

## EXPLANATORY MEMORANDUM

### INDUSTRIAL RELATIONS AMENDMENT BILL 2018

#### INTRODUCTION

The *Industrial Relations Amendment Bill 2018 (the Bill)* amends the *Industrial Relations Act 1979 (the IR Act)* to abolish the position of the President of the Western Australian Industrial Relations Commission as established by the IR Act. Minor consequential amendments to other legislation are included in the Bill.

The Bill:

- (a) abolishes the position of President of the Western Australian Industrial Relations Commission (intended to take effect when the current Acting President's appointment expires on 26 December 2018);
- (b) provides for the Full Bench to be constituted by three commissioners, one of whom must be the Chief Commissioner or Senior Commissioner; and
- (c) provides for functions of the President and Full Bench that relate to registered organisations (in Part II Division 4 of the IR Act) to be undertaken by the Chief Commissioner or Commission in Court Session.

While the President has the status of a puisne judge and the position has traditionally been tenured, in 2005 the IR Act was amended to allow the appointment of an acting President. Since that time the position of President has been filled on an acting basis. The current acting appointment of the Hon J Smith expires on 26 December 2018. The Hon J Smith was appointed as a Supreme Court judge effective 27 June 2018.

It is intended this Bill will enable an immediate transition to the new arrangements upon the expiry of the current acting President's appointment.

The President's primary function is as one of three members who sit to constitute the Full Bench of the Western Australian Industrial Relations Commission. The Full Bench hears appeals from decisions of single commissioners of the Western Australian Industrial Relations Commission and the Industrial Magistrate's Court. The Full Bench also deals with questions of law.

The current role of the President in relation to appeals will be reallocated or transferred to the presiding commissioner of the Full Bench (the most senior of the commissioners constituting the Full Bench). The role of the President on the Full Bench hearing appeals and questions of law will be performed by the presiding commissioner, along with applications for stay orders in appeals.

Roles of the Full Bench and President in Part II Division 4 of the IR Act (which deals with industrial organisations and associations) will be transferred to the Commission in Court Session and Chief Commissioner respectively. This includes, for example, registration of organisations of employees and the power of the President to deal with complaints against organisations pursuant to section 66 of the IR Act. Questions of interpretation of rules of organisations will be heard by the Commission in Court Session rather than the Full Bench.

The requirement for the President to consent to questions of law being referred to the Full Bench is to be transferred to the Chief Commissioner.

The Bill is in three Parts:

- (a) Part 1 contains the commencement provisions;
- (b) Part 2 contains the amendments to the IR Act;
- (c) Part 3 contains consequential amendments to other Acts.

## **PART 1 OF THE BILL – PRELIMINARY**

### **Clauses 1 and 2 of the Bill – short title and commencement**

Clause 1 of the Bill provides for the short title of the legislation, namely the *Industrial Relations Amendment Act 2018 (Amendment Act)*.

Clause 2 of the Bill provides that Part 1 of the Amendment Act will commence on the day of Royal Assent, while the rest of the Amendment Act will commence on a day fixed by proclamation.

## **PART 2 OF THE BILL – *Industrial Relations Act 1979* amended**

### **Clause 3 of the Bill – amendments to IR Act**

Clause 3 of the Bill provides that Part 2 of the Bill will amend the IR Act.

### **Amendments to Part I, IR Act**

#### **Clause 4 of the Bill (subclauses (1)-(4)) – section 7(1) amended**

**Clause 4(1)** of the Bill will delete a number of existing definitions in section 7(1) of the IR Act, and **clause 4(2)** replaces some of those definitions and inserts the new definition of “presiding commissioner”.

### **Fair Work Australia**

The *Fair Work Amendment Act 2012* (Commonwealth) changed the name of “Fair Work Australia” to “the Fair Work Commission”. Reflecting this change of name, clause 4(1) of the Bill deletes the definition of “Fair Work Australia” and clause 4(2) replaces the definition with the definition of “Fair Work Commission”.

### **member of the Commission**

The definition of “member of the Commission” is deleted. As a result of President’s position being abolished, the only “members” of the Commission will be the Chief Commissioner, the Senior Commissioner and other commissioners. The defined term “commissioner” covers all the “members” of the Commission.

## **President**

The definition of President is deleted as a consequence of the position being abolished by the Bill.

## **presiding commissioner**

The new definition of “presiding commissioner” is inserted. The presiding commissioner of the Full Bench will replace the President on the Full Bench. The presiding commissioner will be either the Chief Commissioner or the Senior Commissioner; the most senior of the three commissioners sitting to constitute the Full Bench.

## **secondary office**

The definition of secondary office is replaced to update the references to “Fair Work Australia” with “the Fair Work Commission”.

The definitions of “office” and “registration” are amended by **clauses 4(3) and 4(4)** of the Bill as a consequence of the transfer of matters relating to registered organisations (under Part II Division 4 of the IR Act) from the Full Bench to the Commission/Commission in Court Session.

## **Clause 4(5) of the Bill – section 7(4) amended**

Clause 4(5) of the Bill will amend an incorrect reference in section 7(4) of the IR Act. The current reference to “subsection (3)(b)” will be replaced with “subsection (3)”.

## **Amendments to Part II, IR Act**

### **Clause 5 of the Bill – section 8(2) amended**

Clause 5 of the Bill amends section 8(2) of the IR Act as a consequence of the President’s position being abolished. Section 8(2) currently sets out the members of the Commission, including the President. The section will be amended to delete the references to the “President” and to “members” as the definition of “member of the Commission” in section 7(1) is being deleted given all members of the Commission will be a “commissioner”.

The amended section 8(2) will provide that the Commission will consist of the Chief Commissioner, Senior Commissioner and other commissioners.

The amendments also update the section to reflect modern drafting styles. **Paragraph (d)** replaces the reference to “in Her Majesty’s name” with “under the Public Seal of the State” to remove gender-specific language and make the provision gender-free and consistent with

other legislative provisions for appointment by commission (e.g. appointments pursuant to the *Supreme Court Act 1935*, section 7A(11)).

#### **Clause 6 of the Bill – section 9 amended**

Clause 6 of the Bill deletes subsections 9(1), (1aa) and (1a), thereby removing from the IR Act the qualification requirements for and entitlements arising from appointment as President. The deletion of these subsections arises from the abolition of the position of President.

#### **Clause 7 of the Bill – section 10 amended**

Clause 7 of the Bill amends section 10 which provides the age limit for a “member of the Commission”. Given the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill, references to “members” are replaced with “commissioners” (all members will be commissioners once the President’s position is abolished).

