Labour Relations Legislation Amendment and Repeal Bill 2012

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to do the following —

- amend the *Industrial Relations Act 1979*;
- amend the *Children and Community Services Act 2004*;
- repeal the *Coal Industry Tribunal of Western Australia Act 1992*;
- repeal the *Conspiracy and Protection of Property Act of 1900*;
- repeal the *Labour Relations Reform Act 2002*;
- repeal the *Minimum Conditions of Employment Act 1993*;
- repeal various regulations;
- repeal the TCR General Order of June 2005,

and to make consequential amendments to various Acts.

This draft Bill has been prepared for public comment but it does not necessarily represent a settled position.
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An Act to do the following —
1 • amend the Industrial Relations Act 1979;
2 • amend the Children and Community Services Act 2004;
3 • repeal the Coal Industry Tribunal of Western Australia Act 1992;
4 • repeal the Conspiracy and Protection of Property Act of 1900;
5 • repeal the Labour Relations Reform Act 2002;
6 • repeal the Minimum Conditions of Employment Act 1993;
7 • repeal various regulations;
8 • repeal the TCR General Order of June 2005,  
and to make consequential amendments to various Acts.

The Parliament of Western Australia enacts as follows:
Part 1 — Preliminary

1. Short title

This is the Labour Relations Legislation Amendment and Repeal Act 2012.

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) A proclamation is not to be made bringing section 93, 95 or 99 into operation until the Minister is satisfied by operation of section 37U(2) as inserted by section 84 of this Act that the award modernisation process has been completed and gives the Governor a certificate to that effect.
Part 2 — Amendments about The Western Australian Industrial Relations Commission

Division 1 — Industrial Relations Act 1979 amended

3. Act amended

This Division amends the Industrial Relations Act 1979.

4. Section 7 amended

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

- Commission in Court Session
- constituent authority
- final offer arbitration
- member of the Commission
- Mines and Metals Association
- President
- secondary office

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

*Commission in Full Session* means the Commission constituted as provided by section 15B;

conciliation conference means a conciliation conference convened under section 45A(1) or (3);

final decision means a decision, determination or ruling in proceedings before the Commission that finally decides, determines or disposes of the matter to which the proceedings relate;

government officer has the meaning given in section 80Q;

presiding member, of the Full Bench, has the meaning given in section 15(1)(a);

registered industrial agent means a person registered as an industrial agent under this Act;

(3) In section 7(1) in the definition of *office* paragraph (e) delete “Full Bench pursuant to” and insert:

Commission under
Labour Relations Legislation Amendment and Repeal Bill 2012

Part 2 Amendments about The Western Australian Industrial Relations Commission

Division 1 Industrial Relations Act 1979 amended

s. 5

1 (4) In section 7(1) in the definition of registration delete “Full Bench;” and insert:

Commission in Full Session;

5. Section 8 amended

(1) Delete section 8(2)(a).

(2) In section 8(2)(b) and (c) delete “Commissioner; and” and insert:

Commissioner;

(3) After section 8(2) insert:

(3AA) In the case of the Full Bench, the Commission includes the presiding member.

6. Section 9 amended

Delete section 9(1), (1aa) and (1a).

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

Qualifications for appointment of Chief Commissioner

7. Section 13 replaced

Delete section 13 and insert:

13. Protection of commissioners and others

Each of the following persons has the same protection and immunity as a judge has in the performance of his or her duties as a judge —

(a) the presiding member of the Full Bench when performing the functions of the Commission or the presiding member;

(b) a commissioner when performing the functions of the Commission or a commissioner;
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1. (c) an industrial magistrate within the meaning of section 81B(2) when performing the functions of an industrial magistrate;

2. (d) the Registrar when performing the functions of the Registrar;

3. (e) a deputy registrar when performing the functions of a deputy registrar.

8. **Section 14 amended**

Delete section 14(1).

9. **Section 14A replaced**

Delete section 14A and insert:

14A. **Dual Federal and State appointments**

(1) A commissioner may be appointed as a member of Fair Work Australia and, subject to section 22(2)(c), at the same time hold the office of commissioner and the office of member of Fair Work Australia.

(2) A member of Fair Work Australia may, if otherwise eligible, be appointed as a commissioner (a *dual member*) unless the law of the Commonwealth provides otherwise.

(3) The appointment as a dual member may be for a fixed term and the member holds office as a commissioner until —

   (a) the expiration of the term; or

   (b) the member ceases to be a member of Fair Work Australia; or

   (c) the member resigns from office as a commissioner; or

   (d) the member is removed from office under subsection (4),

whichever occurs first.

(4) The Governor may remove a dual member from office as a commissioner at any time.
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(5) A dual member is not to be remunerated as a commissioner, but may be paid such allowances as the Minister considers to be reasonable for expenses incurred in discharging the duties of a commissioner.

(6) Section 20(10) does not apply to a dual member.

10. Section 14B amended
Delete section 14B(1) and insert:

(1) As agreed from time to time by the Chief Commissioner and the President of Fair Work Australia, a person who holds office as a commissioner and as a member of Fair Work Australia —

(a) may perform the functions of the office of member of Fair Work Australia; and

(b) may exercise, in relation to a particular matter —

(i) any powers that the person has as a commissioner; and

(ii) any powers that the person has as a member of Fair Work Australia.

11. Sections 15 and 16 replaced
Delete sections 15 and 16 and insert:

15. Constitution of Full Bench

(1) The Commission as the Full Bench is to be constituted by —

(a) a judge assigned by the Chief Justice of Western Australia (the presiding member); and

(b) not less than 2 commissioners assigned by the Chief Commissioner,
sitting or acting together.

(2) An assignment under subsection (1)(a) or (b) may alter the constitution of the Full Bench.
(3) When it is continuing to deal with and deciding a matter in relation to which its constitution has been altered, the Full Bench can have regard to —
   (a) any record of the proceedings of the Full Bench in relation to the matter before the alteration; and
   (b) any evidence taken in the proceedings before the alteration.

15A. Matters relating to presiding member of Full Bench

(1) The assignment of a person as a presiding member of the Full Bench does not affect the person’s tenure of office as, or status as, a judge nor the payment of the person’s salary or allowances as a judge nor any other right or privilege of the person as a judge.

(2) A person’s service as a presiding member is to be taken for all purposes to be service in the person’s office of judge.

(3) Nothing in this Act prevents a person who is serving as a presiding member from doing anything in the person’s capacity as a judge.

(4) A person serving as the presiding member has the jurisdiction expressly conferred on a presiding member by this Act or by any other Act and in the exercise of that jurisdiction the person constitutes the Commission and has and may exercise such powers of the Commission as may be necessary or appropriate.

15B. Constitution of Commission in Full Session

The Commission in Full Session is to be constituted by not less than 3 commissioners sitting or acting together.

16. Functions of Chief Commissioner

(1) In the performance and exercise of functions under this Act the Chief Commissioner must act in a manner that facilitates and encourages cooperation between the Commission and Fair Work Australia.

(2) The Chief Commissioner is responsible for matters of an administrative nature relating to the Commission and commissioners including a commissioner assigned to the Full Bench.
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(3) Subject to sections 15 and 25, the Chief Commissioner may allocate and reallocate the work of the Commission and may assign or appoint commissioners for the purposes of constituting the Commission, or altering the constitution of the Commission, in relation to a matter.

(4) When it is continuing to deal with and deciding a matter that has been reallocated, or in relation to which its constitution has been altered, the Commission can have regard to —
(a) any record of the proceedings of the Commission in relation to the matter before the reallocation or alteration; and
(b) any evidence taken in the proceedings before the reallocation or alteration.

(5) The Chief Commissioner —
(a) must, before 1 October in each year, make a written report to the Minister relating to the operation of this Act up to the last preceding 30 June; and
(b) may require the commissioners to attend a conference of commissioners for the purposes of paragraph (a) or for any other purpose.

(6) If the Chief Commissioner is unable to attend to his or her duties under this Act, whether on account of illness or otherwise, or if there is a vacancy in the office of Chief Commissioner, the functions of the Chief Commissioner devolve on the commissioner who is next in order of seniority who is present and able to perform those functions, unless the Governor appoints some other person to be acting Chief Commissioner.

16AA. Designation of commissioner to exercise Occupational Safety and Health Act 1984 jurisdiction

(1) The Chief Commissioner must, in writing, designate one commissioner, who holds office under section 8(2)(d) and who satisfies the additional requirements referred to in section 8(3A), to exercise the jurisdiction conferred by the Occupational Safety and Health Act 1984 section 51G.
(2) Without affecting the Chief Commissioner’s duty under subsection (1) to ensure that, at any one time, one commissioner is designated, the Chief Commissioner —

(a) may at or after the time when a commissioner is designated under subsection (1), in writing, specify a date when the designation ceases to have effect; and

(b) may, in writing, vary any date so specified.

(3) The designation of a commissioner under subsection (1) to exercise the jurisdiction conferred by the Occupational Safety and Health Act 1984 section 51G does not preclude the commissioner from also performing other functions as a commissioner under this Act.

12. Section 17 amended

(1) In section 17(1) delete “acting President,”.

(2) Delete section 17(1a) and (1b).

(3) In section 17(2) delete “acting President or”.

13. Section 18 amended

Delete section 18(3) and (4) and insert:

(3) The continuation in office of a retired commissioner under subsection (1) does not prevent the appointment of a person to fill the office from which the commissioner retired.

(4) The continuation in office of an acting commissioner under subsection (1) does not prevent the appointment of another person to act in the office in which the acting commissioner acted.
14. **Section 19 replaced**

Delete section 19 and insert:

19. **Duty of commissioners**

Each commissioner must keep himself or herself acquainted with industrial affairs and conditions.

15. **Section 20 amended**

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

(1) The offices of commissioners, except as provided in section 14A(5), are to be regarded for the purposes of the *Salaries and Allowances Act 1975*, and any other written law, as having been prescribed for the purposes of section 6(1)(e) of that Act.

(2) The Governor may from time to time determine whether a commissioner is to work full-time or other than full-time as a commissioner.

(3) Unless the commissioner has consented, the Governor must not determine that a commissioner working full-time is to work other than full-time, or vice versa.

(4) A commissioner must not engage in other work for financial reward unless permitted to do so by the Governor.

(2) Delete section 20(8c) and (8d).

(3) Delete section 20(11) to (13).

16. **Section 22A deleted**

Delete section 22A.
17. **Section 25 amended**

Delete section 25(2) and insert:

(2) Subsection (1) has effect subject to any provision of this Act under which the Commission must be constituted in a particular way.

(3) If a matter is before the Commission in Full Session, the Chief Commissioner may allocate any interlocutory matter arising in relation to that matter to one of the commissioners constituting the Commission in Full Session.

(4) If a matter is before the Full Bench, the presiding member may, after consultation with the Chief Commissioner, allocate any interlocutory matter arising in relation to that matter to one of the commissioners sitting on the Full Bench.

18. **Section 26 amended**

(1) Delete section 26(3) and insert:

(3) If —

(a) the Commission holds a hearing in respect of a matter; and

(b) in deciding the matter the Commission proposes or intends to take into account any matter or information that was not raised before it on the hearing,

the Commission must, before deciding the matter, notify the parties concerned and afford them the opportunity of being heard in relation to that matter or information.

(2) Delete section 26(4).
19. **Section 27 amended**

(1) In section 27(1):

(a) delete “before it —” and insert:

before it, do any one or more of the following —

(b) in paragraph (a) delete “satisfied —” and insert:

satisfied as to any of the following —

(c) delete paragraph (a)(i) and insert:

(i) that the matter or that part is vexatious, trivial or without substance;

(ia) that the matter or that part has no reasonable prospect of success;

(d) after paragraph (a)(ii) and (iii) delete:

or

(e) delete paragraph (c);

(f) delete paragraph (u) and insert:

(u) refer to the Full Bench for hearing and determination by the Full Bench any question of law, other than a question of interpretation of the rules of an organisation, arising in the matter;

(2) After section 27(2) insert:

(3) Subject to this Act, the Commission may deal with any matter and may make —

(a) a finding without a hearing; and

(b) if the parties consent, a final decision without a hearing.
20. Section 28A inserted

After section 28 insert:

28A. Costs

(1) The Commission may, in relation to any matter before it, order any party to the proceedings to pay to any other party such costs and expenses, including expenses of witnesses, as are specified in the order.

