EXPLANATORY MEMORANDUM

INDUSTRIAL AND RELATED LEGISLATION AMENDMENT BILL 2007

INTRODUCTION

The *Industrial and Related Legislation Amendment Bill 2007* (the Bill) will amend the following legislation:

(a) the *Industrial Relations Act 1979*, mainly to expand the jurisdiction of the Western Australian Industrial Relations Commission (WAIRC) to deal with denied contractual benefits and to hold joint proceedings with other State industrial relations tribunals;

(b) the *Magistrates Court (Civil Proceedings) Act 2004*, to improve employees' access to the Magistrates Court for an alleged breach of their contract of employment;

(c) the *Children and Community Services Act 2004*, mainly to strengthen protections for children who are either employed by constitutional corporations or engaged as independent contractors;

(d) the *Occupational Safety and Health Act 1984*, to enhance protections for workers against discrimination and workplace bullying;

(e) the *Workers' Compensation and Injury Management Act 1981*, to enhance protections for injured workers who are dismissed within a specified period of becoming injured; and

(f) the *Minimum Conditions of Employment Act 1993* and the *Public Sector Management Act 1994*, to make consequential amendments.

PART 1 OF THE BILL – SHORT TITLE AND COMMENCEMENT

Clause 1 of the Bill

Clause 1 of the Bill provides that the short title of the new legislation will be the *Industrial and Related Legislation Amendment Act 2007* (the new Act).

Clause 2 of the Bill

Clause 2 of the Bill provides that:

(a) Part 1 of the new Act will commence on the day of Royal Assent; and

(b) the rest of the new Act will commence on a day or days fixed by proclamation.

PART 2 OF THE BILL – AMENDMENTS TO INDUSTRIAL RELATIONS ACT 1979

Clause 3 of the Bill

Clause 3 provides that Part 2 of the Bill will amend the *Industrial Relations Act 1979* (IR Act). The are five main objectives of the amendments, namely to:

(a) expand the scope of denied contractual benefits claims that the WAIRC may deal with, beyond industrial matters to any express or implied condition of the employment contract, including implied minimum conditions of employment in some circumstances;

(b) enable the WAIRC to participate in joint proceedings with other tribunals in relation to General Order matters, including State Wage order matters;

(c) remove the salary cap for unfair dismissal and denied contractual benefits claims;

(d) amend publication requirements relating to area and scope provisions in section 29A of the IR Act;

(e) ensure the validity of appointments under the IR Act, including appointments of industrial inspectors, the clerk of the Western Australian Industrial Appeal Court, the Registrar and deputy registrars of the WAIRC.

Clause 4 of the Bill

Clause 4 of the Bill will amend section 6 of the IR Act. The principal objects of the IR Act will be amended to include new paragraph (cb), "to provide remedies for breaches of contracts of employment".

This reflects the expanded denied contractual benefits jurisdiction which will enable remedies to be sought in respect of breaches of any term of an employment contract.

Clause 5 of the Bill

Clause 5 of the Bill will amend section 7 of the IR Act. Clause 5(1) of the Bill contains amendments to section 7(1) of the IR Act that arise from the amendments at clauses 23, 24, 26 and 27 of the Bill which ensure the validity of appointments under the IR Act. The amended definitions at clause 5(1)(a) of the Bill of "deputy registrar", "industrial inspector" and "Registrar" and the new definitions at clause 5(1)(b) arise from those amendments.

Clause 5(2) of the Bill will amend section 7(7) of the IR Act and is one of a number of amendments arising from the repeal of section 29(1)(b)(ii) of the IR Act and its replacement with new section 28A, which provides the expanded denied contractual benefits jurisdiction under the IR Act.

Clause 6 of the Bill
Clause 6 of the Bill will amend section 8(2)(d) of the IR Act. Section 8(2)(d) of the IR Act provides that the WAIRC shall consist of "such number of other commissioners as may, from time to time, be necessary for the purposes of this Act". The amendment reflects the range of new roles for the WAIRC under legislation other than the IR Act and amends section 8(2)(d) so that the WAIRC shall consist of (inter alia) "such number of other commissioners as may, from time to time, be necessary for the purposes of this Act and any other Act under which the Commission exercises jurisdiction".

Clause 7 of the Bill
Clause 7 of the Bill will amend section 14(2) of the IR Act. This amendment also reflects the range of new roles for the WAIRC under legislation other than the IR Act. The subsection is amended from "… except as otherwise provided in this Act, he [a commissioner] has and may exercise while so sitting or acting, all the powers and jurisdiction of the Commission" to "… except as otherwise provided in this or any other Act, he [a commissioner] has and may exercise while so sitting or acting, all the powers and jurisdiction of the Commission".

Clause 8 of the Bill
Clause 8 of the Bill will amend section 16 of the IR Act. Clause 8(1) will repeal section 16(1ab) of the IR Act which relates to the powers of the Chief Commissioner in allocating and reallocating work, assigning or appointing commissioners for the purposes of constituting the commission or altering the constitution of the WAIRC.

Section 16(1ab) will be replaced with a new subsection which includes the existing powers in section 16(1ab) and adds an additional power pursuant to which the Chief Commissioner may "assign commissioners for the purpose of acting as mediators under the *Magistrates Court (Civil Proceedings) Act 2004* Part 4A." The new provision ensures that the Chief Commissioner has the requisite powers to assign commissioners to mediate employment-related claims. This amendment is consequential to the amendments to the *Magistrates Court (Civil Proceedings) Act 2004* contained in Part 3 of the Bill.

Clause 8(2) of the Bill will amend section 16(2)(b) of the IR Act which requires the Chief Commissioner to make a written report to the Minister for Employment Protection, before 1 October in each year, relating to the operation of the IR Act in the preceding financial year. The amendment to section 16(2)(b) adds a new requirement to report on the operation of other legislation under which the WAIRC exercises jurisdiction.

Clause 9 of the Bill
Clause 9(1) of the Bill will amend section 25(1) of the IR Act. Section 25(1) gives the Chief Commissioner the capacity, in allocating the work of the WAIRC, to allocate matters to a commissioner, directly to the Commission in Court Session and to revoke an allocation and reallocate a matter to a commissioner of the Commission in Court Session. The amendment will ensure that the Chief Commissioner has the same capacity in respect of work of the WAIRC under any other Act.

Clause 9(2) of the Bill will amend section 25(2)(a) of the IR Act. The amendment arises as a consequence of the amendment to section 25(1) of the IR Act by clause 9(1) of the Bill. The amendment provides that the operation of section 25(1) has effect subject to any other Act under which the WAIRC is to be or may be constituted.

Clause 9(3) of the Bill will give the Chief Commissioner the discretion to allocate a section 28A claim directly to the WAIRC Full Bench, with the consent of the President, if the Chief Commissioner is of the opinion that the claim under section 28A involves an important principle of law or complex facts or issues.

Clause 10 of the Bill

Clause 10 of the Bill will expand the range of denied contractual benefits claims that may be made to the WAIRC.

New section 28A of the IR Act

New section 28A of the IR Act will provide the WAIRC with jurisdiction in respect of denied contractual benefits.

New section 28A(1) will define a contractual benefit for the purposes of section 28A. A contractual benefit is defined to be an entitlement under a contract of employment whether as included in the contract or as implied by the *Minimum Conditions of Employment Act 1993* (MCE Act) or as otherwise implied. Presently, claims for denied contractual benefits are confined to claims that constitute industrial matters. The definition in the Bill expands the matters capable of being the subject of a contractual benefits claim beyond industrial matters.

New section 28A(2) will provide that a claim that an employee has not been allowed a contractual benefit may be referred to the WAIRC by an individual employee or a relevant organisation or association.

New section 28A(3) will provide that a claim in respect of a benefit implied into the contract of employment by section 5(1)(c) of the MCE Act (denied MCE benefit) may only be the subject of a claim under new section 28A if there is another contractual benefit that is not a denied MCE benefit. Denied MCE benefits will be referable to the WAIRC under new section 28A to avoid duplication of proceedings in the Industrial Magistrates Court and the WAIRC where there are benefits of both types being claimed. To prevent that duplication, where there is a denied MCE benefit and at least one other denied contractual benefit, both benefits will be referable to the WAIRC in a single claim pursuant to new section 28A of the IR Act.

New section 28A(4) will ensure that where the WAIRC is dealing with a contractual benefits claim that is not an industrial matter, the WAIRC may treat the claim as if it were an industrial matter and any reference in the IR Act to an industrial matter is taken to include a reference to a section 28A claim. This provision will ensure that the powers and functions of the WAIRC are not limited or restricted where a contractual benefit is not an industrial matter.

Claims are to be dealt with as if they are industrial matters, whether they are or not.

New section 28A(5) will clarify the powers of the WAIRC in dealing with a denied contractual benefits claim. Among other things, the WAIRC will be able to:

(a) hear and determine any set-off and counterclaim by an employer;

(b) make orders for the payment of a sum of money found to be owing or by way of compensation or restitution;

(c) make an order in the nature of an order for specific performance of the relevant contract;

(d) order a party to do or refrain from doing something.

It is appropriate that the WAIRC be able to hear and determine any set-off or counterclaim. In the absence of such a power, the employer would be required to institute separate civil proceedings that are in effect a counterclaim to a denied contractual benefits claim. It is desirable that the WAIRC deal with those elements of the counterclaim or set-off in the same proceedings as the denied contractual benefits claim.

The other powers of the WAIRC provided in new section 28A(5) will clarify the remedies the WAIRC may order in determining a denied contractual benefits claim under new section 28A.

New section 28A(6) will provide that new section 28A of the IR Act applies to contracts entered into before or after section 28A commences.

New section 28A(7) will provide that claims in respect of non-industrial matters (that is, claims in respect of the expanded jurisdiction) can only be referred if the refusal or failure to allow the contractual benefit that is not an industrial matter occurred after section 28A commences. The capacity to refer a claim in respect of a non-industrial matter is not retrospective, that is, it will not apply to benefits denied before the relevant provisions of the Bill commence.

New section 28A(8) will provide a transitional arrangement for a claim referred but not finalised before the repeal of section 29(1)(b)(ii) of the IR Act. A claim referred under section 29(1)(b)(ii) will be able to be dealt with as if it were a claim under new section 28A.

New section 28B of the IR Act

New section 28B(1) will prevent duplication of proceedings in multiple jurisdictions in respect of the same denied contractual benefit where there is concurrent jurisdiction to make a claim in respect of the same subject matter. This is achieved by precluding the WAIRC from dealing with a claim if the matter is the subject of other proceedings or has been settled as a result of other proceedings. For example, proceedings in respect of the same denied

contractual benefit might be able to be made in the WAIRC, the Industrial Magistrates Court, the Magistrates Court or other civil courts. Multiple claims should not have to be defended simultaneously.

New section 28B(2) will provide the WAIRC with a discretion to take no action on a claim or suspend or discontinue any proceeding on the claim in certain circumstances. The circumstances in which the WAIRC may do so are where the WAIRC is of the opinion that the claim should be resolved in some other manner or that there is some other reasonable cause justifying a decision to exercise that discretion.

Clause 11 of the Bill

Clause 11(1) of the Bill will delete section 29(1)(b)(ii) of the IR Act and consequentially amend the numbering of paragraph (i). Section 29(1)(b)(ii) is replaced by new section 28A which relates to the referral of claims for denied contractual benefits.

Clause 11(2) and (3) of the Bill will make consequential amendments to references to section 29(1)(b)(i) of the IR Act, arising from its renumbering as section 29(1)(b).

Clause 12 of the Bill

Clause 12 of the Bill will repeal section 29AA(3), (4) and (5) of the IR Act thereby removing the salary cap that applies to unfair dismissal and denied contractual benefits claims where an industrial instrument does not apply to the employee.

Since the decision of the WAIRC Full Bench in *Thomas Quinn v Kalgoorlie Consolidated Gold Mines Pty Ltd*[1] where it was held that an "industrial instrument" for the purposes of section 29AA includes a General Order of the WAIRC, the salary cap has had limited effect. For example, given a General Order such as the General Order on Termination, Change and Redundancy applies to the vast majority of employees in Western Australia, the salary cap is not applicable to any of those employees. This effectively renders the salary cap inoperative. Consequently, the salary cap is being removed.

Clause 13 of the Bill

Clause 13 of the Bill addresses an issue arising from the uncertainty of the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices Act) and the difficulty of ascertaining whether an employer is a constitutional corporation.