#### **Clause 8 of the Bill - section 11(1) amended**

Clause 8 of the Bill amends section 11 of the IR Act, which requires a member of the Commission to make oath of office and secrecy before entering office. Given the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill, references to “members” are replaced with “commissioners” (all members will be commissioners once the President’s position is abolished).

#### **Clause 9 of the Bill – section 13 replaced**

Section 13 of the IR Act relates to protection and immunity in the performance of functions under the IR Act. Clause 9 replaces current section 13 to replace the references to a “member” of the Commission with “commissioner” and to update the drafting style of the section. The amendment arises from the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished).

#### **Clause 10 of the Bill – section 14 amended**

**Clause 10(1)** of the Bill deletes section 14(1) of the IR Act relating to the jurisdiction of the President. This deletion arises from the abolition of the President’s position.

**Clause 10(2)** of the Bill amends section 14(3) of the IR Act to replace references to “member of the Commission” with “commissioner”. These amendments arise from the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished).

#### **Clause 11 of the Bill – section 14A amended**

Clause 11 **paragraphs (a) and (c)** amend section 14A of the IR Act to replace references to “member of the Commission” with references to “commissioner”. These amendments arise from the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished).

Clause 11 **paragraphs (b) and (d)** amend section 14A of the IR Act to replace references to “Fair Work Australia” with “the Fair Work Commission” reflecting the name change of that body (see further clause 4 of the Bill).

#### **Clause 12 of the Bill – section 14B amended**

Clause 12 of the Bill replaces section 14B(1) of the IR Act to:

- replace references to “member of the Commission” with references to “commissioner” due to the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished); and
- replace references to “Fair Work Australia” with “the Fair Work Commission” reflecting the name change of that body (see further clause 4 of the Bill).

#### **Clause 13 of the Bill – section 15 amended**

Clause 13 of the Bill replaces the current section 15(1) of the IR Act, which provides for the constitution of the Full Bench including the President. New section 15(1) provides for the constitution of the Full Bench by three commissioners. At least one of the commissioners constituting the Full Bench must be the Chief Commissioner or the Senior Commissioner.

New section 15(1A) provides that the presiding commissioner of the Full Bench is the most senior member. This will be either the Chief Commissioner or Senior Commissioner, however

if both the Chief Commissioner and Senior Commissioner are on a Full Bench together, the Chief Commissioner will be the presiding commissioner.

The presiding commissioner will have certain functions as part of the Full Bench that are currently the President's functions, for example, determining applications for a stay order pursuant to amended section 49(12).

#### **Clause 14 of the Bill – section 16 amended**

Section 16(1aa) provides that the Chief Commissioner is responsible for matters of an administrative nature relating to the Commission and members of the Commission. The amendment in clause 14 of the Bill deletes the reference to "members of the Commission" and replaces it with "commissioners".

The amendment in **clause 14(1)** arises from the deletion of the definition of "member of the Commission" by clause 4(1) of the Bill (all members will be commissioners once the President's position is abolished).

Section 16(2)(c) of the IR Act requires the Chief Commissioner to consult with the President before making the annual report to the Minister. The amendment in **clause 14(2)** deletes paragraph (c) removing the requirement to consult. This deletion arises from the abolition of the position of President.

#### **Clause 15 of the Bill – section 16A amended**

Clause 15 of the Bill amends section 16A of the IR Act, which relates to the Chief Commissioner's power to delegate, to replace the reference to "member of the Commission" with "commissioner". This amendment arises from the deletion of the definition of "member of the Commission" by clause 4(1) of the Bill (all members will be commissioners once the President's position is abolished).

#### **Clause 16 of the Bill – section 17 amended**

**Clause 16(1)** amends section 17(1) (which relates to the appointment of acting members of the Commission) to replace the reference to "member of the Commission" with "commissioner", remove the reference to "acting President" and remove gender-specific language to make the provision gender-free.

**Clause 16(2)** deletes section 17(1a) and (1b), which relate to the appointment of an acting President. These deletions arise from the abolition of the position of President.

**Clause 16(3)** removes the reference to “acting President” from section 17(2) which applies the relevant qualification requirements to acting positions and removes gender-specific language to make the provision gender-free.

#### **Clause 17 of the Bill – section 18 amended**

**Clause 17(1)** of the Bill amends section 18(1) of the IR Act to replace references to a “member of the Commission” with “commissioner” and remove gender-specific language to make section 18(1) gender-free.

**Clause 17(2)** of the Bill replaces section 18(3) and (4) of the IR Act, thereby:

- replacing the references to “member of the Commission” and “member” with “commissioner” due to the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished); and
- removing the paragraphs that relate to the President or acting President (that is, section 18(3)(b) and (4)(b)) as required to abolish the position of President.

#### **Clause 18 of the Bill – section 19 replaced**

Clause 18 of the Bill replaces section 19 of the IR Act, relating to the duty of members of the Commission to keep acquainted with industrial affairs and conditions, to:

- replace the reference to “member of the Commission” with “commissioner” due to the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished); and
- remove gender-specific language to make section 19 gender-free.

#### **Clause 19 of the Bill – section 20 amended**

**Clause 19(1)** of the Bill deletes section 20(1) of the IR Act which relates to the conditions of service of the President. This deletion arises directly from the abolition of the position of President.

**Clause 19(2)** of the Bill amends section 20(2) of the IR Act, which relates to the conditions of service of members of the Commission other than the President, all of whom will be commissioners after the enactment of the Bill.



**Clause 19(3)** of the Bill deletes section 20(8c), (8d), (11), (12) and (13) of the IR Act. Section 20(8c) and (8d) relate to a President who was, immediately prior to appointment, a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*. No appointee to the roles of President and acting President is a contributor within the meaning of that Act.

Section 20(11) to (13) of the IR Act relate to leave of absence and pension entitlements of the President. Section 20(11) is deleted as leave of absence entitlements will not be relevant once the President's position is abolished. The continued operation of section 20(12) and (13) of the IR Act in relation to past Presidents is provided for in the transitional provisions inserted by clause 66 of the Bill (proposed clause 3 of Schedule 6).

Clause 3 of proposed new Schedule 6 applies to past Presidents or acting Presidents or their dependents who have a pension entitlement by application (pursuant to section 20(12) and (13) of the IR Act) of the *Judges' Salaries and Pensions Act 1950* to persons who have held the office of President or acting President prior to the position being abolished. Clause 3 of Schedule 6 of the IR Act (proposed to be inserted by clause 66 of the Bill) will preserve that entitlement, where relevant, for past Presidents or acting Presidents who held office prior to the commencement of the Bill.