(2) The Commission must not order a party (the first person) to bear some or all of the costs of another person in relation to proceedings before the Commission unless —

(a) the Commission is satisfied that the first person initiated the proceedings, or the first person responded to the proceedings, vexatiously or without reasonable cause; or

(b) the Commission is satisfied that it should have been reasonably apparent to the first person that the proceedings initiated by the first person, or the first person’s response to the proceedings, had no reasonable prospect of success.

21. Section 29A amended

(1) Delete section 29A(2) and insert:

(2) Subject to any direction given under subsection (2A), if the reference of an industrial matter to the Commission seeks —

(a) the issuance of an award or the registration of an industrial agreement; or

(b) the variation of the area and scope provisions of an existing award,

the Commission must not hear or determine the claim or application until the area and scope provisions of the proposed award or industrial agreement have, or the proposed variation has, been published in the required manner.
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(2) Delete section 29A(2b).

(3) Delete section 29A(3) and insert:

(3) Unless otherwise directed by the Commission, if the reference of an industrial matter to the Commission seeks the issuance, variation or cancellation of an award, the Commission must not hear or determine the claim or application until such employers, organisations and associations as in the opinion of the Commission are reasonably representative of the employers and employees who are or would be covered by the award have been served with a copy of the claim or application.

22. Section 30 replaced

Delete section 30 and insert:

30. Intervention by Minister on behalf of State

The Minister may intervene at any time on behalf of the State in proceedings before the Commission.

23. Section 31 amended

(1) In section 31(1)(c)(i) delete “Chamber, the Mines and Metals Association,” and insert:

Chamber,

(2) In section 31(5) delete “Commission may make regulations” and insert:

Chief Commissioner may make regulations under section 113
24. **Section 32 amended**

   (1) After section 32(4) insert:

   (5) Subsection (4) does not apply to an order or declaration to which section 35 applies.

   (2) Delete section 32(7) and insert:

   (7) A commissioner who constituted the Commission for the purpose of endeavouring to resolve an industrial matter by conciliation under this section must not constitute the Commission for the purpose of deciding the matter by arbitration under subsection (6) unless all of the parties consent in writing.

   (3) After section 32(8) insert:

   (9) If a direction, order or declaration requires a party to comply with a condition specified in the direction, order or declaration, the Commission must specify the time within which the party must comply with the condition.

25. **Section 33 amended**

   Delete section 33(6).

26. **Section 34 amended**

   (1) Delete section 34(1) and insert:

   (1) A final decision must be made in the form of an award, order or declaration and must be signed and dated at the time it is made —

   (a) in the case of a decision made by the Commission constituted by a commissioner — by the commissioner; or

   (b) in the case of a decision made by the Commission in Full Session — by the senior
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1. commissioner among the commissioners constituting the Commission in Full Session; or

2. (c) in the case of a decision by the Full Bench or its presiding member — by the presiding member.

3. (2A) A decision of the Commission must be sealed with the seal of the Commission.

4. (2) In section 34(3) delete “President, the Full Bench, or” and insert:

5. Full Bench, its presiding member, or

6. (3) In section 34(4):

7. (a) delete “President, the Full Bench, or” and insert:

8. Full Bench, its presiding member, or

9. (b) delete “question by any” and insert:

10. question by or in any

11. 27. Section 35 amended

12. (1) Delete section 35(1) and insert:

13. (1) Subject to subsection (4), a final decision must, before it is made, be drawn up in the form of minutes which must be handed down to the parties concerned and, unless in any particular case the Commission otherwise determines, its reasons for decision must be published at the same time.

14. (2A) Subsection (1) does not apply to an order made for the purposes of section 27(1)(a).
(2) In section 35(3) delete “they are delivered as the decision of the Commission.” and insert:

the final decision is made in the terms of the minutes.

28. Section 36 replaced

Delete section 36 and insert:

36. Copy of decision must be given to parties and be available for inspection

(1) The Commission must, as soon as practicable after making a decision —

(a) give a copy of the decision to each party to the proceeding; and

(b) deposit a copy of the decision in the office of the Registrar.

(2) A copy of each decision of the Commission lodged in the office of the Registrar must be open to inspection without charge during office hours by any person interested.

37A. Decision may be corrected

The Commission may at any time, if it considers that to do so will not prejudice any party to proceedings, correct a clerical mistake in a decision, or any error arising from an accidental slip or omission.

29. Section 38 amended

In section 38(1) delete “Chamber, the Mines and Metals Association” and insert:

Chamber
30. **Section 40B amended**

(1) Delete section 40B(2) and insert:

(2) The Commission must not make an order under this section unless it has given the following persons notice of, and an opportunity to make submissions in relation to, the proposed variations —

(a) the named parties to the award;
(b) UnionsWA;
(c) the Chamber;
(d) the Minister.

(2) In section 40B(3)(a) delete “Chamber, the Mines and Metals Association” and insert:

Chamber

31. **Section 42E amended**

(1) Delete section 42E(1).

(2) In section 42E(2) delete “subsection (1)” and insert:

section 32 and Division 2C, when assisting parties to bargain for an industrial agreement,

32. **Part II Division 2C replaced**

Delete Part II Division 2C and insert:

**Division 2C — Conciliation conferences**

44. **Term used: Commission**

In this Division —

*Commission* means the Commission constituted by a commissioner.
45A. Convening a conciliation conference

(1) The Commission must convene a conciliation conference if a person referred to in subsection (2) applies to the Commission to do so.

(2) The following persons may apply to the Commission to convene a conciliation conference —
   (a) an organisation, association or employer;
   (b) the Minister on behalf of the State;
   (c) an employee in respect of a dispute relating to the entitlement of the employee to long service leave.

(3) The Commission may convene a conciliation conference on its own motion whenever industrial action has occurred or, in the opinion of the Commission, is likely to occur.

(4) An application made under subsection (2) to convene a conciliation conference in respect of unfair dismissal must be made within the time specified in section 37G(2).

45B. Conduct of conciliation conference

(1) The Commission may direct a person to attend a conciliation conference at a time and place specified in the direction, and to continue to attend as directed by the Commission.

(2) A conciliation conference must be conducted in private, unless the Commission, at any stage of the conference, directs that it be conducted in public.

(3) In endeavouring to resolve a matter by conciliation the Commission may do anything that appears to it to be right and proper to assist the parties to reach an agreement on terms for the resolution of the matter.

(4) Subject to subsection (5), the Commission may, at or in relation to a conciliation conference, make suggestions and give written recommendations as it considers appropriate.

(5) The Commission must not give a written recommendation that a matter be included in, or excluded from, an industrial agreement.
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45C.  Powers of Commission at conciliation conference

(1) For the purposes of a conciliation conference, the Commission may give directions as it considers appropriate.

(2) Without limiting subsection (1) the Commission may —

(a) direct the parties or any of them to confer with one another or with any other person and without a chairperson or with the Registrar or a deputy registrar as chairperson; and

(b) direct that disclosure of any matter discussed at a conciliation conference be limited in the manner specified by the Commission; and

(c) give directions and make orders or declarations that will, in the opinion of the Commission —

(i) prevent the deterioration of industrial relations in respect of the industrial matter in question until conciliation or arbitration has resolved that matter; or

(ii) enable conciliation or arbitration to resolve the industrial matter in question; or

(iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the industrial matter in question;

and

(d) give any direction or make any order or declaration that the Commission is otherwise authorised to give or make under this Act; and

(e) without limiting paragraph (c) or (d), in the case of a claim of unfair dismissal of an employee, make any interim order the Commission considers appropriate in the circumstances pending resolution of the claim; and

(f) exercise any of the powers of the Commission referred to in section 27(1) as the Commission considers appropriate.
(3) If a direction, order or declaration requires a party to comply with a condition specified in the direction, order or declaration, the Commission must specify the time within which the party must comply with the condition.

(4) An order made under subsection (2)(c), (d) or (e) —
   (a) binds only the parties to the relevant conciliation conference; and
   (b) may vary the operation of an existing award or industrial agreement in respect of the parties to the relevant conciliation conference.

(5) If, at a conciliation conference, agreement is reached between the parties or any of them in relation to an industrial matter the Commission may —
   (a) make an order in the terms of that agreement binding only on those parties who consented to the making of the order; or
   (b) if the nature or subject matter of the agreement does not, in the opinion of the Commission, require that an order in terms of the agreement be made, make, sign and file a memorandum of the terms of the agreement.

45D. Hearing and determination at conclusion of conciliation conference

(1) If, at the conclusion of a conciliation conference, any question, dispute or disagreement in relation to an industrial matter has not been settled by agreement between all of the parties, the Commission may —
   (a) hear and determine the question, dispute or disagreement; and
   (b) make an order binding only the parties in relation to whom the matter has not been so settled.

(2) A commissioner who constituted the Commission for a conciliation conference in respect of a matter must not constitute the Commission for the purposes of proceedings under this section in respect of the matter unless all of the parties consent in writing.
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(3) Without limiting subsection (1), if the parties in relation to whom the matter has not been settled —

(a) consent in writing to the commissioner who constituted the Commission for the conciliation conference constituting the Commission for the purposes of proceedings under this section; and

(b) consent in writing to that commissioner conclusively determining the question, dispute or disagreement,

the commissioner may hear and determine that question, dispute or disagreement and make an order binding on the parties who so consented.

(4) Despite section 49, no appeal lies from an order made under subsection (3).

45E. Form of directions, orders and declarations

(1) The Commission must —

(a) if it gives or makes a direction, order or declaration orally under this Division, reduce the direction, order or declaration to writing as soon as is practicable; and

(b) preface each direction, order or declaration given or made under this Division —

(i) if given or made in writing, at the time of that giving or making; or

(ii) if given or made orally, at the time the direction, order or declaration is reduced to writing,

with a brief written statement setting out the reasons for giving or making the direction, order or declaration.

(2) Subsection (1) does not apply to an order or declaration to which section 35 applies.

45F. Application of section 39 to orders under this Division

Section 39 applies, with such modifications as are necessary, to an order made under this Division.
33. Section 47 amended

(1) Delete section 47(1) and (2) and insert:

(1) Subject to subsection (3), if, in the opinion of the Commission —

(a) there is no employee to whom an award or industrial agreement applies; or

(b) an award or industrial agreement is obsolete or no longer capable of operating,

the Commission may, on its own motion, by order, cancel that award or industrial agreement.

(2) Subject to subsection (3), if the Commission is of the opinion that —

(a) a party to an award who is named as an employer; or

(b) an employer who is specified by name in an award for the purposes of section 40BA,

is no longer carrying on business as an employer in the industry to which the award applies or is, for any other reason, not bound by the award, the Commission may on its own motion, by order, strike out the name of that employer from the award.

(2) In section 47(2a) delete “subsections (3), (4) and (5),” and insert:

subsection (3),

(3) Delete section 47(3), (4) and (5) and insert:

(3) The Commission must not make an order under subsection (1), (2) or (2a) to cancel an award or industrial agreement, strike out the name of an employer from an award or strike out a party to an industrial agreement unless, before the order is made, the Commission has caused —

(a) notice of the intention of the Commission to make the order to be published in the required manner; and
(4) Any person may —

(a) within 30 days of the day on which the notice referred to in subsection (3)(a) is first published in the required manner; or

(b) within 30 days of being given a notice under subsection (3)(b), object to the Commission making the order referred to in the notice.

(5) The Commission must cause a copy of any order made under this section —

(a) if the order relates to an award, to be given to such employers, organisations and associations as in the opinion of the Commission are reasonably representative of the employers and employees covered by the award; and

(b) if the order relates to an industrial agreement, to be given to each person notified under subsection (3)(b) of the intention to make the order.