The implications are particularly apparent in the context of seeking redress for denied contractual benefits. On the enactment of the Bill and the *Contractual Benefits Bill 2007*, different avenues will exist for pursuing claims depending on whether the employer is a constitutional corporation or not.

[1] 2006 WAIRC 04262.

Whether an employer is a constitutional corporation is often a complex legal question. If a claim is incorrectly filed, new section 29AB of the IR Act will permit the transfer of the claim to the appropriate jurisdiction.

For example, an employee who lodges a claim under the IR Act on the mistaken basis that the employer is not a constitutional corporation will be able to have the claim transferred to the jurisdiction under the proposed *Contractual Benefits Act 2007*.

A claim that is transferred will then be dealt with as if it had been referred under the other written law and any proceedings were proceedings under the other law.

Clause 14 of the Bill

Clause 14 of the Bill will repeal and replace section 29A(2a) of the IR Act. Section 29A(2) requires that the area and scope provisions of a proposed award or industrial agreement be published before the WAIRC may hear the claim or application. Similarly, details of any proposed variation to the area and scope provisions of an existing award or industrial agreement must be published before the WAIRC can hear the claim or application.

Existing section 29A(2a) of the IR Act allows the Chief Commissioner to waive the publication requirements only where the area and scope provisions are identical to the previous award or industrial agreement, as the case may be.

The new section 29A(2a) will authorise the Chief Commissioner to waive the publication requirements in any case as he thinks fit. This might include, for example, circumstances where the area and scope of an award or industrial agreement are substantially the same but not identical.

Clause 15 of the Bill

The amendment in clause 15 of the Bill arises from the repeal of section 29(1)(b)(ii) of the IR Act and its replacement with new section 28A. Section 31 of the IR Act relates to the representation of parties in WAIRC proceedings. Section 31(1)(c)(ii) permits representation by a legal practitioner for proceedings in respect of a claim under section 29(1)(b). The change for denied contractual benefits claims from section 29(1)(b) to the new section 28A requires the inclusion of section 28A claims as a proceeding in respect of which a claimant may appear by a legal practitioner.

Clause 16 of the Bill

The amendments to section 50A of the IR Act contained in clause 16 of the Bill arise from the amendments allowing for the WAIRC to participate in joint proceedings with other industrial tribunals in clauses 17-19 of the Bill.

If the WAIRC participates in a joint proceeding in relation to a State Wage case, it is unlikely that the requirement in section 50A(1) to make a State Wage order by 1 July in each year would be able to be complied with. It might also be considered desirable to coordinate the dates on which the various State Wage orders take effect. The amendments will allow the WAIRC the flexibility

it requires to participate in joint proceedings and make orders consistent with the outcomes of joint proceedings.

The amendments to section 50A(1) and (5) will require a State Wage order to be made each calendar year, rather than by 1 July, and the State Wage order will take effect from the day specified in the order or in the absence of a specified day, the day the order is published.

Clause 17 of the Bill

Clause 17 of the Bill will repeal and replace section 80ZF, which contains definitions of terms used in Part IIC of the IR Act.

The definition of "Australian Commission" in existing section 80ZF will be replicated in the replacement section 80ZF.

The definition of "corresponding authority" will be removed from 80ZI(3) and its terms replicated in new section 80ZF.

"General Order" is defined to mean a General Order under Part II Division 3. That definition includes a General Order under section 50 or a State Wage order under section 50A and other General Orders under that Division (sections 51A and 51B).

Clause 18 of the Bill

Clause 18 of the Bill will insert a new section 80ZGA into the IR Act. Proposed section 80ZGA allows for the Chief Commissioner and a corresponding authority of a State or Territory to participate in proceedings in joint session where the Chief Commissioner considers it appropriate to deal with matters relating to a proposed General Order in joint session. The corresponding authority must agree to the proceedings in joint session.

New section 80ZGA(2) will allow the Chief Commissioner or another member of the WAIRC authorised by the Chief Commissioner to participate in proceedings in joint session. When participating in proceedings in joint session, the Chief Commissioner or authorised member of the WAIRC may:

(a) hear and receive evidence jointly with the corresponding authority;

(b) confer with the corresponding authority about the proceedings and decision to be made;

(c) exercise in the presence of the corresponding authority, parties and witnesses, any of the powers the Commission in Court Session may exercise in proceedings relating to a General Order. However, the Chief Commissioner or authorised member of the WAIRC may not exercise the power to make a General Order.

New section 80ZGA(3) will provide that if, after the commencement of proceedings in joint session, the Chief Commissioner decides the proceedings should not be held in joint session, the commissioner participating must stop

participating and the proceedings may continue before the Commission in Court Session.

New section 80ZGA(4)-(7) will provide how the outcomes of joint proceedings are to be implemented.

First, the commissioner who participates in proceedings is required to report, orally or in writing, any results of the joint session to the Commission in Court Session. Then the Commission in Court Session may take all or any part of that report into account in making a General Order.

New section 80ZGA(7) will provide that the Commission in Court Session is not required to notify the parties of the report or its contents. If the Commission in Court Session is satisfied that the parties were given an opportunity to be heard on the matters and information in the report, then the parties do not have to be given a further opportunity to be heard. This will balance the right for parties to be heard on matters that will be taken into account in making General Orders with the desirability of ensuring proceedings are not unnecessarily prolonged. New section 80ZGA(7) will qualify the obligation in section 26(3) of the IR Act relating to notification and affording parties an opportunity to be heard.

Clause 19 of the Bill
Clause 19 of the Bill will repeal section 80ZI(3) of the IR Act. Section 80ZI(3) has been included in the definitions in section 80ZF by clause 17 of the Bill (see above).

Clause 20 of the Bill
Clause 20 of the Bill will repeal and replace section 81AA of the IR Act, which relates to the jurisdiction of the Industrial Magistrates Court. Section 81AA provides that in addition to the jurisdiction under the IR Act, the Industrial Magistrates Court has the jurisdiction conferred in it by Part IV and section 36 of the *Long Service Leave Act 1958* and section 196(2) of the *Children and Community Services Act 2004*.

The amendment to section 81AA removes the list of other Acts pursuant to which the Industrial Magistrates Court has jurisdiction and provides that the Industrial Magistrates Court has the jurisdiction conferred on it by or under any other Act, in addition to its jurisdiction under the IR Act.

Clause 21 of the Bill
Clause 21 of the Bill will amend section 81CA of the IR Act to include in the meaning of "general jurisdiction" of the Industrial Magistrates Court, the jurisdiction under new section 84AO of the *Workers' Compensation and Injury Management Act 1981*. This is a consequential amendment arising from the inclusion in the *Workers' Compensation and Injury Management Act 1981* of provisions for enforcement of reinstatement orders and compensation orders in the Industrial Magistrates Court.

Clause 22 of the Bill

Section 83E of the IR Act relates to the contravention of civil penalty provisions. Section 83E(6) provides by whom an application for an order relating to contravention of a civil penalty provision may be made. An application may be made by a person directly affected by the contravention or his or her representative (if applicable); an organisation or association of which a person directly affected is a member; the Registrar or a deputy registrar; or an industrial inspector.

Section 83E(6a) excludes the Registrar or a deputy registrar making an application in accordance with subsection (6) in the case of certain contraventions. Already, the Registrar and deputy registrar are precluded from making applications in respect of contravention of certain provisions of the MCE Act and the *Long Service Leave Act 1958*.

Clause 22 of the Bill will add to the contraventions in respect of which a Registrar or deputy registrar cannot make an application:

(a) contraventions of the *Children and Community Services Act 2004* sections 200(1), 202, 203(2), 203(4), 204(2) and 228(2);

(b) contraventions of the *Workers' Compensation and Injury Management Act 1981* sections 84AA(1) and 84AB(1).

Clauses 23, 24, 26 and 27 of the Bill

The amendments in clauses 23, 24, 26 and 27 of the Bill will ensure the validity of appointments under the IR Act, including appointments of industrial inspectors, the Registrar and deputy registrars. The new and amended definitions in clause 5(1) of the Bill (which amends section 7(1) of the IR Act) relate to the amendments contained in these clauses. The amendments in these clauses arise from a deficiency identified in a decision of the Industrial Magistrates Court of Western Australia. In that decision delivered 23 May 2007[2], Cicchini I.M. questioned the validity of the process used to appoint industrial inspectors of the Department of Consumer and Employment Protection (DOCEP). The question was not conclusively determined in that decision.

Section 98 of the IR Act presently provides that industrial inspectors "*may be appointed under and subject to Part 3 of the Public Sector Management Act 1994*". The wording of this section poses three problems in that it does not:

(a) identify who can appoint industrial inspectors;

(b) explain the relationship between the appointment of industrial inspectors and the *Public Sector Management Act 1994* (PSMA); and

[2] *Milward v Melrose Farm Pty Ltd T/As Milesaway Tours* M99 of 2006 and *Milward v C.A. Miles and R.G. Miles T/As Milesaway Tours* M15 of 2007.

(c) define the meaning of "appoint", which is distinct from a transfer pursuant to the PSMA.

The terminology causing the deficiency is replicated in other provisions relating to appointments in the IR Act.

Clause 23 of the Bill

Clause 23 of the Bill will amend section 85 of the IR Act. Section 85(7) of the IR Act relates to the appointment of the clerk of the Western Australian Industrial Appeal Court (the Court). Section 85(7) currently provides that "There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a clerk of the court and such other officers as are necessary for the proper functioning of the Court, and each of them may hold the office to which they are so appointed in conjunction with any other office under that Act."

That provision is repealed and replaced with three subsections which provide that the chief executive officer of the Registrar's Department is to be the clerk of the Court unless the chief executive officer designates another Registrar's Department officer to be the clerk of the Court (proposed section 85(7) and (9) of the IR Act).

Proposed section 85(8) of the IR Act will provide that section 32(1) of the PSMA does not apply to the performance of functions of the clerk of the Court by the chief executive officer of the Registrar's Department. Section 32(1) of the PSMA generally requires a chief executive officer to comply with any lawful directions or instructions given by the responsible authority of his or her department or organisation. This provision removes the potential for conflict between the obligations on the chief executive officer as chief executive officer and as clerk of the Court that might arise if section 32(1) of the PSMA were to apply to performance of functions of the clerk of the Court.

Clause 24 of the Bill

Clause 24(1) of the Bill will repeal section 93(1) of the IR Act which provides for the appointment of the Registrar and deputy registrars and other officers. Section 93(1) will be replaced with five new subsections which will provide the following:

(a) the chief executive officer of the Registrar's Department is the Registrar (proposed subsection (1)) subject to proposed subsection (1ab) which allows the chief executive officer of the Registrar's Department to designate a Registrar's Department officer to be the Registrar in consultation with the Chief Commissioner;

(b) where the chief executive officer of the Registrar's Department is the Registrar, section 32(1) of the PSMA (requiring chief executive officers to comply with lawful directions or instructions given by the responsible authority of his or her department or organisation) does not apply to the performance of functions of the Registrar. This provision avoids potential conflict between the role as chief executive officer of the

Registrar's Department (which is subject to direction of the Minister) and the role as Registrar (which is subject to direction by the WAIRC under section 93(2) of the IR Act);

(c) the Registrar may designate as many Registrar's Department officers to be deputy registrars as are necessary for the purposes of the IR Act (subsections (1ac) and (1ad)).

Clause 24(2) of the Bill will amend section 93(1a) of the IR Act which relates to the appointment of associates by the Minister on the recommendation of the Chief Commissioner. Presently, section 93(1a) provides that associates shall not be "appointed under and subject to Part 3 of the *Public Sector Management Act 1994*". The amendment deletes that phrase and replaces it with "public service officers". This is a consequential amendment arising from the removal of all references to appointment under and subject to Part 3 of the PSMA.

Clause 24(3) will clarify the functions of the Registrar and the chief executive officer of the Registrar's Department where both roles are performed by the same person. It provides that section 93(2) of the IR Act, "The duties of officers of the Commission shall be as prescribed and as directed by the Commission", applies despite the PSMA, however nothing in section 93(2) affects the functions of the Registrar as chief executive officer of the Registrar's Department. This provision ensures the roles and their separate functions are discrete. The PSMA will apply to the functions of the role of chief executive officer of the Registrar's Department.

Clause 25 of the Bill

Clause 25 of the Bill will make consequential amendments to section 96 of the IR Act arising from the repeal of section 29(1)(b)(ii) and the introduction of new section 28A.