#### **Clause 20 of the Bill – section 21 amended**

Clause 20 of the Bill amends section 21 of the IR Act, relating to resignation from office, to:

- replace the reference to “member of the Commission” with “commissioner” due to the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President's position is abolished); and
- remove gender-specific language to make section 21 gender-free.

#### **Clause 21 of the Bill – section 22 amended**

**Clause 21(1)** of the Bill amends section 22(1) of the IR Act to replace the reference to the “members of the Commission” with “commissioners” due to the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President's position is abolished).

**Clause 21(2)** of the Bill replaces section 22(2) of the IR Act to:

- replace the reference to the “member of the Commission” with “commissioner” due to the deletion of the definition of “member of the Commission” by clause 4(1) of the Bill (all members will be commissioners once the President’s position is abolished);
- remove gender-specific language to make the section gender-free;
- replace the reference to “Fair Work Australia” with “the Fair Work Commission” to reflect the name change of that body.

#### **Clause 22 of the Bill – section 27 amended**

Clause 22 of the Bill amends section 27(1) of the IR Act to provide for:

- in paragraph (t), questions of interpretation of the rules of organisations to transfer to the Commission in Court Session (as functions relating to registered organisations under Part II Division 4 of the IR Act will transfer to the Commission in Court Session from the Full Bench on abolition of the President’s position) (**clause 22(1)**);
- In paragraph (u), the requirement for the President’s consent for referral of questions of law to the Full Bench to be replaced by consent of the Chief Commissioner (**clause 22(2)**).

#### **Clause 23 of the Bill – section 29AA amended**

Clause 23 amends section 29AA(1) and (2) of the IR Act to replace the references to “Fair Work Australia” with “the Fair Work Commission” to reflect the name change of that body.

#### **Clause 24 of the Bill – section 34 amended**

**Clause 24(1)** of the Bill deletes and replaces section 34(1), which relates to the form of a decision of the Commission. The subsection is redrafted for clarity and the requirement is added for the presiding commissioner to sign and date a decision of the Full Bench.

Importantly, the amendment will provide that a decision is “made” when it is signed and dated by the commissioner, the most senior commissioner of the Commission in Court Session or presiding commissioner (as the case may be). This will alter the current situation where a decision is made when it is signed and “delivered”, namely deposited in the office of the Registrar.<sup>1</sup> This will mean, for example, that a time limit for appeal will start from the signing and dating of the decision rather than its “delivery”. It should be noted that a decision may not necessarily take *effect*, however, when it is made as its terms may provide otherwise.

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<sup>1</sup> *Graham McCorry v Como Investments Pty Ltd* (1989) 69 WAIG 1000.

New provisions requiring the decision to be provided to parties and deposited in the office of the Registrar for inspection are included in clause 26 of the Bill (replacement section 36 of the IR Act).

Proposed section 34(1)(c) effectively replaces section 49(7) of the IR Act, which relates to the President signing and delivering the decision of the Full Bench. The new provision requires that the presiding commissioner of the Full Bench sign and date a decision of the Full Bench or presiding commissioner.

Proposed section 34(1A) requires a decision of the Commission to be sealed with the Commission's seal. This new provision arises from the repeal of section 36(a) of the IR Act and re-enacts the requirement for a decision to be sealed with the Commission's seal. Section 12(2) of the IR Act requires judicial notice to be taken of the seal of the Commission affixed to a document.

Proposed section 34(2) of the Bill replaces section 34(2) of the Act to replace the reference to "members of the Commission in Court Session" with "commissioners who constitute" the Commission in Court Session. This is a technical amendment arising from the deletion of the definition of "member of the Commission" in section 7(1).

**Clauses 24(2) and (3)** of the Bill amend sections 34(3) and (4) respectively to remove the references to the "President" and the "Full Bench". The references to the "President" are removed due to the abolition of the President's position and the references to the "Full Bench" are redundant as the "Commission" includes the Full Bench pursuant to the definition of "Commission" in section 22A for the purposes of Part II Division 2 of the IR Act.

**Clause 24(3)(b)** amends section 34(4) to insert "or in", which is a technical correction to the drafting of that section.

#### **Clause 25 of the Bill – section 35 amended**

Clause 25 of the Bill will amend section 35 of the IR Act to provide that only final decisions must be drawn up in the form of minutes before they are made.

As is currently the case under section 35, final decisions will not be required to be drawn up in the form of minutes where:

- a) the final decision is an order made under section 27(1)(a) to dismiss a matter or refrain from further hearing or determining a matter;

- b) the final decision is an order or declaration made under section 32(8) which relates to the conciliation or arbitration of an industrial matter (section 32(4) provides the requirements for such orders); or
- c) the Commission considers the process to be inappropriate or unnecessary and the parties consent.

#### **Clause 26 of the Bill – section 36 replaced**

Clause 26 of the Bill will replace section 36 of the IR Act so that as soon as practicable after making a decision, the Commission must give a copy to each party and deposit a copy in the office of the Registrar.

Copies of decisions will continue to be available for public inspection. While the onus is on the Commission to comply with section 36, failure to comply will not affect the fact that a decision has been validly made.

#### **Clause 27 of the Bill – section 39 amended**

Clause 27 will amend section 39 of the IR Act to provide that an award will come into effect on the day on which it made, rather than on the day it is delivered as is currently the case.

The Commission will retain the power to fix and specify within the award a day on which the award is to come into operation as an alternative to the day on which the order is made.

#### **Clause 28 of the Bill – section 49 amended**

**Clause 28(1)(a)** corrects a referencing error in section 49(1). Clause 28(1)(a) amends subsection 49(1) so that the definition in that subsection of “Commission” for the purposes of section 49 is confined to subsections (2) to (6a). This amendment reflects the use of the term “Commission” in subsection 49(11) with its usual meaning, rather than the meaning provided by subsection 49(1).

**Clause 28(1)(b)** amends section 49(1) of the IR Act, which defines Commission for the purposes of the decisions of the Commission that can be appealed to the Full Bench.

This amendment will ensure that a decision of a presiding commissioner relating to a stay application under section 49(12) will be appellable to the Industrial Appeal Court pursuant to section 90 in the same way that the President’s decision on a stay application has been. Without amendment a presiding commissioner’s decision on a stay application could be

appellable to another Full Bench. The amendment will ensure that a decision under section 49(12), as part of the appellate function of the Full Bench under section 49, remains appellable to the Industrial Appeal Court following the abolition of the President's position.

**Clause 28(2)** of the Bill deletes section 49(7) of the IR Act, which relates to the signing and delivery of decisions of the Full Bench by the President. On abolition of the President's position, decisions of the Full Bench will be delivered by the presiding commissioner under section 34(1) as amended by clause 24(1) of the Bill.