34. Part II Division 2E heading replaced

Delete the heading to Part II Division 2E and insert:

Division 2E — Appeals

35. Section 49 amended

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

(1) In this section —

*Commission* means the Commission constituted by a commissioner, but does not include the Commission exercising jurisdiction under section 80ZE.
(2) Delete section 49(2b) and insert:

(2B) An appeal does not lie under this section from a determination of the Commission —

(a) under section 97VP, 97XC or 97XQ; or

(b) in an arbitration under any EEA dispute provision of the kind referred to in section 97UP.

(3) Delete section 49(5)(b) and insert:

(ba) allow the appeal; or

(b) set aside, reverse or, subject to subsection (6), vary the decision; or

(4) Delete section 49(7).

(5) In section 49(8) delete “President.” and insert:

presiding member.

(6) In section 49(9) delete “President” and insert:

presiding member

(7) In section 49(10) delete “(7), (8),” and insert:

(8)

(8) Delete section 49(12) and insert:

(12) An application under subsection (11) must be determined by the presiding member of the Full Bench.
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36. **Section 50 amended**

In section 50(2) delete “Chamber, the Mines and Metals Association” and insert:

Chamber

37. **Section 51I amended**

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

Chamber

38. **Section 51J amended**

In section 51J(a) delete “Chamber, the Mines and Metals Association,” and insert:

Chamber,

39. **Section 51K amended**

In section 51K delete “Chamber, the Mines and Metals Association,” and insert:

Chamber,

40. **Section 51N amended**

In section 51N(3) delete “section 27(1)(m).” and insert:

sections 27(1)(m) and 37A.

41. **Section 53 amended**

(1) In section 53(1) delete “Full Bench.” and insert:

Commission in Full Session.
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1. (2) In section 53(2) delete “Full Bench if the Full Bench” and insert:

Commission in Full Session if it

42. Section 54 amended

(1) In section 54(1) delete “Full Bench.” and insert:

Commission in Full Session.

(2) In section 54(2) delete “Full Bench if the Full Bench” and insert:

Commission in Full Session if it

43. Section 55 amended

(1) In section 55(2)(c) delete “Full Bench that he” and insert:

Commission in Full Session that the person

(2) In section 55(3) delete “Full Bench” and insert:

Commission in Full Session

(3) In section 55(4):

(a) delete “Full Bench is” and insert:

Commission in Full Session is

(b) delete “Full Bench shall” and insert:

Commission in Full Session must
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(4) In section 55(5):

(a) delete “Full Bench shall” and insert:

Commission in Full Session must

(b) delete “Full Bench is” and insert:

Commission in Full Session is

44. Section 58 amended

In section 58(1), (2) and (3) delete “Full Bench” (each occurrence) and insert:

Commission in Full Session

45. Section 59 amended

(1) In section 59(1):

(a) delete “Full Bench shall” and insert:

Commission in Full Session must

(b) delete “the opinion of the Full Bench,” and insert:

the opinion of the Commission in Full Session,

(2) In section 59(3) delete “Full Bench” and insert:

Commission in Full Session

46. Section 60 amended

In section 60(1) delete “Full Bench,” and insert:

Commission in Full Session,
47. Section 68 amended

In section 68 delete “Full Bench” and insert:

Commission

Note: The heading to amended section 68 is to read:

Declaration as to certain functions

48. Section 71 amended

(1) In section 71(2) delete “Full Bench,” and insert:

Commission in Full Session,

(2) In section 71(3) delete “Full Bench” and insert:

Commission in Full Session

(3) In section 71(7) and (8) delete “Full Bench” (each occurrence) and insert:

Commission in Full Session

(4) In section 71(9)(a) delete “Full Bench; and” and insert:

Commission in Full Session; and

(5) In section 71(10) delete “Full Bench” (each occurrence) and insert:

Commission in Full Session

49. Section 72 amended

In section 72(1) delete “Full Bench.” and insert:

Commission in Full Session.
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50. Section 72A amended

(1) In section 72A(2), (3) and (4) delete “Full Bench” and insert:

Commission in Full Session

(2) Delete section 72A(5), (6) and (7) and insert:

(5) The Commission in Full Session must not make an order described in subsection (2) without giving persons who, in its opinion, have a sufficient interest in the matter an opportunity of being heard.

(6) Where an order is made under subsection (4), the Commission in Full Session must refer the matter to the Chief Commissioner unless it is satisfied that the rules of the organisations concerned do not need to be altered.

(7) On a reference under subsection (6) the Chief Commissioner must, after giving the organisations concerned an opportunity of being heard, make such alterations (if any) to the rules of the organisations as are, in the Chief Commissioner’s opinion, necessary to reflect the order made by the Commission in Full Session.

(3) In section 72A(8) delete “President” and insert:

Chief Commissioner

51. Section 73 amended

(1) In section 73(1):

(a) after “Commission” insert:

constituted by a commissioner

(b) delete “Full Bench” and insert:

Commission in Full Session
(2) In section 73(2) delete “President” and insert:

Chief Commissioner

(3) In section 73(6) delete “Full Bench.” and insert:

Commission in Full Session for the purposes of this section.

(4) In section 73(7):

(a) delete “to the Full Bench” and insert:

to the Commission in Full Session

(b) delete “Full Bench —” and insert:

Commission in Full Session —

(5) In section 73(7a)(c) delete “Full Bench” and insert:

Commission in Full Session

(6) In section 73(7b):

(a) delete “to the Full Bench” and insert:

to the Commission in Full Session

(b) delete “Full Bench —” and insert:

Commission in Full Session —

(7) In section 73(8) and (9) delete “Full Bench” (each occurrence) and insert:

Commission in Full Session
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(8) In section 73(10):
(a) delete “as the Full Bench” and insert:
   as the Commission in Full Session
(b) delete “by the Full Bench” and insert:
   by the Commission in Full Session
(c) delete “to the Full Bench” and insert:
   to it

(9) In section 73(12) delete “Full Bench” and insert:
Commission in Full Session

52. Section 76 deleted
Delete section 76.

53. Part IIA replaced
Delete Part IIA and insert:

Part IIA — Jurisdiction of Commission in relation to government officers

80Q. Terms used
In this Part, unless the contrary intention appears —

Commission means the Commission constituted by a commissioner;

employer —
(a) in relation to a government officer who is a public service officer, means the employing authority of the public service officer; and
(b) in relation to any other government officer, means the public authority by whom or by which the government officer is employed;

employing authority has the meaning given by the Public Sector Management Act 1994 section 5;

government officer means any of the following —

(a) a public service officer;

(b) a member of the Governor’s Establishment within the meaning of the Governor’s Establishment Act 1992;

(c) a member of a department of the staff of Parliament referred to in, and an electorate officer within the meaning of, the Parliamentary and Electorate Staff (Employment) Act 1992;

(d) any other person employed on the salaried staff of a public authority;

(e) any person not referred to in paragraph (a) or (d) who would have been a government officer within the meaning of section 96 of this Act as enacted before the coming into operation of the Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984 section 58,

but does not include any of the following —

(f) a teacher;

(g) a member of the academic staff of a post-secondary education institution;

teacher includes —

(a) a person employed as a member of the teaching staff under the School Education Act 1999 section 235(1)(b); and

(b) a person who is a member of the teaching staff or another person appointed under section 236(2) of, and who is employed at a community kindergarten registered under Part 5 of, the School Education Act 1999,

but does not include any public service officer, whether or not that public service officer holds or acts in a position in respect of which a teaching academic qualification is required.
80R. Construction and application

(1) This Part must be read in conjunction with the Public Sector Management Act 1994.

(2) The Commission does not have jurisdiction to deal with an industrial matter in relation to an employee who is government officer except in accordance with this Part.

(3) Nothing in subsection (2) limits the operation of Part II Division 3, Part XI or Part XII.

(4) Sections 80S and 80T do not apply to a government officer if and when the officer occupies —

(a) an office for which the remuneration payable is determined or recommended under the Salaries and Allowances Act 1975; or

(b) an office for which the remuneration is determined by an Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.

(5) If —

(a) an industrial matter in relation to a government officer or group of government officers is being dealt with under this Act; and

(b) a question arises between 2 or more organisations as to which of them or whether or not one of them, should be named as a party to an award or order or should become a party to an industrial agreement,

regard must be had, when that question is being determined, to the past coverage of such government officers by organisations under awards, orders and industrial agreements and under unregistered industrial agreements that the Commission considers to be relevant.

80S. Jurisdiction of Commission in relation to government officers

(1) Subject to section 80R(4) and subsection (6), the Commission has jurisdiction to enquire into and deal with any industrial matter relating to a government officer, a group of government officers or government officers generally.
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s. 53

(2) Without limiting the generality of subsection (1) the jurisdiction conferred by that subsection includes—

(a) a claim in respect of the salary, range of salary or title allocated to the office occupied by a government officer and, where a range of salary was allocated to the office occupied by the government officer, in respect of the particular salary within that range of salary allocated to the government officer; and

(b) a claim in respect of a decision of an employer to downgrade any office that is vacant.

(3) The Commission also has the jurisdiction conferred on it by—

(a) Part VID Division 5 Subdivision 3; and

(b) section 97WI; and

(c) section 97WK.

(4) The jurisdiction referred to in subsection (3) must be exercised in accordance with the relevant provisions of Part VID, and section 80U does not apply to the exercise of that jurisdiction by the Commission.

(5) Nothing in subsection (1) or (2) affects or interferes with the exercise by an employer in relation to any government officer, or office under the administration of the employer, of any power in relation to any matter within the jurisdiction of Commission, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by the Commission in the course of the exercise by it of its jurisdiction in respect of that matter under this Part.

(6) Despite subsection (1), the Commission does not have jurisdiction to enquire into or deal with, or refer to the Commission in Full Session or the Full Bench, any matter in respect of which a procedure referred to in the Public Sector Management Act 1994 section 97(1)(a) is, or may be, prescribed under that Act.

80T. By whom matters may be referred to Commission

(1) Subject to subsections (2) and (3) an industrial matter may be referred to the Commission under section 80S
by an employer, organisation or association or by the
Minister.

(2) A claim mentioned in section 80S(2)(a) may be
referred to the Commission by —
   (a) the government officer concerned; or
   (b) an organisation on behalf of the government
       officer; or
   (c) the employer of the government officer.

(3) A claim mentioned in section 80S(2)(b) may be
referred to the Commission by an organisation or an
employer.

(4) A government officer who is an employee under an
employer-employee agreement may refer to the
Commission —
   (a) any question, dispute or difficulty that the
       Commission has jurisdiction to determine under
       section 97WI; and
   (b) an allegation referred to in section 97WK(2).

80U. Certain provisions of Part II apply

(1) Subject to this Part, the provisions of Part II that apply
to or in relation to the exercise of the jurisdiction of the
Commission constituted by a commissioner apply with
such modifications as are prescribed and such other
modifications as may be necessary or appropriate, to
the exercise by the Commission of its jurisdiction
under section 80S.

(2) For the purposes of subsection (1), section 49 does not
apply to a decision of the Commission on a claim
mentioned in section 80S(2).

80V. Appeals

(1) Subject to subsection (2) and the Public Sector
Management Act 1994 section 52, the Commission has
jurisdiction to hear and determine —
   (a) an appeal by any public service officer against
       any decision of an employing authority in
       relation to an interpretation of any provision of
       the Public Sector Management Act 1994, and
any provision of the regulations made under that Act, concerning the conditions of service (other than salaries and allowances) of public service officers;

(b) an appeal by a government officer under the Public Sector Management Act 1994 section 78 against a decision or finding referred to in subsection (1)(b) of that section;

(c) an appeal, other than an appeal under the Public Sector Management Act 1994 section 78(1), by a government officer from a decision, determination or recommendation of the employer of that government officer that the government officer be dismissed,

and to adjust all such matters as are referred to in paragraphs (a), (b) and (c).

(2) The Commission does not have jurisdiction to hear and determine an appeal by a government officer from a decision made under regulations referred to in the Public Sector Management Act 1994 section 94.

(3) Subject to this Part the provisions of sections 22B, 26(1) and (3), 27, 28, 28A, 31(1), (2), (3) and (5), 34(1), (2A), (3) and (4), 36 and 37A that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a commissioner apply, with such modifications as are prescribed and such other modifications as may be necessary, to the exercise by the Commission of its jurisdiction under this section.