Presently, section 96 allows for regulations to provide for the delegation to a Registrar of all or any of the functions of the WAIRC in relation to a claim referred to in section 29(1)(b), amongst other matters. Regulation 64 of the *Industrial Relations Commission Regulations 2005* is made pursuant to section 96.

New section 96(2)(ab) will enable the regulations to provide for the delegation to a Registrar of all or any of the functions of the WAIRC in relation to a claim referred to in section 28A or a claim in relation to a contractual benefit under another written law (for example, the *Contractual Benefits Act 2007*).

Existing section 96(3)(b) of the IR Act provides that the powers of the WAIRC to make an order in respect of a denied contractual benefit cannot be delegated to a Registrar. Proposed replacement paragraph (3)(b) will provide that the powers of the WAIRC to make an order under the IR Act or another written law in relation to a contractual benefit cannot be delegated to a Registrar.

Clause 26 of the Bill
Clause 26 of the Bill will amend section 98 of the IR Act. Section 98(1) of the IR Act relates to the appointment of industrial inspectors. Given the questions that have arisen in relation to the validity of appointments under that section, section 98(1) will be repealed and replaced with new provisions which provide:

(a) the Minister may designate a departmental officer (that is, an officer of DOCEP) to be an industrial inspector and there are to be as many industrial inspectors as necessary to perform the functions conferred by the IR Act or any other written law;

(b) a person ceases to be an industrial inspector if the designation is revoked or ceases to have effect (see new section 98C(2) and (4) of the IR Act for provisions relating to revocation and when designations cease to have effect).

Clause 27 of the Bill
Clause 27 of the Bill will insert new sections 98A, 98B and 98C into the IR Act.

New section 98A of the IR Act
New section 98A relates to identity cards for industrial inspectors. New section 98A(1) will require that every industrial inspector is to be provided with an identity card signed by the Minister, the chief executive officer of DOCEP (CEO) or a departmental officer authorised by the CEO to do so.

New section 98A(2) will require an industrial inspector to produce the identity card where requested and the industrial inspector has performed or is about to perform a function of an industrial inspector.

New section 98A(3) will provide that an identity card is evidence in a court of the appointment as industrial inspector and any other matter specified on the card.

New section 98A(4) will require an identity card to be returned if the designation as industrial officer is revoked or ceases to have effect (see new section 98C(2) and (4) of the IR Act). The identity card must be returned to the CEO or a departmental officer (of DOCEP) authorised by the CEO to receive it.

New section 98B of the IR Act
New section 98B(1) will provide that a person who is seconded to DOCEP or the Registrar's Department is taken to be employed for the purposes of this section.

New section 98B(2) will provide that as many public service officers are to be employed in DOCEP as are necessary for the purposes of the IR Act.

New section 98B(3) will provide that as many public officers are to be employed in the Registrar's Department as are necessary for the performance of the Court's functions, the performance of the WAIRC's functions and otherwise for the purposes of the IR Act.

New section 98C of the IR Act

New section 98C is expressed to apply to a designation of a person to be clerk of the Court (under new section 85(9) of the IR Act), to be the Registrar (under new section 93(1ab) of the IR Act), to be a deputy registrar (under new section 93(1ac) of the IR Act) and to be an industrial inspector (under amended section 98(1) of the IR Act).

New section 98C(2) will provide that the power to make a designation includes a power to revoke a designation previously made or to designate another person to perform the functions when it is impractical for the designated person to perform the functions.

New section 98C(3) will provide that a designation of clerk of the Court, Registrar or deputy registrar ceases to have effect if the person designated ceases to be a Registrar's Department officer.

New section 98C(4) will provide that a designation of industrial inspector ceases to have effect if the person designated ceases to be an officer of DOCEP.

New section 98C(5) will allow for the power to make a designation by the Minister, Registrar or the chief executive officer of the Registrar's Department to be delegated to another person.

New section 98C(6) will require that a designation, revocation of a designation or a delegation of the power to make a designation must be in writing.

Clause 28 of the Bill

Clause 28(1) of the Bill will amend section 113(1)(d)(ii) of the IR Act to provide that regulations may be made under section 113 regulating the practice and procedure to be followed in relation to the referral, bringing, hearing and determination of matters, applications, claims and appeals under the *Children and Community Services Act 2004* and the *Workers' Compensation and Injury Management Act 1981*.

Clause 28(2) of the Bill will amend section 113(3) of the IR Act to provide that regulations may be made by the Governor for various purposes relating to the Industrial Magistrates Court. As the Industrial Magistrates Court has a range of powers and functions under other Acts, the amendment provides that regulations may be made in relation to its powers and jurisdiction under the IR Act or another written law.

PART 3 OF THE BILL – AMENDMENTS TO MAGISTRATES COURT (CIVIL PROCEEDINGS) ACT 2004

Clause 29 of the Bill

Clause 29 provides that Part 3 of the Bill will amend the *Magistrates Court (Civil Proceedings) Act 2004* (MCCP Act). The primary objective of Part 3 is to improve employees' access to the Magistrates Court for an alleged breach of their contract of employment by their employer (an employment-related claim).

Employment-related claims will be subject to the Magistrates Court's jurisdictional limit of $50,000 (to be increased to $75,000 on 1 January 2009).

Clause 30 of the Bill
Clause 30 of the Bill will insert relevant definitions into section 3(1) of the MCCP Act.

Clause 31 of the Bill
Clause 31 of the Bill will amend section 23 of the MCCP Act so that the usual mediation procedures under the MCCP Act do not apply to employment-related claims. Rather, mediation of employment-related claims will be dealt with under new Part 4A Division 2 of the MCCP Act.

Clause 32 of the Bill
Clause 32 of the Bill will amend section 26(1) of the MCCP Act by deleting the definition of "general procedure". This term will instead be defined in section 3(1) of the MCCP Act.

Clause 33 of the Bill
Clause 33 of the Bill will insert new Part 4A into the MCCP Act to deal specifically with employment-related claims.

New section 33A of the MCCP Act
New section 33A(1) will define terms for the purposes of new Part 4A of the MCCP Act.

New section 33A(2) clarifies that new Part 4A will extend to former employers and employees.

New section 33A(3) provides that new Part 4A will apply to persons in the entertainment industry in certain circumstances, regardless of whether they are employed under a contract of employment. For example, they could be engaged as an independent contractor under a contract for services.

New section 33B of the MCCP Act
New section 33B(1) will clarify the scope of new Part 4A of the MCCP Act. New Part 4A will apply to claims by employees alleging a breach of their contract of employment by their employer. The alleged breach could relate to an express or implied term of the contract.

New section 33B(2) will clarify that where an employment-related claim is made, claims made under the *Workplace Relations Act 1996* (WR Act) can also be dealt with as if they were an employment-related claim. For example, Part 14 Divisions 1 and 2 of the WR Act confer jurisdiction on the Magistrates Court to deal with alleged breaches of federal industrial instruments. New section 33B(2) of the MCCP Act will enable such claims under the WR Act to be dealt with under new Part 4A of the MCCP Act.

New section 33C of the MCCP Act
New section 33C(1) will enable a party to make an application to the Magistrates Court to determine whether a claim is "employment-related".

If the Magistrates Court determines that a claim is not employment-related, the employee could discontinue or withdraw the claim and bring a claim under the IR Act in relation to the same subject matter. In this situation, new section 33C(3) of the MCCP Act would ensure that the employee was not disadvantaged by any time limit for bringing a claim under the IR Act.

New section 33D of the MCCP Act
New section 33D will provide for mediation of employment-related claims by commissioners of the WAIRC. Associates and deputy registrars under the IR Act will be able to assist commissioners with mediation under the MCCP Act.

New section 33E of the MCCP Act
New section 33E will enable mediators to compulsorily require parties to attend mediation. Parties who fail to attend mediation or participate as required under new section 33E may have a judgment made against them by the Magistrates Court under section 19 of the MCCP Act.

New section 33F of the MCCP Act
New section 33F(1) will enable parties to a mediation to be represented by:

(a) a relevant organisation or association as defined by new section 33A(1) of the MCCP Act (eg. a union or an employer association); or

(b) any other person if:

  (i) the parties agree; or

  (ii) the mediator is satisfied that such representation would be in the interests of justice.

New section 33F(2) refers to section 44(2)(b) and (2)(c) of the MCCP Act to clarify that:

(a) a corporation may be represented in mediation by one of its officers (section 44(2)(b) of the MCCP Act); and

(b) public officers and public authorities may be represented in mediation by a person prescribed by the regulations (section 44(2)(c) of the MCCP Act).

New section 33G of the MCCP Act
New section 33G will ensure that employment-related mediation is conducted free-of-charge by mediators. It will also ensure that costs cannot be awarded in relation to an employment-related mediation (see also new section 33L(2) of the MCCP Act).

New section 33H of the MCCP Act

New section 33H will require mediators to issue a certificate where they are satisfied the parties are unable to settle all or part of the employment-related claim. The Magistrates Court will only be able to hear and determine an employment-related claim if a certificate has been issued. However, a certificate will not be required for the Magistrates Court to determine whether a claim is "employment-related" under new section 33C(1) of the MCCP Act.

Where parties agree to settle a claim in mediation, they will be able to sign and lodge a memorandum of consent under rules 53 and 54 of the *Magistrates Court (Civil Proceedings) Rules 2005*.

New Part 4A Division 3 of the MCCP Act

New Part 4A Division 3 of the MCCP Act will deal with proceedings before the Magistrates Court involving an employment-related claim.

New section 33J of the MCCP Act

New section 33J(1) will provide an exception to section 44 of the MCCP Act, which limits non-legal representation before the Magistrates Court. New section 33J(1) will give parties to an employment-related claim the right to be represented by a relevant organisation or association as defined by new section 33A(1) of the MCCP Act.

New section 33J(2) will provide that section 44(4) of the MCCP Act does not apply to relevant organisations or associations who represent parties to an employment-related claim. This will enable relevant organisations and associations to charge for their services if they so wish.

New section 33K of the MCCP Act

New section 33K(1) and (2) will enable the Magistrates Court to act with less formality when dealing with employment-related claims. However, the Magistrates Court will have discretion under new section 33K(3) to order that an employment-related claim be dealt with under the general procedure of Part 3 of the MCCP Act.

New section 33L of the MCCP Act

New section 33L(1) will limit the awarding of costs in employment-related claims. The Magistrates Court will only be able to order costs against a party where:

(a) because of the existence of exceptional circumstances, an injustice would be done if costs were not ordered; or

(b) the party's claim or defence was wholly without merit.

New section 33L(2) will clarify that costs cannot be ordered against a party in relation to an employment-related mediation.

New section 33M of the MCCP Act
New section 33M will enable the Magistrates Court to make rules of court for the purposes of new Part 4A of the MCCP Act.

Clause 34 of the Bill
Clause 34 of the Bill will amend section 34 of the MCCP Act to make reference to employment-related mediation and mediators. As a result, Part 5 of the MCCP Act dealing with mediation generally will apply to employment-related mediation and mediators.

Clause 35 of the Bill
Clause 35 of the Bill will amend section 36 of the MCCP Act by applying section 37 of the *Magistrates Court Act 2004* to associates and deputy registrars who assist with mediation under new section 33D(3) of the MCCP Act. Section 37 of the *Magistrates Court Act 2004* will provide them with protection from personal liability in the performance, or purported performance, of their functions.

PART 4 OF THE BILL – AMENDMENTS TO THE CHILDREN AND COMMUNITY SERVICES ACT 2004

Clause 36 of the Bill
Clause 36 provides that Part 4 of the Bill will amend the *Children and Community Services Act 2004* (CCS Act). The primary objective of Part 4 is to:

(a) reinstate protections for children employed by constitutional corporations removed by the Work Choices Act;

(b) protect children who are engaged as independent contractors; and

(c) limit unpaid trial work involving children.

Part 4 of the Bill recognises that children are a vulnerable category of workers. A "child" is defined by section 3 of the CCS Act to mean a person under 18 years of age.

Clause 37 of the Bill
Clause 37 of the Bill will delete the existing heading to Part 7 of the CCS Act and replace it with "Part 7 – Prohibitions and limitations on certain kinds of employment of children". This will be the only amendment made to Part 7 of the CCS Act by the Bill.

Clause 38 of the Bill
Clause 38 of the Bill will insert new Part 8 into the CCS Act.

New section 197 of the CCS Act
New section 197 will define terms for the purposes of new Part 8 of the CCS Act.

