

Industrial Relations Legislation Amendment Bill 2021

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Industrial Relations Act 1979* amended

3.	Act amended	3
4.	Section 6 amended	3
5.	Section 7 amended	3
6.	Section 10 amended	8
7.	Section 16 amended	9
8.	Section 20 amended	11
9.	Section 22 amended	11
10.	Section 23 amended	12
11.	Section 23A amended	12
12.	Section 26 amended	12
13.	Section 29 amended	13
14.	Section 31 amended	14
15.	Section 37 amended	14
16.	Sections 37A to 37D inserted	14
	37A. Public sector awards and enterprise awards	14
	37B. Private sector awards: general	15
	37C. Private sector awards: limitations on making and varying	16
	37D. Private sector awards: variations of the Commission's own motion	16
17.	Section 38 amended	18
18.	Section 40 amended	19

Contents

19.	Part II Division 2F heading amended	20
20.	Section 49D amended	20
21.	Section 49DA inserted	24
	49DA. Employer obligations in relation to pay slips	24
22.	Section 49E amended	26
23.	Section 49F amended	27
24.	Section 49I amended	27
25.	Section 49K replaced	28
	49K. No entry to premises used for habitation	28
26.	Section 50 amended	29
27.	Section 50A amended	30
28.	Section 50B amended	32
29.	Part II Division 3AA inserted	32
	Division 3AA — Workers bullied or sexually harassed at work	
	51BF. Terms used	32
	51BG. Person conducting a business or undertaking	33
	51BH. Worker	34
	51BI. Worker bullied or sexually harassed at work	35
	51BJ. Stop bullying or sexual harassment application	36
	51BK. Dealing with a stop bullying or sexual harassment application	36
	51BL. Power to dismiss stop bullying or sexual harassment applications involving covert operations	37
	51BM. Commission may make stop bullying or sexual harassment orders	37
	51BN. Contravening stop bullying or sexual harassment order	38
30.	Section 51BJ amended	39
31.	Part II Division 3B replaced	39
	Division 3B — Equal remuneration	
	51O. Equal remuneration orders	39
	51P. Employer not to reduce remuneration	41
	51Q. Alternative remedies	41
	51R. Remuneration-related action	42
32.	Section 52 amended	42
33.	Section 52A inserted	43
	52A. Counterpart federal body	43
34.	Section 55 amended	45
35.	Section 59 amended	45

36.	Section 71 amended	45
37.	Section 71A amended	47
38.	Part 2AA inserted	48
	Part 2AA — Employers declared not to be national system employers	
	Division 1 — Declarations	
80A.	Employers declared not to be national system employers	48
	Division 2 — Change from federal to State system	
80B.	Terms used	48
80BA.	Operation of awards, industrial agreements or orders	49
80BB.	New State instruments	50
80BC.	Amendment of new State instruments	51
80BD.	Ability to carry over matters	52
80BE.	References in new State instruments to federal industrial authority and General Manager	52
80BF.	References in new State instruments to provisions of Commonwealth laws	53
80BG.	References in new State instruments to federal organisations	53
80BH.	Named parties to new State instruments	54
80BI.	Employment under old federal instrument	54
80BJ.	Leave accrued immediately before relevant day	55
80BK.	Leave taken under old federal instrument	55
39.	Section 80E amended	56
40.	Section 80I amended	56
41.	Section 80R amended	56
42.	Part III Division 1 heading inserted	56
	Division 1 — Industrial magistrate's court	
43.	Section 81B amended	56
44.	Section 81CA amended	57
45.	Section 81G inserted	58
81G.	Industrial inspectors may assist industrial magistrate's court	58
46.	Part III Division 2 heading inserted	58
	Division 2 — Enforcement generally	
47.	Section 83 amended	58
48.	Section 83A amended	61
49.	Section 83B amended	62
50.	Section 83C amended	63
51.	Section 83E amended	64

Contents

52.	Sections 83EA and 83EB inserted	66
	83EA. Serious contravention of entitlement provision or civil penalty provision	66
	83EB. Employer to have burden of disproving certain allegations by applicant under s. 83	68
53.	Section 84 amended	68
54.	Section 84AA inserted	69
	84AA. Illegal contracts of employment may be treated as valid	69
55.	Section 84A amended	70
56.	Part III Divisions 3 to 5 inserted	70
	Division 3 — Civil infringement notices	
	84B. Terms used	70
	84C. Giving civil infringement notice	71
	84D. Content of civil infringement notice	71
	84E. Amount of civil infringement notice penalty	73
	84F. Time for payment of civil infringement notice penalty	73
	84G. Extension of time to pay civil infringement notice penalty	73
	84H. Withdrawal of civil infringement notice	74
	84I. Effect of payment of civil infringement notice penalty	75
	84J. Refund of civil infringement notice penalty	75
	Division 4 — Enforceable undertakings	
	84K. Terms used	75
	84L. Application of Division	76
	84M. Enforceable undertaking	76
	84N. Enforcement of enforceable undertakings	76
	Division 5 — Compliance notices	
	84O. Terms used	77
	84P. Application of Division	77
	84Q. Giving compliance notice	77
	84R. Relationship with enforceable undertakings	78
	84S. Relationship with proceedings under s. 83	79
	84T. Person must comply with compliance notice	79
	84U. Review of compliance notices	80
	84V. Withdrawal of compliance notice	80
57.	Section 86 amended	81
58.	Section 91A inserted	81
	91A. Court's power to order costs and expenses	81
59.	Section 93 amended	82

60.	Section 96 amended	82
61.	Part 6B inserted	82
	Part 6B — Protection of employee rights	
	Division 1 — Preliminary	
	97. Terms used	82
	Division 2 — Damaging action	
	97A. Damaging action because of inquiry or complaint	83
	97B. Court orders to employers	84
	97C. Court orders to third parties	85
	Division 3 — Sham contracts for services	
	97D. Misrepresenting contract of employment as contract for services	85
	97E. Dismissing to engage under contract for services	86
	97F. False statement to engage under contract for services	86
	97G. Court orders to employers	87
	Division 4 — Miscellaneous	
	97H. Certain advertising prohibited	88
62.	Section 97U amended	88
63.	Section 97UF amended	89
64.	Section 97YA amended	89
65.	Section 98 amended	89
66.	Section 98A inserted	93
	98A. Information obtained under s. 98 not to be disclosed	93
67.	Section 102 amended	94
68.	Section 103 amended	95
69.	Section 112A amended	95
70.	Section 117 inserted	96
	117. Savings and transitional provisions for <i>Industrial Relations Legislation Amendment Act 2021</i>	96
71.	Schedule 4 amended	97
72.	Various penalties amended	97
73.	Various references to “prescribed” amended	100
74.	Various references to “Federal” amended	101
75.	Various references to titles amended	101
76.	Various references to “shall” replaced	105
77.	Various references to gender removed	116
78.	Various other modernisations	129

Part 3 — Courts and Tribunals (Electronic Processes Facilitation) Act 2013 amended		
79.	Act amended	137
80.	Section 6 amended	137
Part 4 — Long Service Leave Act 1958 amended		
81.	Act amended	138
82.	Part II Division 1 heading inserted	138
Division 1 — General		
83.	Section 4 amended	138
84.	Sections 5 and 6 replaced	140
	4A. Employees with equivalent separate LSL entitlements	140
	5. Cashing out of accrued long service leave	141
	6. Continuous employment	142
	6A. Calculating length of continuous employment	145
85.	Part II Division 2 heading inserted	146
Division 2 — Ordinary pay		
86.	Section 7 replaced	146
	7. Ordinary pay: general	146
	7A. Ordinary pay: shift premiums, overtime, penalty rates or allowances	148
	7B. Ordinary pay: casual employees' loading	148
	7C. Ordinary pay: board and lodging	149
87.	Part II Division 3 inserted	149
Division 3 — Transfer of business		
	7D. Terms used	149
	7E. Transfer of business, old employer, new employer, transferring work	150
	7F. Transferring employee	150
	7G. Connection between old employer and new employer	150
	7H. Status of transferring employees on transfer of business	152
	7I. Transfer of employment records	152
88.	Part III heading amended	152
89.	Section 8 amended	153
90.	Section 9 amended	153
91.	Section 11 amended	155

92.	Section 26 amended	156
93.	Section 26A amended	158
94.	Section 39 amended	159
95.	Part 8 inserted	159
Part 8 — Savings provisions for <i>Industrial Relations Legislation Amendment Act 2021</i>		
	40. Terms used	159
	41. Business transmitted before commencement day	159
96.	Various references to “shall” replaced	160
97.	Various references to gender removed	160
98.	Various other modernisations	161
Part 5 — <i>Minimum Conditions of Employment Act 1993</i> amended		
99.	Act amended	163
100.	Section 3 amended	163
101.	Section 5 amended	164
102.	Section 7 replaced	164
	7. Enforcement of minimum conditions	164
103.	Section 8 amended	165
104.	Section 9 deleted	165
105.	Section 9A amended	165
106.	Section 9B amended	165
107.	Part 3 Division 1 heading inserted	165
Division 1 — General		
108.	Section 10 amended	166
109.	Part 3 Division 2 inserted	166
Division 2 — Employees with disabilities		
	15. Terms used	166
	16. Application of Act to employee with disability	168
	17. Minimum pay for employee with disability	168
110.	Section 17A amended	169
111.	Section 17B replaced	170
	17B. Employee not to be compelled to accept other than money for pay	170
112.	Section 17BA inserted	171
	17BA. Employees and prospective employees not to be unreasonably compelled to spend or pay amount	171
113.	Section 17C amended	173

Contents

114.	Section 17E inserted	174	174
	17E. Certain terms of no effect	174	
115.	Section 18 amended	175	
116.	Part 4 Division 2 replaced	177	
	Division 2 — Personal leave		
	19. Personal leave	177	
	20. Entitlement to paid personal leave	177	
	21. Entitlement to unpaid personal leave	178	
	22. Certain matters as to personal leave not minimum conditions	179	
	22A. Employee to prove entitlements to personal leave	179	
117.	Part 4 Division 7 inserted	179	
	Division 7 — Unpaid family and domestic violence leave		
	39A. Terms used	179	
	39B. Entitlement to unpaid family and domestic violence leave	180	
	39C. Taking unpaid family and domestic violence leave	181	
	39D. Employee to prove entitlements to unpaid family and domestic violence leave	181	
	39E. Confidentiality	181	
118.	Part 6 deleted	182	
119.	Part 8 inserted	182	
	Part 8 — Transitional provisions for <i>Industrial Relations Legislation Amendment Act 2021</i>		
	48. Term used: commencement day	182	
	49. Employees with disabilities	182	
	50. “Under rate employee” provisions in awards	183	
120.	Schedule 1 amended	185	
121.	Various references to gender removed	185	
	Part 6 — <i>Public and Bank Holidays Act 1972</i> amended		
122.	Act amended	187	
123.	Section 3 amended	187	
124.	Second Schedule amended	188	

**Part 7 — Consequential amendments
to *Work Health and Safety
Act 2020***

**Division 1 — *Work Health and Safety Act 2020*
amended**

Subdivision 1 — Preliminary

125. Act amended 189

**Subdivision 2 — Amendments if this Act commences
before *Work Health and Safety Act 2020***

126. Section 360 amended 189

127. Section 361 amended 189

**Subdivision 3 — Other amendments linked to
commencement of this Act**

128. Schedule 1 amended 190

**Division 2 — Provisions that do not commence
and are deleted in certain circumstances**

129. Non-commencement and deletion of Division 1
Subdivision 2 191

Western Australia

LEGISLATIVE ASSEMBLY

Industrial Relations Legislation Amendment Bill 2021

A Bill for

An Act —

- **to amend the *Industrial Relations Act 1979*, the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*, the *Long Service Leave Act 1958*, the *Minimum Conditions of Employment Act 1993* and the *Public and Bank Holidays Act 1972*; and**
- **to make consequential amendments to the *Work Health and Safety Act 2020*.**

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9
10
11

Part 1 — Preliminary

1. Short title

This is the *Industrial Relations Legislation Amendment Act 2021*.

2. Commencement

- (1) This Act comes into operation as follows —
 - (a) Part 1 — on the day on which this Act receives the Royal Assent;
 - (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
- (2) Subsection (1)(b) is subject to sections 5(3), 30 and 128.

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

2 **3. Act amended**

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

4 **4. Section 6 amended**

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

7
8 remuneration; and
9

10 **5. Section 7 amended**

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

12 *award*

13 *canvasser*

14 *Commonwealth Act*

15 *employee*

16 *employer*

17 *Fair Work Commission*

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

19
20 *approved form* means a form approved by the Chief
21 Commissioner for the purposes of the provision in
22 which the term is used;

23 *award* —

24 (a) means an award made by the Commission
25 under this Act; and

26 (b) for the purposes of section 37C(1), includes an
27 award made under a law of the Commonwealth,

s. 5

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

- 1 (iv) an order made by the Commission,
2 other than an order made under
3 section 23A, 32(8), 44(6) or 66;
4 or
5 (b) a provision of the LSL Act Part III; or
6 (c) a minimum condition of employment as
7 defined in the MCE Act section 3(1);
8 **equal remuneration** means equal remuneration for
9 men and women for work of equal or comparable
10 value;
11 **equal remuneration order** has the meaning given in
12 section 51O(2);
13 **federal organisation** means an organisation of
14 employees registered under the FW (Registered
15 Organisations) Act;
16 **FW Act** means the *Fair Work Act 2009*
17 (Commonwealth);
18 **FW Commission** means the body established by the
19 FW Act section 575;
20 **FW (Registered Organisations) Act** means the *Fair*
21 *Work (Registered Organisations) Act 2009*
22 (Commonwealth);
23 **FW (Transitional) Act** means the *Fair Work*
24 *(Transitional Provisions and Consequential*
25 *Amendments) Act 2009* (Commonwealth);
26 **industrial instrument** means —
27 (a) an award; or
28 (b) an order of the Commission under this Act; or
29 (c) an industrial agreement; or
30 (d) for the purposes of section 49D or in relation to
31 a SWIIP — an employer-employee agreement;

s. 5

- 1 **LSL Act** means the *Long Service Leave Act 1958*;
- 2 **MSI Act** means the *Mines Safety and Inspection*
- 3 *Act 1994*;
- 4 **OSH Act** means the *Occupational Safety and Health*
- 5 *Act 1984*;
- 6 **private sector award** means an award other than a
- 7 public sector award or enterprise award;
- 8 **produce** includes exhibit, send or deliver;
- 9 **public sector award** means an award that only extends
- 10 to and binds the following —
- 11 (a) a public sector body as defined in the *Public*
- 12 *Sector Management Act 1994* section 3(1);
- 13 (b) an entity specified in the *Public Sector*
- 14 *Management Act 1994* Schedule 1 column 2;
- 15 **record-related civil penalty provision** means the
- 16 following —
- 17 (a) section 49D(1), (6) or (8);
- 18 (b) section 49DA(1) or (3);
- 19 (c) section 49E(1);
- 20 (d) section 102(1)(a);
- 21 (e) the LSL Act section 7I(2), 26(1) or (2)
- 22 or 26A(1);
- 23 **serious contravention** has the meaning given in
- 24 section 83EA(2);
- 25 **supported wage industrial instrument provision** or
- 26 **SWIIP** means a provision of an industrial instrument
- 27 that —
- 28 (a) applies to an employee with a disability; and
- 29 (b) provides a means (a **wage assessment tool**) for
- 30 the assessment of whether, and the extent to
- 31 which, the employee’s productive capacity is
- 32 reduced because of the disability; and

- 1 (c) provides that the employer may pay a wage
2 that —
3 (i) relates to the employee’s productive
4 capacity as assessed using the wage
5 assessment tool; and
6 (ii) may be less than the applicable
7 minimum wage in the industrial
8 instrument;

9 **Supported Wage System** or **SWS** means the scheme
10 known by that name established by the Commonwealth
11 Government to enable the assessment of whether, and
12 the extent to which, a person’s productive capacity is
13 reduced because of a disability;
14

- 15 (3) In section 7(1) delete the definitions of:

16 **MSI Act**

17 **OSH Act**

18 Notes for this subsection:

- 19 1. If the *Work Health and Safety Act 2020* Part 15 Division 4
20 Subdivision 5 comes into operation on or before the day on which
21 subsection (2) comes into operation, this subsection will be proclaimed
22 to come into operation on the same day as subsection (2).
23 2. If the *Work Health and Safety Act 2020* Part 15 Division 4
24 Subdivision 5 comes into operation after the day on which
25 subsection (2) comes into operation, this subsection will be proclaimed
26 to come into operation on the day on which Part 15 Division 4
27 Subdivision 5 of that Act comes into operation.