(4) For the purposes of subsection (3), section 31(1) applies as if paragraph (c) were deleted and the following paragraph were inserted:

(c) by a legal practitioner.

80W. Institution of appeals

(1) In this section —

organisation means —

(a) an organisation of employees registered under Part II Division 4; or
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(b) an association of employees registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth); or

(c) in the case of an appeal by a medical practitioner employed in a public hospital, the Western Australian Branch of the Australian Medical Association Incorporated.

(2) An appeal under section 80V —

(a) must be instituted in the prescribed manner; and

(b) must be instituted within 21 days after the date of the decision against which the appeal is brought; and

(c) may be instituted by the government officer concerned or by an organisation on behalf of the government officer.

(3) The Commission may allow —

(a) an appeal under section 80V(1)(b) against a decision made under the *Public Sector Management Act 1994* section 79(3)(c) or (4); or

(b) an appeal under section 80V(1)(c),

to be made out of time if the Commission considers that it would be unfair not to do so.

54. Section 80ZIH amended

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

55. Section 80ZI replaced

Delete section 80ZI and insert:

80ZI. Conferences with other industrial bodies

(1) In this section —

*industrial body* means —

(a) Fair Work Australia;

(b) a body established under a law of another State or a Territory that has functions corresponding, or substantially corresponding, to functions
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56. Section 80ZK inserted

After section 80ZJ insert:

80ZK. Provision of administrative support

The Chief Commissioner may make a written arrangement with Fair Work Australia for —

(a) the Commission to provide administrative support to Fair Work Australia; or

(b) Fair Work Australia to provide administrative support to the Commission.

57. Section 84 amended

(1) In section 84(4)(c) delete “subsection (5),” and insert:

section 28A,

(2) Delete section 84(5).
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58. Section 90 amended

(1) In section 90(1) delete “President, the Full Bench, or the Commission in Court Session —” and insert:

Full Bench, its presiding member, or the Commission in Full Session —

(2) In section 90(3) delete “President, the Full Bench, or the Commission in Court Session,” and insert:

Full Bench, its presiding member, or the Commission in Full Session,

59. Section 92 amended

Delete section 92(4) and insert:

(4) The presiding member of the Full Bench, when presiding on the Full Bench or sitting or acting alone, has and may exercise like powers as are conferred on the Court by this section.

60. Section 97U amended

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

(2) In section 97U(1) insert in alphabetical order:

Commission means the Commission constituted by a commissioner;

61. Section 97UN amended

Delete section 97UN(2) and insert:

(2) EEA dispute provisions cannot confer jurisdiction on an arbitrator, including the Commission acting under a provision mentioned in section 97UP, to enforce an EEA by making an order or determination that an
industrial magistrate’s court may make under section 83.

62. Section 97VQ amended

Delete section 97VQ(2) and insert:

(2) Subject to subsection (1), the Commission may exercise its powers under sections 27, 28, 28A and 33 as it considers necessary or expedient to exercise for the purposes of an appeal under this Subdivision.

63. Section 97VZ amended

(1) In section 97VZ(1) delete “Minister or a peak industrial body” and insert:

Minister, UnionsWA or the Chamber

(2) Delete section 97VZ(3).

64. Section 106 amended

In section 106(a)(ii) delete “judge, President,” and insert:

judge, presiding member of the Full Bench.

65. Section 112A amended

(1) Delete section 112A(1a)(a) and insert:

(a) carrying on business by an organisation, UnionsWA or the Chamber; or

(2) In section 112A(3)(c) delete “Chamber, the Mines and Metals Association,” and insert:

Chamber,
66. Section 113 amended
Delete section 113(1)(da).

67. Schedule 1 amended
(1) Delete Schedule 1 item 2(c) and insert:
(c) presiding members; and

(2) In Schedule 1 item 6 delete “Court, the President, or” and insert:
Court or

68. Schedule 3 amended
(1) Delete Schedule 3 clause 1.

(2) In Schedule 3 clause 2(3) delete “Despite subclause (2), an Arbitrator” and insert:
Despite subclause (2), the Commission

69. Various references to “Court Session” amended
In the provisions listed in the Table delete “Court Session” (each occurrence) and insert:

<table>
<thead>
<tr>
<th>Table</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>s. 25(1)(b)</td>
<td>s. 27(1)(t)</td>
</tr>
<tr>
<td>s. 34(2)</td>
<td>s. 42C(6) def. of Commission</td>
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<tr>
<td>s. 50(1)</td>
<td>s. 51C(1) def. of Commission</td>
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<td>s. 97VW def. of Commission</td>
<td>s. 97YI(1)</td>
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<tr>
<td>Sch. 3 cl. 2(3)</td>
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</table>

[Draft Bill for public comment]
70. Other provisions amended

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

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<thead>
<tr>
<th>Provision</th>
<th>Delete</th>
<th>Insert</th>
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<td>section 16(2A)</td>
<td>section 16AA(1)</td>
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<tr>
<td>s. 10</td>
<td>a member of the Commission</td>
<td>a commissioner</td>
</tr>
<tr>
<td>s. 10</td>
<td>member of the Commission shall retire from his</td>
<td>commissioner must retire from</td>
</tr>
<tr>
<td>s. 11(1)</td>
<td>his office each member of the Commission shall</td>
<td>office each commissioner must</td>
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<tr>
<td>s. 14(3)</td>
<td>member of the Commission (each occurrence)</td>
<td>commissioner</td>
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<td>s. 16A(1)</td>
<td>member of the Commission</td>
<td>commissioner</td>
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<td>s. 17(1)</td>
<td>member of the Commission</td>
<td>commissioner</td>
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<td>s. 18(1)</td>
<td>member of the Commission (each occurrence)</td>
<td>commissioner</td>
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<td>s. 21</td>
<td>member of the Commission</td>
<td>commissioner</td>
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<td>s. 22(1)</td>
<td>members of the Commission shall hold</td>
<td>commissioners hold</td>
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<tr>
<td>s. 22(2)</td>
<td>member of the Commission shall become</td>
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<td>s. 25(1)</td>
<td>section 16(1ab)</td>
<td>section 16(3)</td>
</tr>
<tr>
<td>Provision</td>
<td>Delete</td>
<td>Insert</td>
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<td>-----------------------------------------------</td>
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<tr>
<td>s. 29(1a)</td>
<td>where the Commission so constituted is the relevant industrial authority under Part VID</td>
<td></td>
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<tr>
<td>s. 29(1a)(a)</td>
<td>as so constituted</td>
<td></td>
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<tr>
<td>s. 31(1)(c)(ii)</td>
<td>section 44(7)(a)(iii)</td>
<td>section 45A(2)(c)</td>
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<tr>
<td>s. 72B(2)(b)</td>
<td>sections 80C(4) and 80F</td>
<td>sections 80R(5) and 80T</td>
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<tr>
<td>s. 97UP</td>
<td>relevant industrial authority</td>
<td>Commission</td>
</tr>
<tr>
<td>s. 97VH(2)(b)</td>
<td>relevant industrial authority</td>
<td>Commission</td>
</tr>
<tr>
<td>s. 97VL(2)(b)</td>
<td>a relevant industrial authority</td>
<td>the Commission</td>
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<tr>
<td>s. 97VM(1)</td>
<td>relevant industrial authority</td>
<td>Commission</td>
</tr>
<tr>
<td>s. 97VN(2)</td>
<td>relevant industrial authority</td>
<td>Commission</td>
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<tr>
<td>s. 97VN(2)(a)</td>
<td>that authority</td>
<td>the Commission</td>
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<tr>
<td>s. 97VO(1), (2)(b), (3)(a)</td>
<td>relevant industrial authority</td>
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<td>the Commission</td>
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<tr>
<td>s. 97VP(1), (2), (3)</td>
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<td>s. 97VY(b)</td>
<td>relevant industrial authority</td>
<td>Commission</td>
</tr>
<tr>
<td>Provision</td>
<td>Delete</td>
<td>Insert</td>
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</tr>
<tr>
<td>s. 97WH def. of arbitrator par. (b)</td>
<td>a relevant industrial authority</td>
<td>the Commission</td>
</tr>
<tr>
<td>s. 97WI(1)</td>
<td>A relevant industrial authority</td>
<td>The Commission</td>
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<tr>
<td>s. 97WI(1), (2)(b)</td>
<td>the authority</td>
<td>it</td>
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<td>s. 97WI(2)</td>
<td>relevant industrial authority</td>
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<td>relevant industrial authority</td>
<td>Commission</td>
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<tr>
<td>s. 97WK(6)(a)</td>
<td>the authority</td>
<td>it</td>
</tr>
<tr>
<td>s. 97WN(1)(b)</td>
<td>a relevant industrial authority</td>
<td>the Commission</td>
</tr>
<tr>
<td>s. 97WP(1), (2)</td>
<td>a relevant industrial authority</td>
<td>the Commission</td>
</tr>
<tr>
<td>s. 113(1)</td>
<td>members of the Commission,</td>
<td>other commissioners,</td>
</tr>
<tr>
<td>Sch. 3 cl. 2(2)(a) and (b)</td>
<td>section 80C</td>
<td>section 80Q</td>
</tr>
</tbody>
</table>

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

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<tr>
<th>Amended section</th>
<th>Section heading</th>
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<td>Commission to notify parties of certain deficiencies in EEA</td>
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<td>s. 97WI</td>
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</tr>
<tr>
<td>s. 97WK</td>
<td>Reference to Commission where delay alleged in dispute resolution</td>
</tr>
</tbody>
</table>
Division 2 — Consequential amendments and repeals

71. **Constitution Acts Amendment Act 1899 amended**

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

(2) In Schedule V Part 1 Division 1:

(a) delete “President of The Western Australian Industrial Relations Commission.”;

(b) delete “Public service arbitrator appointed under Division 2 of Part IIA of the *Industrial Relations Act 1979*.”;

(c) delete “Chairman, or deputy of the chairman, of the Railways Classification Board established under Division 3 of Part IIA of the *Industrial Relations Act 1979*.”.

(3) In Schedule V Part 2 Division 1 delete “Member, or deputy of a member, of the Railways Classification Board, established under Division 3 of Part IIA of the *Industrial Relations Act 1979*.”.

72. **Construction Industry Portable Paid Long Service Leave Act 1985 amended**

(1) This section amends the *Construction Industry Portable Paid Long Service Leave Act 1985*.

(2) In section 51A(1) delete “sections 22B, 26(1)(a) and (b) and (3), 27, 28, 31(1), (2) and (3), 34(3) and (4), 36 and 49” and insert:

sections 22B, 26(1)(a) and (b) and (3), 27, 28, 28A, 31(1), (2) and (3), 34(3) and (4), 36, 37A and 49

73. **Equal Opportunity Act 1984 amended**

(1) This section amends the *Equal Opportunity Act 1984*.

(2) In section 66ZN(2)(g) delete “President or”.

74. **Health and Disability Services ( Complaints) Act 1995 amended**

(1) This section amends the *Health and Disability Services ( Complaints) Act 1995*. 
(2) In section 3(1) delete the definition of *industrial tribunal* and insert:

*industrial tribunal* means —

(a) Fair Work Australia established by the *Fair Work Act 2009* (Commonwealth) section 575; or

(b) The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*;

75. *Juries Act 1957* amended

(1) This section amends the *Juries Act 1957*.

(2) In Schedule 1 Division 1 clause 2(1)(g) delete “the President or”.

76. *Occupational Safety and Health Act 1984* amended

(1) This section amends the *Occupational Safety and Health Act 1984*.

(2) Delete section 35C(4) and insert:

(4) The *Industrial Relations Act 1979* section 80S(1) does not apply to a claim under subsection (1) by a government officer as defined in section 80Q of that Act.