New section 198 of the CCS Act

New section 198 will define "affected employer" for the purposes of Division 2 of new Part 8 of the CCS Act. Affected employers will be required to provide children with prescribed minimum conditions of employment.

A person will be an affected employer of a child if:

(a) the person is a constitutional corporation as defined by new section 197 of the CCS Act;

(b) the person is an employer within the meaning of section 7(1) of the IR Act;

(c) the child is employed under a federal workplace agreement or an arrangement prescribed by the regulations; and

(d) a comparable State award is in force in relation to the work carried out by the child.

A "workplace agreement" will have the meaning given to that term by section 4(1) of the WR Act (new section 198(1) of the CCS Act).

A "comparable State award" will be defined by new section 197 of the CCS Act to mean a State award that regulates the terms and conditions of employment of employees carrying out the same kind of work as the work carried out by the child. Another way of approaching the question is to determine what the constitutional corporation's award coverage would be, if any, if it was operating in the State industrial relations system.

EXAMPLE
Miriam's Corner Shop Pty Ltd employs children as shop assistants under Australian Workplace Agreements. The kind of work carried out by the children is regulated in the State industrial relations system by the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977*. This award would be a comparable State award for the purposes of new section 198 of the CCS Act.

A person will also be an affected employer if they:

(a) engage a child as an independent contractor; and

(b) a comparable State award is in force in relation to the work carried out by the child.

In this case there is no requirement that the person be a constitutional corporation. New section 198(3) of the CCS Act will apply to constitutional corporations, non-constitutional corporations and sole traders alike. The person will be treated as the child's employer for the purposes of Division 2 of new Part 8 of the CCS Act.

New section 199 of the CCS Act

New section 199(1) will apply certain provisions of the IR Act for the purposes of the WAIRC exercising jurisdiction under new Part 8 of the CCS Act. The applied provisions relate to:

(a) the functions and powers of the WAIRC – paragraphs (a)-(d) of new section 199(1);

(b) intervention in WAIRC proceedings by the Minister for Employment Protection – paragraph (e) of new section 199(1);

(c) the representation rights of parties – paragraph (f) of new section 199(1);

(d) the exercise of conciliation and arbitration powers by the WAIRC – paragraph (g) of new section 199(1);

(e) evidence before the WAIRC – paragraph (h) of new section 199(1);

(f) the form of WAIRC decisions – paragraphs (i)-(k) of new section 199(1); and

(g) appeals to the WAIRC Full Bench and the Industrial Appeal Court – paragraphs (l)-(o) of new section 199(1).

New section 199(2) will enable the applied provisions to be modified in certain circumstances. This will provide flexibility to ensure that the applied provisions are appropriate for the CCS Act.

New section 199(3)(a) will modify section 31(1) of the IR Act (as applied by new section 199(1)(f)) to give parties the right to be represented by a legal practitioner in WAIRC proceedings.

New section 199(3)(b) will modify section 33(6) of the IR Act (as applied by new section 199(1)(h)) to make reference to new section 232G of the CCS Act, which will enable the WAIRC to summon any person to conciliation proceedings.

New section 199(3)(c) will modify section 90(1) of the IR Act (as applied by new section 199(1)(m)) so that appeals can be made to the Industrial Appeal Court on the ground that a decision of the WAIRC Full Bench was in excess of jurisdiction.

Division 2 of new Part 8 of the CCS Act (new sections 200-218)

Division 2 of new Part 8 will require constitutional corporations who employ children under certain arrangements to provide them with conditions of employment not less favourable than prescribed State award conditions.

New section 200 of the CCS Act

New section 200(1) will require affected employers to provide children with employment conditions not less favourable than the "minimum conditions of employment".

New section 200(2) will define "minimum conditions of employment" to mean:

(a) the rates of salary or wages that are not less than those provided for from time to time under the comparable State award; and

(b) any other conditions of employment under the comparable State award that are prescribed by the regulations.

New section 200(2)(a) will ensure that children receive at least the same salary or wages that they would be entitled to under the comparable State award from time to time. State award wages are adjusted annually by a State Wage order made by the WAIRC under section 50A of the IR Act. Affected employers will have to take note of such adjustments.

In terms of other conditions of employment, it is intended that the regulations will prescribe conditions such as meal breaks, overtime, penalties, allowances, minimum hours of engagement and notification of roster changes. An affected employer will be required to ensure that the child's employment conditions are not less favourable than these prescribed conditions.

What is meant by "not less favourable" will depend on the circumstances of each case. What is "favourable" to an adult may not necessarily be favourable to a child. However, it is broadly intended that:

(a) monetary benefits will be able to offset other monetary benefits, such as a higher hourly rate of pay to offset overtime, penalties and allowances;

(b) monetary benefits will not be able to offset non-monetary benefits, such as a higher hourly rate of pay to offset meal breaks or notification of roster changes. These non-monetary benefits are of particular importance to children;

(c) non-monetary benefits will only be able to offset monetary benefits if they are readily quantifiable in real terms. It is not intended that things such as a child's "preference" or "choice" to work certain days or hours should be viewed as a non-monetary benefit.

New section 200(3) will clarify that new section 200 is not intended to limit the operation of the MCE Act. Affected employers should be aware that comparable State awards will be subject to the MCE Act. A provision of a State award that is less favourable than a minimum condition of employment under the MCE Act has no effect (section 5(2) of the MCE Act).

New section 201 of the CCS Act

New section 201 will enable affected employers to seek clarification from the Registrar of the WAIRC about which comparable State award applies to them. A determination by the Registrar will generally be binding in proceedings concerning an alleged contravention of new section 200(1) of the CCS Act.

New section 202 of the CCS Act

New section 202 will require affected employers to conspicuously display a copy of the comparable State award at the workplace. For example, a copy could be displayed on a notice board, in a lunch room or in some other common area.

New section 203 of the CCS Act

New section 203(2) will require affected employers to keep certain records in relation to children. These records are generally consistent with those required to be kept by constitutional corporations under the WR Act. However, affected employers will also be required to record the starting and finishing times and the total hours worked each day by children.

New section 203(4) will require the records to be kept for at least 7 years after they are made.

New section 204 of the CCS Act

New section 204 will enable the child, or a person authorised by the child, to inspect the records required to be kept under new section 203 of the CCS Act. A person authorised by the child could include a parent or an industrial inspector designated under the IR Act.

A request to inspect records must be made to the affected employer in writing. The affected employer will have 14 days from when the request is made to produce, and to allow inspection of, the records.

New section 205 of the CCS Act

New section 205 will designate the following provisions as civil penalty provisions for the purposes of section 83E of the IR Act:

(a) new section 200(1) (affected employers to provide children with employment conditions not less favourable than the minimum conditions of employment);

(b) new section 202 (affected employers to conspicuously display a copy of the comparable State award at the workplace);

(c) new section 203(2) (affected employers to keep certain records in relation to children);

(d) new section 203(4) (affected employers to keep records for at least 7 years after they are made); and

(e) new section 204(2) (affected employers to allow inspection of records).

Applications for civil penalties are heard by the Industrial Magistrates Court and determined on the balance of probabilities. An application may be made by:

(a) the affected child;

(b) a union (provided the affected child is a member); or

(c) an industrial inspector designated under the IR Act.

Among other things, section 83E(1) of the IR Act enables the Industrial Magistrates Court to order penalties of up to $5,000 against an employer.

For the purposes of civil penalty proceedings, new section 205(2) will provide that a declaration made by the WAIRC under new section 216(6)(c) is prima facie evidence that an affected employer contravened new section 200(1) of the CCS Act. The intent is to expedite civil penalty proceedings where a declaration has been made by the WAIRC.

New section 206 of the CCS Act

New section 206 will enable an industrial inspector to issue an affected employer with a compliance notice in certain circumstances. A compliance notice may be issued if the industrial inspector is of the opinion that the affected employer:

(a) is contravening new section 200(1) of the CCS Act; or

(b) has contravened new section 200(1) in circumstances that make it likely the contravention will continue or be repeated.

A compliance notice may require an affected employer to remedy a contravention of new section 200(1) within a specified period. This period cannot be less than 14 days, unless it would be reasonably practicable for the affected employer to comply with a lesser period.

New section 207 of the CCS Act

New section 207 will enable compliance notices to include directions as to how a contravention of new section 200(1) of the CCS Act could be remedied. For example, the notice could include a direction that the affected employer pay the child in accordance with a particular classification of the comparable State award.

New section 208 of the CCS Act

New section 208 will enable an authorised industrial inspector to withdraw a compliance notice that was issued in error or is incorrect in some respect.

New section 208(2) will define an “authorised industrial inspector” to mean:

(a) the industrial inspector who issued the compliance notice; or

(b) another industrial inspector authorised to withdraw the compliance notice by the officer prescribed by the regulations. It is intended that the officer prescribed by the regulations will be the Executive Director of the Department of Consumer and Employment Protection.

New section 208(3) will provide that the withdrawal of a compliance notice takes effect when written notice of the withdrawal is given to the affected employer. Written notice could be "given" in various ways pursuant to section 76 of the *Interpretation Act 1984*. For example, the notice could be posted to the affected employer's principal place of business.

New section 209 of the CCS Act

New section 209 will clarify that the withdrawal of a compliance notice does not prevent another compliance notice being issued.

New section 210 of the CCS Act

New section 210 will clarify that the issue or withdrawal of a compliance notice does not affect any proceedings under new Part 8 of the CCS Act in connection with a matter for which the notice was issued. For example, the withdrawal of a compliance notice during proceedings would not invalidate or otherwise impugn those proceedings.

New section 211 of the CCS Act

New section 211 will confer jurisdiction on the WAIRC to hear and determine applications under new section 213 of the CCS Act.

New section 212 of the CCS Act

New section 212 will provide that the WAIRC is to be constituted by a single commissioner when exercising jurisdiction under new section 211 of the CCS Act. When allocating a matter, the Chief Commissioner must consider the desirability of the commissioner concerned having relevant knowledge of new Part 8 of the CCS Act.

New section 213 of the CCS Act

New section 213 will enable an application to be made to the WAIRC for a determination whether an affected employer contravened new section 200(1) of the CCS Act (affected employers to provide children with employment conditions not less favourable than the minimum conditions of employment).

An application may be made by:

(a) the child, a parent of the child (as defined by new section 197 of the CCS Act) or a person authorised in writing by the child;

(b) a union (provided the child is a member or is eligible to be a member); or

(c) an industrial inspector designated under the IR Act.

New section 213(3) will clarify that an application may be made whether or not a compliance notice has been issued to the affected employer.

New section 213(4) will require a copy of the application to be served on the affected employer.

New section 213(5) will require an application to be brought not later than 6 years after the day on which:

(a) the affected employer was given a compliance notice in respect of the contravention; or

(b) the alleged contravention occurred (if no compliance notice was given).

New section 214 of the CCS Act
New section 214 will provide that the applicant and the affected employer (on whom a copy of the application is served) are the parties to proceedings. New section 214 will be subject to section 27(1)(j) of the R Act (as applied by new section 215 of the CCS Act), which enables the WAIRC to direct that parties be struck out or that persons be joined to proceedings.

New section 215 of the CCS Act
New section 215 will apply the provisions of new section 199 for the purposes of the WAIRC exercising jurisdiction under new section 211 of the CCS Act.

New section 216 of the CCS Act
New section 232F will enable the WAIRC to conciliate an application under new section 213 of the CCS Act. However, if an application is not resolved by conciliation then new section 216(1) will enable the WAIRC to hear and determine the application.

New section 216(2) will enable the same commissioner who conciliated the application to also hear and determine the application. However, new section 216(4) will prevent the same commissioner from hearing and determining the application if a party objects before the hearing commences.
New section 216(6) will enable the WAIRC to do one of more of the following things in determining an application:

(a) make an order that the affected employer pay compensation to the child for underpayment of wages or otherwise;

(b) make an order that the affected employer do, or refrain from doing, any specified thing;

(c) make a declaration that the affected employer contravened new section 200(1) of the CCS Act by failing to provide the child with the prescribed minimum conditions of employment;

(d) make an order dismissing the application;

(e) make any ancillary or incidental order that the WAIRC thinks necessary for giving effect to an order made under paragraphs (a)-(d) of new section 216(6).