- 28 (4) In section 7(1) in the definition of **industry** delete paragraph (b)
29 and insert:

- 30
31 (b) the performance of the functions of any public
32 authority;
33

s. 6

- 1 (5) In section 7(1) in the definition of *public authority* after
2 “means” insert:
3
4 the Crown,
5
6 (6) After section 7(1a) insert:
7
8 (2) In subsection (2A) —
9 *bullying or sexual harassment* means behaviour to
10 which section 51BI(1) or (3) applies;
11 *worker* has the meaning given in section 51BH.
12 (2A) A matter relating or pertaining to the bullying or sexual
13 harassment of a worker is an industrial matter.
14
15 (7) Delete section 7(5).
16 (8) In section 7(7) delete “section 29(1)(b)(ii)” and insert:
17
18 section 29(1)(d)
19
20 **6. Section 10 amended**
21 In section 10:
22 (a) delete “attained the age of 65 years” and insert:
23
24 reached 70 years of age
25
26 (b) delete “attaining the age of 65 years.” and insert:
27
28 reaching 70 years of age.
29

1 **7. Section 16 amended**

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

3

4 (1AA)

5

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

7

8 (1AA) The Chief Commissioner is responsible for matters of
9 an administrative nature relating to the Commission
10 and commissioners, including the following —

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

13 (b) developing and implementing performance
14 standards and setting benchmarks for the
15 Commission;

16 (c) overseeing the proper use of the resources of
17 the Commission;

18 (d) managing the business of the Commission,
19 including by ensuring that the Commission
20 operates efficiently and effectively and
21 continually improves the way in which it
22 carries out its functions;

23 (e) providing leadership and guidance to the
24 Commission and engendering cohesiveness and
25 collaboration amongst commissioners;

26 (f) being responsible for promoting the training,
27 education and professional development of
28 commissioners.
29

s. 7

- 1 (3) After section 16(1ac) insert:
2
- 3 (1AD) Except as provided in subsection (1AE),
4 subsections (1AA) to (1ac) apply, with the necessary
5 modifications, to commissioners appointed under
6 section 81B(2A) as industrial magistrates.
- 7 (1AE) Directions under subsection (1AA)(a) cannot limit the
8 judicial independence of commissioners appointed as
9 industrial magistrates.
10
- 11 (4) Delete section 16(2D) and (2E).
- 12 (5) If the *Work Health and Safety Act 2020* Part 15 Division 4
13 Subdivision 5 comes into operation on or before the day on
14 which section 5(2) of this Act comes into operation,
15 subsection (4) —
- 16 (a) does not come into operation; and
17 (b) is deleted when section 5(2) of this Act comes into
18 operation.
- 19 Notes for this subsection:
- 20 1. If the *Work Health and Safety Act 2020* Part 15 Division 4
21 Subdivision 5 comes into operation after the day on which section 5(2)
22 of this Act comes into operation, see Part 7 Division 1 Subdivision 2.
23 2. See also section 129.
- 24 (6) After section 16(3) insert:
25
- 26 (4) The Chief Commissioner may do all things necessary
27 or convenient to be done in the performance of the
28 Chief Commissioner's functions.
29

1 **8. Section 20 amended**

2 After section 20(2) insert:

3

4 (3) If a commissioner has, under section 81B(2A), been
5 appointed as an industrial magistrate, the
6 commissioner's remuneration must be the higher of
7 that provided under —

8 (a) subsection (2); or

9 (b) the *Magistrates Court Act 2004* Schedule 1
10 clause 5(2).

11 (4) The Chief Commissioner may, in exceptional
12 circumstances, approve the taking by a commissioner
13 appointed as an industrial magistrate of paid sick leave
14 in addition to any paid sick leave that the
15 commissioner's conditions of service may have entitled
16 the commissioner to take.

17 (5) A commissioner appointed as an industrial magistrate
18 may, subject to section 22(3), at the same time hold the
19 office of commissioner and industrial magistrate but
20 not otherwise.

21

22 **9. Section 22 amended**

23 After section 22(2) insert:

24

25 (3) A commissioner appointed as an industrial magistrate
26 must not work as a legal practitioner (whether for
27 financial reward or not), or engage in other work for
28 financial reward, outside the functions of a
29 commissioner and industrial magistrate, unless
30 permitted to do so by the Governor.

31

s. 10

1 **10. Section 23 amended**

2 In section 23(3)(c) before “make” insert:

3

4 except as provided in section 49K(3),

5

6 **11. Section 23A amended**

7 Delete section 23A(2) and insert:

8

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

12 (a) whether, at the time of the dismissal, the
13 employee —

14 (i) was employed for a probationary period
15 agreed between the employer and
16 employee; and

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

19 (b) whether, at the time of the dismissal, the
20 employee was employed in a private home to
21 provide services directly to the employer or a
22 member of the employer’s family or household.
23

24 **12. Section 26 amended**

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

27

28 decision (except an equal remuneration order) that
29

- 1 **13. Section 29 amended**
- 2 (1) Delete section 29(1)(b) and insert:
- 3
- 4 (b) except as provided in section 51Q(2), in the
- 5 case of an equal remuneration order — by an
- 6 application made by any of the following —
- 7 (i) an employee to be covered by the order;
- 8 (ii) an organisation in which employees to
- 9 be covered by the order are eligible to
- 10 be enrolled as members;
- 11 (iii) an organisation in which employers of
- 12 employees to be covered by the order
- 13 are eligible to be enrolled as members;
- 14 (iv) UnionsWA;
- 15 (v) the Chamber;
- 16 (vi) the Minister;
- 17 (vii) the Commissioner for Equal
- 18 Opportunity;
- 19 and
- 20 (c) in the case of a claim by an employee that the
- 21 employee has been harshly, oppressively or
- 22 unfairly dismissed from the employee’s
- 23 employment — by the employee; and
- 24 (d) in the case of a claim by an employee that the
- 25 employer has not allowed the employee a
- 26 benefit, other than a benefit under an award or
- 27 order, to which the employee is entitled under
- 28 the contract of employment — by the
- 29 employee; and
- 30 (e) in the case of an industrial matter mentioned in
- 31 section 7(2A) — by the worker.
- 32

s. 14

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

2

3 subsection (1)(c)

4

5 **14. Section 31 amended**

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

7

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

9

10 **15. Section 37 amended**

11 Delete section 37(1) and insert:

12

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

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

17

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

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

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

21 After section 37 insert:

22

23 **37A. Public sector awards and enterprise awards**

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

26 (a) employees employed in a calling specified in
27 the award in the industry or industries to which
28 the award applies; and

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

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

- 1 (2) A variation must not be made in relation to —
2 (a) an application under section 50(2) that does not
3 seek the variation of the scope of the private
4 sector award; or
5 (b) a State Wage order under section 50A.
- 6 (3) A variation must specify that the scope of the private
7 sector award extends to and binds —
8 (a) employers of a class or classes specified in the
9 award, whether or not the employers are also
10 specified by name in the award; and
11 (b) employees —
12 (i) of employers referred to in
13 paragraph (a); and
14 (ii) of a class or classes specified in the
15 award.
- 16 (4) For the purposes of subsection (3)(a) and (b)(ii), the
17 class may be described by reference to —
18 (a) a particular industry or part of an industry; or
19 (b) a particular kind of work.
- 20 (5) A variation that stops the private sector award from
21 extending to and binding particular employers or
22 employees must not be made unless the Commission is
23 satisfied that another appropriate award will extend to
24 and bind them.
- 25 (6) The Commission must not make a variation under this
26 section until it has —
27 (a) published the proposed variation in the required
28 manner; and

s. 17

- 1 (b) given notice of the proposed variation to —
2 (i) UnionsWA, the Chamber, the Mines
3 and Metals Association and the
4 Minister; and
5 (ii) any organisations, associations and
6 employers as the Commission may
7 direct (being, in the case of employers,
8 employers constituting, in the opinion of
9 the Commission, a sufficient number of
10 employers reasonably representative of
11 the employers who would be bound by
12 the proposed variation);
13 and
14 (c) afforded the persons or bodies referred to in
15 paragraph (b) an opportunity to be heard in
16 relation to the proposed variation.
17

18 **17. Section 38 amended**

- 19 (1) In section 38(3):
20 (a) delete “an award” and insert:
21
22 a public sector award or enterprise award
23
24 (b) delete “shall for the purposes of section 37(1) be
25 expressly limited to that industry.” and insert:
26
27 is expressly limited to that industry for the purposes of
28 section 37A.
29

1 (2) In section 38(4) delete “an award” and insert:

2

3 a public sector award or enterprise award

4

5 **18. Section 40 amended**

6 (1) In section 40(1) delete “sections 29A” and insert:

7

8 sections 29A, 37C, 37D(5)

9

10 (2) After section 40(2) insert:

11

12 (2A) A variation to the scope of a private sector award must
13 specify that it extends to and binds —

14 (a) employers of a class or classes specified in the
15 award, whether or not the employers are also
16 specified by name in the award; and

17 (b) employees —

18 (i) of employers referred to in
19 paragraph (a); and

20 (ii) of a class or classes specified in the
21 award.

22 (2B) For the purposes of subsection (2A)(a) and (b)(ii), the
23 class may be described by reference to —

24 (a) a particular industry or part of an industry; or

25 (b) a particular kind of work.

26

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

28 **Varying and cancelling awards generally**

s. 19

1 **19. Part II Division 2F heading amended**

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

3

4 **and pay slips**

5

6 **20. Section 49D amended**

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

8

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

11

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

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

14

15 the following employment records are kept —

16

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

18

19 birth;

20

21 (c) after paragraph (a) insert:

22

23 (aa) the employer’s name and Australian Business
24 Number (if any);

25

26 (d) in paragraph (b) delete “applies; and” and insert:

27

28 applies;

29

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

s. 20

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

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

s. 21

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

19 **21. Section 49DA inserted**

20 After section 49D insert:
21

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

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

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

s. 22

- 1 (j) if the employer is required to make
2 superannuation contributions for the benefit of
3 the employee —
- 4 (i) the amount of each contribution that the
5 employer made during the period to
6 which the pay slip relates and the name,
7 or the name and number, of any fund to
8 which the contribution was made; or
- 9 (ii) the amounts of contributions that the
10 employer is liable to make in relation to
11 the period to which the pay slip relates,
12 and the name, or the name and number,
13 of any fund to which the contributions
14 will be made.
- 15 (3) An employer must not give a pay slip for the purposes
16 of this section if the pay slip is false or misleading.
- 17 (4) Subsection (3) does not apply if —
- 18 (a) the employer gives the pay slip without
19 knowing, or being reasonably expected to
20 know, that it is false or misleading; or
- 21 (b) the pay slip is not false or misleading in a
22 material particular.
23

24 **22. Section 49E amended**

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

- 26 (a) after “the” insert:
27
28 employment
29

1 (b) delete “section 49D(3); and” and insert:

2

3 section 49D; and

4

5 **23. Section 49F amended**

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

7

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

9

10 **24. Section 49I amended**

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

14

15 LSL Act, the MCE Act, the OSH Act, the MSI Act, the
16 *Construction Industry Portable Paid Long Service Leave*
17 *Act 1985*

18

19 (2) If the *Work Health and Safety Act 2020* Part 15 Division 4
20 Subdivision 5 comes into operation on or before the day on
21 which section 5(2) of this Act comes into operation,
22 subsection (1) —

23 (a) does not come into operation; and

24 (b) is deleted when section 5(2) of this Act comes into
25 operation.

s. 25

1 (3) In section 49I(1) delete “*Long Service Leave Act 1958*, the MCE
2 Act, the *Work Health and Safety Act 2020*” and insert:

3

4 LSL Act, the MCE Act, the *Work Health and Safety Act 2020*,
5 the *Construction Industry Portable Paid Long Service Leave*
6 *Act 1985*

7

8 (4) If the *Work Health and Safety Act 2020* Part 15 Division 4
9 Subdivision 5 comes into operation after the day on which
10 section 5(2) of this Act comes into operation, subsection (3) —

11 (a) does not come into operation; and

12 (b) is deleted when section 5(2) of this Act comes into
13 operation.

14 Notes for subsections (2) to (4):

15 1. If the *Work Health and Safety Act 2020* Part 15 Division 4
16 Subdivision 5 comes into operation after the day on which section 5(2)
17 of this Act comes into operation, see also Part 7 Division 1
18 Subdivision 2.

19 2. See also section 129.

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

21

22 view, and take photographs, films and audio, video or other
23 recordings of,

24

25 **25. Section 49K replaced**

26 Delete section 49K and insert:

27

28 **49K. No entry to premises used for habitation**

29 (1) Except as provided in subsection (3), an authorised
30 representative does not have authority under this
31 Division to enter any part of premises principally used

- 1 for habitation by an employer or a member of the
2 employer's household (*habitation premises*).
- 3 (2) An authorised representative may apply to the
4 Commission for an order permitting the authorised
5 representative to enter habitation premises under
6 section 49I(1).
- 7 (3) The Commission may make the order only if it is
8 satisfied that exceptional circumstances exist
9 warranting the making of the order.
10

11 **26. Section 50 amended**

12 After section 50(4) insert:
13

- 14 (5) A General Order that varies the scope of a private
15 sector award must specify that it extends to and
16 binds —
- 17 (a) employers of a class or classes specified in the
18 award, whether or not the employers are also
19 specified by name in the award; and
- 20 (b) employees —
- 21 (i) of employers referred to in
22 paragraph (a); and
- 23 (ii) of a class or classes specified in the
24 award.
- 25 (6) For the purposes of subsection (5)(a) and (b)(ii), the
26 class may be described by reference to —
- 27 (a) a particular industry or part of an industry; or
28 (b) a particular kind of work.
29

s. 27

1 **27. Section 50A amended**

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

3

4 (1AA) In this section —

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

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

19

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

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

22

23 setting the following —

24

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

26

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

29

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

s. 28

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

3

4 remuneration;

5

6 **28. Section 50B amended**

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

9

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

11

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

13 After Part II Division 3 insert:

14

15 **Division 3AA — Workers bullied or sexually harassed**
16 **at work**

17 **51BF. Terms used**

18 In this Division —

19 *bullied*, at work, has the meaning given in
20 section 51BI(1);

21 *person* conducting a business or undertaking includes a
22 public authority conducting the business or
23 undertaking;

24 *sexually harassed*, at work, has the meaning given in
25 section 51BI(3);

26 *stop bullying or sexual harassment application* has the
27 meaning given in section 51BJ(1);

1 ***stop bullying or sexual harassment order*** has the
2 meaning given in section 51BM(1);
3 ***volunteer*** means a person who is acting on a voluntary
4 basis (irrespective of whether the person receives
5 out-of-pocket expenses);
6 ***WA Police*** means the Police Force of Western
7 Australia provided for by the *Police Act 1892*;
8 ***worker*** has the meaning given in section 51BH.

9 **51BG. Person conducting a business or undertaking**

- 10 (1) A reference in section 51BH to a person conducting a
11 business or undertaking includes a reference to the
12 following —
13 (a) a person conducting the business or
14 undertaking —
15 (i) whether alone or with others; and
16 (ii) whether or not for profit or gain;
17 (b) a partnership, or an unincorporated association,
18 conducting the business or undertaking;
19 (c) in the case of a partnership (other than an
20 incorporated partnership) referred to in
21 paragraph (b) — each partner in the
22 partnership.
- 23 (2) A reference in section 51BH to a person conducting a
24 business or undertaking does not include a reference to
25 the following —
26 (a) an individual engaged solely as a worker in the
27 business or undertaking;
28 (b) in the case of a business or undertaking
29 conducted by a local government or a regional
30 local government — a member of the council
31 of the local government or regional local
32 government;

- 1 (c) a volunteer association;
- 2 (d) a person of a prescribed class.
- 3 (3) In subsection (2)(c) —
- 4 ***volunteer association*** means a group of volunteers
- 5 working together for 1 or more community purposes
- 6 where none of the volunteers, whether alone or jointly
- 7 with any other volunteers, employs any person to carry
- 8 out work for the volunteer association.
- 9 **51BH. Worker**
- 10 (1) A person is a ***worker*** if the person carries out work in
- 11 any capacity for a person conducting a business or
- 12 undertaking, including work as any of the following —
- 13 (a) an employee;
- 14 (b) a contractor or subcontractor;
- 15 (c) an employee of a contractor or subcontractor;
- 16 (d) an employee of a labour hire agency who has
- 17 been assigned to work in the person’s business
- 18 or undertaking;
- 19 (e) an outworker;
- 20 (f) an apprentice or trainee;
- 21 (g) a student gaining work experience;
- 22 (h) a volunteer;
- 23 (i) a person of a prescribed class.
- 24 (2) A police officer is —
- 25 (a) a worker of WA Police; and
- 26 (b) at work throughout the time when the officer is
- 27 on duty or lawfully performing the functions of
- 28 a police officer, but not otherwise.
- 29 (3) A person conducting the business or undertaking
- 30 referred to in subsection (1) is also a ***worker*** if the

1 person is an individual who carries out work in that
2 business or undertaking.

3 **51BI. Worker bullied or sexually harassed at work**

4 (1) A worker is *bullied* at work if, while the worker is at
5 work —

6 (a) an individual, or group of individuals,
7 repeatedly behaves unreasonably towards —

8 (i) the worker; or

9 (ii) a group of workers of which the worker
10 is a member;

11 and

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

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

16 (3) A worker is *sexually harassed* at work if, while the
17 worker is at work, an individual, or group of
18 individuals —

19 (a) makes an unwelcome sexual advance, or an
20 unwelcome request for sexual favours, to the
21 worker in circumstances a reasonable person,
22 having regard to all the circumstances, would
23 have anticipated the possibility that the worker
24 would be offended, humiliated or intimidated;
25 or

26 (b) engages in other unwelcome conduct of a
27 sexual nature in relation to the worker in
28 circumstances a reasonable person, having
29 regard to all the circumstances, would have
30 anticipated the possibility that the worker
31 would be offended, humiliated or intimidated.

- 1 (4) In subsection (3)(b) —
2 *conduct of a sexual nature*, in relation to a worker,
3 includes the following —
4 (a) making to, or in the presence of, the worker or
5 another person a statement of a sexual nature
6 concerning the worker, whether by visual, oral,
7 written or electronic communication;
8 (b) publishing a statement of a sexual nature
9 concerning the worker on the Internet or any
10 other form of communication.
- 11 **51BJ. Stop bullying or sexual harassment application**
- 12 (1) A worker who reasonably believes that the worker has
13 been bullied or sexually harassed at work may make an
14 application (a *stop bullying or sexual harassment*
15 *application*) to the Commission for a stop bullying or
16 sexual harassment order.
- 17 (2) The application must be accompanied by any fee
18 prescribed by the regulations.
- 19 **51BK. Dealing with a stop bullying or sexual harassment**
20 **application**
- 21 (1) The Commission must start to deal with a stop bullying
22 or sexual harassment application within 14 days after
23 the application is made.
- 24 (2) Section 44 does not apply to a stop bullying or sexual
25 harassment application.
- 26 (3) Section 48A(2) or any other enactment providing for
27 the resolution of grievances or disputes by workers
28 does not limit the power of the Commission to deal
29 with a stop bullying or sexual harassment application
30 under this Division.