(3) In section 51H(1)(a) delete “section 16(2A)” and insert:

section 16AA(1)

(4) In section 51H(4):

(a) delete “section 16(2B),” and insert:

section 16AA(2),

(b) delete “section 16(2A)” and insert:

section 16AA(1)
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(5) In section 511(1) delete “sections 22B, 26(1), (2) and (3), 27, 28, 31(1), (2), (3), (5) and (6), 33, 34(1), (3) and (4), 36 and 49” and insert:
sections 22B, 26(1), (2) and (3), 27, 28, 28A, 31(1), (2), (3) and (5), 33, 34(1), (1A), (3) and (4), 36, 37A and 49

77. Police Act 1892 amended

(1) This section amends the Police Act 1892.

(2) In section 33S delete the Table and insert:

| Table |
|-----------------|-----------------|
| **Section**     | **Modification** |
| s. 26(1)(a) and (b) and (3) |                  |
| s. 27(1)(b), (d), (e), (f), (h), (ha), (hb), (l), (m), (n), (o) and (v) | An order under section 27(1)(o) may be made by any one of the industrial Commissioners constituting the WAIRC to determine the appeal. |
| s. 27(1a)       |                  |
| s. 28           | But only in relation to powers conferred by section 27 listed in this Table. |
| s. 28A          |                  |
| s. 31(1)        | Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs — “(b) with the leave of the Commission, by an agent; or (c) by a legal practitioner.”. |
| s. 31(3) and (5) |                  |
### Table of Amendments

<table>
<thead>
<tr>
<th>Section</th>
<th>Modification</th>
</tr>
</thead>
</table>
| s. 32   | Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall” were a reference to “If the Commission is dealing with an appeal instituted under the Police Act 1892 section 33P, the Commission may recommend that the parties to the appeal”.

References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.

For the purposes of subsections (2) and (3), Commission does not include an industrial Commissioner constituting the WAIRC to hear the appeal.

Subsections (4), (5), (6), (6A), (8) and (9) do not apply. |
| s. 33   | A summons shall not be issued under section 33(1)(a) to the Governor.

A summons may be issued to the Commissioner of Police or the Minister but only at the direction of an industrial Commissioner if that Commissioner is satisfied that there are extraordinary grounds for doing so.

A summons may not be issued to any other person except at the direction of an industrial Commissioner. |
### Section 78

<table>
<thead>
<tr>
<th>Section</th>
<th>Modification</th>
</tr>
</thead>
</table>
| s. 34   | A reference in subsection (1) to “an award, order, or declaration” is to be read as if it were a reference to “an order”.

   A reference in subsection (3) to “the Full Bench, its presiding member, or the Commission” is to be read as if it were a reference to “the Commission”.

   A reference in subsection (4) to “no award, order, declaration, finding, or proceeding of the Full Bench, its presiding member, or the Commission” is to be read as if it were a reference to “no decision, order, finding or proceeding of the Commission”.
| s. 35   |            |
| s. 36   |            |
| s. 37A  |            |
| s. 86   | But not in relation to costs and expenses other than expenses of witnesses. |
| s. 90   | A reference in subsection (1) to “any decision of the Full Bench, its presiding member, or the Commission in Full Session” is to be read as if it were a reference to “a decision of the Commission under the Police Act 1892 section 33U”. |

1  **Public Sector Management Act 1994 amended**

2 (1) This section amends the Public Sector Management Act 1994.
(2) Delete section 37 and insert:

37. Reference as to remuneration if organisation becomes part of Public Service

(1) If, in respect of an appointment as a public service officer of a person who was employed in an organisation immediately before the organisation became part of the Public Service, the relevant employing authority determines that the remuneration payable to the public service officer is to be at a rate less than was payable to the person as an employee of the organisation immediately prior to it becoming part of the Public Service, the public service officer may refer the matter to the Industrial Commission under the Industrial Relations Act 1979 section 80S.

(2) Despite any provision of the Industrial Relations Act 1979, the Industrial Commission has jurisdiction to hear and determine the matter referred.

(3) In section 78(1):
   (a) delete paragraph (a) and insert:
       (a) is, or was, a government officer as defined in the Industrial Relations Act 1979 section 80Q; and
   (b) in paragraph (b) delete “Government officer” (each occurrence) and insert:
       government officer
   (c) delete the passage that begins with “constituted by” and ends with “that Division.” and insert:
       under the Industrial Relations Act 1979 Part IIA, and the Industrial Commission has jurisdiction to hear and determine that appeal as if it were an appeal under section 80V of that Act.
(4) Delete section 78(2)(a) and insert:

(a) is not a government officer within the meaning of section 80Q of that Act; and

(5) In section 78(5):

(a) delete “or the Public Service Appeal Board”;
(b) delete “Industrial Commission or Public Service Appeal Board —” and insert:

Industrial Commission —

79. Regulations repealed

(1) The Industrial Relations Commission (Government School Teachers Tribunal [Elections]) Regulations 1985 are repealed.

(2) The Industrial Relations Commission (Railways Classification Board [Elections]) Regulations 1985 are repealed.
Part 3 — Amendments about awards

80. Act amended

This Part amends the *Industrial Relations Act 1979*.

81. Section 7 amended

In section 7(1) insert in alphabetical order:

*amending Act* means the *Labour Relations Legislation Amendment and Repeal Act 2012*;

*award modernisation process* means the process provided for by sections 37P and 37Q of reviewing pre-modern State awards and making modern State awards;

*covers*, in relation to —

(a) a modern State award has the meaning given by section 40BB; and

(b) any other award has the meaning given by section 37(2);

*enterprise award* means an award that is expressed to relate wholly or in part to a single business, project, undertaking or activity that is carried on by an employer, other than an employer in the Public Sector, and for the purposes of this definition —

(a) if 2 or more employers carry on a single business, project, undertaking or activity as a joint venture or common enterprise, the employers are taken to be one employer; and

(b) a single business, project, undertaking or activity includes, for example —

(i) a geographically distinct part of it; and

(ii) a distinct operational or organisational unit within it;

*make*, in relation to an award, means to make the award in accordance with Part II Division 2A and the other provisions of this Act relating to the making of the award concerned;

*miscellaneous modern State award* means the modern State award that is expressed to cover any employee —

(a) whose work is of a similar nature to work that has traditionally been covered by an award
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(whether made under a law of the Commonwealth or the States); but

(b) who is not covered by any other modern State award;

modern State award means an award made in terms of section 37T, other than a public sector award;

pre-modern State award means an award other than a modern State award, a public sector award or an enterprise award;

Public Sector has the meaning given in the Public Sector Management Act 1994 section 3(1);

public sector award means an award that covers employers in the Public Sector and their employees, including an award that is expressed to relate wholly or in part to a single business, project, undertaking or activity carried on by such an employer;

82. Section 34 amended

Before section 34(2) insert:

(2B) An award referred to in subsection (1) means an award made in accordance with Division 2A and other provisions of this Act relating to the making of awards.

83. Part II Division 2A Subdivision 1 heading inserted

At the beginning of Part II Division 2A insert:

Subdivision 1 — Award-making functions of Commission
84. Section 36A replaced and Part II Division 2A Subdivision 2 inserted

Delete section 36A and insert:

37L. Awards that Commission may make

The awards that the Commission may make are —

(a) if made before the date referred to in section 37U(2) —
   (i) a pre-modern State award; and
   (ii) the miscellaneous modern State award;

(b) a modern State award; and

(c) a public sector award.

37M. Limitations on the making of awards

(1) The Commission must not make an enterprise award.

(2) The Commission must not make a modern State award covering any particular employers or employees unless the Commission has considered whether it should instead vary an existing modern State award to cover them.

(3) The Commission must not make a modern State award so that an organisation or association becomes covered by the award, unless the organisation or association is entitled to represent the industrial interests of one or more employers or employees who will be covered by the award.

37N. Enforcement of awards

The provisions of an award are enforceable under section 83.

Subdivision 2 — Award modernisation and review of enterprise awards

37O. Constitution of Commission for various functions

(1) The constitution of the Commission for the purposes of the provisions specified in this section is as follows —

   (a) for the purposes of sections 37P, 37Q, 37R, 37S, 37T and 37U Commission means the Commission in Full Session;
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(b) for the purposes of sections 37V, 37W and 37X

Commission means the Commission constituted by a commissioner.

(2) Despite subsection (1)(a), the Chief Commissioner may allocate work that comes within section 37R to one of the commissioners constituting the Commission in Full Session and the commissioner must carry out the allocated work.

37P. Commission to review and replace pre-modern State awards; decision of Commission final

(1) The Commission —

(a) must carry out a review of every pre-modern State award; and

(b) must make such modern State award or awards as it thinks necessary or expedient so that every pre-modern State award is replaced by one or more modern State awards; and

(c) if it thinks fit, may include provisions relating to the transition from the operation of the provisions of a replaced award to the operation of the provisions of the award that replaces it.

(2) Despite section 90, no appeal lies from a decision of the Commission under subsection (1)(b) or (c).

37Q. Additional award-making functions during the award modernisation process

The Commission may during the award modernisation process on its own motion —

(a) make such other modern State awards as it thinks necessary or expedient that do not replace any pre-modern State award; and

(b) make the miscellaneous modern State award.

37R. Consultation

(1) The Commission, in the manner and to the extent that it thinks fit, must consult with —

(a) UnionsWA, the Chamber and the Minister; and

(b) any other person, including an employer, employee, organisation or association, that it
considers to have an interest in any relevant matter.

(2) The consultation must be undertaken in relation to the performance of the Commission’s functions under sections 37P and 37Q, including the preparation of an exposure draft for the purposes of section 37S.

37S. Public comment on proposed modern State award

(1) The Commission must make available for public comment a draft (the exposure draft) of every modern State award that is proposed to be made under section 37P or 37Q.

(2) The Commission must —

(a) cause a notice giving a general description of the exposure draft to be published either in a newspaper circulating throughout the State or on an internet website maintained by the Commission; and

(b) include in the notice the following information —

(i) the places at which or means by which a copy of the exposure draft may be obtained;

(ii) a statement that written submissions on the exposure draft may be made to the Commission by any person within a specified period;

(iii) the address to which the submissions may be delivered or posted.

(3) The period specified under subsection (2)(b)(ii) must be not less than 30 days after the notice has first been published in accordance with subsection (2)(a).

(4) The Commission must have regard to any submission made in accordance with the notice.

37T. Form and content of modern State awards

Modern State awards must be made by the Commission in terms that —

(a) are simple to understand; and
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(b) avoid unnecessary duplication between modern State awards; and

(c) are in accordance with the State employment standards and otherwise provide a fair minimum safety net of terms and conditions for employees; and

(d) are economically sustainable; and

(e) facilitate the efficient and productive organisation and performance of work.

37U. Completion of award modernisation process

(1) The Commission must complete the award modernisation process by the end of —

(a) 12 months after the commencement of the amending Act section 84; or

(b) such other period after that day as is prescribed by regulations made by the Governor.

(2) When the award modernisation process has been completed the Commission must make an order —

(a) declaring the date of the completion; and

(b) cancelling all pre-modern State awards, and section 47 does not apply to the cancellation.

37V. Commission to review and may cancel enterprise awards

(1) The Commission must carry out a review of each enterprise award to determine whether this section applies to the award, that is to say whether —

(a) the award is obsolete or is no longer capable of operating; or

(b) there is no employee to whom the award applies; or

(c) all the employees covered by the award would, if the award were cancelled, be covered by a modern State award (other than the miscellaneous modern State award) that is appropriate for them.
(2) The reviews required to be carried out under this section must be carried out as soon as is practicable after the date referred to in section 37U(2).

(3) If it is satisfied that this section applies to an award the Commission must, subject to section 37W, by order cancel the award.

(4) The Commission must cause a copy of any order made under this section to be given to such persons as, in the opinion of the Commission, ought to have a copy.

37W. Prerequisites to cancellation

(1) The Commission must not cancel an enterprise award unless —
   (a) this section has been complied with; and
   (b) either —
       (i) the time for any person to lodge an objection in accordance with section 37X has elapsed without such an objection being lodged; or
       (ii) all objections so lodged have been disallowed.

(2) Before the cancellation order is made, the Commission must cause —
   (a) notice of the intention of the Commission to make the order to be published in the required manner; and
   (b) copies of the notice to be given to such persons as, in the opinion of the Commission, ought to have such notice.