New section 217 of the CCS Act

New section 217 will enable the WAIRC to order costs against a party where proceedings have been frivolously or vexatiously instituted or defended. Any such order made by the WAIRC will be enforceable via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 218 of the CCS Act

New section 218(1) will enable orders made by the WAIRC under new section 216(6) or new section 217 to be enforced via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 218(2) will apply certain provisions of the IR Act for the purposes of the Industrial Magistrates Court enforcing orders. The applied provisions relate to:

(a) the time limit for making an application to the Industrial Magistrates Court to enforce an order (the time limit will be 6 years from when the affected employer failed to comply with the WAIRC order);

(b) the powers of the Industrial Magistrates Court to enforce an order;

(c) the awarding and payment of costs in enforcement proceedings;

(d) appeals to the WAIRC Full Bench and the Industrial Appeal Court; and

(e) the ability of industrial inspectors to make an application for enforcement of an order.

New section 218(2)(a) and (2)(b) will enable the applied provisions to be modified in certain circumstances. This will provide flexibility to ensure that the applied provisions are appropriate for the CCS Act.

Division 3 of new Part 8 of the CCS Act (new sections 219-227)

Division 3 of new Part 8 will enable children employed by constitutional corporations to refer unfair dismissal and denied contractual benefits claims to the WAIRC.

New section 219 of the CCS Act

New section 219(1) will define terms for the purposes of Division 3 of new Part 8 of the CCS Act.

New section 220 of the CCS Act
New section 220 will confer jurisdiction on the WAIRC to hear and determine unfair dismissal and denied contractual benefits claims referred under new section 222 of the CCS Act.

New section 221 of the CCS Act
New section 221 will provide that the WAIRC is to be constituted by a single commissioner when exercising jurisdiction under new section 220 of the CCS Act. When allocating a matter, the Chief Commissioner must consider the desirability of the commissioner concerned having relevant knowledge of new Part 8 of the CCS Act.

New section 222 of the CCS Act
New section 222(1) will enable a claim to be referred to the WAIRC that a child has:

(a) been harshly, oppressively or unfairly dismissed by a constitutional corporation (as defined by new section 197 of the CCS Act); or

(b) has been denied a contractual benefit by a constitutional corporation.

Children employed by non-constitutional corporations can refer these claims under the IR Act. However, as a result of the Work Choices Act the IR Act no longer applies to children employed by constitutional corporations.

The term "contractual benefit" is defined by new section 219(1) of the CCS Act to mean a benefit to which a child is entitled under a contract of employment with a constitutional corporation. The benefit could be an express or implied term of the contract. It will include terms implied by the MCE Act which may have application to constitutional corporations (such as methods of payment and deductions from pay).

New section 219(1) will clarify that a contractual benefit does not include a benefit to which a child is entitled under a Commonwealth instrument prescribed by the regulations. It is intended that the regulations will prescribe awards, workplace agreements and transitional instruments under the WR Act. The enforcement of benefits under these instruments proceeds via an eligible court under the WR Act.

New section 219(2) and (3) will enable children engaged in the entertainment industry to refer a claim of denied contractual benefits to the WAIRC, even if they are not employed under a contract of employment. For example, they could be engaged under a contract for services. This will be consistent with section 7(6) and (7) of the IR Act.

New section 222(1) will apply where:

(a) the dismissal occurs on or after the day on which new section 222 of the CCS Act commences (in the case of an unfair dismissal claim); or

(b) the failure to allow the child a contractual benefit occurs on or after 27 March 2006 (in the case of a denied contractual benefits claim). A failure that occurred before 27 March 2006 may be dealt with under the IR Act (by virtue of regulation 1.2(2) of the *Workplace Relations Regulations 2006*).

New section 222(3) will enable a claim to be referred to the WAIRC by:

(a) the child, a parent of the child (as defined by new section 197 of the CCS Act) or a person authorised in writing by the child;

(b) a union (provided the child is a member or is eligible to be a member); or

(c) an industrial inspector designated under the IR Act.

New section 222(4) will require a copy of the claim to be served on the employer.

New section 222(5) will require a claim to be referred to the WAIRC not later than:

(a) 28 days after the day on which the child was dismissed (in the case of an unfair dismissal claim); or

(b) 6 years after the day on which the child was not allowed the contractual benefit (in the case of a denied contractual benefits claim).

New section 222(6) will enable the WAIRC to accept an unfair dismissal claim out-of-time if the WAIRC considers that it would be unfair not to do so.

New section 223 of the CCS Act

New section 223 will provide that the claimant and the employer (on whom a copy of the claim is served) are the parties to proceedings. New section 223 will be subject to section 27(1)(j) of the IR Act (as applied by new section 224 of the CCS Act), which enables the WAIRC to direct that parties be struck out or that persons be joined to proceedings.

New section 224 of the CCS Act

New section 224 will apply the provisions of new section 199 for the purposes of the WAIRC exercising jurisdiction under new section 220 of the CCS Act.

New section 225 of the CCS Act

New section 232F will enable the WAIRC to conciliate a claim referred under new section 222 of the CCS Act. However, if a claim is not resolved by conciliation then new section 225(1) will enable the WAIRC to hear and determine the claim.

New section 225(2) will enable the same commissioner who conciliated the claim to also hear and determine the claim. However, new section 225(4) will

prevent the same commissioner from hearing and determining the claim if a party objects before the hearing commences.

New section 225(6) will enable the WAIRC to determine an unfair dismissal claim in accordance with section 23A of the IR Act. Among other things, this will enable the WAIRC to order:

(a) reinstatement or re-employment of the child; or

(b) compensation of up to 6 months' remuneration of the child, if reinstatement or re-employment would be impracticable.

New section 225(7) will enable the WAIRC to determine a denied contractual benefits claim in accordance with new section 28A of the IR Act.

New section 225(8) will prevent "double-dipping" so that children cannot be compensated both under new section 225 of the CCS Act and otherwise for the same dismissal or denied contractual benefits.

New section 226 of the CCS Act

New section 226 will enable the WAIRC to order costs against a party where proceedings have been frivolously or vexatiously instituted or defended. Any such order made by the WAIRC will be enforceable via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 227 of the CCS Act

New section 227(1) will enable an unfair dismissal order made by the WAIRC under new section 225(6) to be enforced via section 83B of the IR Act.

New section 227(2) will enable an order made by the WAIRC under new section 225(7) (denied contractual benefits order) or new section 226 (order for costs) to be enforced via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 227(3) will apply certain provisions of the IR Act for the purposes of the Industrial Magistrates Court enforcing orders. The applied provisions relate to:

(a) the time limit for making an application to the Industrial Magistrates Court to enforce an order (the time limit will be 6 years from when the employer failed to comply with the WAIRC order);

(b) the powers of the Industrial Magistrates Court to enforce an order;

(c) the awarding and payment of costs in enforcement proceedings;

(d) appeals to the WAIRC Full Bench and the Industrial Appeal Court; and

(e) the ability of industrial inspectors to make an application for enforcement of an order.

New section 227(3)(c) and (3)(d) will enable the applied provisions to be modified in certain circumstances. This will provide flexibility to ensure that the applied provisions are appropriate for the CCS Act.

Division 4 of new Part 8 of the CCS Act (new sections 228-232E)
Division 4 of new Part 8 will limit the circumstances in which children can be engaged on unpaid trial work. What is meant by "trial work" will depend on the circumstances of each case. A person who ostensibly engages a child on trial work, even for one day, could be the employer of the child. Whether or not a contractual relationship exists will depend on well-established legal principles such as the parties' intentions. However, it is acknowledged that children are more vulnerable than adults to exploitative trial work arrangements.

Division 4 of new Part 8 will apply to constitutional corporations, non-constitutional corporations and sole traders alike.

New section 228(1) of the CCS Act
New section 228(1) will define "unpaid work" and "unpaid work on a trial basis" for the purposes of Division 4 of new Part 8 of the CCS Act.

"Unpaid work" will mean work for which no payment or reward, or only nominal payment or reward, is received by the child. A person will be unable to avoid new section 228(2) of the CCS Act simply by providing a child with some nominal payment or reward.

"Unpaid work on a trial basis" will mean unpaid work that is carried out with a view to obtaining paid work with the person for whom the unpaid work is carried out (whether under a contract of service, a contract for services or otherwise). As the unpaid work must be carried out with a "view to obtaining paid work with the person for whom the unpaid work is carried out", it will <u>not</u> include such things as:

(a) volunteer work;

(b) work experience carried out pursuant to an educational or vocational program;

(c) other formal programs such as work placements for children with disabilities.

The regulations will prescribe certain work arrangements which do <u>not</u> constitute "unpaid work on a trial basis" for the purposes of Division 4 of new Part 8 of the CCS Act.

New section 228(2) of the CCS Act
New section 228(2) will limit unpaid work on a trial basis to one day per calendar year. The trial work must not exceed 7 hours, excluding any meal break. If the

child works more than 5 hours, they must be provided with a meal break of at least 30 minutes.

New section 229 of the CCS Act
New section 229 will designate new section 228(2) of the CCS Act as a civil penalty provision for the purposes of section 83E of the IR Act.

Applications for civil penalties are heard by the Industrial Magistrates Court and determined on the balance of probabilities. An application may be made by:

(a) the affected child;

(b) a union (provided the child is a member); or

(c) an industrial inspector designated under the IR Act.

Among other things, section 83E(1) of the IR Act enables the Industrial Magistrates Court to order penalties of up to $5,000 against an employer.

For the purposes of civil penalty proceedings, new section 229(2) will provide that a declaration made by the WAIRC under new section 232C(6)(c) is prima facie evidence that a person contravened new section 228(2) of the CCS Act. The intent is to expedite civil penalty proceedings where a declaration has been made by the WAIRC.

New section 230 of the CCS Act
New section 230 will confer jurisdiction on the WAIRC to hear and determine applications that a person contravened new section 228(2) of the CCS Act.

New section 231 of the CCS Act
New section 231 will provide that the WAIRC is to be constituted by a single commissioner when exercising jurisdiction under new section 230 of the CCS Act. When allocating a matter, the Chief Commissioner must consider the desirability of the commissioner concerned having relevant knowledge of new Part 8 of the CCS Act.

New section 232 of the CCS Act
New section 232(1) will enable an application to be made to the WAIRC for a determination whether a person contravened new section 228(2) of the CCS Act.

New section 232(2) will enable an application to be made by:

(a) the child, a parent of the child (as defined by new section 197 of the CCS Act) or a person authorised in writing by the child;

(b) a union (provided the child is a member or is eligible to be a member); or

(c) an industrial inspector designated under the IR Act.

New section 232(3) will require a copy of the application to be served on the person who engaged the child to carry out the work.

New section 232(4) will require an application to be brought not later than 6 years after the day on which the alleged contravention of new section 228(2) occurred.

New section 232A of the CCS Act
New section 232A will provide that the applicant and the person on whom a copy of the application is served are the parties to proceedings. New section 232A will be subject to section 27(1)(j) of the IR Act (as applied by new section 232B of the CCS Act), which enables the WAIRC to direct that parties be struck out or that persons be joined to proceedings.

New section 232B of the CCS Act
New section 232B will apply the provisions of new section 199 for the purposes of the WAIRC exercising jurisdiction under new section 230 of the CCS Act.

New section 232C of the CCS Act
New section 232F will enable the WAIRC to conciliate an application under new section 232 of the CCS Act. However, if an application is not resolved by conciliation then new section 232C(1) will enable the WAIRC to hear and determine the application.

New section 232C(2) will enable the same commissioner who conciliated the application to also hear and determine the application. However, new section 232C(4) will prevent the same commissioner from hearing and determining the application if a party objects before the hearing commences.

New section 232C(6) will enable the WAIRC to do one of more of the following things in determining an application:

(a) make an order that the person pay compensation to the child, whether for the child not being paid or otherwise (for example, the WAIRC could order the person to pay the child compensation for what the child would have been entitled to if they were an employee of the person);

(b) make an order that the person do, or refrain from doing, any specified thing (for example, the WAIRC could order that the person refrain from engaging any other children on unpaid work on a trial basis);

(c) make a declaration that the person contravened new section 228(2) of the CCS Act;

(d) make an order dismissing the application;

(e) make any ancillary or incidental order that the WAIRC thinks necessary for giving effect to an order made under paragraphs (a)-(d) of new section 232C(6).