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

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

25 **51BN. Contravening stop bullying or sexual harassment**
26 **order**

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

1 **30. Section 51BJ amended**

2 After section 51BJ(2) insert:

3

- 4 (3) The *Work Health and Safety Act 2020* section 115 does
5 not apply in relation to a stop bullying or sexual
6 harassment application.

7

8 Notes for this section:

- 9 1. If the *Work Health and Safety Act 2020* section 115 comes into
10 operation on or before the day on which section 29 of this Act comes
11 into operation, this section will be proclaimed to come into operation on
12 the same day as section 29.
- 13 2. If the *Work Health and Safety Act 2020* section 115 comes into
14 operation after the day on which section 29 of this Act comes into
15 operation, this section will be proclaimed to come into operation on the
16 day on which section 115 comes into operation.

17 **31. Part II Division 3B replaced**

18 Delete Part II Division 3B and insert:

19

20 **Division 3B — Equal remuneration**

21 **51O. Equal remuneration orders**

- 22 (1) In this section —
23 *statement of principles* means the statement of
24 principles referred to in section 50A(1)(d)(ii).
- 25 (2) On an application under section 29(1)(b), the
26 Commission must make an order (an *equal*
27 *remuneration order*) to ensure that an employee
28 receives equal remuneration if the Commission is
29 satisfied that the employee does not receive that
30 remuneration.

s. 31

- 1 (3) The equal remuneration order may relate to any matter
2 the Commission considers appropriate, including (but
3 not limited to) the following —
- 4 (a) reclassifying work;
5 (b) establishing new career paths;
6 (c) implementing changes to incremental pay
7 scales;
8 (d) providing for increases in remuneration rates,
9 including —
- 10 (i) minimum rates of pay in awards,
11 industrial agreements and enterprise
12 orders; and
13 (ii) new allowances;
14 (e) reassessing definitions and descriptions of work
15 to properly reflect the value of the work.
- 16 (4) The Commission must apply the statement of
17 principles, with any necessary modifications, in —
- 18 (a) determining whether an employee receives
19 equal remuneration; and
20 (b) deciding the terms of an equal remuneration
21 order.
- 22 (5) For the purposes of subsection (3), this Division
23 prevails over the statement of principles to the extent of
24 any inconsistency.
- 25 (6) An equal remuneration order may introduce measures
26 to ensure equal remuneration —
- 27 (a) immediately; or
28 (b) progressively, in stages specified in the order.

1 **51P. Employer not to reduce remuneration**

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

7 **51Q. Alternative remedies**

- 8 (1) Except as provided in subsection (3), this Division does
9 not limit a right a person might otherwise have to a
10 remedy (an *alternative remedy*) to secure equal
11 remuneration under another provision of this Act or
12 another enactment.
- 13 (2) A person who has applied for an alternative remedy in
14 relation to an employee cannot apply for an equal
15 remuneration order in relation to the employee unless
16 the proceedings for the alternative remedy have been
17 withdrawn or determined.
- 18 (3) A person who has applied for an equal remuneration
19 order in relation to an employee cannot commence
20 proceedings for an alternative remedy in relation to the
21 employee unless the application for the equal
22 remuneration order has been withdrawn or determined.
- 23 (4) Subsection (3) does not prevent an organisation from
24 commencing proceedings —
- 25 (a) that relate, in part or as a whole, to the securing
26 of equal remuneration for the employee; and
- 27 (b) that comprise any of the following —
- 28 (i) an application to vary an award under
29 section 40;
- 30 (ii) an application for the registration of an
31 industrial agreement under section 41;

s. 32

- 1 (iii) an initiation of bargaining under
2 section 42(1);
3 (iv) an application under section 42G for an
4 order regarding provisions of an
5 industrial agreement;
6 (v) an application under section 42I for an
7 enterprise order.

8 **51R. Remuneration-related action**

- 9 (1) In this section —
10 *remuneration-related action* means —
11 (a) the registration of an industrial agreement
12 under section 41; or
13 (b) the making of an award under this Act; or
14 (c) the making of an order under this Act.
15 (2) The Commission must not take remuneration-related
16 action that —
17 (a) prohibits or restricts the making of an
18 application for an equal remuneration order; or
19 (b) is inconsistent with, or prohibits or restricts the
20 application of, an equal remuneration order.
21

22 **32. Section 52 amended**

- 23 (1) In section 52 insert in alphabetical order:
24
25 *counterpart federal body* has the meaning given in
26 section 52A;
27 *State organisation* means an organisation that is
28 registered under this Division.
29

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

3

4 the person;

5

6 **33. Section 52A inserted**

7 After section 52 insert:

8

9 **52A. Counterpart federal body**

10 (1) In this section —

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

12 (a) rules relating to the qualifications of persons for
13 membership; and

14 (b) rules prescribing the offices that exist within
15 the branch.

16 (2) A Western Australian branch of a federal organisation
17 is a *counterpart federal body* in relation to a State
18 organisation if the rules of the branch are, or in
19 accordance with section 71(2) or (4) are taken to be,
20 the same as the rules of the State organisation relating
21 to the corresponding subject matter.

22 (3) A federal organisation is a *counterpart federal body* of
23 a State organisation even though the body does not
24 have or comprise a Western Australian branch of the
25 federal organisation if the Commission in Court
26 Session is of the opinion that the federal organisation is
27 a counterpart federal body in relation to a State
28 organisation.

s. 33

- 1 (4) The Commission in Court Session may form the
2 opinion referred to in subsection (3) only if —
- 3 (a) a substantial number of members of the State
4 organisation are —
- 5 (i) members or eligible to be members of
6 the federal organisation; or
- 7 (ii) engaged in the same work, in aspects of
8 the same work or in similar work as
9 members of the federal organisation; or
- 10 (iii) employed in the same or similar work
11 by employers engaged in the same
12 industry as members of the federal
13 organisation; or
- 14 (iv) engaged in work or in industries for
15 which there is a community of interest
16 between the federal organisation and the
17 State organisation;
- 18 or
- 19 (b) there is an agreement in force under the FW
20 (Registered Organisations) Act section 151
21 between the federal organisation and the State
22 organisation.
- 23 (5) The Commission in Court Session may form the
24 opinion referred to in subsection (3) despite the fact
25 that a person who is eligible to be a member of the
26 State organisation is, by reason of being a member of a
27 particular class of persons, ineligible to be a member of
28 that State organisation's counterpart federal body.
- 29 (6) The Commission in Court Session may form the
30 opinion referred to in subsection (3) despite the fact
31 that a person who is eligible to be a member of the
32 counterpart federal body is, by reason of being a
33 member of a particular class of persons, ineligible to be
34 a member of the State organisation.

- 1 (7) A State organisation may apply to the Commission in
2 Court Session for a declaration that, for the purposes of
3 subsection (2) or (3), a Western Australian branch of a
4 federal organisation, or a federal organisation, is a
5 counterpart federal body in relation to the State
6 organisation.
7

8 **34. Section 55 amended**

9 In section 55(1)(b) delete “3 copies” and insert:

10
11 a copy
12

13 **35. Section 59 amended**

14 In section 59(3) delete “Federal body under that section.” and
15 insert:

16
17 federal body.
18

19 **36. Section 71 amended**

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

21
22 (2) The rules of a State organisation and a counterpart
23 federal body described in section 52A(2) are taken to
24 be the same if the rules of the organisation and the
25 body —

26 (a) relate to the qualifications of persons for
27 membership; and

28 (b) are, in the opinion of the Commission in Court
29 Session, substantially the same.
30

s. 36

- 1 (2) Delete section 71(4) and insert:
2
- 3 (4) The rules of a State organisation and a counterpart
4 federal body described in section 52A(2) are taken to
5 be the same if —
6 (a) the rules prescribe the offices existing in the
7 body; and
8 (b) for every office in the organisation there is a
9 corresponding office in the body.
10
- 11 (3) In section 71(5)(a) delete “Federal body, holds the
12 corresponding office in that body; and” and insert:
13
14 federal body, holds an office described in subsection (5A) in
15 that body; and
16
- 17 (4) After section 71(5) insert:
18
- 19 (5A) The office referred to in subsection (5)(a) is —
20 (a) in the case of a counterpart federal body
21 referred to in section 52A(2) — the
22 corresponding office in the body;
23 (b) in the case of a counterpart federal body
24 referred to in section 52A(3) — an office that is
25 specified in the rules of the State organisation
26 for the purposes of this subsection and in
27 relation to which the members of the State
28 organisation are, under the rules of the
29 counterpart federal body, entitled to —
30 (i) nominate a person to be the office
31 holder; and

1 (ii) vote for a person to be the office holder.

2

3 (5) In section 71(6):

4 (a) after “State organisation” insert:

5

6 referred to in section 52A(2) or (3)

7

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

10

11 branch or organisation that is the State organisation’s
12 counterpart federal body,

13

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

15 **Rules of State and federal organisations as to membership and**
16 **offices**

17 **37. Section 71A amended**

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

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

20

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

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

24

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

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

1 **38. Part 2AA inserted**

2 After section 80 insert:
3

4 **Part 2AA — Employers declared not to be**
5 **national system employers**

6 **Division 1 — Declarations**

7 **80A. Employers declared not to be national system**
8 **employers**

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

12 (2) The regulations may —
13 (a) declare the employer not to be a national
14 system employer for the purposes of the
15 FW Act; and
16 (b) fix a day (the *relevant day*) for the purposes of
17 that declaration.

18 **Division 2 — Change from federal to State system**

19 **80B. Terms used**

20 In this Division —

21 *declared employee* means a person employed by a
22 declared employer;

23 *declared employer* means an employer declared not to
24 be a national system employer in regulations under
25 section 80A(2)(a);

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

federal award means —

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

federal industrial authority means —

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

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

national fair work legislation means —

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

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

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

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

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

terms includes conditions, restrictions and other provisions.

80BA. Operation of awards, industrial agreements or orders

- (1) The regulations may provide that, on and from the relevant day, an award, industrial agreement or order specified in the regulations applies to the employees of a declared employer specified in the regulations.

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

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

18 **80BC. Amendment of new State instruments**

- 19 (1) A declared employer, a declared employee or an
20 organisation may apply to the Commission to amend a
21 new State instrument.
- 22 (2) On the application, the Commission may make the
23 amendment if it is satisfied it is fair and reasonable to
24 do so in the circumstances.
- 25 (3) The amendment may be provided to take effect —
26 (a) immediately; or
27 (b) progressively, in stages specified in the
28 amendment.

1 **80BD. Ability to carry over matters**

2 The Commission may, in connection with the operation
3 of this Part, or any matter arising directly or indirectly
4 out of the operation of this Part —

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

16 **80BE. References in new State instruments to federal**
17 **industrial authority and General Manager**

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

1 **80BF. References in new State instruments to provisions of**
2 **Commonwealth laws**

- 3 (1) In this section —
4 *corresponding provision of this Act*, to a provision of
5 the FW Act, means —
6 (a) if paragraph (b) does not apply — a provision
7 of this Act that is of similar effect to the
8 provision of the FW Act; or
9 (b) a provision of this Act declared by regulations
10 to be a corresponding provision.
11 (2) On and from the relevant day, a term of a new State
12 instrument expressed to refer to a provision of the
13 FW Act is taken to refer to the corresponding provision
14 of this Act.

15 **80BG. References in new State instruments to federal**
16 **organisations**

- 17 (1) In this section —
18 *federal counterpart* has the meaning given in the FW
19 (Registered Organisations) Act section 9A.
20 (2) On and from the relevant day, a term of a new State
21 instrument expressed to refer to a federal organisation
22 is taken to refer to an organisation under this Act of
23 which the federal organisation is a federal counterpart.
24 (3) If the federal organisation is not a federal counterpart
25 of an organisation under this Act, the federal
26 organisation is taken to be an organisation under this
27 Act representing the declared employees of the relevant
28 declared employer in proceedings or other matters
29 arising under this Act.

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

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

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

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

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

- 1 **80BJ. Leave accrued immediately before relevant day**
- 2 (1) This section applies to any paid or unpaid leave
3 accrued under an old federal instrument, the national
4 fair work legislation or a law of this State.
- 5 (2) Leave accrued immediately before the relevant day by
6 a declared employee to whom a new State instrument
7 applies is taken to have accrued under the new State
8 instrument.
- 9 **80BK. Leave taken under old federal instrument**
- 10 (1) A declared employee who was, immediately before the
11 relevant day, taking a period of leave under the old
12 federal instrument or under the FW Act is entitled to
13 continue on that leave under the new State instrument
14 or a law of this State for the remainder of the period.
- 15 (2) A declared employee who has, before the relevant day,
16 taken a step under the old federal instrument or the
17 FW Act that the employee is required to take so the
18 employee can, on and from the relevant day, take a
19 period of leave under the old federal instrument or the
20 FW Act, is taken to have taken the step under the new
21 State instrument or a law of this State.
- 22 (3) The regulations may deal with other matters relating to
23 how a new State instrument applies to leave that,
24 immediately before the relevant day, is being, or is to
25 be, taken by a declared employee under the old federal
26 instrument or the FW Act.
- 27

s. 39

1 **39. Section 80E amended**

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

4
5 Except as provided in Part II Divisions 3, 3AA and 3B
6

7 **40. Section 80I amended**

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

9
10 subsection (1)
11

12 **41. Section 80R amended**

13 In section 80R(1) delete “Subject to Division 3 of Part II” and
14 insert:

15
16 Except as provided in Part II Divisions 3, 3AA and 3B
17

18 **42. Part III Division 1 heading inserted**

19 At the beginning of Part III insert:

20
21 **Division 1 — Industrial magistrate’s court**
22

23 **43. Section 81B amended**

24 (1) After section 81B(2) insert:

25
26 (2A) The Governor may appoint a commissioner who meets
27 the qualifications referred to in the *Magistrates Court*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Act 2004 Schedule 1 clause 2 (a *qualified commissioner*) to be an industrial magistrate.

(2) In section 81B(3)(a) delete “magistrate; or” and insert:

magistrate or commissioner; or

(3) In section 81B(4):

(a) delete “may, on the recommendation of the Chief Magistrate,” and insert:

may

(b) after “a magistrate” insert:

or a qualified commissioner

(4) After section 81B(4) insert:

(4A) Subsections (2) and (2A) apply, with the necessary modifications, to an appointment of an acting industrial magistrate.

44. Section 81CA amended

Delete section 81CA(2) and (3).

1 **45. Section 81G inserted**

2 After section 81F insert:

3

4 **81G. Industrial inspectors may assist industrial**
5 **magistrate's court**

- 6 (1) An industrial inspector may, with the leave of the
7 industrial magistrate's court, assist the court.
- 8 (2) The industrial magistrate's court may grant the leave in
9 respect of —
- 10 (a) proceedings that, in the opinion of the court,
11 have significant implications for the
12 administration of this Act, the LSL Act or the
13 MCE Act; or
- 14 (b) proceedings that involve special circumstances
15 that satisfy the court that it would be in the
16 public interest for the industrial inspector to
17 assist the court.
18

19 **46. Part III Division 2 heading inserted**

20 Before section 82 insert:

21

22 **Division 2 — Enforcement generally**
23

24 **47. Section 83 amended**

25 (1) Before section 83(1) insert:

26

- 27 (1A) In this section —
28 *contravene*, in relation to an entitlement provision,
29 includes fail to comply with that provision.
30

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

s. 47

- 1 (d) conspires with others to effect the
2 contravention.
3
- 4 (4) In section 83(3) delete “instrument to which this section applies
5 shall” and insert:
6
7 entitlement provision must
8
- 9 (5) In section 83(4):
10 (a) in paragraph (a) delete “or failure to comply”;
11 (b) delete paragraph (a)(ii) and insert:
12
13 (ii) impose a pecuniary penalty in
14 accordance with subsection (4A);
15
- 16 (6) After section 83(4) insert:
17
- 18 (4A) The pecuniary penalty may be an amount not
19 exceeding —
20 (a) in the case of a body corporate —
21 (i) if the contravention is a serious
22 contravention — \$650 000; or
23 (ii) if the contravention is not a serious
24 contravention — \$65 000;
25 and
26 (b) in the case of an individual —
27 (i) if the contravention is a serious
28 contravention — \$130 000; or
29 (ii) if the contravention is not a serious
30 contravention — \$13 000.
31

- 1 (7) In section 83(5):
2 (a) delete “or failure to comply with a provision of an
3 instrument to which this section applies” and insert:
4
5 of an entitlement provision
6
7 (b) delete “or failure to comply with” (second occurrence)
8 and insert:
9
10 of
11
- 12 (8) In section 83(8) delete the Penalty and insert:
13
14 Penalty for this subsection:
15 (a) a fine of \$13 000;
16 (b) a daily penalty of a fine of \$1 000 for each
17 day or part of a day during which the offence
18 continues.
19
- 20 (9) After section 83(8) insert:
21
22 (9) A contravention of an entitlement provision is not an
23 offence and section 83E(8) applies to the contravention
24 as if it were a contravention of a civil penalty
25 provision.
26
- 27 **48. Section 83A amended**
- 28 (1) In section 83A(1):
29 (a) delete “an employer” and insert:
30
31 a person
32

s. 49

- 1 (b) delete “of that employer has not been paid by that
2 employer” and insert:
3
4 has not been paid
5
6 (c) delete “instrument to which that section applies” and
7 insert:
8
9 entitlement provision,
10
11 (d) delete “employer to” and insert:
12
13 person to
14
15 (2) In section 83A(2):
16 (a) in paragraph (b) delete “employer” and insert:
17
18 person
19
20 (b) in paragraph (b)(iii) delete “employer’s” and insert:
21
22 person’s
23
24 **49. Section 83B amended**
25 (1) In section 83B(3) and (4) after “contravention” (1st occurrence)
26 insert:
27
28 of
29

- 1 (2) In section 83B(5):
2 (a) in paragraph (a) delete “\$5 000; and” and insert:
3
4 \$13 000; and
5
6 (b) in paragraph (b) after “contravention” insert:
7
8 of
9
10 (3) In section 83B(10) delete the Penalty and insert:
11
12 Penalty for this subsection:
13 (a) a fine of \$13 000;
14 (b) a daily penalty of a fine of \$1 000 for each
15 day or part of a day during which the offence
16 continues.
17

18 **50. Section 83C amended**

19 Delete section 83C(2) and insert:
20

- 21 (2) In proceedings under section 83 or 83B costs must not
22 be given to any party to the proceedings for the
23 services of a legal practitioner or agent of that party
24 unless —
25 (a) the industrial magistrate’s court finds that the
26 other party has committed a serious
27 contravention; or
28 (b) in the opinion of the industrial magistrate’s
29 court, the proceedings have been frivolously or
30 vexatiously instituted or defended, as the case
31 requires, by the other party.
32

s. 51

1 **51. Section 83E amended**

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

3

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

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

9 (i) if the contravention is a serious
10 contravention — \$650 000; or

11 (ii) if the contravention is not a serious
12 contravention — \$65 000;

13 (b) in the case of an individual —

14 (i) if the contravention is a serious
15 contravention — \$130 000; or

16 (ii) if the contravention is not a serious
17 contravention — \$13 000.