37X. Objections to cancellation

(1) Any person may within 30 days —
   (a) after the day on which the notice referred to in section 37W(2)(a) is first published in the required manner; or
   (b) after being given a notice under section 37W(2)(b), lodge with the Commission an objection to the relevant order being made.
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(2) An objection may be lodged only on the ground that —

(a) the enterprise award provides for enterprise-specific terms and conditions of employment that will not be adequately provided for by a modern State award; or

(b) the cancellation and consequential application of a modern State award will adversely affect the ongoing viability or competitiveness of the enterprise carried on by the persons covered by the award.

(3) The Commission must consider any objection duly made and may either allow it or disallow it.

85. Part II Division 2A Subdivision 3 heading inserted
Before section 37 insert:

Subdivision 3 — Miscellaneous provisions about awards

86. Section 37 replaced
Delete section 37 and insert:

37. Area and scope of awards

(1) In this section —

award means —

(a) a pre-modern State award; and

(b) a public sector award; and

(c) an enterprise award.

(2) An award extends to and binds, that is to say covers —

(a) all employees employed in any calling mentioned in the award in the industry or industries to which the award applies; and

(b) all employers employing those employees, except as may be otherwise provided in the award.

(3) An award operates throughout the State except as may be otherwise provided in the award.
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(4) An award operates in the areas to which section 3(1) applies if —
   (a) that operation is consistent with section 3; and
   (b) the award is expressed to operate in those areas.

(5) Nothing in this Act affects an award provision in force immediately before the commencement of the amending Act section 86 by which it is expressed that the award, or a provision of the award, is to be in force for a specified length of time.

87. Section 38 amended

(1) Before section 38(1) insert:

(1A) In this section —

award means —
   (a) a pre-modern State award; and
   (b) a public sector award; and
   (c) an enterprise award.

(2) Delete section 38(1a).

(3) In section 38(1b) delete “subsections (1) and (1a)” and insert:

subsection (1)

88. Section 39 amended

(1) Delete section 39(1) and (2) and insert:

(1) An award comes into operation —
   (a) on the day on which it is made; or
   (b) on such day or days as the Commission fixes and specifies in the award.

(2) In section 39(4) delete “delivered.” and insert:

made.
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(3) After section 39(4) insert:

(5) The Commission does not have power under subsection (3) to give retrospective effect to a modern State award that is made during the award modernisation process.

89. Sections 39A to 39D inserted

After section 39 insert:

39A. Duration of operation

(1) In this section —

*award* means —

(a) a modern State award; and

(b) the following awards made after the commencement of the amending Act section 84 —

(i) a public sector award;

(ii) a pre-modern State award.

(2) An award must be expressed to remain in force until it is cancelled, suspended or replaced under this Act.

(3) An award must not be expressed in such a form of words that it has effect for a specified length of time.

39B. Power to cancel an award

(1) The Commission may, subject to section 39C, by order cancel an award.

(2) An application for the cancellation of an award under subsection (1) may be made by —

(a) an employer, organisation or association that is covered by the award; or

(b) an organisation or association that is entitled to represent the industrial interests of one or more employers or employees that are covered by the award.

(3) The Commission must cause a copy of any order made under this section to be given to such employers,
organisations and associations as in the opinion of the Commission are reasonably representative of the employers and employees covered by the award.

39C. Prerequisites to cancellation

(1) The Commission must not cancel an award unless —
   (a) this section has been complied with; and
   (b) either —
      (i) the time for any person to lodge an objection in accordance with section 39D has elapsed without such an objection being lodged; or
      (ii) all objections so lodged have been disallowed.

(2) Before the cancellation order is made, the Commission must cause —
   (a) notice of the intention of the Commission to make the order to be published in the required manner; and
   (b) copies of the notice to be given to such persons as, in the opinion of the Commission, ought to have such notice.

39D. Objections to cancellation

(1) Any person may —
   (a) within 30 days of the day on which the notice referred to in section 39C(2)(a) is first published in the required manner; or
   (b) within 30 days of being given a notice under section 39C(2)(b), lodge with the Commission an objection to the relevant order being made.

(2) The Commission must consider any objection duly made and may either allow it or disallow it.
90. Section 40 amended

(1) Delete section 40(2) and insert:

(2) An application to vary an award may be made by —

(a) an employer, organisation or association that is or would be covered by the award; or

(b) an organisation or association that is or would be entitled to represent the industrial interests of one or more employers or employees that are or would be covered by the award.

(2) After section 40(3) insert:

(4A) In subsection (3) —

award means any enterprise award and the following awards made before the commencement of the amending Act section 90 —

(a) a pre-modern State award;

(b) a public sector award.

91. Section 40AA inserted

After section 40 insert:

40AA. Limitations on the powers conferred by section 40

(1) The Commission must not vary a modern State award so that particular employers or employees stop being covered by the award unless the Commission is satisfied that they will instead become covered by another modern State award (other than the miscellaneous modern State award) that is appropriate for them.

(2) The Commission must not vary a modern State award, so that an organisation or association becomes covered by the award, unless the organisation or association is entitled to represent the industrial interests of one or more employers or employees who are or will be covered by the award.
(3) The Commission must not vary an award so that provision is made for a Board of Reference or other entity or person, apart from the Commission, to have any functions under the award of the kind referred to in section 48(6) deleted by the amending Act section 97.

92. Section 40A amended

(1) In section 40A(1)(b) delete “a named party to the award” and insert:

a relevant person in relation to the award

(2) After section 40A(1) insert:

(2A) In subsection (1)(b) —

relevant person in relation to the award means —

(a) a named party to the award; and

(b) if there is no such party, an employer covered by the award or organisation or association entitled to represent the industrial interests of one or more employers or employees covered by the award.

93. Section 40B deleted

Delete section 40B.

94. Part II Division 2A Subdivision 4 inserted

Before Part II Division 2B insert in numerical order:

Subdivision 4 — Provisions about modern State awards

40BA. Specification of award coverage

(1) A modern State award must, in accordance with this section, include provisions setting out the employers and employees that are covered by the award.

(2) A modern State award must be expressed to cover —

(a) specified employers; and

(b) specified employees of the employers covered by the award.
(3) For the purposes of subsection (2) —
   (a) employers may be specified —
       (i) by name; or
       (ii) by inclusion in a specified class or
            specified classes,
       or in both of those ways; and
   (b) employees must be specified by inclusion in a
        specified class or specified classes.

(4) Without limiting subsection (3), a class may be
    specified by reference to —
    (a) a particular industry or part of an industry; or
    (b) a particular kind of work.

(5) If an employer is specified by name in a modern State
    award, the scope of the award cannot be fixed by
    reference to any industry, or part of any industry
    carried on by that employer.

(6) A modern State award may be expressed to cover one
    or more specified organisations or associations in
    relation to all or specified employees or employers
    covered by the award, but only if the organisation or
    association is specified by name.

40BB. Who is bound

A modern State award extends to and binds an
employee and employer that the award covers, that is
to say an employee and employer expressly stated in
the award to be covered.

40BC. Area of operation

(1) A modern State award operates throughout the State
    except as may be otherwise provided in the award.

(2) A modern State award operates in the areas to which
    section 3(1) applies if —
    (a) that operation is consistent with section 3; and
    (b) the award is expressed to operate in those areas.
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40BD. Exclusion of employees not traditionally covered by
awards and similar employees

A modern State award must not be expressed to cover
classes of employees —
(a) who, because of the nature or seniority of their
role, have traditionally not been covered by
awards (whether made under laws of the
Commonwealth or the States); or
(b) who perform work that is not of a similar nature
to work that has traditionally been regulated by
such awards.

40BE. Employees and their employers under enterprise
awards or public sector awards to be excluded

(1) A modern State award must be expressed not to
cover —
(a) employees who are covered by an enterprise
award or a public sector award; or
(b) employers in relation to those employees.

(2) When a modern State award (other than the
miscellaneous modern State award) comes into
operation that covers —
(a) an employee; or
(b) an employer, organisation or association in
relation to an employee,

and replaces an existing pre-modern State award that
covers them, that existing award ceases to cover (and
can never again cover) the employee, or the employer,
organisation or association in relation to the employee.

95. Part II Division 2A Subdivision 5 inserted

Before Part II Division 2B insert in numerical order:

Subdivision 5 — 4 yearly reviews of awards

40BF. Term used: Commission

In this Subdivision —
Commission means the Commission in Full Session.
40BG. 4 yearly reviews of awards to be conducted

(1) The Commission must conduct a review of every award starting as soon as is practicable —

(a) after the fourth anniversary of the completion of the award modernisation process, that is the fourth anniversary of the date declared under section 37U(2)(a); and

(b) after the expiry of each 4 yearly interval after that fourth anniversary.

(2) In reviewing an award under this section the Commission must ensure that it —

(a) does not contain wages that are less than the minimum award wage as ordered by the Commission under section 50A; and

(b) does not contain any provision, or condition of employment, that is less favourable to an employee than a State employment standard; and

(c) does not contain provisions that discriminate against an employee on any ground on which discrimination in work is unlawful under the Equal Opportunity Act 1984; and

(d) is not obsolete or in need of updating or contain provisions that are obsolete or in need of updating; and

(e) provides a fair minimum safety net of terms and conditions for employees; and

(f) is economically sustainable and facilitates the efficient and productive organisation and performance of work; and

(g) subject to Schedule 6 clause 10, does not contain any provision of the kind referred to in section 48(6) deleted by the amending Act section 97.

(3) Each award must be reviewed in its own right but this does not prevent the review of 2 or more awards at the same time.
40BH. Powers exercisable on a 4 yearly review

(1) On a review under section 40BG the Commission may take any step mentioned in subsection (2) or determine that no step needs to be taken as a result of the review.

(2) The steps are —
   (a) to make one or more modern State awards or public sector awards;
   (b) to vary one or more awards, but only in conformity with any applicable statement of principles for the time being in force under section 50A(2);
   (c) to cancel one or more awards.

(3) The provisions of section 40AA apply for the purposes of this section in the same way as they apply for the purposes of section 40.

40BI. Notices required to be given

(1) In this section —
   parties concerned means such employers, organisations and associations respectively as, in the opinion of the Commission, are reasonably representative of employers and employees covered or proposed to be covered by the award.

(2) If the Commission proposes to make, vary or cancel an award under section 40BH it must not do so until it has —
   (a) given notice of the proposal to the parties concerned and to UnionsWA, the Chamber and the Minister; and
   (b) afforded them an opportunity to be heard in relation to the proposal.

(3) The Commission must cause a copy of an award or order made under section 40BH —
   (a) to be given to the parties concerned and to UnionsWA, the Chamber and the Minister; and
   (b) to be published in the required manner.
40BJ. Coming of award into operation

Section 39 applies to and in relation to an award or order made under section 40BH —

(a) as if the reference in section 39(3) to the date on which an application was lodged in the Commission were a reference to the date on which notice was first given under section 40BI(2); and

(b) with such other modifications as are necessary.

96. Section 46 amended

In section 46(1) after “application of” insert:

an industrial inspector or of

97. Section 48 deleted

Delete section 48.

98. Section 83 amended

After section 83(3) insert:

(4A) An application can only be made for the enforcement of a provision of an award if not less than 21 days have elapsed since the first day on which the award has been published under section 93(3) —

(a) in the Industrial Gazette; and

(b) either in a newspaper circulating throughout the State or on an internet website maintained by the Commission.

99. Section 96 amended

(1) In section 96(2)(b) delete “section 40B;” and insert:

section 40BG;

(2) Delete section 96(3)(c) and insert:

(c) to take a step mentioned in section 40BH(2),
Part 4 — Amendments about industrial agreements and enterprise orders

Division 1 — Industrial Relations Act 1979 amended

100. Act amended

This Division amends the Industrial Relations Act 1979.

101. Part II Division 2B heading replaced

Delete the heading to Part II Division 2B and insert:

Division 2B — Industrial agreements and enterprise orders

102. Section 40C amended

In section 40C insert in alphabetical order:

nominal expiry date of an industrial agreement or enterprise order means the date specified in the agreement or order as its nominal expiry date;

103. Section 41 amended

Delete section 41(6), (7) and (8).