**Clause 28(3)** of the Bill replaces section 49(8) of the IR Act to provide that if the Full Bench is unable to reach a majority decision, the decision of the presiding commissioner on a question will prevail as the decision of the Full Bench.

**Clause 28(4)** of the Bill amends section 49(9) of the IR Act, which relates to questions of law arising in proceedings before the Full Bench and stating a case for the decision of the Industrial Appeal Court on that question. The amendment replaces the reference to the "President" with a reference to the "presiding commissioner", so that the presiding commissioner will state the case.

**Clause 28(5)** of the Bill amends section 49(10) of the IR Act to delete the reference to subsection (7), which is deleted by clause 28(2) of the Bill.

**Clause 28(6)** of the Bill deletes and replaces section 49(12) of the IR Act. Section 49(12) relates to the hearing and determination of an application for a stay order under section 49(11) of the IR Act, and the amendment provides that in the place of the President (who currently hears and determines stay applications), the presiding member of the Full Bench that has been allocated the appeal is to constitute the Commission for hearing and determining a stay application.

#### **Clause 29 of the Bill – section 49E(4) amended**

Clause 29 of the Bill will amend an incorrect reference in section 49E(4) of the IR Act. The current reference in paragraph (d) to "an officer referred to in section 93 authorised in writing by the Registrar" will be replaced with "a Registrar's Department officer authorised in writing by the Registrar".

#### **Amendments to Part II Division 4, IR Act (Registered organisations)**

The following clauses amending Part II Division 4, reallocate matters relating to registered organisations. The Bill provides for the current functions of the President to transfer to the Chief Commissioner on abolition of the position of President. Functions of the Full Bench relating to registered organisations will transfer to the Commission in Court Session.

Transitional arrangements are provided for in proposed new Schedule 6 of the IR Act (see clause 66 of the Bill).

#### **Clause 30 of the Bill – section 53 amended**

Clauses 30(1) and (2) of the Bill amend sections 53(1) and (2) of the IR Act (which relate to the registration of organisations of employees) to replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

#### **Clause 31 of the Bill – section 54 amended**

Clauses 31(1) and (2) of the Bill amend sections 54(1) and (2) of the IR Act (which relate to the registration of organisations of employers) to replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

#### **Clause 32 of the Bill – section 55 amended**

Clauses 32(1)-(4) of the Bill amend sections 55(2)-(5) of the IR Act (which relate to applications for registration under sections 53 and 54) to replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

#### **Clause 33 of the Bill – section 58 amended**

**Clauses 33(1) and (2)** of the Bill amend sections 58(1), (2) and (3) of the IR Act (which relate to the registration of organisations) to replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position. Clause 33(1)(a) also amends section 58(1) to remove gender-specific language and clause 33(1)(b) updates the drafting of the section to reflect modern drafting styles by deleting superfluous words.

#### **Clause 34 of the Bill – section 59 amended**

**Clauses 34(1) and (2)** of the Bill amend sections 59(1) and (3) of the IR Act (which relate to restrictions of the names of registered organisations) to replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

#### **Clause 35 of the Bill – section 60 amended**

**Clause 35** of the Bill amends section 60 of the IR Act (which relates to the effect of registration) to provide that organisations may change their name with the consent of the “Commission in Court Session”, replacing the reference to the “Full Bench”. The amendment implements the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

#### **Clause 36 – section 62 amended**

**Clause 36(1)** of the Bill amends section 62(2) of the IR Act (which relates to altering the registered rule of an organisation) to replace the reference to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

**Clause 36(2)** of the Bill amends section 62(3) of the IR Act to replace the reference to the “President” with the “Chief Commissioner”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President to the Chief Commissioner on abolition of the President’s position. The amendment also removes gender-specific language to make the subsection gender-free.

#### **Clause 37(1) – section 66 amended**

Section 66 of the IR Act relates to the powers of the President to deal with rules of organisations. The amendments in the Bill transfer these powers to the Chief Commissioner.

**Clause 37(1)(a)** of the Bill amends section 66(1) of the IR Act to replace the reference to the “President” with the “Chief Commissioner”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President to the Chief Commissioner on abolition of the President’s position.

**Clause 37(1)(b)** amends section 66(1)(c) to remove gender-specific language to make the subsection gender-free.

**Clause 37(2)** amends section 66(2) of the IR Act to replace the references to the “President” with the “Chief Commissioner”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President to the Chief Commissioner on abolition of the President’s position. The amendment in clause 37(2)(b) removes gender-specific language to make the subsection gender-free.

**Clause 37(3)** deletes section 66(3), (7) and (8).

Section 66(3) is deleted as it is superfluous - section 34(1) of the IR Act, as amended by the Bill, provides for the signing and dating of decisions of commissioners, including the Chief Commissioner who will make the decisions under section 66 once the Bill is enacted. New section 36 of the IR Act (as amended by clause 26 of the Bill) requires a copy of the decision to be given to each party to the proceeding and a copy to be deposited in the office of the Registrar, where it is to be available for inspection.

Sections 66(7) and (8) impose obligations on the Registrar to perform reviews of rules of organisations:

- (a) when 6 months have elapsed after the coming into operation of the *Industrial Legislation Amendment Act 1995*;
- (b) within 6 months of the coming into operation of section 10 of the *Labour Relations Legislation Amendment Act 1997*.

Both the reviews of rules of organisations in sections 66(7) and (8) were completed in accordance with the subsections. Clause 37(3) therefore repeals the subsections.

**Clause 37(4)** deletes and replaces section 66(9) of the IR Act to replace the references to the “President” and “Full Bench” with the “Chief Commissioner” and “Commission in Court Session” respectively, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President and Full Bench to the Chief Commissioner and Commission in Court Session on abolition of the President’s position. The new section will also amend the reference to section 27(1)(u) to section 27(1)(t) to reflect the transfer of questions of interpretation of the rules of organisations from the Full Bench under section 27(1)(u) to the Commission in Court Session under section 27(1)(t).

#### **Clause 38 of the Bill – section 68 amended**

Clause 38 of the Bill amends section 68 of the IR Act (which relates to declarations as to the functions of an office in an organisation) to replace the reference to the “Full Bench” with the



“Commission”, implementing the reallocation of the Full Bench functions in Part II Division 4 of the IR Act on abolition of the President’s position.

**Clause 39 of the Bill – section 69 amended**

Clause 39 of the Bill amends section 69(12) of the IR Act (which relates to appeals against a Registrar’s decision that a request for an election has not been duly made) to replace the reference to “Full Bench” with “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position. The amendment in paragraph (a) removes gender-specific language to make the section gender-free.