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

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

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

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

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

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

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

s. 52

1 vexatiously instituted or defended, as the case
2 requires, by the other party.
3

4 **52. Sections 83EA and 83EB inserted**

5 After section 83E insert:
6

7 **83EA. Serious contravention of entitlement provision or**
8 **civil penalty provision**

9 (1) In this section —

10 *contravention* means a contravention of or failure to
11 comply with —

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

14 (2) A contravention by a person is a *serious contravention*
15 if —

- 16 (a) the person knowingly commits the
17 contravention; and
18 (b) the person's conduct constituting the
19 contravention is part of a systematic pattern of
20 conduct relating to 1 or more other persons.

21 (3) For the purposes of subsection (2), a body corporate
22 knowingly commits a contravention if the body
23 corporate expressly, tacitly or impliedly authorises the
24 contravention.

25 (4) In determining whether the person's conduct
26 constituting the contravention was part of a systematic
27 pattern of conduct, the industrial magistrate's court
28 may have regard to all or any of the following —

- 29 (a) the number of contraventions (the *relevant*
30 *contraventions*) committed by the person;

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

- 1 **83EB. Employer to have burden of disproving certain**
2 **allegations by applicant under s. 83**
- 3 (1) In proceedings under section 83, the employer has the
4 burden of disproving an allegation by an applicant in
5 relation to a matter if the employer —
- 6 (a) was required under this Act or the LSL Act
7 to —
- 8 (i) make or keep a record in relation to the
9 matter; or
- 10 (ii) give a pay slip in relation to the matter;
11 or
- 12 (iii) make available for inspection a record
13 in relation to the matter;
- 14 and
- 15 (b) failed to comply with the requirement.
- 16 (2) Subsection (1) does not apply if the employer provides
17 a reasonable excuse for the failure to comply with the
18 requirement.
19
- 20 **53. Section 84 amended**
- 21 Delete section 84(5) and insert:
- 22
- 23 (5) In proceedings under this section costs must not be
24 given to any party to the proceedings for the services of
25 a legal practitioner or agent of that party except —
- 26 (a) in respect of an appeal from proceedings under
27 section 83 or 83E — to the party that was the
28 applicant in those proceedings, if the Full
29 Bench finds, or upholds a finding, that the other
30 party has committed a serious contravention; or

- 1 (b) if, in the opinion of the Full Bench, the
2 proceedings have been frivolously or
3 vexatiously instituted or defended, as the case
4 requires, by the other party.
- 5 (6) At any time after an appeal to the Full Bench has been
6 instituted under this section, a party to the proceedings
7 may apply to the Commission for an order that the
8 operation of the decision appealed against be stayed,
9 wholly or in part, pending the hearing and
10 determination of the appeal.
- 11 (7) For the purposes of hearing and determining an
12 application under subsection (6) for an order in respect
13 of a decision, the Commission must be constituted by
14 the presiding commissioner of the Full Bench allocated
15 the appeal against the decision.
16

17 **54. Section 84AA inserted**

18 After section 84 insert:
19

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

- 22 (1) In this section —
23 *contravention* means a contravention of or failure to
24 comply with —
25 (a) a civil penalty provision; or
26 (b) an entitlement provision.
- 27 (2) If in any proceedings under section 83 or 83E the
28 industrial magistrate's court finds that an employee
29 was employed or engaged under an illegal contract at
30 the time a contravention occurred, the court may

s. 55

1 nonetheless deal with the matter as if the contract was
2 valid.
3

4 **55. Section 84A amended**

5 (1) In section 84A(1) delete “44(3), 51S” and insert:

6

7 44(3)

8

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

12

13 \$10 000; or

14

15 **56. Part III Divisions 3 to 5 inserted**

16 At the end of Part III insert:

17

18 **Division 3 — Civil infringement notices**

19 **84B. Terms used**

20 In this Division —

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

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

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

27 (a) to have a civil infringement notice withdrawn;

28 or

- 1 (b) to be allowed more time to pay a civil
2 infringement notice penalty;
3 *recipient* means a person to whom a civil infringement
4 notice is given under section 84C(2).

5 **84C. Giving civil infringement notice**

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

26 **84D. Content of civil infringement notice**

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

s. 56

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

1 **84E. Amount of civil infringement notice penalty**

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

8 **84F. Time for payment of civil infringement notice**
9 **penalty**

10 (1) A civil infringement notice penalty must be paid within
11 28 days after the day on which the notice is served on
12 the recipient unless subsection (2), (3) or (4) applies.

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

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

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

26 **84G. Extension of time to pay civil infringement notice**
27 **penalty**

28 (1) Before the end of 28 days after receiving a civil
29 infringement notice, the recipient may apply, in
30 writing, to the nominated person for a further period of
31 up to 28 days in which to pay the civil infringement
32 notice penalty.

- 1 (2) Within 14 days after receiving the application, the
2 nominated person must —
- 3 (a) grant or refuse a further period not longer than
4 the period sought (but less than 28 days); and
- 5 (b) notify the recipient in writing of the decision
6 and, if the decision is a refusal, the reasons for
7 the decision.

8 **84H. Withdrawal of civil infringement notice**

- 9 (1) Before the end of 28 days after receiving the civil
10 infringement notice, the recipient may apply, in
11 writing, to the nominated person for the civil
12 infringement notice to be withdrawn.
- 13 (2) Within 14 days after receiving the application, the
14 nominated person must —
- 15 (a) withdraw or refuse to withdraw the civil
16 infringement notice; and
- 17 (b) notify the recipient in writing of the decision
18 and, if the decision is a refusal, the reasons for
19 the decision.
- 20 (3) If the nominated person has not approved the
21 withdrawal of the civil infringement notice within the
22 period allowed by subsection (2), the application is
23 taken to have been refused.
- 24 (4) The inspector who issued it may also withdraw the
25 civil infringement notice at any time by serving a
26 notice of withdrawal on the recipient.
- 27 (5) A notice of the withdrawal of a civil infringement
28 notice under subsection (4) must —
- 29 (a) specify the recipient's full name; and
- 30 (b) specify the recipient's address; and
- 31 (c) specify its date of issue; and

- 1 (d) state that the civil infringement notice is
2 withdrawn.

3 **84I. Effect of payment of civil infringement notice**
4 **penalty**

5 If a civil infringement notice is not withdrawn and the
6 recipient pays the civil infringement notice penalty —

- 7 (a) any liability of the recipient for the alleged
8 contravention is discharged; and
9 (b) no proceedings may be brought against the
10 recipient, by any person, for the alleged
11 contravention; and
12 (c) the recipient is not taken to have admitted to
13 having contravened the record-related civil
14 penalty provision; and
15 (d) the recipient is not taken to have committed a
16 contravention of the provision in relation to
17 which the civil infringement notice was issued.

18 **84J. Refund of civil infringement notice penalty**

19 If a civil infringement notice is withdrawn after the
20 civil infringement notice penalty has been paid, the
21 Treasurer must refund the amount of the penalty to the
22 person who paid it.

23 **Division 4 — Enforceable undertakings**

24 **84K. Terms used**

25 In this Division —

26 ***contravention*** means a contravention of or failure to
27 comply with —

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

1 *enforceable undertaking* means a written undertaking
2 accepted under section 84M(1).

3 **84L. Application of Division**

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

7 **84M. Enforceable undertaking**

- 8 (1) Except as provided by subsection (4), an industrial
9 inspector may accept a written undertaking given by a
10 person in relation to a contravention.
- 11 (2) The person may withdraw or vary the enforceable
12 undertaking at any time, but only with the industrial
13 inspector's consent.
- 14 (3) An industrial inspector must not apply for an order
15 under section 83 or 83E in relation to the contravention
16 unless the enforceable undertaking has been —
17 (a) withdrawn; or
18 (b) cancelled under section 84N(2)(c).
- 19 (4) The industrial inspector must not accept an enforceable
20 undertaking in relation to a contravention if the person
21 has been given a compliance notice as defined in
22 section 84Q in relation to the contravention.

23 **84N. Enforcement of enforceable undertakings**

- 24 (1) If an industrial inspector considers that a person who
25 gave an enforceable undertaking has contravened any
26 of its terms, the industrial inspector may apply to the
27 industrial magistrate's court for an order under
28 subsection (2).
- 29 (2) If the industrial magistrate's court is satisfied that the
30 person has contravened a term of the enforceable

- 1 undertaking, the court may make 1 or more of the
2 following orders —
- 3 (a) an order directing the person to comply with
4 the term of the undertaking;
- 5 (b) an order awarding compensation for loss that a
6 person has suffered because of the
7 contravention;
- 8 (c) an order varying or cancelling the enforceable
9 undertaking;
- 10 (d) any other order that the court considers
11 appropriate.

12 **Division 5 — Compliance notices**

13 **84O. Terms used**

14 In this Division —

15 *compliance notice* has the meaning given in
16 section 84Q;

17 *contravention* means a contravention of or failure to
18 comply with an entitlement provision.

19 **84P. Application of Division**

20 This Division applies if an industrial inspector (the
21 *industrial inspector*) reasonably believes that a person
22 has contravened an entitlement provision.

23 **84Q. Giving compliance notice**

24 (1) Except as provided in section 84R, the industrial
25 inspector may give the person a notice (a *compliance*
26 *notice*) requiring the person to do either or both of the
27 following within a reasonable time specified in the
28 notice —

- 29 (a) take specified action to remedy the direct
30 effects of the contravention;

- 1 (b) produce reasonable evidence of the person's
2 compliance with the notice.
- 3 (2) The compliance notice must also set out all of the
4 following —
- 5 (a) the name of the person to whom the notice is
6 given;
- 7 (b) the name of the industrial inspector who gave
8 the notice;
- 9 (c) brief details of the contravention;
- 10 (d) an explanation that a failure to comply with the
11 notice may contravene a civil penalty
12 provision;
- 13 (e) an explanation that the person may apply to the
14 industrial magistrate's court for a review of the
15 notice on either or both of the following
16 grounds —
- 17 (i) the person has not committed a
18 contravention set out in the notice;
- 19 (ii) the notice does not comply with
20 subsection (1) or this subsection;
- 21 (f) any other matters prescribed by the regulations.

22 **84R. Relationship with enforceable undertakings**

- 23 The industrial inspector must not give a person a
24 compliance notice in relation to a contravention if —
- 25 (a) the person has given an enforceable
26 undertaking as defined in section 84M(1) in
27 relation to the contravention; and
- 28 (b) the undertaking has not been withdrawn under
29 section 84M(2) or cancelled under
30 section 84N(2)(c).

- 1 **84S. Relationship with proceedings under s. 83**
- 2 (1) The industrial inspector must not apply for an order
3 under section 83 in relation to a contravention by a
4 person if —
- 5 (a) the inspector has given the person a compliance
6 notice in relation to the contravention; and
- 7 (b) the compliance notice has not been withdrawn;
8 and
- 9 (c) either of the following applies —
- 10 (i) the person has complied with the notice;
- 11 (ii) the person has made an application
12 under section 84U(1) in relation to the
13 compliance notice and that application
14 has not been completely dealt with.
- 15 (2) A person who complies with a compliance notice is not
16 taken to have —
- 17 (a) admitted to contravening an entitlement
18 provision to which the compliance notice
19 relates; or
- 20 (b) been found to have contravened an entitlement
21 provision to which the compliance notice
22 relates.
- 23 **84T. Person must comply with compliance notice**
- 24 (1) A person must comply with a compliance notice.
- 25 (2) A contravention of subsection (1) is not an offence but
26 the subsection is a civil penalty provision for the
27 purposes of section 83E, except that the pecuniary
28 penalty cannot exceed —
- 29 (a) in the case of a body corporate — \$30 000;
- 30 (b) in the case of an individual — \$6 000.

- 1 (3) Subsection (1) does not apply if the person has a
2 reasonable excuse.

3 **84U. Review of compliance notices**

- 4 (1) A person who has been given a compliance notice may
5 apply to the industrial magistrate's court for a review
6 of the notice on either or both of the following
7 grounds —

- 8 (a) the person has not committed a contravention
9 set out in the notice;
10 (b) the notice does not comply with section 84Q.

- 11 (2) At any time after the application has been made, the
12 industrial magistrate's court may stay the operation of
13 the notice on the terms and conditions that the court
14 considers appropriate.

- 15 (3) In an application made on the ground referred to in
16 subsection (1)(a), the person making the application
17 has the burden of proving that the person has not
18 committed the contravention.

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

21 **84V. Withdrawal of compliance notice**

- 22 (1) The industrial inspector may withdraw the compliance
23 notice at any time by serving a notice of withdrawal on
24 the person (the *recipient*) who has been given the
25 compliance notice.

- 26 (2) The notice of withdrawal must —
27 (a) specify the full name of the recipient; and
28 (b) specify the recipient's address; and

- 1 (c) specify its date of issue; and
- 2 (d) state that the compliance notice is withdrawn.
- 3

4 **57. Section 86 amended**

5 Delete section 86(2).

6 **58. Section 91A inserted**

7 After section 91 insert:

8

9 **91A. Court’s power to order costs and expenses**

- 10 (1) Except as provided in subsection (2), in the exercise of
- 11 its jurisdiction under this Act the Court may make such
- 12 orders as it thinks just as to the costs and expenses
- 13 (including the expenses of witnesses) of proceedings
- 14 before the Court, including proceedings dismissed for
- 15 want of jurisdiction.

- 16 (2) Costs for the services of any legal practitioner or agent
- 17 of any party to the proceedings must not be given to
- 18 that party except as follows —

 - 19 (a) costs can be given to that party if, in the
 - 20 opinion of the Court, the proceedings have been
 - 21 frivolously or vexatiously instituted or
 - 22 defended, as the case requires, by the other
 - 23 party;

 - 24 (b) in respect of an appeal from proceedings under
 - 25 section 83 or 83E — costs can be given to the
 - 26 party that was the applicant in those
 - 27 proceedings, if the Court finds, or upholds a
 - 28 finding, that the other party has committed a
 - 29 serious contravention.
 - 30

s. 59

1 **59. Section 93 amended**

2 (1) In section 93(6) delete “Subject to subsection (6a), the” and
3 insert:

4
5 The

6
7 (2) Delete section 93(6a).

8 **60. Section 96 amended**

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

10
11 section 29(1)(c) or (d);

12
13 **61. Part 6B inserted**

14 After section 96L insert:

15
16 **Part 6B — Protection of employee rights**

17 **Division 1 — Preliminary**

18 **97. Terms used**

19 In this Part —

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

21 (a) in the case of an employee —

22 (i) dismissing the employee; or

23 (ii) altering the employee’s position to the
24 employee’s disadvantage; or

25 (iii) refusing to promote or transfer the
26 employee; or

- 1 (iv) otherwise injuring the employee in
2 relation to the employee's employment
3 with the employer or another person; or
4 (v) threatening to do anything referred to in
5 subparagraphs (i) to (iv);
6 and
7 (b) in the case of a prospective employee —
8 (i) refusing to employ the prospective
9 employee; or
10 (ii) discriminating against the prospective
11 employee in the terms or conditions on
12 which the employer offers to employ the
13 prospective employee; or
14 (iii) threatening to do anything referred to in
15 subparagraphs (i) and (ii);
16 *employee* includes a prospective employee;
17 *employer* includes a former employer or prospective
18 employer.

19 **Division 2 — Damaging action**

20 **97A. Damaging action because of inquiry or complaint**

- 21 (1) An employer must not take damaging action against an
22 employee for the reason, or for reasons that include,
23 that the employee is able to make an
24 employment-related inquiry or complaint to the
25 employer or another person.
26 (2) In any proceedings for a contravention of
27 subsection (1), if it is proved that an employer took the
28 damaging action against the employee, it is for the
29 employer to prove that the employer did not do so
30 because the employee made the inquiry or complaint or
31 proposed to make the inquiry or complaint.

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

4 **97B. Court orders to employers**

- 5 (1) This section applies if the industrial magistrate's court
6 determines that an employer has contravened
7 section 97A(1) in respect of an employee.

- 8 (2) Except as provided in subsection (5), the industrial
9 magistrate's court may order the employer to do 1 or
10 more of the following —

- 11 (a) if the employee was dismissed from
12 employment — to reinstate the employee;
13 (b) if the employee was refused employment — to
14 employ the employee;
15 (c) to pay to the employee compensation for any
16 loss or injury suffered as a result of the
17 contravention.

- 18 (3) The employer must comply with the order.

19 Penalty for this subsection:

- 20 (a) a fine of \$13 000;
21 (b) a daily penalty of a fine of \$1 000 for each
22 day or part of a day during which the offence
23 continues.

- 24 (4) The industrial magistrate's court may make the order in
25 addition to imposing a penalty under section 83E.

- 26 (5) The industrial magistrate's court must not make the
27 order if the employee has applied under another
28 provision of this Act or any other written law for relief
29 in relation to the same damaging action unless the
30 proceedings for that relief have been withdrawn or
31 failed for want of jurisdiction.

- 1 (6) The employee is not entitled to compensation for the
2 same damaging action under both subsection (2)(c) and
3 another provision of this Act or any other written law.

