);
- 29 (e) if proceedings were taken under this Part
30 against an employee or former employee for a
31 suspected breach of discipline arising out of

- 1 alleged disobedience to, or disregard of, a
2 lawful redeployment direction —
- 3 (i) a decision made under section 82 to
4 suspend the employee or former
5 employee on partial pay or without pay;
6 or
7 (ii) a finding made in relation to the
8 employee or former employee referred
9 to in section 82A(3)(a), 87(3)(a)(i)
10 or 88(a).

11 Note for this section:
12 See the *Industrial Relations Act 1979* section 36AA and
13 Part II Division 2AA Subdivision 3 for the Industrial
14 Commission’s jurisdiction to hear and determine an
15 industrial matter mentioned in this section.
16

17 **152. Section 80A amended**

- 18 (1) In section 80A delete the definition of *section 94 breach of*
19 *discipline*.
- 20 (2) In section 80A insert in alphabetical order:

21
22 *redemption direction breach of discipline* means a
23 breach of discipline arising out of disobedience to, or
24 disregard of, a lawful redeployment direction;
25

26 **153. Section 95 amended**

27 In section 95(1) in the definition of *section 94 decision* delete
28 “lawful order by virtue of section 94(4).” and insert:

29
30 lawful redeployment direction).
31

1 **154. Schedule 1 amended**

2 In Schedule 1 delete item 13.

3 **155. Various references to “section 94” in relation to breaches of**
4 **discipline amended**

5 In the provisions listed in the Table delete “section 94” and
6 insert:

7

8 redeployment direction

9

10

Table

s. 82A(3)(a) and (b)	s. 87(3)(a)(i) and (c)
s. 88(a)	s. 89(1) and (2)(a)

11

Division 5 — Other consequential amendments

12 **156. Constitution Acts Amendment Act 1899 amended**

13 (1) This section amends the *Constitution Acts Amendment Act 1899*.

14 (2) In Schedule V Part 1 Division 1 delete the items for:

15 Public service arbitrator

16 Chairman, or deputy of the chairman, of the Railways Classification
17 Board

18 (3) Delete Schedule V Part 2 Division 1.

19 (4) Delete the heading to Schedule V Part 2 Division 2.

1 **157. *Gold Corporation Act 1987* amended**

2 (1) This section amends the *Gold Corporation Act 1987*.

3 (2) In section 52(3) delete “Division 2 of Part IIA of the *Industrial*
4 *Relations Act 1979*.” and insert:

5

6 the *Industrial Relations Act 1979* Part II Division 2AA.

7

8 (3) In section 68(4) delete “Division 2 of Part IIA of the *Industrial*
9 *Relations Act 1979*.” and insert:

10

11 the *Industrial Relations Act 1979* Part II Division 2AA.

12

13 **158. *Owner-Drivers (Contracts and Disputes) Act 2007* amended**

14 (1) This section amends the *Owner-Drivers (Contracts and*
15 *Disputes) Act 2007*.

16 (2) In section 34B(3)(b)(i) delete “an authority issued under the
17 IR Act section 49J(1)” and insert:

18

19 a right of entry permit as defined in the IR Act section 49G(1)

20

21 (3) In section 34C(1):

22 (a) delete “an authority or” and insert:

23

24 a

25

26 (b) delete “authority or” (2nd occurrence).

Industrial Relations Legislation Amendment Bill 2024

Part 4 Other Acts amended

Division 5 Other consequential amendments

s. 159

1 (4) Delete section 34D(1)(b)(i) and (3)(c)(i) and insert:

2

3 (i) a right of entry permit as defined in the
4 IR Act section 49G(1); or

5

6 **159. *University of Notre Dame Australia Act 1989* amended**

7 (1) This section amends the *University of Notre Dame Australia*
8 *Act 1989*.

9 (2) In section 25(3)(b) delete “Division 2 of Part IIA of the
10 *Industrial Relations Act 1979*.” and insert:

11

12 the *Industrial Relations Act 1979* Part II Division 2AA.

13

14 **160. *Work Health and Safety Act 2020* amended**

15 (1) This section amends the *Work Health and Safety Act 2020*.

16 (2) In section 4 in the definition of ***IR entry authority*** delete
17 paragraph (a) and insert:

18

19 (a) a right of entry permit as defined in the
20 *Industrial Relations Act 1979* section 49G(1);

21 or

22

=====