**Clause 40 of the Bill – section 71 amended**

Clause 40 of the Bill amends section 71 of the IR Act (which relates to rules of State branches of Federal registered organisations) to replace references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

The amendments in clauses 40(2)(b) and 40(5)(b) remove gender-specific language to make the section gender-free.

The amendment in clause 40(4)(a) also updates the section using plain language.

**Clause 41 of the Bill – section 72 amended**

Clause 41 of the Bill amends section 72(1) of the IR Act (which relates to the registration of amalgamated organisations) to replace the reference to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

**Clause 42 of the Bill – section 72A amended**

Clause 42 of the Bill amends section 72A of the IR Act, which relates to representation orders regarding employee organisations.

**Clauses 42(1), (2)(b), (3) and (4)** replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

**Clauses 42(2) and (4)** update drafting of sections 72A(3) and (5) using plain language.

**Clause 42(5)** amends section 72A(6) to replace references to the “President” and “Full Bench” with the “Chief Commissioner” and “Commission in Court Session” respectively, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President and Full Bench to the Chief Commissioner and Commission in Court Session respectively on abolition of the President’s position.

**Clause 42(6)** amends section 72A(7) to replace references to the “President” and “Full Bench” with the “Chief Commissioner” and “Commission in Court Session” respectively, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President and Full Bench to the Chief Commissioner and Commission in Court Session respectively on abolition of the President’s position. Plain language is used in the amendments.

**Clause 42(7)** amends section 72A(8) replaces the reference to the “President” with the “Chief Commissioner”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President to the Chief Commissioner on abolition of the President’s position. Plain language is used in the amendments.

#### **Clause 43 of the Bill – section 73 amended**

**Clause 43(1)** amends section 73(1) of the IR Act to:

- clarify that a single commissioner may direct the Registrar to issue a summons under the section;
- replace the reference to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

**Clause 43(2)** amends section 73(2) of the IR Act to replace the reference to the “President” with the “Chief Commissioner”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the President to the Chief Commissioner on abolition of the President’s position. The subsection is amended to be in plain language.

**Clause 43(3)** amends section 73(6) to replace the reference to the “Full Bench” with the “Commission in Court Session” and update the drafting consistent with the amendment of the section.

**Clause 43(4)** amends section 73(7) of the IR Act to replace the references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position.

**Clauses 43(5), (6), (7), (8) and (9)** amend section 73(7a)(c), (7b), (8), (9), (10) and (12) to replace references to the “Full Bench” with the “Commission in Court Session”, implementing the transfer of the functions in Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session on abolition of the President’s position. Clause 43(9) also amends section 73(12) to be in plain language.

### **Amendment to Part II Division 5, IR Act (Duties of officers of registered organisations)**

#### **Clause 44 of the Bill – section 76 deleted**

Clause 44 of the Bill will delete section 76 of the IR Act. Section 76 is a transitional provision and is no longer relevant.

### **Amendments to Part IIA, IR Act (Constituent authorities)**

#### **Clause 45 of the Bill – section 80D amended**

Clause 45 of the Bill deletes section 80D(1), (2) and (3) and replaces with a new section 80D(1) and (2). The purpose of the amendments is to enable the Chief Commissioner to be appointed as a public service arbitrator. A significant proportion of the work of the Commission is within the jurisdiction of the public service arbitrator and the amendment will allow the Chief Commissioner to assist with this workload should an appointment be made. The section is also redrafted for clarity.

#### **Clause 46 of the Bill – section 80E amended**

Clause 46 of the Bill amends section 80E(6)(a) and (b) to:

- replace the reference to the “President” with a reference to the “Chief Commissioner” to transfer the requirement for the consent for the referral of questions of law from the President to the Chief Commissioner.
- Transfer the jurisdiction for hearing and determining questions of interpretation of the rules of an organisation arising in a matter before the Arbitrator from the Full Bench to the Commission in Court Session consistent with the transfer of registered

organisation matters under Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session.

These amendments arise directly from the abolition of the President's position and the consequential reallocation of functions from the President and Full Bench to the Chief Commissioner and Commission in Court Session respectively. The amendments are also consistent with the proposed amendments to section 27(1)(t) and (u) of the IR Act (in clause 22 of the Bill for the referral of these questions in the general jurisdiction of the Commission).

#### **Clause 47 of the Bill – section 80H amended**

Clause 47 of the Bill deletes section 80H(3) of the IR Act to replace the appeal to the Public Service Appeal Board constituted with the President as chairman with a public service arbitrator as chairman so that in all appeals to the Public Service Appeal Board the Board will be constituted with a public service arbitrator as the chairman, removing the distinction between the appeals referred to in section 80I(1)(a), (b) and (c) (where the Board is currently constituted with the President as chairman) and the appeals in section 80I(1)(d) and (e) (where the Board is currently constituted with a public service arbitrator as chairman).

The amendments in clause 47(2) and (3) are consequential amendments arising from the deletion of section 80H(3) and the abolition of the President's position.

#### **Clause 48 of the Bill – section 80K amended**

The amendment in clause 48 of the Bill ensures consistency with the amendments to section 34(1) of the IR Act that relate to the signing of decisions of commissioners, the Commission in Court Session and the Full Bench. As a consequence of the amendments, the requirements for decisions of the Public Service Appeal Board will remain consistent with other decisions of the Commission.

#### **Clause 49 of the Bill – section 80L amended**

Clause 49 of the Bill amends section 80L(1) of the IR Act to remove an outdated reference to section 31(6) of the IR Act. Section 31(6) was repealed by the *Legal Profession Act 2008* (s.668(4)). The consequential amendment to section 80L was not made by the *Legal Profession Act 2008*.

### **Clause 50 of the Bill – section 80R amended**

Clause 50 of the Bill amends section 80R(3)(a) and (b) to:

- replace the reference to the “President” with a reference to the “Chief Commissioner” to transfer the requirement for the consent for the referral of questions of law from the President to the Chief Commissioner.
- Transfer the jurisdiction for hearing and determining questions of interpretation of the rules of an organisation from the Full Bench to the Commission in Court Session consistent with the transfer of registered organisation matters under Part II Division 4 of the IR Act from the Full Bench to the Commission in Court Session.

These amendments arise directly from the abolition of the President’s position and the consequential reallocation of functions from the President and Full Bench to the Chief Commissioner and Commission in Court Session respectively. The amendments are also consistent with the proposed amendments to section 27(1)(t) and (u) of the IR Act (in clause 22 of the Bill for the referral of these questions in the general jurisdiction of the Commission).