4 **97C. Court orders to third parties**

- 5 (1) In this section —
6 *third party*, in relation to proceedings for a
7 contravention of section 97A(1), means a person, other
8 than the employer, on whom a copy of the application
9 under section 83E(1) has been served.
- 10 (2) This section applies if the industrial magistrate's court
11 determines that an employer has contravened
12 section 97A(1) in respect of an employee.
- 13 (3) The industrial magistrate's court may order a third
14 party —
15 (a) to refrain from taking any damaging action
16 against the employee; and
17 (b) to take any action necessary or desirable to give
18 effect to an order under section 97B(2).
- 19 (4) The third party must comply with the order.
20 Penalty for this subsection:
21 (a) a fine of \$13 000;
22 (b) a daily penalty of a fine of \$1 000 for each
23 day or part of a day during which the offence
24 continues.

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

26 **97D. Misrepresenting contract of employment as**
27 **contract for services**

- 28 (1) An employer must not represent to an employee that a
29 contract of employment is a contract for services.

s. 61

- 1 (2) Subsection (1) does not apply if the employer proves
2 that, when the representation was made, the employer
3 did not know, and could not reasonably be expected to
4 have known, that the contract was a contract of
5 employment rather than a contract for services.
- 6 (3) A contravention of subsection (1) is not an offence but
7 that subsection is a civil penalty provision for the
8 purposes of section 83E.

9 **97E. Dismissing to engage under contract for services**

- 10 (1) An employer must not dismiss or threaten to dismiss an
11 employee performing particular work for the employer
12 in order to engage the employee to perform the same,
13 or substantially the same, work under a contract for
14 services.
- 15 (2) In any proceedings for a contravention of
16 subsection (1), if it is proved that an employer
17 dismissed, or threatened to dismiss, the employee, it is
18 for the employer to prove that the employer did not do
19 so in order to engage the employee under the contract
20 for services.
- 21 (3) A contravention of subsection (1) is not an offence but
22 that subsection is a civil penalty provision for the
23 purposes of section 83E.

24 **97F. False statement to engage under contract for**
25 **services**

- 26 (1) An employer must not make a statement that the
27 employer knows, or could reasonably be expected to
28 know, is false in order to persuade or influence an
29 employee performing particular work for the employer
30 to enter into a contract for services under which the
31 employee will perform the same, or substantially the
32 same, work.

1 (2) In any proceedings for a contravention of
2 subsection (1), if it is proved that an employer made
3 the statement, it is for the employer to prove that the
4 employer did not do so in order to persuade or
5 influence the employee to enter into the contract for
6 services.

7 (3) A contravention of subsection (1) is not an offence but
8 that subsection is a civil penalty provision for the
9 purposes of section 83E.

10 **97G. Court orders to employers**

11 (1) This section applies if an industrial magistrate's court
12 determines that an employer has contravened
13 section 97D(1), 97E(1) or 97F(1) in respect of an
14 employee.

15 (2) Except as provided in subsection (5), the industrial
16 magistrate's court may order the employer to do 1 or
17 more of the following —

- 18 (a) if the employee was dismissed from
19 employment — to reinstate the employee;
20 (b) if the employee was refused employment — to
21 employ the employee;
22 (c) to pay to the employee compensation for any
23 loss or injury suffered as a result of the
24 contravention.

25 (3) The employer must comply with the order.

26 Penalty for this subsection:

- 27 (a) a fine of \$13 000;
28 (b) a daily penalty of a fine of \$1 000 for each
29 day or part of a day during which the offence
30 continues.

s. 62

- 1 (4) The court may make the order in addition to imposing
2 a penalty under section 83E.
- 3 (5) The industrial magistrate's court must not make the
4 order if the employee has applied under another
5 provision of this Act or any other written law for relief
6 in relation to the same act or omission unless the
7 proceedings for that relief have been withdrawn or
8 failed for want of jurisdiction.
- 9 (6) The employee is not entitled to compensation for the
10 same act or omission under both subsection (2)(c) and
11 another provision of this Act or any other written law.

12 **Division 4 — Miscellaneous**

13 **97H. Certain advertising prohibited**

- 14 (1) A person must not advertise the availability of
15 employment at a rate of pay that is less than the
16 minimum wage applicable to the position under the
17 MCE Act or an award, order of the Commission or an
18 industrial agreement.
- 19 (2) A contravention of subsection (1) is not an offence but
20 that subsection is a civil penalty provision for the
21 purposes of section 83E.
22

23 **62. Section 97U amended**

- 24 (1) In section 97U(1) delete the definitions of:
25 *supported wage provisions*
26 *Supported Wage System*

1 (2) In section 97U(1) in the definition of *section 97UM signatory*
2 delete “97UM(2);” and insert:

3

4 97UM(2).
5

6 **63. Section 97UF amended**

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

9

10 a SWIIP; and
11

12 **64. Section 97YA amended**

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

15

16 a SWIIP
17

18 **65. Section 98 amended**

19 (1) In section 98(3):

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

21

22 (a) with or without giving notice to the owner or
23 occupier, enter —

24 (i) a place (*industrial location*) at which
25 there are reasonable grounds to suspect
26 that an industry is being or has been
27 carried on or any work is being done or
28 has been done or commenced in relation
29 to an industry; or

s. 65

- 1 (ii) a place (*business premises*) at which
2 there are reasonable grounds to suspect
3 that records relevant to an industry are
4 kept or can be accessed;
- 5 and
- 6
- 7 (b) in paragraph (b) delete “location; and” and insert:
8
9 location or business premises, or any record accessible
10 from a computer kept at the industrial location or
11 business premises; and
12
- 13 (c) delete paragraphs (c) to (f) and insert:
14
- 15 (c) take with the inspector into an industrial
16 location or business premises any person or
17 persons the inspector considers necessary to
18 provide assistance to the inspector; and
- 19 (d) require (either alone or in the presence, or with
20 the assistance, of some other person) any
21 person the inspector finds in an industrial
22 location or business premises to answer
23 questions by the inspector —
- 24 (i) orally; or
25 (ii) if the inspector thinks fit — in writing;
- 26 and
- 27 (e) by notice in writing or orally require a person
28 having the control of, or access to, a record to
29 produce the record for inspection by the
30 inspector; and

- 1 (f) in relation to a record referred to in
2 paragraph (b) or (e), do all or any of the
3 following —
4 (i) seize the record;
5 (ii) retain the record for as long as is
6 necessary for the purposes of carrying
7 out the function to which the record is
8 relevant;
9 (iii) take extracts from or copies of the
10 record;
11 and
12 (fa) post at an industrial location, in a place where it
13 may be viewed by employees at the location, a
14 notice containing information regarding any of
15 the following —
16 (i) the rights and obligations under any law
17 of the State or Commonwealth relating
18 to employment (an *employment law*) of
19 the employees or their employer;
20 (ii) a conviction of the employer of an
21 offence under an employment law;
22 (iii) a finding that the employer has
23 contravened an entitlement provision or
24 civil penalty provision under this Act or
25 a civil remedy provision under the
26 FW Act;
27 and
28
29 (d) In paragraph (h) delete “(f)” and insert:
30
31 (f), (fa)
32

s. 65

- 1 (2) After section 98(3) insert:
2
- 3 (3A) If an industrial inspector proposes to exercise the
4 power under subsection (3)(a) to enter an industrial
5 location or business premises that also comprises
6 premises principally used for habitation, the inspector
7 must give the owner or occupier of the location or
8 premises at least 24 hours' written notice of the
9 proposed entry unless —
- 10 (a) the owner or occupier is carrying on an industry
11 at the location or premises; or
- 12 (b) the Commission has made an order waiving the
13 requirement under this subsection to give the
14 notice.
- 15 (3B) An industrial inspector may apply to the Commission
16 for an order under subsection (3A)(b).
- 17 (3C) The application may be heard in the absence of the
18 owner or occupier of the industrial location or business
19 premises.
- 20 (3D) The Commission may make the order if it is satisfied
21 that a notice under subsection (3A) would defeat the
22 purpose for which the power in subsection (3)(a) is
23 intended to be exercised.
24
- 25 (3) Delete section 98(5) and insert:
26
- 27 (5) The power of an industrial inspector under
28 subsection (3)(e) may be exercised —
- 29 (a) whether or not the industrial inspector has
30 entered, or proposes to enter, an industrial
31 location or business premises; and

1 (b) if exercised when the industrial inspector has
2 entered an industrial location or business
3 premises — in relation to any record whether or
4 not it is kept at the location or premises.

5 (5A) The regulations may prescribe the form and manner in
6 which records may be produced for inspection under
7 subsection (3)(e).
8

9 (4) In section 98(6) delete the definition of *conveyance*.

10 (5) In section 98(7) delete “subsection (2), (3) or (5)” and insert:
11

12 subsection (2) or (3)
13

14 **66. Section 98A inserted**

15 After section 98 insert:
16

17 **98A. Information obtained under s. 98 not to be disclosed**

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

19 (a) an industrial inspector; or

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

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

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

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

s. 67

- 1 (c) to assist in the administration or enforcement of
2 a written law or a law of the Commonwealth,
3 another State or a Territory; or
4 (d) for the purpose of proceedings in a court; or
5 (e) with the written authority of each person to
6 whom the information relates; or
7 (f) in other circumstances prescribed by the
8 regulations.

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

11 **67. Section 102 amended**

12 (1) After section 102(2) insert:
13

14 (2A) For the purposes of subsection (2)(a), a person who
15 destroys, defaces, alters, takes, or otherwise interferes
16 with a notice posted at an industrial location by an
17 industrial inspector under section 98(3)(fa) is taken to
18 obstruct the industrial inspector in the performance of
19 the inspector's function under that section.
20

21 (2) After section 102(3) insert:
22

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

28 (5) If in proceedings under section 83E an industrial
29 magistrate's court is required to consider whether a
30 contravention of a record-related civil penalty
31 provision has occurred it may, as an alternative,

1 determine that a contravention of subsection (1)(a) has
2 occurred.
3

4 **68. Section 103 amended**

5 In section 103(3) in the definition of *breach* after
6 “contravention” (first occurrence) insert:

7

8 of
9

10 **69. Section 112A amended**

11 After section 112A(3) insert:
12

13 (3A) Subsection (3) does not apply to a disqualified person.

14 (3B) In subsection (3A) —

15 *disqualified person* means a disqualified person as
16 defined in the *Legal Profession Act 2008* section 3
17 except that —

18 (a) it includes —

19 (i) a person whose name has been removed
20 from a foreign roll as defined in
21 section 3 of that Act; and

22 (ii) a person in relation to whom the grant
23 or renewal of a local practising
24 certificate as defined in section 3 of that
25 Act has been refused;

26 but

27 (b) it does not include —

28 (i) a person whose name has, for reasons
29 other than or in connection with
30 disciplinary action, been removed from

s. 70

- 1 an Australian roll or foreign roll as
2 those terms are defined in section 3 of
3 that Act; or
4 (ii) a person whose local practising
5 certificate as defined in section 3 of that
6 Act has, for reasons other than or in
7 connection with disciplinary action,
8 been suspended or cancelled.
9

10 **70. Section 117 inserted**

11 At the end of Part VII insert:
12

13 **117. Savings and transitional provisions for *Industrial***
14 ***Relations Legislation Amendment Act 2021***

- 15 (1) In this section —
16 *commencement day* means the day on which the
17 *Industrial Relations Legislation Amendment Act 2021*
18 section 15 comes into operation;
19 *former section* means a section of this Act as in
20 operation immediately before the commencement day;
21 *transitioned private sector award* means a private
22 sector award that was in force immediately before the
23 commencement day.
24 (2) On and after the commencement day, former
25 section 37(1) continues in operation in relation to a
26 transitioned private sector award until the award is —
27 (a) cancelled; or
28 (b) varied under section 37D, 40(2A) or 50(5).
29 (3) Sections 37B and 37C do not apply to a transitioned
30 private sector award until it is varied under
31 section 37D, 40(2A) or 50(5).

1 (4) This section does not affect the operation of the
 2 *Interpretation Act 1984* Part V.
 3

4 **71. Schedule 4 amended**

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

6
 7 (a) there is no industrial instrument containing a SWIIP
 8 that extends to the employee; and
 9

10 **72. Various penalties amended**

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

Table

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

s. 72

Provision	Delete	Insert
Sch. 5 cl. 2 Sch. 5 cl. 3	\$2 000	a fine of \$2 000
Sch. 5 cl. 4(1) and (2)	Penalty:	Penalty for this subclause: a fine of

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

Table

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

- (5) In section 96C(3) delete the Penalty.
- (6) In section 96D(3) delete the Penalty and insert:

Penalty for this subsection:

- (a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;
- (b) in any other case —
 - (i) a fine of not less than \$1 000 or more than \$10 000;
 - (ii) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

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

Penalty for this subsection:

- (a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;
- (b) in any other case —
 - (i) a fine of not less than \$1 000 or more than \$10 000;

s. 73

- 1 (ii) a daily penalty of a fine of \$500 for
2 each day or part of a day during which
3 the offence continues.
4
- 5 (8) In section 97YC(4) delete the Penalty and insert:
6
7 Penalty for this subsection:
8 (a) a fine of \$5 000;
9 (b) a daily penalty of a fine of \$500 for each day
10 or part of a day during which the offence
11 continues.
12
- 13 (9) In section 97YG(7) delete the Penalty and insert:
14
15 Penalty for this subsection:
16 (a) a fine of \$5 000;
17 (b) a daily penalty of a fine of \$500 for each day
18 or part of a day during which the offence
19 continues.
20

21 **73. Various references to “prescribed” amended**

22 In the provisions listed in the Table delete “prescribed” and
23 insert:

24
25 approved
26

27 **Table**

s. 33(1)(a)	s. 41(7)
s. 55(1)(c)	s. 58(1) (first occurrence)

1 **74. Various references to “Federal” amended**

2 In the provisions listed in the Table delete “Federal” (each
 3 occurrence) and insert:

4
 5 federal

6
 7 **Table**

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

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

10 **Table**

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

11 **75. Various references to titles amended**

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

13 **Table**

Provision	Delete	Insert
s. 31(1)(c)(i) s. 73(3)(a)(ii) and (7b) s. 80ZJ(1) s. 97VS(5)(a)	<i>Fair Work Act 2009</i> (Commonwealth)	FW Act

s. 75

Provision	Delete	Insert
s. 73(3)(a)(ii) and (7b) s. 97VS(5)(a)	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Commonwealth)	FW (Transitional) Act
s. 7(1) def. of <i>secondary office</i> s. 14A s. 14B(1) s. 22(2)(c) s. 29AA(1) and (2) s. 80ZF def. of <i>Fair Work Commission</i> s. 80ZG(1)(a), (b) and (c), (2) and (3) s. 80ZH(1), (2) and (4) s. 80ZI(2) and (3)	Fair Work Commission (each occurrence)	FW Commission
s. 80ZF def. of <i>Fair Work Commission</i>	<i>Fair Work Commission</i>	<i>FW Commission</i>
s. 80H(6)	<i>Fair Work (Registered Organisations) Act 2009</i> (Commonwealth)	FW (Registered Organisations) Act

s. 75

s. 7(3)(b)	section 102(1) of the <i>Mines Safety and Inspection Act 1994</i>	the MSI Act section 102(1)
s. 7(3)(c)	clause 69(1) of Schedule 1 to the <i>Petroleum and Geothermal Energy Resources Act 1967</i> , clause 69(1) of Schedule 1 to the <i>Petroleum Pipelines Act 1969</i> , or clause 70(1) of Schedule 5 to the <i>Petroleum (Submerged Lands) Act 1982</i>	the <i>Petroleum and Geothermal Energy Resources Act 1967</i> Schedule 1 clause 69(1), the <i>Petroleum Pipelines Act 1969</i> Schedule 1 clause 69(1), or the <i>Petroleum (Submerged Lands) Act 1982</i> Schedule 5 clause 70(1)
s. 8(3A)(b) s. 113(1)(d)(ii)(II)	<i>Mines Safety and Inspection Act 1994</i>	MSI Act

- 1 (3) If the *Work Health and Safety Act 2020* Part 15 Division 4
 2 Subdivision 5 comes into operation on or before the day on
 3 which section 5(2) of this Act comes into operation,
 4 subsection (2) —
 5 (a) does not come into operation; and
 6 (b) is deleted when section 5(2) of this Act comes into
 7 operation.

8 Notes for this subsection:

- 9 1. If the *Work Health and Safety Act 2020* Part 15 Division 4
 10 Subdivision 5 comes into operation after the day on which section 5(2)
 11 of this Act comes into operation, see Part 7 Division 1 Subdivision 2.
 12 2. See also section 129.