New section 232D of the CCS Act
New section 232D will enable the WAIRC to order costs against a party where proceedings have been frivolously or vexatiously instituted or defended. Any such order made by the WAIRC will be enforceable via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 232E of the CCS Act
New section 232E(1) will enable an order made by the WAIRC under new section 232C(6) or new section 232D to be enforced via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 232E(2) will apply certain provisions of the IR Act for the purposes of the Industrial Magistrates Court enforcing orders. The applied provisions relate to:

(a) the time limit for making an application to the Industrial Magistrates Court to enforce an order (the time limit will be 6 years from when the person failed to comply with the WAIRC order);

(b) the powers of the Industrial Magistrates Court to enforce an order;

(c) the awarding and payment of costs in enforcement proceedings;

(d) appeals to the WAIRC Full Bench and the Industrial Appeal Court; and

(e) the ability of industrial inspectors to make an application for enforcement of an order.

New section 232E(2)(a) and (2)(b) will enable the applied provisions to be modified in certain circumstances. This will provide flexibility to ensure that the applied provisions are appropriate for the CCS Act.

Division 5 of new Part 8 of the CCS Act (new sections 232F and 232G)
Division 5 of new Part 8 will enable the WAIRC to conciliate applications and claims made under new Part 8 of the CCS Act.

New section 232F of the CCS Act
New section 232F(1) will enable the WAIRC to conciliate:

(a) applications made under new section 213(1) that an affected employer contravened new section 200(1) (affected employers to provide children with employment conditions not less favourable than the minimum conditions of employment);

(b) claims referred under new section 222(1) that a child was unfairly dismissed or denied a contractual benefit by a constitutional corporation; and

(c) applications made under new section 232(1) that a person contravened new section 228(2) (limitations on unpaid trial work involving children).

New section 232F(6) will provide that conciliation proceedings are to be held in private.

New section 232F(3) will enable the WAIRC to make enforceable directions, orders and declarations in conciliation. Any such direction, order or declaration will be enforceable under new section 232F(9) of the CCS Act. Enforcement under new section 232F(9) will proceed via section 84A of the IR Act. Among other things, section 84A of the IR Act enables the WAIRC Full Bench to order penalties against a person.

New section 232F(8) will enable the parties to agree upon a binding settlement in the form of an order made by the WAIRC. Any such order will also be enforceable under new section 232F(9) of the CCS Act.

New section 232G of the CCS Act
New section 232G will enable the WAIRC to summon a person to attend conciliation proceedings. A person who fails to attend will have the onus of proving in any enforcement proceedings that they:

(a) did not receive the summons (new section 232G(2)(b)); or

(b) had good cause for not attending (new section 232G(4)).

The requirement to attend conciliation will be enforceable in accordance with new section 232F(9) of the CCS Act. Enforcement under new section 232F(9) will proceed via section 84A of the IR Act. Among other things, section 84A of the IR Act enables the WAIRC Full Bench to order penalties against a person.

Division 6 of new Part 8 of the CCS Act (new sections 232H-232M)
Division 6 of new Part 8 deals with miscellaneous amendments to the CCS Act.

New section 232H of the CCS Act
New section 232H will apply section 102(1)(a), (1)(b), (2) and (3) of the IR Act for the purposes of industrial inspectors performing functions under new Part 8 of the CCS Act. Section 102 of the IR Act deals with obstruction. A person who obstructs an industrial inspector in the performance of their functions could be liable for a civil penalty.

New section 232I of the CCS Act
New section 232I will provide that only an industrial inspector can apply for a civil penalty for a contravention of section 102 of the IR Act, as applied by new section 232H of the CCS Act.

New section 232J of the CCS Act
New section 232J will prevent the WAIRC from dealing with an application or claim under new Part 8 of the CCS Act if proceedings relating to the same

subject matter have already been commenced under the IR Act or other written law.

However, new section 232J will not apply where the proceedings under the IR Act or other written law have been discontinued or failed for want of jurisdiction.

New section 232K of the CCS Act

New section 232K will deal with claims mistakenly referred under Division 3 of new Part 8 of the CCS Act. Division 3 will only apply to unfair dismissal and denied contractual benefits claims where the employer is a constitutional corporation. However, whether an employer is a constitutional corporation is often a complex legal question.

If a claim is referred under Division 3 of new Part 8 of the CCS Act, but the WAIRC determines that the child's employer is not a constitutional corporation, then the WAIRC may order that the claim be dealt with under the IR Act.

New section 232L of the CCS Act

New section 232L will ensure that new Part 8 of the CCS Act does not limit or derogate from the WAIRC's functions under the IR Act.

New section 232M of the CCS Act

New section 232M(1) will clarify that nothing in new Part 8 limits the operation of Part 7 of the CCS Act.

New section 232M(2) will provide that sections 195 and 196 of the CCS Act do not apply for the purposes of new Part 8. Sections 195 and 196 enable authorised officers to investigate and enforce contraventions of Part 7 of the CCS Act.

PART 5 OF THE BILL - AMENDMENTS TO THE OCCUPATIONAL SAFETY AND HEALTH ACT 1984

Clause 39 of the Bill

Clause 39 provides that Part 5 of the Bill will amend the *Occupational Safety and Health Act 1984* (OSH Act). The primary objectives of Part 5 are to:

(a) enhance current protections for workers who are discriminated against for reasons relating to something they have done in the interests of occupational safety and health. These protections will be consistent with current protections for safety and health representatives under the OSH Act;

(b) provide a process for conciliation and resolution of claims of workplace bullying that creates a risk to safety or health.

Clause 40 of the Bill

Current sections 35A-35D of the OSH Act provide protections for safety and health representatives who are discriminated against for reasons relating to something they have done in the interests of occupational safety and health.

Section 35D provides remedies for these instances. In the process of drafting the Bill, it was identified that minor clarifications could be made to section 35D.

Clause 40(1) of the Bill will amend section 35D(1) of the OSH Act to:

(a) clarify that a safety and health representative who suffers some kind of detriment under section 35A of the OSH Act, other than loss of employment or loss of earnings, can be compensated under section 35D(1)(a)(ii); and

(b) clarify that any payment ordered by the Occupational Safety and Health Tribunal (the Tribunal) under section 35D(1)(b) to a prospective employee is by way of compensation.

Clause 40(2) of the Bill will amend section 35D(2) of the OSH Act to clarify that any payment ordered by the Tribunal to a contractor is also by way of compensation.

Clause 40(3) of the Bill will amend section 35D(4) of the OSH Act to ensure consistency with amended section 35D(1)(a)(ii). Both sections will refer to "other detriment".

Clause 41 of the Bill

Clause 41 of the Bill will amend section 51G(1) of the OSH Act to enable the Tribunal to hear and determine matters referred under new sections 56A(1) (in relation to claims of discrimination of workers) and 56C(1) (in relation to claims of workplace bullying).

Section 51G(1) of the OSH Act will be amended in accordance with either clause 41(a) or 41(b) of the Bill, depending on whether the *Occupational Safety and Health Legislation Amendment Bill 2007* (the OSH Bill) has commenced. The OSH Bill will also amend section 51G(1), by inserting reference to new section 60A of the OSH Act.

If the OSH Bill commences before Part 5 of the Bill, section 51G(1) will be amended in accordance with clause 41(b) of the Bill.

If the OSH Bill does not commence before Part 5 of the Bill, section 51G(1) will be amended in accordance with clause 41(a) of the Bill.

Clause 42 of the Bill

Clause 42(1) of the Bill will amend section 51J(1) of the OSH Act to enable the Tribunal to conciliate matters referred under new section 56C(1) (in relation to claims of workplace bullying).

Clause 42(2) of the Bill will insert new section 51J(3a) and (3b) into the OSH Act. Directions, orders and declarations made by the Tribunal under section 51J(3) are enforceable via section 84A of the IR Act. Section 84A(5)(a)(ii) of the IR Act enables the WAIRC Full Bench to order penalties against employers, but not principals (as the IR Act does not apply to principal-contractor relationships,

unlike the OSH Act). New section 51J(3a) and (3b) of the OSH Act will ensure that principals are treated the same way as employers under section 84A(5)(a)(ii) of the IR Act.

Clause 43 of the Bill

Workplace bullying can create a risk to safety and health of workers and is unlawful under Part III of the OSH Act, which places general duties on all people at the workplace to avoid adversely affecting the safety and health of others. People who breach these duties may face prosecution. The Bill provides an additional mechanism for dealing with claims of workplace bullying by establishing a process for conciliation and resolution of claims by the Tribunal. Prosecution is not necessarily the most effective means of ensuring that bullying behaviour ceases promptly.

Clause 43 of the Bill will insert new Division 1 into Part VIII of the OSH Act. New Division 1 will define terms for the purposes of Part VIII. In particular, new section 56AB(1) of the OSH Act will define "bullying" for the purposes of new Division 3 of Part VIII.

Bullying will be defined as unreasonable or inappropriate behaviour at a workplace that:

(a) is repeatedly directed towards an employee or contractor (or a group of employees or contractors); and

(b) creates a risk to safety or health.

The definition of bullying is consistent with the definition under the Commission for Occupational Safety and Health's *Code of Practice: Violence, Aggression and Bullying at Work* (2006). New Division 3 of Part VIII of the OSH Act recognises that bullying could be committed by an employer, principal, employee or contractor.

The definition of bullying is not intended to encompass reasonable managerial prerogative exercised by an employer or principal in relation to an employee or contractor. New section 56AB(2) of the OSH Act will outline examples of what does not constitute bullying. These examples are not intended to be exhaustive.

Clause 44 of the Bill

Section 56(1) of the OSH Act creates an offence where employers and prospective employers treat employees and prospective employees "less favourably than would otherwise be the case" for reasons relating to something they have done in the interests of occupational safety and health. Clause 44(1) of the Bill will amend section 56(1) by replacing the reference to "less favourably than would otherwise be the case" with "causes disadvantage to an employee or prospective employee". This will ensure consistency with section 35A(1) of the OSH Act, which deals with disadvantage caused to safety and health representatives. It is desirable that consistent terminology be used across the OSH Act's discrimination provisions.

Clause 44(2) of the Bill will insert new section 56(1a) into the OSH Act to create an offence where principals disadvantage contractors for reasons relating to something they have done in the interests of occupational safety and health.

Clause 44(3) of the Bill will insert new section 56(3), (4) and (5) into the OSH Act:

(a) new section 56(3) will define "disadvantage" for the purposes of section 56(1) (disadvantage to employees). The definition will be consistent with section 35A(2) of the OSH Act;

(b) new section 56(4) will also define "disadvantage" for the purposes of section 56(1) (disadvantage to prospective employees). The definition will be consistent with section 35A(3) of the OSH Act; and

(c) new section 56(5) will define "disadvantage" for the purposes of new section 56(1a) (disadvantage to contractors). The definition will be consistent with section 35B(2) of the OSH Act.

Clause 45 of the Bill

Clause 45 of the Bill will insert new sections 56A and 56B into the OSH Act.

Workers have an important role to play in safety and health at the workplace. They have responsibilities under the OSH Act, including the duty to report hazards that they cannot rectify. They are also recognised in the consultative processes under the OSH Act and may be members of safety and health committees. Section 56 of the OSH Act currently protects employees and prospective employees from discrimination for reasons relating to something they have done in the interests of safety and health. However, these provisions do not provide for reinstatement of a dismissed employee or any other means of rectifying or compensating the effects of discrimination.

In order to protect employees and provide an adequate means of redress, the Bill will insert new sections 56A and 56B to give employees, prospective employees and contractors the right to seek redress in the Tribunal where they have been disadvantaged. Such a right will exist whether or not prosecution action is taken. The new sections are consistent with current sections 35C and 35D of the OSH Act dealing with discrimination against safety and health representatives.

New section 56A of the OSH Act

New section 56A(1) of the OSH Act will enable employees, prospective employees and contractors to refer a claim to the Tribunal that they have been disadvantaged in contravention of section 56(1) or new section 56(1a).

New section 56A(2) of the OSH Act will clarify that a claim may be referred to the Tribunal under new section 56A(1) regardless of whether the employer, prospective employer or principal in question has been convicted of an offence under section 56(1) or new section 56(1a).

New section 56A(3) of the OSH Act will enable a referral under new section 56A(1) to be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the IR Act. An agent could include an employee or officer of a union.

New section 56A(4) of the OSH Act will provide that section 80E(1) of the IR Act does not apply to a claim referred under new section 56A(1) of the OSH Act by a government officer. This will enable the Tribunal to deal with claims by government officers which could otherwise be within the exclusive jurisdiction of the Public Service Arbitrator under the IR Act.