### **Clause 51 of the Bill – section 80V amended**

The amendment in clause 51 of the Bill ensures consistency with the amendments to section 34(1) of the IR Act that relate to the signing of decisions of commissioners, the Commission in Court Session and the Full Bench. As a consequence of the amendments, the requirements for decisions of the Railways Classification Board will remain consistent with other decisions of the Commission.

### **Amendments to Part IIC, IR Act**

#### **Clause 52 of the Bill – section 80ZF replaced**

Clause 52 replaces section 80ZF of the IR Act, which currently provides that a reference to “Fair Work Australia” includes a reference to a member of Fair Work Australia for the purposes of the Part.

The *Fair Work Amendment Act 2012* (Commonwealth) changed the name of “Fair Work Australia” to “the Fair Work Commission”. Reflecting this change of name, clause 52 replaces section 80ZF to replace the references to “Fair Work Australia” with “Fair Work Commission” and “the Fair Work Commission” as the context requires.

#### **Clause 53 of the Bill – section 80ZG amended**

Clause 53 of the Bill amends section 80ZG of the IR Act, which relates to joint proceedings of the Commission and Fair Work Australia to replace all references to “Fair Work Australia” with references to “the Fair Work Commission”, reflecting the change of name effected by the *Fair Work Amendment Act 2012* (Commonwealth).

#### **Clause 54 of the Bill – section 80ZH amended**

Clause 54 of the Bill amends section 80ZH of the IR Act, which relates to referring matters to Fair Work Australia for determination under the IR Act, to replace all references to “Fair Work Australia” with references to “the Fair Work Commission”, reflecting the change of name effected by the *Fair Work Amendment Act 2012* (Commonwealth).

#### **Clause 55 of the Bill – section 80ZI amended**

**Clause 55(1)** amends section 80ZI(1) of the IR Act, which relates to conferences with other industrial authorities, to replace the reference to “member of the Commission” with “commissioner” as a consequence of the definition of “member of the Commission” being deleted from the IR Act by clause 4(1) of the Bill. The amendment also removes a gender-specific reference and makes the section gender-free.

**Clause 55(2)** replaces the reference to “Fair Work Australia” with a reference to “the Fair Work Commission”, reflecting the change of name effected by the *Fair Work Amendment Act 2012* (Commonwealth). The amendment also removes a gender-specific reference and makes the section gender-free.

**Clause 55(3)** replaces the reference to “Fair Work Australia” with a reference to “the Fair Work Commission”, reflecting the change of name effected by the *Fair Work Amendment Act 2012* (Commonwealth).

## **Amendments to Part III, IR Act**

### **Clause 56 of the Bill – section 81B amended**

Clause 56 of the Bill amends section 81B(2) and (4) of the IR Act, which relate to the appointment of industrial magistrates and acting industrial magistrates. Currently, the Governor appoints industrial magistrates and acting industrial magistrates on the joint recommendation of the President and the Chief Magistrate. The amendments remove the reference to the “joint” recommendation and to the “President” so that future appointments will be on the recommendation of the Chief Magistrate alone. This amendment arises from the abolition of the President’s position.

## **Amendments to Part IV, IR Act**

### **Clause 57 of the Bill – section 90 amended**

Clause 57 of the Bill amends section 90 of the IR Act, which relates to appeals to the Western Australian Industrial Appeal Court. Currently, decisions of the President, the Full Bench and Commission in Court Session are appellable to the Court under that section.

On abolition of the President’s position, the appeals from the Full Bench and Commission in Court Session will remain the same. The decision of a presiding commissioner of a Full Bench on an application under section 49(11) (i.e. an application for a stay order relating to the decision appealed to the Full Bench) will be appellable to the Court, in the same way that the President’s decisions on these applications presently are.

Other decisions that the President currently makes that will be made by the Chief Commissioner (or other commissioners if delegated under section 16A) once the IR Act is amended by the Bill, will be appellable to the Full Bench under section 49 (rather than directly to the Court under section 90). That avenue of appeal is consistent with the appeal avenue for all other decisions of the Chief Commissioner or single commissioners.

The only decision of a single commissioner that will be appellable to the Court will be a decision on a section 49(11) application because that forms part of the Full Bench’s appellate function and all other Full Bench decisions are appellable to the Court.

### **Clause 58 of the Bill – section 92 amended**

Clause 58 of the Bill deletes section 92(4) of the IR Act, which relates to the President’s powers of contempt. The repeal of this section arises directly from the abolition of the President’s position.

## **Amendments to Part VII, IR Act**

### **Clause 59 of the Bill – section 98 amended**

Clause 59 of the Bill will amend an incorrect reference in section 98(7) of the IR Act. The current reference to “subsection (1)” will be replaced with “subsection (2A)”.<sup>2</sup>

### **Clause 60 of the Bill – section 99D amended**

Clause 60 of the Bill will amend an incorrect reference in section 99D(5) of the IR Act. The current reference to “Minister” will be replaced with “CEO”.<sup>3</sup>

### **Clause 61 of the Bill – section 106(a)(ii) amended**

Clause 61 removes the reference to “President” in section 106(a)(ii), which relates to judicial notice of signatures and appointments, as a consequence of the position being abolished.

### **Clause 62 of the Bill – section 113 amended**

**Clause 62(1)(a)** amends section 113(1) of the IR Act to delete the reference to “members of the Commission” as that term is deleted by clause 4(1) of the Bill (see above for explanation).

**Clauses 62(1)(b) and 62(2)** amend section 113(1)(a) and (2) respectively to allow for the Chief Commissioner to make regulations that prescribe “*or provide for the approval of*” forms of certificates, notices, returns, or other instruments or documents to be used for the purposes of the Act. This amendment will enable the Chief Commissioner to amend the Regulations to provide for a mechanism of updating forms without the Regulations needing to be updated every time there are any changes to a form. This will enable the more efficient updating of the relevant forms.

### **Clause 63 of the Bill – section 116 inserted**

Clause 63 inserts new section 116 which provides that Schedule 6 sets out transitional provisions for the Amendment Act.

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<sup>2</sup> This amendment is consequential to amendments made to the IR Act by the *Industrial Legislation Amendment Act 2011*.

<sup>3</sup> This amendment is consequential to amendments made to the IR Act by the *Industrial Legislation Amendment Act 2011*.



## **Amendments to Part VIII, IR Act**

### **Clause 64 of the Bill – Part VIII deleted**

Clause 64 of the Bill will delete Part VIII of the IR Act, which has been omitted in reprints of the IR Act for some time but never formally deleted. Part VIII of the IR Act was inserted by the *Industrial Arbitration Act 1979* and contained transitional provisions arising from the re-write of the legislation. Those transitional provisions are now obsolete.