1 **76. Various references to “shall” replaced**

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

3 **Table**

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

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

5

6 **must**

7

8 **Table**

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

s. 76

s. 40B(2) and (3)	s. 41(2) and (4)
s. 41A(1) and (2)	s. 42B(1)
s. 42C(2) and (5)	s. 44(3), (5), (5a), (11) and (12d) (each occurrence)
s. 46(2)	s. 47(3) and (5)
s. 48(2), (8), (9) and (12) (each occurrence)	s. 48A(1) and (1a)
s. 48B(2) and (4) (each occurrence)	s. 49(3), (4)(a) and (b) and (6)
s. 50(7)	s. 50A(1), (3), (4) and (7)
s. 50B(3)	s. 51A(4) and (5)
s. 51BA(1)	s. 51BB
s. 51BE	s. 51J
s. 51K	s. 51L
s. 51M	s. 55(1), (2), (3) and (4)(e)(i)
s. 56(1) (each occurrence)	s. 56(3) (1 st occurrence)
s. 56A(3)	s. 57(1)
s. 59(2)	s. 62(2) and (3)
s. 63(1), (2), (3), (6) and (7)	s. 64(2)
s. 64A(2)	s. 64D

s. 65	s. 66(2)(f)(ii) and (4) (each occurrence)
s. 69(3), (4), (6), (8), (9) and (11) (each occurrence)	s. 70(1) and (2)
s. 71(5) (1 st occurrence)	s. 71(9)(a)
s. 71A(5)(a)	s. 72(2) (each occurrence)
s. 72B(4), (5) and (6)	s. 73(3)(a) and (b), (4), (5), (7)(a), (7b)(a), (11), (12a), (13) and (14) (each occurrence)
s. 77(6) and (7)	s. 80C(2) and (4)
s. 80J(a)	s. 80K(3) (each occurrence)
s. 80M(3) (1 st and 3 rd occurrences)	s. 80N(3), (4) and (5)(a)
s. 80U(3)	s. 80V(2) (each occurrence)
s. 80ZE(1)	s. 81(2) and (4) (each occurrence)
s. 81C(2)	s. 81D(1) (1 st occurrence)
s. 82(2)	s. 82A
s. 83(8)	s. 83A(1)
s. 83A(3) (2 nd occurrence)	s. 83B(6)(a) and (10)
s. 83F(1)	s. 84(3)

s. 76

s. 84A(4)(a) and (b) and (7)	s. 85(4) and (5) (each occurrence)
s. 87(1)	s. 90(2) and (3a)
s. 93(3), (4), (5) and (6) (each occurrence)	s. 95(2) (2 nd occurrence)
s. 96F(4)(b) and (c)	s. 96J(2)(a)
s. 98(2) (each occurrence)	s. 102(1) and (2)
s. 103(2)	s. 106
s. 109	s. 110(1)
s. 111(1) and (2)	s. 112(2)
s. 112A(4)	s. 113(2)
s. 113(3b) (2 nd occurrence)	s. 114(2) (2 nd occurrence)

1
2
3
4
5
6
7

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

Which industrial agreements must not be registered under s. 41

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

is

Table

s. 8(3)(c)	s. 31(2)
s. 33(1)(b)	s. 34(4)
s. 56A(5)	s. 80H(1)

s. 80H(4) (2 nd occurrence)	s. 80M(2)
s. 80N(1) and (2)(a), (b) and (c) (each occurrence)	s. 80ZG(3)
s. 80ZH(3)	s. 81B(1)
s. 81CA(8)	s. 81D(1)
s. 83A(3) (1 st occurrence)	s. 84A(8)
s. 85(2)(a) and (b) and (3a)	s. 92(2)
s. 96I(1) and (2)	s. 114(2) (1 st occurrence)

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

2

3

are

4

5

Table

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

s. 76

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

2

3 cannot

4

5

Table

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

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

7

8 can

9

10

Table

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

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

12

13 is

14

15

Table

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

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

2

Table

Provision	Delete	Insert
s. 3(2)	An employer shall, for the purposes of subsection (1), be	For the purposes of subsection (1), an employer is
s. 3(4)	process	process is, in the absence of proof to the contrary, taken to be proved if it is either of the following
s. 3(4)(b)	(3),	(3).
s. 3(4)	shall, in the absence of proof to the contrary, be deemed to be proved.	
s. 3(6)	Effect shall be given to subsections (1), (2), and (3)	Subsections (1), (2), and (3) have effect
s. 7(4)	no regard shall	regard must not
s. 20(8)	shall, while he holds his office, be deemed	holding office is taken
s. 20(8a)	<i>1938</i> the duration of	<i>1938</i> , the following are taken to be increased by 100%

s. 76

Provision	Delete	Insert
s. 20(8a)(a)	any	the period of any
s. 20(8a)(c)(ii)	duties,	duties.
s. 20(8a)	shall be deemed to be increased by 100%.	
s. 20(10)	shall be not	cannot be
s. 29A(1b)	(2A)	(2A), the following must be published in the required manner
s. 29A(1b)(b)	agreement,	agreement.
s. 29A(1b)	shall be published in the required manner.	
s. 33(1)(d)	whenever it shall appear	if the Commission considers it
s. 34(3)	shall they	can they
s. 35(3)	shall, at a time fixed by the Commission, be	are, at a time fixed by the Commission,

Provision	Delete	Insert
s. 37(4)	An award, and any provision of an award, whether or not it has been made for a specified term, shall, subject to any variation made under this Act, remain	Subject to any variation made under this Act, an award, and any provision of an award, whether or not it has been made for a specified term, remains
s. 37(4)	shall cease	ceases
s. 41(5)	shall operate	operates
s. 41(6)	shall, subject to this Act, continue	continues
s. 41(7)	such filing, and such party shall on the expiration of that period cease	the filing, and, on the expiration of that period, the party ceases
s. 44(12c)	no appeal shall	an appeal does not
s. 48(1)	shall be	is established
s. 50(3) s. 80G(2) s. 99	shall	does
s. 60(1)	shall, upon and during registration, become and be,	is, upon and during registration,

s. 76

Provision	Delete	Insert
s. 62(1) s. 71A(5)(b)	shall not be or become	is not
s. 71(5)(d)	shall, for all purposes, be	are, for all purposes,
s. 73(9)	shall	will
s. 80D(4) s. 80O(1)(a) and (b)	shall hold	holds
s. 80E(5)	shall affect or interfere	affects or interferes
s. 80H(2) s. 80N(2) s. 85(2)	shall consist	consists
s. 80L(2)	shall apply	applies
s. 80M(2)	shall have and enjoy	has and enjoys
s. 80O(5)	shall become	becomes
s. 80R(2)(c)	shall be advanced	advance
s. 80U(2) s. 87(2) s. 114(1)	shall not be	is not

Provision	Delete	Insert
s. 81B(5)	An industrial magistrate or acting industrial magistrate shall, if the industrial magistrate's court constituted by him	If an industrial magistrate's court constituted by an industrial magistrate or acting industrial magistrate
s. 85(3)	shall nominate	nominates
s. 85(3)	such judges as the Chief Justice of Western Australia shall from time to time nominate	judges the Chief Justice of Western Australia from time to time nominates
s. 85(3b)	shall	is to
s. 93(1a)	shall appoint	may appoint
s. 93(1a)	shall not be	are not
s. 93(7)	shall forthwith	must immediately
s. 95(1) and (2)	shall have	has
s. 98(4)	shall for all purposes be deemed (each occurrence)	is taken
s. 102A(1) s. 104(4)	his own motion, and shall, if he is	the Registrar's or deputy registrar's own motion, and must, if

s. 77

Provision	Delete	Insert
s. 108	shall not, on and from the date of its registration, and while so registered, be	is not, on and from the date of its registration, and while so registered,
s. 113(3b)	what fees shall	the fees to
s. 114(1)	shall, to that extent, be null and void	is, to that extent, void

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

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

4

5 chairperson

6

7

Table

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

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

2

3 the person

4

5

Table

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

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

7

Table

s. 16(3)	s. 20(8a)(b)
s. 44(11)(a)	s. 80D(4)
s. 80M(1) def. of <i>head of branch</i> and <i>sub-head of branch</i>	s. 80O(1)(a)
s. 91(1)(a)	s. 93(10)
s. 111(1)	

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

9

10 the person’s

11

s. 77

1

Table

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

2

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

3

4

the person

5

6

Table

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

7

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

8

9

the Registrar’s

10

11

Table

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

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

3

4 the employee’s

5

6

Table

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

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

9

10 the person

11

12

Table

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

s. 77

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

3

4 the person’s

5

6

Table

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

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

8

9 the Registrar

10

11

Table

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

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

14

15 the person

16

17

Table

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

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

3
4
5
6

the Registrar

Table

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

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

8

Table

Provision	Delete	Insert
s. 7(1) def. of <i>public authority</i>	his or her	the Governor’s
s. 7(1a)(b)	his	the employee’s
s. 11(2) s. 14(2) s. 44(11)	he (each occurrence)	the commissioner
s. 16(3)	himself	
s. 18(2)	him he	the Governor the Governor
s. 20(9)	his appointment he retains his existing his service	being appointed the commissioner retains any existing the service

s. 77

Provision	Delete	Insert
s. 23(3)(c)(i) s. 80E(5) (1 st occurrence)	his	the employer's
s. 25(1)(c) s. 44(12) s. 93(1a)	he (each occurrence)	the Chief Commissioner
s. 27(1)(i)	his	the expert's
s. 29AA(4)	his or her	an
s. 30(1) s. 73(3)(a)	his	the Minister's
s. 41(7)	his	the party's
s. 44(3)	his	that
s. 44(7)(a)(iii)	his	an
s. 44(11)	his (1 st occurrence)	the commissioner's
s. 44(11)(b)	him	the commissioner
s. 48(9) s. 80K(1) s. 80V(1)	him	the chairperson
s. 49E(2)(b)	him or her	the employee

Provision	Delete	Insert
s. 56(1)(b) s. 80C(3)	he	the officer
s. 56(1)(b)	his being so	the person is
s. 56(2) and (3) s. 63(7)	him	the Registrar
s. 63(1)(a)	financial status of each member in respect of his	status of each member in respect of the financial requirements for
s. 73(3)(a) s. 80N(3)	him	the Minister
s. 73(12a)	him or her	the Registrar
s. 80D(5)(a)	he	the arbitrator
s. 80D(5)(b)	his appointment	the appointment of the commissioner
s. 80E(2)(a) s. 94	him (each occurrence)	the officer
s. 80E(5)	by him of his	of the Arbitrator's
s. 80F(2) s. 80J(b)	his (each occurrence)	the officer's
s. 80G(1)	his	the Arbitrator's

Industrial Relations Legislation Amendment Bill 2021**Part 2**

Industrial Relations Act 1979 amended

s. 77

Provision	Delete	Insert
s. 80N(4)	him	the Electoral Commissioner
s. 80N(5)(b)	he	the Minister
s. 80O(2)(a)	he	the chairperson
s. 80O(2)(b)	his	the chairperson's
s. 80O(5)(b), (c) and (e) s. 87(3)	he	the member
s. 80O(5)(d), (6) and (9)(a) s. 85(6)	his	the member's
s. 80O(6) s. 80ZH(4)	him	the member
s. 80O(9)	his (1 st occurrence)	the person's
s. 80P(1)	member (1 st occurrence)	person as a member
s. 80P(2)	him he	the Chief Commissioner or Governor the Chief Commissioner or Governor
s. 80R(2)(d)	his or their	of the relevant

Provision	Delete	Insert
s. 80R(2)(f)	his or their position	of the relevant position or positions
s. 80S(2)	on his or their behalf	
s. 80ZH(1)	where in his opinion	if
s. 80ZH(3)	him under subsection (2), the member of the Fair Work Commission	the member of the FW Commission under subsection (2), the member
s. 81B(3)	when	when the industrial magistrate
s. 81B(3)(a)	he	
s. 81B(3)(b)	he resigns his	in the case of a person appointed under subsection (2), resigns from
s. 81B(4)	his	
s. 81B(5)	he	the magistrate
s. 85(6)	him he (each occurrence)	the judge the judge
s. 95(1)(a) and (b)	him	the deputy registrar
s. 96(3)(b)	his or her (1 st occurrence)	an

Industrial Relations Legislation Amendment Bill 2021**Part 2**

Industrial Relations Act 1979 amended

s. 77

Provision	Delete	Insert
s. 96(3)(b) s. 97UM(4)	he or she	the employee
s. 96(3)(b)	his or her (2 nd occurrence)	a
s. 96(11)	his or her	the Chief Commissioner's
s. 96L(1)(a)(i)	he or she	the complainant
s. 96L(1)(a)(iii)	him or her	the complainant
s. 97UD(2) s. 97XJ(2)	his or her	the represented person's
s. 97UG(1) s. 97YH	he or she	the employer
s. 97UH	him or her	the employer
s. 97UJ(1)	his or her	a
s. 97UJ(1)(d)	him or her	the employer or employee
s. 97V(1) s. 97VJ(1)	he or she	the party
s. 97VB	satisfy himself or herself that	consider whether
s. 97VC(3)	his or her	the party's

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

Industrial Relations Legislation Amendment Bill 2021**Part 2**

Industrial Relations Act 1979 amended

s. 77

Provision	Delete	Insert
s. 98(3) s. 102A(2) s. 104(3)	his (each occurrence)	the inspector's
s. 98(3)(g)	he	the inspector
s. 98(3)(h)	him	the inspector
s. 102(1)(c)	his	the returning officer's
s. 103(2)	he	the applicant
s. 107	by him	
s. 112(1)	his	a
s. 112A(2)	holds himself out as	represents that the person is
s. 114(2)	his (1 st occurrence) his (2 nd occurrence) him he	the employee's the the employee the employee
Sch. 4 it. 1(g) Sch. 4 it. 1(h)	he or she (each occurrence)	the employee
Sch. 4 it. 1(i)	his or her	that party's
Sch. 5 it. 1(c)	he or she	the authorised person

1 **78. Various other modernisations**

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

4
5 (Commonwealth)

6
7 **Table**

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

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

9 **Table**

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

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

11

12 taken

13

14 **Table**

s. 20(8a)(b)	s. 31(2)
s. 44(2)(b)	s. 56(3)

s. 78

s. 66(2)(f)(ii)	s. 71A(3)
s. 80M(2) and (3)	s. 80ZH(3)
s. 92(2)	s. 96F(4)(d)

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

2 **Table**

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

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

5

6 anything

7

8 **Table**

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

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

11

12 taken

13

14 **Table**

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

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

2

Table

Provision	Delete	Insert
s. 3(1)	industrial matter or industrial action related thereto extends thereto	related industrial matter or industrial action extends to the matter or action
s. 6(b)	agreement, thereby	agreement and
s. 7(1) def. of <i>industrial matter</i> para. (c) s. 73(9)	therein (each occurrence)	
s. 7(1) def. of <i>industrial matter</i>	therein	in the industry
s. 7(1) def. of <i>industrial matter</i> para. (e)	thereof	of an organisation or association
s. 27(1)(a)	thereof (1 st and 3 rd occurrence) thereof (2 nd occurrence)	of it
s. 27(1)(d) s. 80E(6) s. 80R(3)	thereof	of the matter

Industrial Relations Legislation Amendment Bill 2021**Part 2**

Industrial Relations Act 1979 amended

s. 78

Provision	Delete	Insert
s. 27(1)(h) s. 49(3)(a) s. 84(3) s. 90(2)(a)	wherein	in which
s. 27(1)(p)	whatsoever, wherein of a matter before the Commission or is related thereto	in, of, or related to, a matter before the Commission
s. 27(1)(q)	thing whatsoever	other thing
s. 32(4)(a) s. 47(5)	thereafter	
s. 32(4)(c)	(8) and of the preamble thereto	(8), and of any preamble to it,
s. 33(5)	therefrom	from the documents
s. 35(4)	therein prescribed	prescribed in this section
s. 40(3)	thereof	of it
s. 41(1)	disputes, disagreements, or questions relating thereto	any related disputes, disagreements, or questions
s. 41(5)(a) and (b)	therein	in the agreement

Provision	Delete	Insert
s. 41(6) and (7)	thereto therefrom	to the agreement from the agreement
s. 44(2)(b)	shall, in any proceedings under this Act relating thereto, be	is, in any proceedings under this Act relating to the summons,
s. 44(3)	thereat	
s. 44(6)	the foregoing	this subsection,
s. 44(11) s. 56(3)	thereupon	
s. 46(1)(b)	therein or of giving fuller effect thereto	in, or giving fuller effect to, the provision
s. 48(10)	as prescribed therein	in accordance with that subsection
s. 51A(1)(a)	matter related thereto	related matter
s. 55(2)(b)	thereof	of this paragraph
s. 55(4)(d) s. 62(3)(b)(i)	therefor	for the alteration
s. 63(2)	therein	in the records
s. 64(2)	therewith	with the direction

s. 78

Provision	Delete	Insert
s. 65(a)	in this section called	
s. 66(2) s. 87(3)	the foregoing	this subsection
s. 66(2)(ca) s. 80E(5)	any act, matter or thing	anything
s. 66(2)(e)(ii)	thereof	of the irregularity
s. 69(9)	therefrom	from it
s. 69(10)	therein	in the register
s. 71(7)	howsoever	however
s. 73(4)	therewith	with the summons
s. 80M(3)	Forthwith under the hands of thereafter	Immediately by
s. 80ZE(1)	thereon	
s. 80ZI(3)	of the Commonwealth	
s. 81B(5)	be deemed notwithstanding that cessation	the magistrate is, despite the cessation, taken
s. 85(3)	such of those members as	members

Provision	Delete	Insert
s. 93(7)	Industrial	
s. 93(8)	deems	considers
s. 94	any act or thing act or	anything
s. 96C(3)	whereby	by which
s. 96F(2)	forthwith	immediately
s. 96F(4)(d) s. 98(3)(h)	thereunder	under this Act
s. 98(3)(b)	thing whatsoever	other thing
s. 105	be evidence therein	evidence in it
s. 109	thereof (each occurrence)	
s. 109 s. 110(1) and (2)	represented therein	
s. 113(1)(c)	the generality thereof	this paragraph
s. 113(1)(e)	any act or thing	anything
s. 113(2)	thereto of such	of
s. 113(3)	in respect thereof	

s. 78

Provision	Delete	Insert
s. 114(1)	deemed to be severable from any provisions hereby annulled	taken to be severable from any voided provisions

1 **Part 3 — Courts and Tribunals (*Electronic Processes***
2 ***Facilitation*) Act 2013 amended**

3 **79. Act amended**

4 This Part amends the *Courts and Tribunals (Electronic*
5 *Processes Facilitation) Act 2013*.

6 **80. Section 6 amended**

7 After section 6(1)(k) insert:

8

9 (kaa) the *Industrial Relations Act 1979*;

10

1 **Part 4 — Long Service Leave Act 1958 amended**

2 **81. Act amended**

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

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

5 At the beginning of Part II insert:
6

7 **Division 1 — General**
8

9 **83. Section 4 amended**

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

11 *employee*

12 *employer*

13 *industrial inspector*

14 *ordinary pay*

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

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

19 *employee* —

20 (a) means —

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

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

26 and

27 (b) includes a casual or seasonal employee;

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

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

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

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

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

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

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

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

21

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

25

26 IR Act;

27

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

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

30 **Terms used**

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

2 Delete sections 5 and 6 and insert:

3

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

6 (1) In this section —

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

8 (a) an award or industrial agreement; or

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

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

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

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

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

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

30 (4) This Act does not apply to an employee who has a
31 separate LSL entitlement to take long service leave and

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

- 5 (5) Subsection (6) applies to an employee —
- 6 (a) who becomes entitled to WA LSL in relation to
7 employment with an employer; and
- 8 (b) who, immediately before becoming entitled to
9 WA LSL, had a separate LSL entitlement in
10 relation to employment with the employer.
- 11 (6) Any long service leave taken by, or payment on
12 termination instead of long service leave made to, the
13 employee under the separate LSL entitlement must be
14 taken into account in the calculation of the employee's
15 entitlement to WA LSL as if it were taken, or paid on
16 termination, as WA LSL.