New section 56B of the OSH Act

New section 56B(1) of the OSH Act will enable the Tribunal to remedy a contravention of section 56(1) by an employer. The Tribunal will be able to order the employer to:

(a) reinstate the employee if the employee has been dismissed from employment; and/or

(b) pay the employee compensation for loss of employment, loss of earnings and/or any other detriment (compensation could potentially be payable for one or more of these things).

New section 56B(2) of the OSH Act will clarify that the Tribunal's power to order reinstatement includes making any order that the WAIRC is empowered to make under section 23A(3), (4) and (5)(a) of the IR Act. This will enable the Tribunal to:

(a) order reinstatement on conditions no less favourable than what the employee enjoyed immediately before dismissal;

(b) order re-employment, if reinstatement to the employee's former position would be impracticable; and

(c) make an order preserving the employee's continuity of employment between the time of dismissal and reinstatement or re-employment.

New section 56B(3) of the OSH Act will enable the Tribunal to remedy a contravention of section 56(1) by a prospective employer. The Tribunal will be able to order the prospective employer to pay the prospective employee compensation.

New section 56B(4) of the OSH Act will enable the Tribunal to remedy a contravention of section 56(1a) by a principal. The Tribunal will be able to order the principal to pay the contractor compensation.

New section 56B(5) of the OSH Act will prevent "double-dipping" so that claimants cannot be compensated both under new section 56B and otherwise for the same loss or detriment. The Tribunal will also be required to consider any redress the claimant has obtained under another enactment.

Clause 46 of the Bill
Clause 46 of the Bill will insert new Division 3 into Part VIII of the OSH Act to provide a process for conciliation and resolution of claims of workplace bullying.

New section 56C of the OSH Act
New section 56C(1) of the OSH Act will enable a claim of bullying to be referred to the Tribunal. A referral may be made by an employee or contractor who claims to have been bullied. A referral may also be made by an employer or principal who claims that one or more of their workers have been bullied.

Employees and contractors may not have their claims of bullying adequately resolved at the workplace. Similarly, employers and principals may be unsure what to do when faced with allegations of bullying at the workplace. One option would be for these parties to refer a claim of bullying to the Tribunal. The Tribunal would be able to deal with the claim impartially and quickly.

New section 56C(2) of the OSH Act will clarify that a claim may be referred to the Tribunal under new section 56C(1) regardless of whether the person alleged to have committed the bullying has been convicted of an offence under the OSH Act. A person who commits bullying could commit an offence by breaching their general safety and health duties under Part III of the OSH Act.

New section 56C(3) of the OSH Act will enable a referral under new section 56C(1) to be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the IR Act. An agent could include an employee or officer of a union.

New section 56C(4) of the OSH Act will provide that section 80E(1) of the IR Act does not apply to a claim referred under new section 56C(1) of the OSH Act by a government officer. This will enable the Tribunal to deal with claims by government officers which could otherwise be within the exclusive jurisdiction of the Public Service Arbitrator under the IR Act.

New section 56D of the OSH Act
The Tribunal will be able to conciliate bullying claims under section 51J of the OSH Act. Section 51J(3) enables the Tribunal to make enforceable directions, orders and declarations in conciliation. Section 51J(5) enables the parties to agree upon a binding settlement in the form of a determination of the Tribunal, enforceable under section 51G(3) of the OSH Act.

New section 56D of the OSH Act will enable the Tribunal to summon a person to attend conciliation proceedings involving a bullying claim. A person who fails to attend will have the onus of proving in any enforcement proceedings that they:

(a) did not receive the summons (new section 56D(2)(b)); or

(b) had good cause for not attending (new section 56D(4)).

The requirement to attend conciliation will be enforceable in accordance with section 51J(3) of the OSH Act. Enforcement under section 51J(3) proceeds via

section 84A of the IR Act. Among other things, section 84A of the IR Act enables the WAIRC Full Bench to order penalties against a person.

New section 56E of the OSH Act

New section 56E will enable two or more claims of bullying to be jointly heard and determined by the Tribunal.

A group of employees, or a group of contractors, could agree in writing to have their claims under new section 56C(1) of the OSH Act dealt with by the Tribunal at the same time in the same proceeding.

New section 56E will only apply where:

(a) the employees or contractors are engaged by the same employer or principal (as the case may be);

(b) the employees or contractors agree in writing to their claims being jointly heard and determined before the Tribunal has begun to hear any of the claims; and

(c) the Tribunal is satisfied that it would be appropriate to jointly hear and determine the claims.

Nothing in new section 56E is intended to limit the Tribunal's powers pursuant to section 27(1)(s) of the IR Act, as applied by section 51I of the OSH Act. Section 27(1)(s) of the IR Act enables the Tribunal to "consolidate or divide proceedings" relating to any matter before the Tribunal.

New section 56F of the OSH Act

New section 56F will enable the Tribunal to hear and determine bullying claims that are not resolved by conciliation or that the Tribunal does not endeavour to resolve by conciliation. The Tribunal will be able to do one or more of the following things in determining a claim:

(a) order a person to do, or to refrain from doing, any specified thing;

(b) order an employer or principal to make specified arrangements to deal with bullying at the workplace;

(c) order a person to complete a course relevant to bullying, at the person's expense;

(d) make a declaration that a person engaged in bullying.

The scope of new section 56F(2) of the OSH Act is intended to be broad. For example, the Tribunal could order an employer or principal to engage a workplace facilitator or mediator to deal with bullying at the workplace. New section 56F(2) will not be limited to providing redress to individual workers who have been bullied. It will also extend to the prevention of bullying at the workplace generally.

An order made by the Tribunal under new section 56F will be enforceable as per section 51G(3) of the OSH Act. Enforcement under section 51G(3) proceeds via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

New section 56G of the OSH Act

New section 56G will enable the Tribunal to order costs against a party to a bullying claim where the proceedings have been frivolously or vexatiously instituted or defended. Any such order made by the Tribunal will be enforceable via section 83 of the IR Act. Among other things, section 83 of the IR Act enables the Industrial Magistrates Court to order penalties against a person.

PART 6 OF THE BILL – AMENDMENTS TO THE WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981

Clause 47 of the Bill

Clause 47 provides that Part 6 of the Bill will amend the *Workers' Compensation and Injury Management Act 1981* (WCIM Act). A primary purpose of the WCIM Act is to "make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work" (section 3(b) of the WCIM Act). Part 6 of the Bill will promote this purpose by providing a remedy to workers who are dismissed within a specified period of becoming injured.

Clause 48 of the Bill

Clause 48 of the Bill will amend section 84AA of the WCIM Act by deleting the offence provision attached to that section. Instead, new section 84AC of the WCIM Act will designate section 84AA as a civil penalty provision (see clause 50 of the Bill).

Section 84AA applies to workers who attain capacity for work within 12 months of becoming entitled to workers' compensation payments. In this situation the employer is required to provide the worker with their pre-injury position or another suitable position.

Clause 49 of the Bill

Clause 49 of the Bill will amend section 84AB of the WCIM Act by deleting the offence provision attached to that section. Instead, new section 84AC of the WCIM Act will designate section 84AB as a civil penalty provision (see clause 50 of the Bill).

An employer who intends to dismiss a worker to whom section 84AA applies is required to give written notice of their intention to the worker and to WorkCover WA.

Clause 50 of the Bill

Clause 50 of the Bill will insert new section 84AC into the WCIM Act. New section 84AC(1) will designate sections 84AA and 84AB of the WCIM Act as civil penalty provisions for the purposes of section 83E of the IR Act.

Applications for civil penalties are heard by the Industrial Magistrates Court and determined on the balance of probabilities. An application may be made by:

(a) the affected worker;

(b) a union (provided the affected worker is a member); or

(c) an industrial inspector designated under the IR Act.

Among other things, section 83E(1) of the IR Act enables the Industrial Magistrates Court to order penalties of up to $5,000 against an employer.

For the purposes of civil penalty proceedings, new section 84AC(2) and (3) of the WCIM Act will provide that a declaration made by the WAIRC under new section 84AL(6)(c) or (6)(d) is prima facie evidence that an employer contravened section 84AA or 84AB. The intent is to expedite civil penalty proceedings where a declaration has been made by the WAIRC.

Clause 51 of the Bill

Clause 51 of the Bill will insert new Part IIIA into the WCIM Act to provide a remedy to workers who are dismissed within a specified period of becoming injured.

New section 84AD of the WCIM Act

New section 84AD will define terms for the purposes of new Part IIIA.

New section 84AE of the WCIM Act

New section 84AE will confer jurisdiction on the WAIRC to hear and determine applications made under new section 84AH.

New section 84AF of the WCIM Act

New section 84AF will provide that the WAIRC is to be constituted by a single commissioner when exercising jurisdiction under new section 84AE of the WCIM Act. When allocating a matter, the Chief Commissioner must consider the desirability of the commissioner concerned having relevant knowledge of the WCIM Act.

New section 84AG of the WCIM Act

New section 84AG(1) will apply certain provisions of the IR Act for the purposes of the WAIRC exercising jurisdiction under new section 84AE of the WCIM Act. The applied provisions relate to:

(a) the functions and powers of the WAIRC – paragraphs (a)-(d) of new section 84AG(1);

(b) intervention in WAIRC proceedings by the Minister for Employment Protection – paragraph (e) of new section 84AG(1);

(c) the representation rights of parties – paragraph (f) of new section 84AG(1);

(d) the exercise of conciliation and arbitration powers by the WAIRC – paragraph (g) of new section 84AG(1);

(e) evidence before the WAIRC – paragraph (h) of new section 84AG(1);

(f) the form of WAIRC decisions – paragraphs (i)-(k) of new section 84AG(1); and

(g) appeals to the WAIRC Full Bench and the Industrial Appeal Court – paragraphs (l)-(o) of new section 84AG(1).

New section 84AG(2) will enable the applied provisions to be modified in certain circumstances. This will provide flexibility to ensure that the applied provisions are appropriate for the WCIM Act.

New section 84AG(3)(a) will modify section 31(1) of the IR Act (as applied by new section 84AG(1)(f)) to give parties the right to be represented by a legal practitioner in WAIRC proceedings.

New section 84AG(3)(b) will modify section 33(6) of the IR Act (as applied by new section 84AG(1)(h)) to make reference to new section 84AK of the WCIM Act, which will enable the WAIRC to summon any person to conciliation proceedings.

New section 84AG(3)(c) will modify section 90(1) of the IR Act (as applied by new section 84AG(1)(m)) so that appeals can be made to the Industrial Appeal Court on the ground that a decision of the WAIRC Full Bench was in excess of jurisdiction.

New section 84AH of the WCIM Act

New section 84AH(1) will enable a worker who has been incapacitated by injury to seek a reinstatement order (as defined by new section 84AD) from the WAIRC where:

(a) the worker is dismissed in the period that begins on the day the injury occurred and ends 12 months from the day the worker becomes entitled to receive workers' compensation payments (the prescribed period); and

(b) the worker attains partial or total capacity for work in the prescribed period.

Importantly, a worker will only be able to seek a reinstatement order if they have attained partial or total capacity for work.

EXAMPLE 1

Peter suffers a workplace injury on 1 January 2008. Peter is dismissed on 28 January 2008, at which time he has no capacity for work because of his injury. On 1 March 2008 Peter becomes entitled to receive workers' compensation payments (triggering the 12-month period referred to in new section 84AH(1) of the WCIM Act). On 25 November 2008 Peter attains some capacity for work. At this point, Peter can apply to the WAIRC for a reinstatement order under new section 84AH(1) of the WCIM Act.

An employer who dismisses an injured worker without giving them a reasonable opportunity to return to work, or to be fully rehabilitated once back at work, could be required to reinstate the worker. The employer may also be in contravention of section 84AA of the WCIM Act.

An application for a reinstatement order may be made by:

(a) the affected worker; or

(b) a union (provided the affected worker is a member or is eligible to be a member).

New section 84AH(2) will require a copy of the application to be served on the employer.

New section 84AH(3) will require an application to be brought within 28 days after the end of the prescribed period.

EXAMPLE 2

The prescribed period for Peter in Example 1 is the period between 1 January 2008 (when Peter is injured) and 1 March 2009 (12 months from when Peter becomes entitled to receive workers' compensation payments). Peter will have 28 days after 1 March 2009 to make an application under new section 84AH(1) of the WCIM Act.

New section 84AH(4) will enable the WAIRC to accept an application out-of-time if the WAIRC considers that it would be unfair not to do so.