104. Section 41A amended

Delete section 41A(1) and insert:

(1) The Commission must not under section 41 register an agreement as an industrial agreement unless the agreement —

(a) specifies a nominal expiry date that is no later than 4 years after the date on which the agreement will come into operation; and

(b) includes any provision specified in relation to that agreement by an order referred to in section 42G; and

(c) includes an estimate of the number of employees who will be bound by the agreement upon registration; and
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Division 1 Industrial Relations Act 1979 amended

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1. (d) makes provision for the procedures set out in section 48A(1); and
2. (e) complies with section 96B and the State employment standards; and
3. (f) is within the Commission’s jurisdiction as limited under sections 48B and 212.

105. Sections 41B to 41F inserted

After section 41A insert:

41B. Date of operation of industrial agreement

(1) An industrial agreement comes into operation —

(a) on the day on which it is registered as an industrial agreement; or

(b) if a later day is specified in the industrial agreement, on that day.

(2) An industrial agreement may give retrospective effect to the whole or any part of the industrial agreement.

(3) For the purposes of subsection (2), an industrial agreement or a provision of it has retrospective effect if and only if it has effect from a day earlier than the day on which the industrial agreement comes into operation.

41C. Term of industrial agreement

(1) In this section —

extended agreement means an industrial agreement that has reached its nominal expiry date.

(2) Despite an industrial agreement having reached its nominal expiry date, the industrial agreement continues in force in respect of all parties to the industrial agreement until —

(a) a new industrial agreement, or an award or enterprise order, in substitution for the extended agreement is made; or

(b) the extended agreement is terminated under section 41E.
(3) When a new industrial agreement is made and registered, or an award or enterprise order is made, in substitution for an extended agreement, the extended agreement is taken to be cancelled, except to the extent that the new industrial agreement, award or enterprise order saves the provisions of the extended agreement.

41D. Termination of industrial agreement before nominal expiry date

(1) If the termination of an industrial agreement before its nominal expiry date has been agreed to by all of the parties to the agreement, a party to the industrial agreement may apply to the Commission to terminate the industrial agreement.

(2) If an application is made under subsection (1), the Commission must terminate the industrial agreement if it is satisfied that all of the parties to the industrial agreement have agreed to the termination.

(3) The termination operates from the day specified in the decision to terminate the industrial agreement.

41E. Termination of industrial agreement after nominal expiry date

(1) On or after the nominal expiry date of an industrial agreement any of the parties to the industrial agreement may apply to the Commission to terminate the industrial agreement.

(2) If practicable, a copy of the application must be served on each party to the industrial agreement before the Commission determines the application.

(3) If an application is made under subsection (1), the Commission must terminate the agreement if —

(a) it is satisfied that it is not contrary to the public interest to do so; and

(b) it considers that it is appropriate to terminate the agreement taking into account all the circumstances including —

(i) any views of the parties; and

(ii) the circumstances of the parties and employees and other persons affected by the agreement.
(4) The termination operates from the day specified in the decision to terminate the industrial agreement.

41F. Enforcement of industrial agreements

The provisions of an industrial agreement are enforceable under section 83.

106. Section 42 amended

Delete section 42(8).

107. Section 42A amended

Delete section 42A(1) and insert:

(1) A person to whom a notice is given under section 42(1) may, within 21 days of receiving the notice (the prescribed period), give the initiating party written notice as to whether that person will, or will not, bargain for an industrial agreement.

108. Section 42I amended

After section 42I(4) insert:

(5) The Commission must not permit the intervention of a person in a matter before it under this section unless, in the opinion of the Commission —

(a) the person has a sufficient interest in the matter; and

(b) the intervention is necessary to enable determination of the matter.

(6) Subsection (5) does not limit the operation of section 30.

109. Section 42K amended

(1) In section 42K(2) delete “2 years” and insert:

3 years
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(2) After section 42K(2) insert:

(3A) The Commission cannot give retrospective effect to the whole or any part of an enterprise order.

(3) In section 42K(6) delete “or order” and insert:

or another enterprise order

110. Section 43 deleted
Delete section 43.

111. Section 97UC amended
Delete section 97UC(3)(a) and (b) and insert:

(a) the Electricity Corporations Act 2005 section 19(2); and

(b) the Port Authorities Act 1999 section 16(4a); and

(c) the Western Australian Land Authority Act 1992 section 11(5).

112. Section 97UF amended
In section 97UF(1)(b) delete “section 41(6).” and insert:

section 41C(2).

Division 2 — Consequential amendments to other Acts

113. Electricity Corporations Act 2005 amended
This section amends the Electricity Corporations Act 2005.

(2) Delete section 19(1) and insert:

(1) There are excluded from the operation of the Industrial Relations Act 1979 Part II Division 2B any matters
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1 dealt with by an instrument issued under section 21 except —
2 (a) rates of remuneration; and
3 (b) leave; and
4 (c) hours of duty.

114. Port Authorities Act 1999 amended

(1) This section amends the Port Authorities Act 1999.

(2) Delete section 16(4) and insert:

(4) There are excluded from the operation of the Industrial Relations Act 1979 Part II Division 2B any matters dealt with by an instrument issued under section 17 except —

(a) rates of remuneration; and
(b) leave; and
(c) hours of duty.

115. Western Australian Land Authority Act 1992 amended

(1) This section amends the Western Australian Land Authority Act 1992.

(2) Delete section 11(4) and insert:

(4) There are excluded from the operation of the Industrial Relations Act 1979 Part II Division 2B any matters dealt with by an instrument issued under section 12 except —

(a) rates of remuneration; and
(b) leave; and
(c) hours of duty.
Part 5 — Amendments about unfair dismissal

Division 1 — Industrial Relations Act 1979 amended

116. Act amended

This Division amends the Industrial Relations Act 1979.

117. Section 7 amended

In section 7(1) insert in alphabetical order:

dismissed has the meaning given in section 37E;
unfairly dismissed has the meaning given in section 37D;

118. Section 23 amended

Delete section 23(3)(h) and insert:

(h) on a claim of, or application under section 45A in respect of, unfair dismissal, order any remedy except a remedy that is authorised by section 37H(1).

119. Section 23A deleted

Delete section 23A.

120. Section 29 amended

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

(i) that the employee has been unfairly dismissed from employment; or

(2) Delete section 29(2) and (3).

121. Section 29AA amended

(1) Delete section 29AA(1), (2) and (3).
(2) Delete section 29AA(5) and insert:

(5) In this section —

**industrial instrument** means —

(a) an award; or
(b) an industrial agreement; or
(c) an enterprise order; or
(d) an employer-employee agreement;

**prescribed amount** means —

(a) $141 000; or
(b) the salary specified, or worked out in a manner specified, in regulations made by the Governor for the purposes of this section.

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

*Certain contractual benefits claims not to be determined*

122. Part II Division 2AA inserted

Before the heading to Part II Division 2A insert:

**Division 2AA — Unfair dismissal**

37B. When an employee is protected from unfair dismissal

(1) In this section —

**industrial instrument** means —

(a) an award; or
(b) an industrial agreement; or
(c) an enterprise order; or
(d) an employer-employee agreement;

**prescribed amount** means —

(a) $141 000; or
(b) the salary specified, or worked out in a manner specified, in regulations made by the Governor for the purposes of this section.
(2) An employee is protected from unfair dismissal for the purposes of section 37H at a time if, at that time —

(a) the employee has completed a period of employment with his or her employer of at least the minimum employment period as determined under section 37C; and

(b) one or both of the following apply —

(i) an industrial instrument applies to the employment of the employee;

(ii) the employee’s contract of employment provides for a salary that does not exceed the prescribed amount.

37C. Minimum employment period and period of employment

(1) The minimum employment period is —

(a) if the employer is not a small business employer within the meaning of subsection (4) — 6 months ending at the earlier of the following times —

(i) the time when the employee is given notice of dismissal;

(ii) immediately before the dismissal;

or

(b) if the employer is a small business employer within the meaning of subsection (4) — one year ending at that time.

(2) An employee’s period of employment with an employer at a particular time is the period of continuous service (as defined in section 116) the employee has completed with the employer at that time as an employee.

(3) However, a period of service as a casual employee does not count towards the employee’s period of employment unless —

(a) the employment as a casual employee was on a regular and systematic basis; and

(b) during the period of service as a casual employee, the employee had a reasonable expectation of continuing employment by the employer on a regular and systematic basis.
(4) An employer is a small business employer at a particular time if the employer employs fewer than 15 employees at that time.

(5) For the purpose of calculating the number of employees employed by the employer at a particular time —
   (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
   (b) a casual employee is not to be counted unless, at that time, that employee has been employed by the employer on a regular and systematic basis.

(6) To avoid doubt, in determining whether an employer is a small business employer at a particular time in relation to the dismissal of an employee, the employees that are to be counted include (subject to subsection (5)(b)) —
   (a) the employee who is being dismissed or whose employment is being terminated; and
   (b) any other employee of the employer who is also being dismissed or whose employment is also being terminated.

37D. What is unfair dismissal

(1) An employee has been unfairly dismissed if the Commission is satisfied that —
   (a) the employee has been dismissed; and
   (b) the dismissal was harsh, unjust or unreasonable; and
   (c) the dismissal was not a case of genuine redundancy within the meaning of this section.

(2) An employee’s dismissal was a case of genuine redundancy if —
   (a) the employee’s employer no longer required the job done by the employee to be done by anyone; and
   (b) the employer has complied with the requirements relating to redundancy set out in Part XI Division 11.
An employee’s dismissal was not a case of genuine redundancy if it would have been reasonable in all the circumstances for the employee to be redeployed within the employer’s business, activity, project or undertaking.

37E. What is dismissal

(1) An employee has been dismissed if —
   (a) the employee’s employment with his or her employer has been terminated at the employer’s initiative; or
   (b) the employee has resigned from his or her employment, but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer.

(2) However, an employee has not been dismissed if —
   (a) the employee was employed under a contract of employment for a specified period of time, for a specified task, or for the duration of a specified season, and the employment has terminated at the end of the period, on completion of the task, or at the end of the season; or
   (b) the employee was a person —
      (i) to whom a training contract registered under the Vocational Education and Training Act 1996 Part 7 Division 2 applied; and
      (ii) whose employment was for a specified period of time or was, for any reason, limited to the duration of the training contract,

and the employment has terminated at the end of the training contract.

(3) Subsection (2) does not apply to an employee employed under a contract of a kind referred to in subsection (2)(a) if a substantial purpose of the employment of the employee under a contract of that kind is, or was at the time of the employee’s employment, to avoid the employer’s obligations under this Division.
37F. Criteria for considering whether dismissal is harsh, unjust or unreasonable

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the Commission must take into account the following —

(a) whether there was a valid reason for the dismissal related to the employee’s capacity or conduct (including its effect on the safety and welfare of other employees);

(b) whether the employee was notified of that reason;

(c) whether the employee was given an opportunity to respond to any reason related to the capacity or conduct of the employee;

(d) any unreasonable refusal by the employer to allow the employee to have a support person present to assist at any discussions relating to dismissal;

(e) if the dismissal related to unsatisfactory performance by the employee — whether the employee had been warned about that unsatisfactory performance before the dismissal;

(f) the degree to which the size of the employer’s business, activity, project or undertaking would be likely to impact on the procedures followed in effecting the dismissal;

(g) the degree to which the absence of dedicated human resource management specialists or expertise in the employer’s business, activity, project or undertaking would be likely to impact on the procedures followed in effecting the dismissal;

(h) any other matters the Commission considers relevant.

37G. Claim of unfair dismissal

(1) A claim that an employee has been unfairly dismissed may be made by —

(a) a reference to the Commission under section 29; or
(b) an application to the Commission under section 45A(2).

(2) A reference or application referred to in subsection (1) in respect of a claim of unfair dismissal must be made —

(a) within 21 days after the dismissal took effect; or

(b) within such further period as the Commission allows under subsection (3).