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

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

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

3 **6. Continuous employment**

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

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

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

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

s. 84

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

- 1 (b) is also employed by another person during the
2 period of employment with the employer.
- 3 (7) If an employee enters into a contract of employment
4 with an employer within 52 weeks after completing an
5 apprenticeship with the employer, the period of
6 apprenticeship is taken to be a part of the employee's
7 *continuous employment* with the employer.
- 8 **6A. Calculating length of continuous employment**
- 9 (1) When calculating the length of continuous employment
10 for the purposes of this Act, a period is counted if it is
11 any of the following —
- 12 (a) leave referred to in section 6(1) for which the
13 employee has received payment;
- 14 (b) an absence referred to in section 6(2);
- 15 (c) an absence referred to in section 6(5).
- 16 (2) When calculating the length of continuous employment
17 for the purposes of this Act, a period is not counted if it
18 is any of the following —
- 19 (a) leave referred to in section 6(1) for which the
20 employee has not received payment;
- 21 (b) an absence referred to in section 6(3);
- 22 (c) a period between a termination and
23 re-employment referred to in section 6(4);
- 24 (d) in respect of an employee to whom section 6(7)
25 applies, any period between —
- 26 (i) the completion of the employee's
27 apprenticeship; and
- 28 (ii) the employment of the employee by the
29 employer;

s. 85

- 1 (e) a period during the transfer of business as
2 defined in section 7D where —
3 (i) the employment of an employee of the
4 old employer as defined in section 7D
5 has terminated; and
6 (ii) the employee has not yet been employed
7 by the new employer as defined in
8 section 7D.
9

10 **85. Part II Division 2 heading inserted**

11 Before section 7 insert:
12

13 **Division 2 — Ordinary pay**
14

15 **86. Section 7 replaced**

16 Delete section 7 and insert:
17

18 **7. Ordinary pay: general**

- 19 (1) Except as provided in subsection (4), an employee's
20 *ordinary pay* is the employee's remuneration for the
21 employee's normal weekly number of hours of work
22 calculated on the ordinary time rate of pay applicable
23 to the employee as at the time when any period of long
24 service leave granted to the employee under this Act
25 commences, or is taken to commence.
26 (2) For the purposes of subsection (1), the normal weekly
27 number of hours of work of an employee whose hours
28 have varied during a period of employment is the
29 average weekly hours worked by the employee during
30 the period, calculated by reference to ascertainable

- 1 hours worked by the employee during the period,
2 excluding any period referred to in section 6A(2).
- 3 (3) For the purposes of subsection (1), the rate of pay of an
4 employee whose leave, or any portion of it, is
5 postponed to meet the convenience of the employee by
6 agreement between the employer and employee is the
7 rate of pay applicable to the employee —
- 8 (a) on the day on which the leave accrues; or
9 (b) if the employer and employee agree — on the
10 day on which the employee commences the
11 leave.
- 12 (4) The *ordinary pay* of an employee employed on
13 piecework, commission, bonus work, percentage
14 reward, or any other system of payment, wholly or
15 partly by results, is the employee's average weekly rate
16 of pay earned over a period totalling 365 days ending
17 on —
- 18 (a) if the employee is in employment and —
- 19 (i) takes long service leave — the day
20 immediately before the day on which
21 the employee commences the long
22 service leave; or
- 23 (ii) takes payment instead of long service
24 leave under section 5 — the day
25 immediately before the day on which an
26 agreement under section 5 is reached in
27 relation to the payment;
- 28 or
- 29 (b) if the employee is not in employment — the
30 day immediately before the day on which the
31 employee was last in employment; or
- 32 (c) if the employee is dead — the day immediately
33 before the day on which the employee died.

- 1 (5) For the purposes of subsection (4), the following
2 periods must be disregarded —
3 (a) any period of unpaid leave;
4 (b) any period during which there is a
5 standing-down of the employee in accordance
6 with the provisions of —
7 (i) an award, agreement, order or
8 determination in force under the IR Act;
9 or
10 (ii) the *Fair Work Act 2009*
11 (Commonwealth) or an enterprise
12 agreement under that Act; or
13 (iii) any other enactment.

14 **7A. Ordinary pay: shift premiums, overtime, penalty**
15 **rates or allowances**

16 Except as provided in section 7B, an employee's
17 **ordinary pay** does not include shift premiums,
18 overtime, penalty rates, allowances or any similar
19 payments.

20 **7B. Ordinary pay: casual employees' loading**

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

- 23 (a) an award, industrial agreement,
24 employer-employee agreement or order of the
25 Commission;
26 (b) a modern award, enterprise agreement or
27 national minimum wage order made by the Fair
28 Work Commission under the *Fair Work*
29 *Act 2009* (Commonwealth);
30 (c) a contract of employment;
31 (d) an enactment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

7C. Ordinary pay: board and lodging

- (1) An employee's *ordinary pay* includes the cash value of board and lodging during a period of long service leave if the board and lodging —
- (a) is provided to the employee by the employer; but
 - (b) is not provided to, and taken by, the employee during the period of long service leave.
- (2) For the purposes of subsection (1), the cash value of board and lodging provided to an employee is —
- (a) if the value is fixed by or under the conditions of the employee's employment — that value; or
 - (b) if the value is not fixed by or under the conditions of the employee's employment — a value calculated by reference to a rate prescribed in the regulations.

87. Part II Division 3 inserted

At the end of Part II insert:

Division 3 — Transfer of business

7D. Terms used

In this Division —

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

new employer has the meaning given in section 7E;

old employer has the meaning given in section 7E;

s. 87

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

6 **7E. Transfer of business, old employer, new employer,**
7 **transferring work**

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

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

22 **7F. Transferring employee**

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

26 **7G. Connection between old employer and new**
27 **employer**

- 28 (1) There is a *connection between the old employer and*
29 *the new employer* if, in accordance with an
30 arrangement between them, the new employer owns or

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

1 **7H. Status of transferring employees on transfer of**
2 **business**

3 For the purposes of this Act, on a transfer of
4 business —

- 5 (a) a transferring employee’s employment before
6 and after the transfer is taken to be a single
7 period of continuous employment; and
8 (b) the new employer is taken to have been the
9 transferring employee’s sole employer for the
10 entire period.

11 **7I. Transfer of employment records**

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

27 **88. Part III heading amended**

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

29
30 **on termination instead**
31

1 **89. Section 8 amended**

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

5
6 the length of continuous employment calculated under
7 section 6A with the same employer.
8

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

10
11 (b) in any circumstances other than by the
12 employer for serious misconduct,
13

14 **90. Section 9 amended**

15 (1) In section 9(1):

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

18
19 except as provided in subsection (1AA),
20

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

23
24 periods.
25

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

27
28 (1AA) The employee and employer may agree when the
29 employee will take long service leave.
30

s. 90

- 1 (3) After section 9(1b) insert:
2
- 3 (1C) The employee may request the employer to grant the
4 employee a period of long service leave —
5 (a) twice as long as the period to which the
6 employee would otherwise be entitled; and
7 (b) at a rate of pay equal to half the employee’s
8 ordinary pay.
- 9 (1D) The employee may request the employer to grant the
10 employee a period of long service leave —
11 (a) half as long as the period to which the
12 employee would otherwise be entitled; and
13 (b) at a rate of pay equal to twice the employee’s
14 ordinary pay.
15
- 16 (4) Delete section 9(2) and insert:
17
- 18 (2) An employee whose employment is terminated is taken
19 to have commenced long service leave on the day of
20 termination if —
21 (a) the employee is entitled to long service leave
22 under section 8(2) or (3); and
23 (b) the employment is terminated before the
24 employee has taken all the long service leave to
25 which the employee is entitled.
- 26 (2A) On the day the employee commences long service
27 leave under subsection (2), the employer must pay the
28 full amount to which the employee is entitled in respect
29 of the leave to —
30 (a) the employee; or

s. 92

- 1 (2) After section 11(2) insert:
2
- 3 (3) Jurisdiction granted under subsection (1) is in addition
4 to jurisdiction an industrial magistrate's court has —
- 5 (a) under the IR Act section 83(1)(e) to enforce a
6 provision of Part III as an entitlement provision
7 as defined in the IR Act section 7(1); and
- 8 (b) under the IR Act section 83E to enforce a
9 provision of this Act that is a civil penalty
10 provision as defined in the IR Act section 7(1).
11

12 **92. Section 26 amended**

- 13 (1) In section 26(1):
- 14 (a) delete “details are recorded of —” and insert:
15
16 the following employment records are kept —
17
- 18 (b) after paragraph (a) insert:
19
- 20 (aa) the employer's name and Australian Business
21 Number (if any);
- 22 (ab) the date of any transfer of business as defined
23 in section 7D during the employment of the
24 employee;
25
- 26 (c) after paragraph (b) insert:
27
- 28 (ba) the weekly hours worked by the employee;
29

- 1 (d) delete paragraph (e) and insert:
2
- 3 (e) any agreement made under section 5, including
4 details of —
- 5 (i) the benefit for, and the amount of, long
6 service leave that was foregone; and
7 (ii) when the benefit was paid;
8
- 9 (e) in paragraph (f) delete “Act; and” and insert:
10
- 11 Act;
12
- 13 (2) In section 26(2):
- 14 (a) in paragraph (a) before “records” insert:
15
- 16 employment
17
- 18 (b) in paragraph (b) delete “entry” and insert:
19
- 20 employment record
21
- 22 (3) Delete section 26(3) and (4) and insert:
23
- 24 (3) A contravention of subsection (1) or (2) is not an
25 offence but those subsections are civil penalty
26 provisions for the purposes of the IR Act section 83E.
27

1 **93. Section 26A amended**

2 (1) In section 26A(1):

3 (a) in paragraph (a) before “records” insert:

4

5 employment

6

7 (b) in paragraph (b) before “records.” insert:

8

9 employment

10

11 (2) In section 26A(1a) delete “*Industrial Relations Act 1979*” and
12 insert:

13

14 IR Act

15

16 (3) Delete section 26A(1b).

17 (4) In section 26A(3):

18 (a) in paragraph (a) before “record” insert:

19

20 employment

21

22 (b) in paragraph (c)(i) and (ii) before “records;” insert:

23

24 employment

25

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

27

Access to employment records kept by employer

1 **94. Section 39 amended**

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

3

4 IR Act

5

6 Note: The heading to amended section 39 is to read:

7 **Application to this Act of certain regulations made under the IR**
8 **Act**

9 **95. Part 8 inserted**

10 After section 39 insert:

11

12 **Part 8 — Savings provisions for *Industrial***
13 ***Relations Legislation Amendment Act 2021***

14 **40. Terms used**

15 In this Part —

16 *commencement day* means the day on which the
17 *Industrial Relations Legislation Amendment Act 2021*
18 section 84 comes into operation;

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

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

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

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

28 (a) former sections 6 and 8 continue in operation;
29 and

s. 96

1
2
3
4
5

(b) Part II Division 3 does not apply.

96. Various references to “shall” replaced

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

Table

Provision	Delete	Insert
s. 8(3) s. 27(2)	shall be	is
s. 10(1)	shall not become	is not
s. 27(1)	shall	must
s. 27(2)	shall thereupon forfeit his	forfeits the
s. 27(3)	shall	do
s. 39	shall	

6
7
8

97. Various references to gender removed

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

Table

Provision	Delete	Insert
s. 8(2)(c)(i) s. 8(3)(a)	his	the employee’s
s. 8(2)(c)(ii)	his	the
s. 8(5)	his or her	

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

1 **98. Various other modernisations**

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

3 **Table**

Provision	Delete	Insert
s. 4(1) def. of <i>business</i>	thereof	of it
s. 8(2)	such continuous employment, as is referred to in subsection (1),	continuous employment
s. 8(3)	of such continuous employment since the commencement thereof, but less than 10 years	but less than 10 years of continuous employment
s. 27(3)	deemed	taken
s. 10(1)	thereto	

s. 98

Provision	Delete	Insert
s. 10(1)	hereunder	
s. 10(2)	thereto (1 st occurrence)	
s. 10(2)	prior thereto	before
s. 11(1)	the foregoing	this subsection
s. 26(2)(b)	7 years thereafter	7 years after that
s. 27(2)	hereunder	
s. 39	deemed	

1 **Part 5 — *Minimum Conditions of Employment Act 1993***
2 **amended**

3 **99. Act amended**

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

6 **100. Section 3 amended**

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

8 *carer's leave*

9 *employee*

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

11

12 *employee* means —

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

16 (b) a person whose usual status is that of an
17 employee;

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

20

21 (3) In section 3(1) in the definition of *minimum condition of*
22 *employment*:

23 (a) in paragraph (e) delete “5;” and insert:

24

25 5; or

26

s. 101

1 (b) after paragraph (e) insert:

2

3 (f) the requirement as to confidentiality prescribed
4 by section 39E(1);

5

6 **101. Section 5 amended**

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

8

9 (1) The minimum conditions of employment extend to and
10 bind all employees and employers and are taken to be
11 implied —

12 (a) in an industrial instrument; or

13 (b) if a contract of employment is not governed by
14 an industrial instrument — in that contract.

15

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

17

18 section 8.

19

20 **102. Section 7 replaced**

21 Delete section 7 and insert:

22

23 **7. Enforcement of minimum conditions**

24 A minimum condition of employment may be enforced
25 under the IR Act section 83 —

26 (a) as an entitlement provision; or

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

29

1 **103. Section 8 amended**

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

3

4 writing, signed by the employer and the employee.

5

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

7

Cashing out of accrued annual leave

8 **104. Section 9 deleted**

9 Delete section 9.

10 **105. Section 9A amended**

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

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

14

15 Commonwealth.

16

17 **106. Section 9B amended**

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

19

20 safety and health

21

22 **107. Part 3 Division 1 heading inserted**

23 At the beginning of Part 3 insert:

24

Division 1 — General

25

26

s. 108

1 **108. Section 10 amended**

2 (1) In section 10:

3 (a) delete “An” and insert:

4

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

6

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

8

9 13 or 14,

10

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

12

13 (2) Nothing in this section prevents an industrial
14 instrument from providing for minimum rates of pay
15 for an employee with a disability.

16

17 **109. Part 3 Division 2 inserted**

18 At the end of Part 3 insert:

19

20 **Division 2 — Employees with disabilities**

21 **15. Terms used**

22 In this Division —

23 *employee with a disability* means an employee whose
24 productive capacity —

25 (a) has been assessed under —

26 (i) the SWS; or

1 (ii) a supported wage industrial instrument
2 provision;

3 and

4 (b) is assessed as being reduced because of a
5 disability;

6 ***instrument-free employee with a disability*** means an
7 employee —

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

10 (b) whose productive capacity has been assessed
11 under the SWS as being reduced because of a
12 disability;

13 ***instrument-governed employee with a disability*** means
14 an employee —

15 (a) whose contract of employment is governed by
16 an industrial instrument that includes a SWIIP
17 that incorporates the SWS; and

18 (b) whose productive capacity has been assessed
19 under the SWS as being reduced because of a
20 disability; and

21 (c) who is not employed by a supported
22 employment service as defined in the *Disability*
23 *Services Act 1986* (Commonwealth) section 7;
24 and

25 (d) who is being paid a weekly rate of pay
26 determined by the SWS under the SWIIP;

27 ***supported wage industrial instrument provision*** or
28 ***SWIIP*** means a provision of an industrial instrument
29 that —

30 (a) applies to an employee with a disability; and

31 (b) provides a means (a ***wage assessment tool***) for
32 the assessment of whether, and the extent to

s. 109

- 1 which, the employee’s productive capacity is
2 reduced because of the disability; and
- 3 (c) provides that the employer may pay a wage
4 that —
- 5 (i) relates to the employee’s productive
6 capacity as assessed using the wage
7 assessment tool; and
- 8 (ii) may be less than the applicable
9 minimum wage in the industrial
10 instrument;

11 **Supported Wage System** or *SWS* means the scheme
12 known by that name established by the Commonwealth
13 Government to enable the assessment of whether, and
14 the extent to which, a person’s productive capacity is
15 reduced because of a disability.

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

- 17 (1) Section 10 does not apply to an employee with a
18 disability who has been assessed under the SWS or a
19 SWIIP and is being paid a rate of pay in accordance
20 with that assessment.
- 21 (2) A person eligible to be employed under the SWS may
22 be employed under its provisions for the purposes of
23 this Act.

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

- 25 (1) This section applies to the following —
- 26 (a) an instrument-free employee with a disability;
- 27 (b) an instrument-governed employee with a
28 disability;
- 29 (c) an employee who is employed for a trial period
30 for the purpose of an assessment under the

s. 111

- 1 *relative*, of an employer, means —
- 2 (a) each of the following people, whether the
- 3 relationship is established by, or traced through,
- 4 consanguinity, marriage, a de facto
- 5 relationship, a written law or a natural
- 6 relationship —
- 7 (i) a parent, grandparent or other ancestor;
- 8 (ii) a step-parent;
- 9 (iii) a sibling;
- 10 (iv) an uncle or aunt;
- 11 (v) a cousin;
- 12 (vi) a spouse or de facto partner;
- 13 or
- 14 (b) in the case of an employer who is an Aboriginal
- 15 person or Torres Strait Islander — a person
- 16 regarded under the customary law or tradition
- 17 of the employer’s community as the equivalent
- 18 of a person mentioned in paragraph (a).
- 19

20 **111. Section 17B replaced**

21 Delete section 17B and insert:

22

23 **17B. Employee not to be compelled to accept other than**

24 **money for pay**

- 25 (1) An employee is not to be directly or indirectly
- 26 compelled by an employer to accept, instead of money
- 27 as any part of the employee’s pay —
- 28 (a) goods of any kind; or
- 29 (b) accommodation or other services of any kind.