## **Amendments to Schedule 1, IR Act**

### **Clause 65 of the Bill – Schedule 1 amended**

Clause 65 amends Schedule 1 to remove references to “the President” in the Schedule as a direct consequence of the President’s position being abolished.

## **New Schedule 6, IR Act**

### **Clause 66 of the Bill – inserts new Schedule 6**

Schedule 6 provides the transitional arrangements arising from the Amendment Act including:

- Allowing for the extension of the appointment of the current acting President in order to complete matters or proceedings not completed on commencement of the Amendment Act;
- Providing for the continued application of the provisions relating to pension entitlements of past Presidents of the Commission;
- Providing for the ongoing requirement to take judicial notice of the signature and appointment of the past Presidents.

Division 3 of Schedule 6 makes specific provision for pending matters that are incomplete at commencement of the Amendment Act, whether they are matters of the President, Full Bench (constituted with the President), or Public Service Appeal Board (constituted with the President as chairman).

The following matters at commencement will be dealt with under the IR Act **as amended** by the Amendment Act:

#### **If the acting President does not continue in office under clause 2 of Schedule 6 after commencement of the Amendment Act:**

- All matters, including matters that have been part heard.

**If the acting President does continue in office under clause 2 of Schedule 6 after commencement of the Amendment Act:**

- Matters in relation to which there have not been any hearings;
- Matters that the Chief Commissioner directs (after consulting the acting President) to be dealt with under the IR Act as amended under clause 5 of Schedule 6.

The matters that will be dealt with under the “former Act” will be matters, if the acting President continues in office under clause 2 of Schedule 6, that have begun to be heard or completed hearing but not finally determined at commencement of the Amendment Act. However, those matters may be reallocated and dealt with under the “amended Act” if the Chief Commissioner so directs.

**Schedule 6, clause 6 of the Bill**

Clause 6 provides that if an application for an order under section 49(11) has been made, heard or determined before commencement of the Amendment Act the substantive appeal has not begun to be heard as a result. Therefore the appeal would be dealt with under the amended Act pursuant to clause 5(2) and clause 5(3) will not apply.

**Schedule 6, clause 7 of the Bill**

Any notices that have been published in accordance with section 55(2) (which relates to applications for registration of organisations of employees and employers under sections 53 and 54 respectively), where there is an objection to the registration, is to satisfy, appear before and be heard by the Commission in Court Session rather than the Full Bench, notwithstanding the reference in a notice to the Full Bench. This is consistent with matters that have not been part or fully heard at commencement of the Amendment Act being dealt with under the provisions of the amended Act.

**Schedule 6, clause 8 of the Bill**

This clause provides that any summonses under section 73 of the IR Act that have been issued prior to commencement of the Amendment Act, but where the date in the summons requiring a person to appear before the Full Bench is after commencement, the summons will be taken to require the appearance before the Commission in Court Session as if the summons had been issued under the amended Act.

## PART 3 OF THE BILL – CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

### **Clauses 67, 68 and 69 of the Bill – amendments to other Acts**

**Clauses 67, 68 and 69** amend the *Constitution Acts Amendment Act 1899*, *Equal Opportunity Act 1984* and *Juries Act 1957* respectively to remove references to the “President”. These amendments are a direct consequence of the abolition of the President’s position.

**Clauses 70, 71 and 72** of the Bill amend the *Police Act 1892*, *Prisons Act 1981* and *Young Offenders Act 1994* respectively. All those Acts apply provisions of the IR Act to jurisdiction exercised under those Acts by commissioners of the Western Australian Industrial Relations Commission.

### **Clause 70 of the Bill – *Police Act 1892* amended**

**Clause 70(1)** of the Bill provides that amendments in clause 70 are amendments to the *Police Act 1892*. The amendments are to the Table in section 33S of the *Police Act 1892*. That Table provides for the modified application of certain provisions of the IR Act to appeals (under Part IIB Division 3 of the *Police Act 1892*) in relation to decisions of the Police Commissioner to take removal action against a member. Those appeals are heard and determined by not less than three commissioners of the Western Australian Industrial Relations Commission.

**Clause 70(2)** provides that the amendments in the subclause are to the Table in section 33S of the *Police Act 1892*.

**Clause 70(2)(a)** deletes the reference (in the Table in section 33S of the *Police Act 1892*) to section 31(6) of the IR Act. There is no longer a section 31(6) in the IR Act – it was deleted from the IR Act by the *Legal Profession Act 2008* without this consequential amendment being made. This amendment therefore corrects the erroneous reference to a repealed section of the IR Act.

**Clause 70(2)(b)** replaces the first paragraph of the item in the Table in section 33S of the *Police Act 1892* that provides for the modified application of section 32 of the IR Act to appeals under Part IIB Division 3 of the *Police Act 1892* (appeal against decision of the Police Commissioner to take removal action against a member). The amendment effectively removes the reference in this item of the Table to “a member of the Commission” as a consequence of the deletion of the definition of “member of the Commission” from section 7(1) IR Act by clause 4(1) of the Bill and replaces it with a reference to “Commission”. The amendment also removes gender-specific references to make the item gender-free.

**Clause 70(2)(c)** replaces the item in the Table in section 33S of the *Police Act 1892* that provides for the modified application of section 34 of the IR Act to appeals under Part IIB Division 3 of the *Police Act 1892*. The amended item:

- replicates the first paragraph of the item (i.e. no amendment is required from the existing paragraph);
- deletes the second paragraph of the item as section 34(3) of the IR Act is amended consistently with this modified provision by clause 24(2) of the Bill (i.e. section 34(3) of the IR Act will be applied without modification);
- amends the third paragraph of the item to reflect the amended wording of section 34(4) of the IR Act as amended by clause 24(3) of the Bill (i.e. the amendment to this paragraph of the item is consequential to the amendment in clause 24(3) of the Bill which amends section 34(4) of the IR Act).

**Clause 70(2)(d)** replaces the item in the Table in section 33S of the *Police Act 1892* that provides for the modified application of section 90 of the IR Act to appeals under Part IIB Division 3 of the *Police Act 1892*. The amended item removes the reference to the “President” consistent with the amendment to section 90 of the IR Act made by clause 57 of the Bill. The reference to a decision of the “President” is replaced with a reference to a decision of “the Commission on an application under section 49(11)” (i.e. on a stay application under section 49(11) of the IR Act) consistent with the wording of section 90(1) as amended by the Bill.

The item provides that section 90(1) of the IR Act is to be read as if the appellable decisions mentioned are references to a decision of the Commission under section 33U of the *Police Act 1892*. As a consequence the amendment reflects the amendment to section 90(1) of the IR Act, which is then modified by the item as provided.