New section 84AI of the WCIM Act

New section 84AI will provide that the applicant and the employer (on whom a copy of the application is served) are the parties to proceedings for a reinstatement order. New section 84AI will be subject to section 27(1)(j) of the IR Act (as applied by new section 84AG of the WCIM Act), which enables the WAIRC to direct that parties be struck out or that persons be joined to proceedings.

New section 84AJ of the WCIM Act

New section 84AJ(2) will enable the WAIRC to conciliate an application for a reinstatement order. New section 84AJ(6) will provide that conciliation proceedings are to be held in private.

New section 84AJ(3) will enable the WAIRC to make enforceable directions, orders and declarations in conciliation. Any such direction, order or declaration will be enforceable under new section 84AJ(9) of the WCIM Act. Enforcement under new section 84AJ(9) will proceed via section 84A of the IR Act. Among other things, section 84A of the IR Act enables the WAIRC Full Bench to order penalties against a person.

New section 84AJ(8) will enable the parties to agree upon a binding settlement in the form of an order made by the WAIRC. Any such order will also be enforceable under new section 84AJ(9) of the WCIM Act.

New section 84AK of the WCIM Act

New section 84AK will enable the WAIRC to summon a person to attend conciliation proceedings. A person who fails to attend will have the onus of proving in any enforcement proceedings that they:

(a) did not receive the summons (new section 84AK(2)(b)); or

(b) had good cause for not attending (new section 84AK(4)).

The requirement to attend conciliation will be enforceable in accordance with new section 84AJ(9) of the WCIM Act. Enforcement under new section 84AJ(9) will proceed via section 84A of the IR Act. Among other things, section 84A of the IR Act enables the WAIRC Full Bench to order penalties against a person.

New section 84AL of the WCIM Act

New section 84AL(1) will enable the WAIRC to hear and determine applications for a reinstatement order that are not resolved by conciliation or that the WAIRC does not endeavour to resolve by conciliation.

New section 84AL(2) will enable the same commissioner who conciliated the application to also hear and determine the application. However, new section 84AL(4) will prevent the same commissioner from hearing and determining the application if a party objects before the hearing commences.

New section 84AL(6) will enable the WAIRC to do one of more of the following things in determining an application:

(a) make a reinstatement order;

(b) make a compensation order for loss or injury caused by the dismissal;

(c) make a declaration that the employer failed to comply with section 84AA(1) of the WCIM Act;

(d) make a declaration that the employer failed to comply with section 84AB(1) of the WCIM Act;

(e) make an order dismissing the application.

Reinstatement order

The WAIRC will be able to make a reinstatement order under new section 84AL(6)(a). New section 84AD of the WCIM Act will define "reinstatement order" to mean an order for:

(a) reinstatement of the worker under section 23A(3) of the IR Act (reinstatement to the worker's former position on conditions no less favourable than what the worker enjoyed immediately before dismissal); or

(b) re-employment of the worker under section 23A(4) of the IR Act (re-employment to another position if reinstatement would be impracticable).

New section 84AL(7) of the WCIM Act will apply section 23A(5), (11) and (12) of the IR Act for the purposes of making a reinstatement order. This will enable the WAIRC to:

(a) make an order preserving the worker's continuity of employment between the time of dismissal and reinstatement or re-employment;

(b) order the employer to pay the worker remuneration lost (or likely to have been lost) because of the dismissal;

(c) require the employer to comply with the reinstatement order within a specified time; and

(d) make any ancillary or incidental order the WAIRC thinks necessary for giving effect to the reinstatement order.

The WAIRC will only be able to make a reinstatement order if satisfied that the worker is fit for the kind of employment to which the worker is to be reinstated or re-employed (new section 84AL(9) of the WCIM Act).

The WAIRC will <u>not</u> be able to make a reinstatement order if the employer proves that the worker was dismissed during the prescribed period for serious or wilful misconduct (new section 84AL(11) of the WCIM Act).

Compensation order

The WAIRC will be able to make a compensation order under new section 84AL(6)(b). The WAIRC will only be able to make a compensation order if it considers that a reinstatement order would be impracticable (new section 84AL(10) of the WCIM Act).

New section 84AL(8) of the WCIM Act will apply section 23A(7) to (12) of the IR Act for the purposes of making a compensation order. This will:

(a) require the WAIRC to take certain things into account when deciding the amount of compensation (such as the worker's efforts to mitigate the loss suffered as a result of the dismissal);

(b) cap the amount of compensation that may be ordered by the WAIRC to a maximum of 6 months' remuneration of the worker;

(c) enable the WAIRC to permit the employer to pay compensation in instalments;

(d) require the employer to comply with the compensation order within a specified time; and

(e) make any ancillary or incidental order the WAIRC thinks necessary for giving effect to the compensation order.

The WAIRC will not be able to make a compensation order if the employer proves that the worker was dismissed during the prescribed period for serious or wilful misconduct (new section 84AL(11) of the WCIM Act).

Declaration that employer failed to comply with section 84AA or 84AB

The WAIRC will be able to make a declaration that an employer failed to comply with section 84AA or 84AB of the WCIM Act. A declaration will be prima facie evidence of a contravention of section 84AA or 84AB for the purposes of civil penalty proceedings in the Industrial Magistrates Court (new section 84AC of the WCIM Act).

New section 84AM of the WCIM Act

When hearing an application for a reinstatement order, the WAIRC could be faced with complex medical issues and conflicting opinions concerning a worker's capacity for work.

New section 84AM(1) of the WCIM Act will enable the WAIRC to refer a question concerning a worker's capacity for work to the Director of the Dispute Resolution Directorate (DRD) for determination by an arbitrator (the terms "Director" and "arbitrator" are defined by section 5(1) of the WCIM Act). The DRD has expertise in resolving medical disputes under the WCIM Act.

If a referral is made by the WAIRC to the Director of the DRD, new section 84AM(3) and (4) will provide that:

(a) the WAIRC must not hear and determine the application for a reinstatement order until it has been given the arbitrator's decision;

(b) the WAIRC is bound by the arbitrator's decision;

(c) the arbitrator's decision is not subject to appeal or judicial review (consistent with section 187 of the WCIM Act); and

(d) the WAIRC's determination of the application is not subject to appeal or judicial review, to the extent that it gives effect to the arbitrator's decision.

New section 84AN of the WCIM Act
New section 84AN will enable regulations to be made providing for:

(a) the functions and proceedings of an arbitrator under new section 84AM; and

(b) the practice and procedure governing those functions and proceedings.

The regulations will ensure that referrals under new section 84AM are dealt with expeditiously.

New section 84AO of the WCIM Act
New section 84AO will confer jurisdiction on the Industrial Magistrates Court to hear and determine applications under new section 84AP of the WCIM Act.

New section 84AP of the WCIM Act
New section 84AP will enable an application to be made to the Industrial Magistrates Court for enforcement of a reinstatement or compensation order. An application may be made by:

(a) the affected worker;

(b) a union (provided the affected worker is a member or is eligible to be a member); or

(c) an industrial inspector designated under the IR Act.

New section 84AQ of the WCIM Act
New section 84AQ(1) will apply certain provisions of the IR Act for the purposes of the Industrial Magistrates Court enforcing a reinstatement or compensation order. The applied provisions relate to:

(a) the time limit for making an application to the Industrial Magistrates Court to enforce a reinstatement or compensation order – paragraph (a) of new section 84AQ(1) (the time limit will be 6 years from when the employer failed to comply with the order);

(b) the powers of the Industrial Magistrates Court to enforce a reinstatement or compensation order – paragraph (b) of new section 84AQ(1);

(c) the awarding and payment of costs in enforcement proceedings – paragraphs (c) and (d) of new section 84AQ(1);

(d) appeals to the WAIRC Full Bench and the Industrial Appeal Court – paragraphs (e)-(h) of new section 84AQ(1); and

(e) the ability of industrial inspectors to make an application for enforcement of a reinstatement or compensation order – paragraph (i) of new section 84AQ(1).

New section 84AQ(2) will enable the applied provisions to be modified in certain circumstances. This will provide flexibility to ensure that the applied provisions are appropriate for the WCIM Act.

New section 84AQ(3) will modify section 83C(1) of the IR Act (as applied by new section 84AQ(1)(c) of the WCIM Act) to delete the references to "the Registrar" and "a deputy registrar". These references are not relevant as the Registrar and deputy registrars will not have standing to bring enforcement proceedings under new section 84AP of the WCIM Act.

New section 84AR of the WCIM Act

New section 84AR will clarify that new Part IIIA of the WCIM Act does not limit a worker's rights under the WCIM Act or any other written law.

New section 84AS of the WCIM Act

New section 84AS will ensure that new Part IIIA of the WCIM Act does not limit or derogate from the WAIRC's functions under the IR Act.

Clause 52 of the Bill

Clause 52 of the Bill will amend the definition of "industrial award" in section 5(1) of the WCIM Act to reflect changes to the WR Act by the Work Choices Act. The definition of "industrial award" is important for the purposes of calculating "weekly earnings" in accordance with clause 11 of Schedule 1 to the WCIM Act.

Paragraph (d) of the definition of "industrial award" in section 5(1) of the WCIM Act will be amended to:

(a) delete the reference to "certified agreement" (which is no longer defined by the WR Act); and

(b) insert reference to "collective agreement" and "APCS" (as defined by section 4(1) of the WR Act).

New paragraphs (e) to (g) will be inserted into the definition of "industrial award" to make reference to appropriate transitional instruments under the WR Act. Prior to the Work Choices Act, these instruments were either State or federal collective agreements or awards.

Clause 53 of the Bill

Clause 53 of the Bill will amend section 83(1) of the WCIM Act to replace the reference to "certified agreement" with "collective agreement". This once again reflects changes to the WR Act by the Work Choices Act.

Clause 54 of the Bill
Clause 54 of the Bill will amend the definition of "Amount E" in clause 11(2) of Schedule 1 to the WCIM Act. "Amount E" provides a safety net for workers whose earnings are not prescribed by an industrial award. Their weekly earnings for the purposes of calculating workers' compensation payments cannot be less than "Amount E" (which refers to minimum weekly earnings under the MCE Act).

The definition of "Amount E" will be amended to ensure that the safety net continues to apply to all workers whose earnings are not prescribed by an industrial award, including those employed by constitutional corporations (who may not technically be entitled to minimum weekly earnings under the MCE Act).

PART 7 OF THE BILL – AMENDMENTS TO THE MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993

Clause 55 of the Bill
Clause 55 provides that the amendments in Part 7 of the Bill are to the MCE Act.

Clause 56 of the Bill
Clause 56 of the Bill will replace existing section 7(c) of the MCE Act. Existing section 7(c) provides for the enforcement of a minimum condition implied into a contract of employment by section 5(1)(c) of the MCE Act in the Industrial Magistrates Court under section 83 of the IR Act.

New section 7(c) will allow for implied conditions to be enforced in the Industrial Magistrates Court in the same way as under existing section 7(c), but also under Part II of the IR Act, subject to the provisions of section 28A of the IR Act, relating to denied contractual benefits claims.

PART 8 OF THE BILL – AMENDMENTS TO THE PUBLIC SECTOR MANAGEMENT ACT 1994

Clause 57 of the Bill
Clause 57 provides that the amendments in Part 8 of the Bill are to the PSMA.

Clause 58 of the Bill
Clause 58 of the Bill will amend section 52 of the PSMA. The amendment is a consequence of the expansion of the WAIRC's denied contractual benefits jurisdiction to non-industrial matters. Section 52(2) of the PSMA currently provides that:

> The employment of a chief executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1979*.

That provision excludes denied contractual benefits claims in relation to the employment of a chief executive officer, as denied contractual benefits claims under the existing provisions of the IR Act are industrial matters that may be referred to the WAIRC.

To avoid making the denied contractual benefits jurisdiction of the WAIRC available to chief executive officers, section 52(2) of the PSMA will be amended to ensure that the employment of a chief executive officer, or any matter, question or dispute relating to any such employment is not an industrial matter, nor is it a matter that can be the subject of a claim under new section 28A of the IR Act.

The amendment will ensure the objective of section 52 of the PSMA, of precluding chief executive officers from accessing the WAIRC's jurisdiction, is maintained and not changed as a result of the introduction of new section 28A of the IR Act.

Clause 59 of the Bill

Clause 59 of the Bill will correct two typographical errors in section 78 of the PSMA. Section 78 refers to "section 29(b)" of the IR Act in subsections (2) and (3). There is no section 29(b) of the IR Act. The reference is intended to be to section 29(1)(b) of the IR Act. The amendment is made accordingly.