- 1 (2) In proceedings under the IR Act section 83 to enforce
2 an entitlement provision, anything given or provided
3 by the employer contrary to subsection (1) is to be
4 treated as if it had never been given or provided.
5

6 **112. Section 17BA inserted**

7 After section 17B insert:
8

9 **17BA. Employees and prospective employees not to be**
10 **unreasonably compelled to spend or pay amount**

- 11 (1) An employer must not directly or indirectly require an
12 employee to spend, or pay to the employer or another
13 person, an amount of the employee's money or the
14 whole or any part of an amount payable to the
15 employee in relation to the performance of work, if —
16 (a) the requirement is unreasonable in the
17 circumstances; and
18 (b) in the case of a payment — the payment is
19 directly or indirectly for the benefit of the
20 employer or a party related to the employer.
- 21 (2) An employer (the *prospective employer*) must not
22 directly or indirectly require another person (the
23 *prospective employee*) to spend, or pay to the
24 prospective employer or any other person, an amount
25 of the prospective employee's money if —
26 (a) the requirement is in connection with
27 employment or potential employment of the
28 prospective employee by the prospective
29 employer; and
30 (b) the requirement is unreasonable in the
31 circumstances; and

s. 112

- 1 (c) in the case of a payment — the payment is
2 directly or indirectly for the benefit of the
3 prospective employer or a party related to the
4 prospective employer.
- 5 (3) The regulations may prescribe circumstances in which
6 a requirement referred to in subsection (1) or (2) is or is
7 not reasonable.
- 8 (4) A contravention of subsection (1) or (2) is not an
9 offence but that subsection is a civil penalty provision
10 for the purposes of the IR Act section 83E.
- 11 (5) In proceedings under the IR Act section 83E for a
12 contravention of subsection (1), an industrial
13 magistrate’s court may, as an alternative, determine
14 that a contravention of an entitlement provision has
15 occurred for the purposes of the IR Act section 83.
- 16 (6) If the industrial magistrate’s court determines that an
17 employer has contravened subsection (1) or (2) in
18 respect of an employee or prospective employee, the
19 industrial magistrate’s court may order the employer to
20 pay to the employee or prospective employee
21 compensation for any loss or injury suffered as a result
22 of the contravention.
- 23 (7) The industrial magistrate’s court may make an order
24 under subsection (6) in addition to imposing a penalty
25 under section 83E.
- 26 (8) A term of an award, employer-employee agreement or
27 contract of employment has no effect to the extent that
28 the term —
- 29 (a) permits, or has the effect of permitting, an
30 employer to make a requirement that would
31 contravene subsection (1); or

- 1 (b) directly or indirectly requires an employee to
2 spend or pay an amount, if the requirement
3 would contravene subsection (1) if it had been
4 made by an employer.
- 5 (9) In proceedings under the IR Act section 83 to enforce
6 an entitlement provision, any amount that the employee
7 has been required to spend or pay contrary to
8 subsection (1), or in accordance with a term to which
9 subsection (8) applies, is taken to be a deduction, from
10 an amount payable to the employee, made by the
11 employer otherwise than in accordance with
12 section 17D.
13

14 **113. Section 17C amended**

- 15 (1) In section 17C(1) delete “To the extent that an employee
16 receives his or her pay in money the” and insert:
17
- 18 An
19
- 20 (2) After section 17C(2) insert:
21
- 22 (3) A contravention of subsection (1) is not an offence but
23 that subsection is a civil penalty provision for the
24 purposes of the IR Act section 83E.
- 25 (4) In proceedings under the IR Act section 83E for a
26 contravention of subsection (1), an industrial
27 magistrate’s court may, as an alternative, determine
28 that a contravention of an entitlement provision has
29 occurred for the purposes of the IR Act section 83.

s. 114

- 1 (5) In proceedings under the IR Act section 83 to enforce
2 an entitlement provision, anything given or provided
3 by the employer contrary to subsection (1) is taken
4 never to have been given or provided to the employee.
5

6 **114. Section 17E inserted**

7 After section 17D insert:
8

9 **17E. Certain terms of no effect**

- 10 (1) A term of an award, employer-employee agreement or
11 contract of employment has no effect to the extent that
12 the term permits, or has the effect of permitting, an
13 employer to deduct an amount from an amount that is
14 payable to an employee in relation to the performance
15 of work, if the deduction is —
16 (a) directly or indirectly for the benefit of the
17 employer or a party related to the employer;
18 and
19 (b) unreasonable in the circumstances.
- 20 (2) The regulations may prescribe circumstances in which
21 a deduction referred to in subsection (1)(b) is or is not
22 reasonable.
- 23 (3) A term of an award, employer-employee agreement or
24 contract of employment has no effect to the extent that
25 the term permits, or has the effect of permitting, an
26 employer to deduct an amount from an amount that is
27 payable to an employee who has not reached 18 years
28 of age in relation to the performance of work by the
29 employee, unless the deduction is agreed to in writing
30 by a parent or guardian of the employee.

s. 115

- 1 (4) After section 18(3) insert:
2
- 3 (3A) Subsection (3) does not apply to prevent casual loading
4 payable under an employer-employee agreement,
5 award or contract of employment from being taken into
6 account in determining the rate of pay for bereavement
7 leave under section 27.
- 8 (3B) An employee paid wholly by commission or
9 percentage reward or at piece rates is entitled to be paid
10 the highest of the following for a period of leave —
- 11 (a) a rate payable under an employer-employee
12 agreement, award or contract of employment
13 for a period of leave;
- 14 (b) a rate calculated according to the employee's
15 average weekly earnings over a period totalling
16 365 days immediately before the time the leave
17 is taken;
- 18 (c) the applicable minimum rate of pay under
19 section 10.
- 20 (3C) For the purposes of subsection (2) and (3B)(b), the
21 following periods must be disregarded —
- 22 (a) any period of unpaid leave;
- 23 (b) any period during which there is a
24 standing-down of the employee in accordance
25 with the provisions of —
- 26 (i) an award or a determination under the
27 IR Act; or
- 28 (ii) the *Fair Work Act 2009*
29 (Commonwealth) or an enterprise
30 agreement under that Act; or
- 31 (iii) any other enactment.
32

s. 116

- 1 (3) Paid personal leave accrues pro rata on a weekly basis.
- 2 (4) Entitlements to paid personal leave are cumulative.
- 3 (5) Except as provided in subsection (6), the employee
4 may take paid personal leave if the employee is unable
5 to work as a result of personal circumstances.
- 6 (6) The employee is not entitled to be paid for any period
7 of absence from work resulting from personal
8 circumstances involving personal illness or injury
9 affecting the employee if the circumstances are
10 attributable to either of the following in the course of
11 the employee's employment —
- 12 (a) the employee's serious and wilful misconduct;
13 or
14 (b) the employee's gross and wilful neglect.

15 **21. Entitlement to unpaid personal leave**

- 16 (1) An employee is entitled to unpaid personal leave of up
17 to 2 days for each occasion (a *permissible occasion*) in
18 which personal circumstances arise.
- 19 (2) An employee is entitled to unpaid personal leave for a
20 particular permissible occasion only if —
- 21 (a) the permissible occasion comprises a
22 circumstance referred to in paragraphs (a)(ii)
23 and (b) of the definition of *personal*
24 *circumstances* in section 19; and
- 25 (b) the employee cannot take paid personal leave
26 during the period under section 20.

- 1 **39B. Entitlement to unpaid family and domestic violence**
2 **leave**
- 3 (1) An employee is entitled to 5 days of unpaid family and
4 domestic violence leave in a 12-month period.
- 5 (2) Unpaid family and domestic violence leave —
6 (a) is available in full at the start of each 12-month
7 period of the employee’s employment; and
8 (b) does not accumulate from year to year; and
9 (c) is available in full to part-time and casual
10 employees.
- 11 (3) For the purposes of subsection (2), the start of an
12 employee’s employment is taken to be the start of the
13 employee’s first employment with that employer if the
14 employee is employed by a particular employer —
15 (a) as a casual employee; or
16 (b) for a specified period of time, for a specified
17 task or for the duration of a specified season.
- 18 (4) The employee may take unpaid family and domestic
19 violence leave as —
20 (a) a single continuous 5 day period; or
21 (b) separate periods of 1 or more days each; or
22 (c) any separate periods to which the employee and
23 the employer agree, including periods of less
24 than 1 day.
- 25 (5) Unpaid family and domestic violence leave can only be
26 taken in accordance with section 39C.
- 27 (6) Nothing in this section prevents the employee and the
28 employer agreeing that the employee may take more
29 than 5 days of unpaid leave to deal with the impact of
30 family and domestic violence.

- 1 **39C. Taking unpaid family and domestic violence leave**
- 2 The employee may take unpaid family and domestic
- 3 violence leave if —
- 4 (a) the employee is experiencing family and
- 5 domestic violence; and
- 6 (b) the employee needs to do something to deal
- 7 with the impact of the family and domestic
- 8 violence; and
- 9 (c) it is impractical for the employee to do that
- 10 thing outside the employee’s ordinary hours of
- 11 work.
- 12 **39D. Employee to prove entitlements to unpaid family**
- 13 **and domestic violence leave**
- 14 An employee who claims to be entitled to unpaid
- 15 family and domestic violence leave under this Division
- 16 must, if required by the employer, provide to the
- 17 employer evidence that would satisfy a reasonable
- 18 person of the entitlement.
- 19 **39E. Confidentiality**
- 20 (1) Employers must take steps to ensure information
- 21 concerning any notice or evidence an employee has
- 22 given of the employee taking leave under this Division
- 23 is treated confidentially, as far as it is reasonably
- 24 practicable to do so.
- 25 (2) Nothing in this Division prevents an employer from
- 26 disclosing information provided by an employee if the
- 27 disclosure is required by a written law or is necessary
- 28 to protect the life, health or safety of the employee or
- 29 another person.
- 30

s. 118

1 **118. Part 6 deleted**

2 Delete Part 6.

3 **119. Part 8 inserted**

4 After section 47 insert:

5

6 **Part 8 — Transitional provisions for *Industrial***
7 ***Relations Legislation Amendment Act 2021***

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

9 In this Part —

10 *commencement day* means the day on which the
11 *Industrial Relations Legislation Amendment Act 2021*
12 section 100 comes into operation.

13 **49. Employees with disabilities**

14 (1) In this section —

15 *assessment* means assessment of an employee's
16 productive capacity under the SWS as defined in
17 section 15;

18 *assessment period* means a period starting on the
19 commencement day and ending on the earlier of the
20 following —

21 (a) the day on which an assessment of the
22 employee's productive capacity is completed
23 for the purposes of determining the employee's
24 minimum rate of pay under section 17(3)(a);

25 (b) the day that is 6 months after the
26 commencement day.

- 1 (2) This section applies to a person who, immediately
2 before the commencement day, was an employee with
3 a disability whose contract of employment was not
4 governed by an industrial instrument.
- 5 (3) During the assessment period the employee is entitled
6 to be paid, for each week worked by the employee, the
7 higher of the following —
- 8 (a) the employee’s weekly wage immediately
9 before the commencement day;
- 10 (b) the amount referred to in section 17(2).
- 11 (4) If the employee’s assessment is completed, and the
12 employee’s wage is determined, within the assessment
13 period, subsection (3) ceases to apply to the employee
14 on the day of completion.
- 15 (5) If the employee is not assessed, or the employee’s
16 assessment is not completed, within the assessment
17 period, then on and after the expiry of the assessment
18 period the employee is entitled to be paid in accordance
19 with section 10(1) until such time as the employee’s
20 productive capacity is determined, on an assessment, to
21 be reduced by a disability.

22 **50. “Under rate employee” provisions in awards**

- 23 (1) In this section —
- 24 *assessment* means assessment of an employee’s
25 productive capacity under the SWS or a SWIIP, as
26 those terms are defined in section 15;
- 27 *assessment period* means the period ending 6 months
28 after the commencement day;
- 29 *pre-commencement day wage* means the weekly wage
30 that an under rate employee was entitled to be paid
31 immediately before the commencement day;

s. 119

- 1 *under rate employee* means an employee who was,
2 immediately before the commencement day, entitled to
3 be paid under an under rate employee provision by
4 reason of infirmity;
- 5 *under rate employee provision* means a provision in an
6 award to the effect that an employee who by reason of
7 old age or infirmity is unable to earn the minimum
8 wage may be paid a lesser wage as is agreed in writing
9 between a union and the employer.
- 10 (2) On and from the commencement day each under rate
11 employee provision is of no effect to the extent to
12 which it applies to an employee who by reason of
13 infirmity or old age is unable to earn the minimum
14 wage.
- 15 (3) During the assessment period, an under rate employee
16 is entitled to be paid, for each week worked by the
17 employee, the higher of the following amounts —
18 (a) the employee’s pre-commencement day wage;
19 (b) the amount referred to in section 17(2).
- 20 (4) If an employee’s assessment is completed, and the
21 employee’s wage is determined, within the assessment
22 period, subsection (3) ceases to apply to the employee
23 on the day of completion.
- 24 (5) If an employee is not assessed, or the employee’s
25 assessment is not completed, within the assessment
26 period, then on and after the expiry of the assessment
27 period the employee is entitled to be paid in accordance
28 with the rate of pay applicable under the award until
29 such time as the employee’s productive capacity is
30 determined, on an assessment, to be reduced by a
31 disability.
32

1 **120. Schedule 1 amended**

2 In Schedule 1 after “Good Friday.” insert:

3

4 Easter Sunday.

5

6 **121. Various references to gender removed**

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

9

10 the employee’s

11

12 **Table**

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

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

15

16 the employee

17

18 **Table**

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

Industrial Relations Legislation Amendment Bill 2021

Part 5 Minimum Conditions of Employment Act 1993 amended

s. 121

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

2

Table

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

1 **Part 6 — *Public and Bank Holidays Act 1972* amended**

2 **122. Act amended**

3 This Part amends the *Public and Bank Holidays Act 1972*.

4 **123. Section 3 amended**

5 (1) In section 3:

6 (a) delete “Unless” and insert:

7

8 (1) Unless

9

10 (b) delete “1979, prevails over any provision of or under
11 this Act, to the extent of any inconsistency therewith.”
12 and insert:

13

14 *1979* (an ***industrial instrument***) prevails over a
15 provision of or under this Act to the extent of any
16 inconsistency with the industrial instrument.

17

18 (2) At the end of section 3 insert:

19

20 (2) A provision of an industrial instrument relating to
21 public holidays applies to Easter Sunday regardless of
22 whether the instrument makes reference to Easter
23 Sunday.

24 (3) However, a provision of an industrial instrument is of
25 no effect to the extent that it substitutes another day for
26 the Easter Sunday public holiday solely because Easter
27 Sunday falls on a weekend.

28

s. 124

1 **124. Second Schedule amended**

2 In the Second Schedule after “Good Friday.” insert:

3

4 Easter Sunday.

5

1 **Part 7 — Consequential amendments to *Work Health***
2 ***and Safety Act 2020***

3 **Division 1 — *Work Health and Safety Act 2020* amended**

4 **Subdivision 1 — Preliminary**

5 **125. Act amended**

6 This Division amends the *Work Health and Safety Act 2020*.

7 **Subdivision 2 — Amendments if this Act commences before *Work***
8 ***Health and Safety Act 2020***

9 **126. Section 360 amended**

10 (1) In section 360(2) delete “*Occupational Safety and Health*
11 *Act 1984*” and insert:

12
13 “OSH Act
14

15 (2) Delete section 360(3).

16 **127. Section 361 amended**

17 In section 361:

18 (a) delete “*Occupational Safety and Health Act 1984, the*
19 *Mines Safety and Inspection Act 1994*” and insert:

20
21 “OSH Act, the MSI Act,”
22

Industrial Relations Legislation Amendment Bill 2021

Part 7 Consequential amendments to Work Health and Safety Act 2020

Division 1 Work Health and Safety Act 2020 amended

s. 128

1 (b) delete “*Act 2020*” and insert:

2

3 *Act 2020*,

4

5 Notes for this Subdivision:

6 1. If the *Work Health and Safety Act 2020* Part 15 Division 4
7 Subdivision 5 comes into operation on or before the day on which
8 section 5(2) of this Act comes into operation, see section 129.

9 2. See also sections 5(3), 7(5), 24(2) and (4) and 75(3).

10 **Subdivision 3 — Other amendments linked to commencement of**
11 **this Act**

12 **128. Schedule 1 amended**

13 (1) In Schedule 1 clause 27(2) delete “instrument to which the
14 *Industrial Relations Act 1979* section 83 applies.” and insert:

15

16 entitlement provision as defined in the *Industrial Relations Act 1979*
17 section 7(1).

18

19 (2) In Schedule 1 clause 31(5)(a) delete “29(1)(b)(ii); and” and
20 insert:

21

22 29(1)(d); and

23

24 Note for this Subdivision:

25 This Subdivision will be proclaimed to come into operation on the day
26 on which section 5(2) of this Act comes into operation.

1 **Division 2 — Provisions that do not commence and are deleted**
2 **in certain circumstances**

3 **129. Non-commencement and deletion of Division 1 Subdivision 2**

4 If the *Work Health and Safety Act 2020* Part 15 Division 4
5 Subdivision 5 comes into operation on or before the day on
6 which section 5(2) of this Act comes into operation, Division 1
7 Subdivision 2 —

- 8 (a) does not come into operation; and
9 (b) is deleted when section 5(2) of this Act comes into
10 operation.

=====