#### **Clause 71 of the Bill – *Prisons Act 1981* amended**

**Clause 71(1)** of the Bill provides that amendments in clause 71 are amendments to the *Prisons Act 1981*.

The amendments are to the Table in section 110B of the *Prisons Act 1981*. That Table provides for the modified application of certain provisions of the IR Act to appeals (under Part X Division 3 Subdivision 3 of the *Prisons Act 1981*) in relation to decisions of the chief executive officer of the relevant Department<sup>4</sup> to take removal action against a prison officer. Those

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<sup>4</sup> The Department is defined in section 3(1) of the *Prisons Act 1981* as follows:

“**Department** means the department of the Government principally assisting the Minister with the administration of this Act;”

appeals are heard and determined by not less than three commissioners of the Western Australian Industrial Relations Commission.<sup>5</sup>

**Clause 71(2)** provides that the amendments in the subclause are to the Table in section 110B of the *Prisons Act 1981*.

**Clause 71(2)(a)** replaces the first paragraph of the item in the Table in section 110B of the *Prisons Act 1981* that provides for the modified application of section 32 of the IR Act to appeals under Part X Division 3 Subdivision 3 of the *Prisons Act 1981* (appeal against decision of the chief executive officer to take removal action against a prison officer). The amendment effectively removes the reference in this item of the Table to “a member of the Commission” as a consequence of the deletion of the definition of “member of the Commission” from section 7(1) IR Act by clause 4(1) of the Bill and replaces it with a reference to “Commission”. The amendment also removes gender-specific references to make the item gender-free.

**Clause 71(2)(b)** replaces the item in the Table in section 110B of the *Prisons Act 1981* that provides for the modified application of section 34 of the IR Act to appeals under Part X Division 3 Subdivision 3 of the *Prisons Act 1981*. The amended item:

- replicates the first paragraph of the item (i.e. no amendment is required from the existing paragraph);
- deletes the second paragraph of the item as section 34(3) of the IR Act is amended consistently with this modified provision by clause 24(2) of the Bill (i.e. section 34(3) of the IR Act will be applied without modification);
- amends the third paragraph of the item to reflect the amended wording of section 34(4) of the IR Act as amended by clause 24(3) of the Bill (i.e. the amendment to this paragraph of the item is consequential to the amendment in clause 24(3) of the Bill which amends section 34(4) of the IR Act).

**Clause 71(2)(c)** replaces the item in the Table in section 110B of the *Prisons Act 1981* that provides for the modified application of section 90 of the IR Act to appeals under Part X Division 3 Subdivision 3 of the *Prisons Act 1981*. The amended item removes the reference to the “President” consistent with the amendment to section 90 of the IR Act made by clause 57 of the Bill. The reference to a decision of the “President” is replaced with a reference to a decision of “the Commission on an application under section 49(11)” (i.e. on a stay application under section 49(11) of the IR Act) consistent with the wording of section 90(1) as amended by the Bill.

The item provides that section 90(1) of the IR Act is to be read as if the appellable decisions mentioned are references to a decision of the Commission under section 110E of the *Prisons*

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<sup>5</sup> Section 106(4) of the *Prisons Act 1981*.

Act 1981. As a consequence the amendment reflects the amendment to section 90(1) of the IR Act, which is then modified by the item as provided.

### **Clause 72 of the Bill – *Young Offenders Act 1994* amended**

**Clause 72(1)** of the Bill provides that amendments in clause 72 are amendments to the *Young Offenders Act 1994*.

The amendments are to the Table in section 11CM of the *Young Offenders Act 1994*. That Table provides for the modified application of certain provisions of the IR Act to appeals (under Part 3 Division 3 Subdivision 3 of the *Young Offenders Act 1994*) in relation to decisions of the chief executive officer of the relevant Department<sup>6</sup> to take removal action against a custodial officer. Those appeals are heard and determined by not less than three commissioners of the Western Australian Industrial Relations Commission.<sup>7</sup>

**Clause 72(2)** provides that the amendments in the subclause are to the Table in section 11CM of the *Young Offenders Act 1994*.

**Clause 72(2)(a)** replaces the first paragraph of the item in the Table in section 11CM of the *Young Offenders Act 1994* that provides for the modified application of section 32 of the IR Act to appeals under Part 3 Division 3 Subdivision 3 of the *Young Offenders Act 1994* (appeal against decision of the chief executive officer to take removal action against a custodial officer). The amendment effectively removes the reference in this item of the Table to “a member of the Commission” as a consequence of the deletion of the definition of “member of the Commission” from section 7(1) of the IR Act by clause 4(1) of the Bill and replaces it with a reference to “Commission”. The amendment also removes gender-specific references to make the item gender-free.

**Clause 72(2)(b)** replaces the item in the Table in section 11CM of the *Young Offenders Act 1994* that provides for the modified application of section 34 of the IR Act to appeals under Part 3 Division 3 Subdivision 3 of the *Young Offenders Act 1994*. The amended item:

- replicates the first paragraph of the item (i.e. no amendment is required from the existing paragraph);
- deletes the second paragraph of the item as section 34(3) of the IR Act is amended consistently with this modified provision by clause 24(2) of the Bill (i.e. section 34(3) of the IR Act will be applied without modification);

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<sup>6</sup> The Department is defined in section 3(1) of the *Young Offenders Act 1994* as follows:

**“Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;”

<sup>7</sup> Section 11CH(4) of the *Young Offenders Act 1994*.

- amends the third paragraph of the item to reflect the amended wording of section 34(4) of the IR Act as amended by clause 24(3) of the Bill (i.e. the amendment to this paragraph of the item is consequential to the amendment in clause 24(3) of the Bill which amends section 34(4) of the IR Act).

**Clause 72(2)(c)** replaces the item in the Table in section 11CM of the *Young Offenders Act 1994* that provides for the modified application of section 90 of the IR Act to appeals under Part 3 Division 3 Subdivision 3 of the *Young Offenders Act 1994*. The amended item removes the reference to the “President” consistent with the amendment to section 90 of the IR Act made by clause 57 of the Bill. The reference to a decision of the “President” is replaced with a reference to a decision of “the Commission on an application under section 49(11)” (i.e. on a stay application under section 49(11) of the IR Act) consistent with the wording of section 90(1) as amended by the Bill.

The item provides that section 90(1) of the IR Act is to be read as if the appellable decisions mentioned are references to a decision of the Commission under section 11CP of the *Young Offenders Act 1994*. As a consequence the amendment reflects the amendment to section 90(1) of the IR Act, which is then modified by the item as provided.