(3) The Commission may allow a reference or application to be made out of time if the Commission considers that it would be unfair not to do so.

37H. When Commission may order remedy for unfair dismissal

(1) Subject to subsection (2), the Commission may order an employee’s reinstatement, or the payment of compensation to an employee, if —

(a) the Commission is satisfied that the employee is protected from unfair dismissal; and

(b) the employee has been unfairly dismissed.

(2) The Commission may make the order only if a claim that the employee has been unfairly dismissed has been made in accordance with section 37G.

(3) The Commission must not order the payment of compensation to the employee unless —

(a) the Commission is satisfied that reinstatement of the employee is impracticable; and

(b) the Commission considers an order for payment of compensation is appropriate in all of the circumstances of the case.

(4) Subject to subsection (5), the Commission must not determine a claim of unfair dismissal if the dismissed employee has lodged an application with Fair Work Australia for relief in respect of the termination of that employment.

(5) Despite subsection (4) the Commission may determine the claim if the application to Fair Work Australia is —

(a) withdrawn; or
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(b) rejected or dismissed on the ground that it is not within the jurisdiction of Fair Work Australia to determine the application.

37I. Remedy — reinstatement

(1) An order for an employee’s reinstatement must be an order that the employee’s employer at the time of the dismissal reinstate the employee by —

(a) reappointing the employee to the position in which the employee was employed immediately before the dismissal; or

(b) appointing the employee to another position on terms and conditions no less favourable than those on which the employee was employed immediately before the dismissal.

(2) If the Commission makes an order under subsection (1) and considers it appropriate to do so, the Commission may also make any order that the Commission considers appropriate to maintain the following —

(a) the continuity of the employee’s employment;

(b) the period of the employee’s continuous service with the employer.

(3) If the Commission makes an order under subsection (1) and considers it appropriate to do so, the Commission may also make any order that the Commission considers appropriate to cause the employer to pay to the employee an amount for the remuneration lost, or likely to have been lost, by the employee because of the dismissal.

(4) In determining an amount for the purposes of an order under subsection (3), the Commission must take into account —

(a) the amount of any remuneration earned by the employee from employment or other work during the period between the dismissal and the making of the order for reinstatement; and

(b) the amount of any remuneration reasonably likely to be so earned by the employee during the period between the making of the order for reinstatement and the actual reinstatement.
37J. Remedy — compensation

(1) An order for the payment of compensation to an employee must be an order that the employee’s employer at the time of the dismissal pay compensation to the employee in lieu of reinstatement.

(2) In determining an amount for the purposes of an order under subsection (1), the Commission must take into account all the circumstances of the case including —

(a) the effect of the order on the viability of the employer’s business, activity, project or undertaking; and

(b) the length of the employee’s service with the employer; and

(c) the remuneration that the employee would have received, or would have been likely to receive, if the employee had not been dismissed; and

(d) the efforts (if any) of the employee to mitigate the loss suffered by the employee because of the dismissal; and

(e) the amount of any remuneration earned by the employee from employment or other work during the period between the dismissal and the making of the order for compensation; and

(f) the amount of any remuneration reasonably likely to be so earned by the employee during the period between the making of the order for compensation and the actual compensation; and

(g) any other matter that the Commission considers relevant.

(3) If the Commission is satisfied that misconduct of an employee contributed to the employer’s decision to dismiss the employee, the Commission must reduce the amount it would otherwise order under subsection (1) by an appropriate amount on account of the misconduct.

(4) The amount ordered by the Commission to be paid to an employee under subsection (1) must not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the employee by the manner of the employee’s dismissal.
The amount of compensation ordered to be paid must not exceed 6 months’ remuneration of the employee.

For the purposes of subsection (5) the Commission may calculate the amount on the basis of an average rate received by the employee during any relevant period of employment.

To avoid doubt, an order by the Commission under section 371(3) or 37J(1) may permit the employer concerned to pay the amount required in instalments specified in the order.

An order under section 371 or 37J may require that it be complied with within a specified time.

The Commission may make any ancillary or incidental order that the Commission considers necessary for giving effect to an order under section 371 or 37J.

In section 83B(1) delete “section 23A” and insert:

Part II Division 2AA

In section 83B(3):

(a) delete “section 23A(3) or (4),” and insert:

section 371(1),

(b) in paragraph (a)(ii) delete “orders, made under section 23A” and insert:

orders

In section 83B(4) delete “under section 23A(5), (6) or (12),” and insert:

under section 371(2) or (3), 37J(1) or 37K(3),
1. In section 83B(5)(b) delete “under section 23A; and” and insert:

under section 371(1); and

2. Delete section 83B(9) and insert:

3. In deciding an amount for the purposes of making an

order under subsection (3)(a)(ii), the industrial

magistrate’s court must have regard to the matters

referred to in section 37J(2).

124. Section 96 amended

In section 96(3)(a) delete “section 23A; and” and insert:

Part II Division 2AA; and

125. Section 113 amended

In section 113(1)(ba) delete “harsh, oppressive or”.

Division 2 — Consequential amendments to other Acts


(1) This section amends the Mines Safety and Inspection Act 1994.

(2) In section 68D(3):

(a) delete “section 23A(3), (4) and (5)(a) of the Industrial

Relations Act 1979” and insert:

the Industrial Relations Act 1979 section 371(1) and (2)

(b) delete “section 23A of that Act” and insert:

Part II Division 2AA of that Act

127. Occupational Safety and Health Act 1984 amended

(1) This section amends the Occupational Safety and Health

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(2) In section 35D(3):
(a) delete “section 23A(3), (4) and (5)(a) of the Industrial Relations Act 1979” and insert:

the Industrial Relations Act 1979 section 371(1) and (2)

(b) delete “section 23A of that Act” and insert:

Part II Division 2AA of that Act

128. Public Sector Management Act 1994 amended
(1) This section amends the Public Sector Management Act 1994.
(2) In section 101 delete “section 23A(4) of the Industrial Relations Act 1979,” and insert:

the Industrial Relations Act 1979 section 37J(5),
Part 6 — Amendments about keeping of, access to, employee records, and pay slips

129. Act amended

This Part amends the Industrial Relations Act 1979.

130. Section 49D amended

(1) Delete section 49D(1).

(2) In section 49D(2):

(a) delete “ensure” and insert:

ensure, in respect of each employee,

(b) after paragraph (a) insert:

(ba) the employer’s name and, if any, the employer’s Australian Business Number; and

(c) after paragraph (d)(i) insert:

(iia) if the employee was on call, as defined by section 124(8), the times during which the employee was on call and the times during which the employee undertook a duty of employment other than being on call; and

(d) in paragraph (e)(ii) delete “the industrial instrument; and” and insert:

an applicable industrial instrument or State employment standard; and

(e) after paragraph (g) insert:

(ha) the details of any of the following that the employee is entitled to be paid —

(i) an incentive-based payment;

(ii) a bonus;
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(iii) a loading;
(iv) a penalty rate;
(v) another monetary allowance or separately identifiable entitlement;

and

(f) in paragraph (i) delete “the industrial instrument.” and insert:

an applicable industrial instrument or State employment standard.

(3) After section 49D(2) insert:

(3A) An employer who enters into an agreement under section 120(2) must ensure that —

(a) a copy of the agreement is kept; and
(b) details are recorded of —

(i) the benefit in lieu of the amount of leave forgone, including, where applicable, the rate of payment for the benefit; and
(ii) when the benefit in lieu was given to the employee.

(3B) An employer must ensure that there is kept a copy of —

(a) each written authorisation of an employee under section 132(1)(a) and each written withdrawal or variation, if any, of the authorisation; and

(b) each written authorisation of —

(i) an employee under section 133(5)(a); or
(ii) a parent or guardian of an employee under section 133(5)(b);

and

(c) each agreement entered into by the employer and an employee with a disability, if the provisions of the Supported Wage System or
supported wage provisions require the agreement to be kept; and

(d) any document relating to the determination of a wage for an employee with a disability that the provisions of the Supported Wage System or supported wage provisions require to be kept.

(3C) An employer must ensure, in relation to the termination of an employee’s employment, that details are recorded of —

(a) whether the employment was terminated by consent, by notice, summarily, or in some other manner (which must be specified); and

(b) the name of the person who acted to terminate the employment.

(4) In section 49D(4) in the definition of industrial instrument delete paragraphs (a) and (b) and insert:

(a) an award; or

(b) an order made by the Commission; or

131. Section 49EA inserted

After section 49D insert:

49EA. Employer obligations in relation to pay slips

(1) An employer must provide a pay slip to each of its employees within one working day, being a day that is not a Saturday, Sunday or a public holiday, of paying an amount to the employee in relation to the performance of work.

(2) The pay slip must be either given in paper form or made available in electronic form, as selected by the employer, and include the following information —

(a) the employer’s name and, if any, the employer’s Australian Business Number;

(b) the employee’s name;

(c) the period to which the pay slip relates (the start and finish dates);
(d) the date on which the payment to which the pay slip relates was made;
(e) the gross and net amounts of the payment;
(f) any amount paid to the employee that is for results, a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement;
(g) if an amount is deducted from the gross amount of the payment —
   (i) the name of the person to whom or which the deduction was paid; and
   (ii) if the deduction was paid into a fund or account, the name, or the name and number, of the fund or account; and
   (iii) the purpose of the deduction;
(h) if the employee is paid at an hourly rate of pay —
   (i) the rate of pay for the employee’s ordinary hours; and
   (ii) the number of hours in that period for which the employee was employed at that rate; and
   (iii) the amount of the payment made at that rate;
(i) if the employee is paid at a weekly or an annual rate of pay, the rate as at the latest date to which the payment relates;
(j) any other information prescribed by the regulations.

132. Section 49F replaced
Delete section 49F and insert:

49F. Enforcement of this Division
(1) A contravention of section 49D(2), (2A), (2B) or (2C) or (3), 49EA(1) or (2) or 49E(1) is not an offence but those provisions are civil penalty provisions for the purposes of section 83E.
(2) The requirements of this Division are in addition to, and do not limit, the requirements under the *Children and Community Services Act 2004* sections 195A(1), (2) and (3) and 195B(2).
Part 7 — *Children and Community Services Act 2004* amended

133. **Act amended**

This Part amends the *Children and Community Services Act 2004*.

134. **Section 192A inserted**

After section 191 insert:

192A. **Children not to do unpaid trial work**

(1) A person must not require a child to carry out work —

(a) for which there will be either no payment or other reward, or a nominal payment or other reward only; and

(b) for the purpose of becoming employed by the person to carry out work for which the child would receive payment or other reward.

Penalty: a fine of $24 000.

(2) Subsection (1) does not apply if the work carried out by a child —

(a) is included in the educational programme (as defined in the *School Education Act 1999* section 4) applicable to the child and is consistent with the terms and conditions of the programme; or

(b) is included in an approved VET course (as defined in the *Vocational Education and Training Act 1996* section 5(1)) or a university course applicable to the child and is consistent with the terms and conditions of the course; or

(c) is arranged by an entity that provides government funded specialist employment services for persons with disabilities and the child is eligible to use those services.

(3) Subsection (1) does not apply in other circumstances that are prescribed.

(4) It is a defence to a charge under subsection (1) for a person to prove that the person believed on reasonable
grounds, at the time the offence is alleged to have been
committed, that the person carrying out the work had
reached 18 years of age.

135. Sections 195A and 195B inserted

After section 194 insert:

195A. Keeping of employment records for child employees

(1) A person who employs a child must ensure that details are recorded of —
   (a) the child’s full name, address and (if any) the child’s home and mobile telephone numbers; and
   (b) the address of each place where the child works; and
   (c) the name, address and (if any) the home, business and mobile telephone numbers of a parent of the child; and
   (d) whether the child works on a full-time or part-time basis; and
   (e) whether the child’s employment is permanent, temporary or casual; and
   (f) the nature of the work the child is required to carry out.

(2) A person who employs a child must ensure that each record under subsection (1) is kept for not less than 7 years after it is made.

(3) A person who employs a child must ensure that a copy of the following is made and kept for not less than 7 years after it is made —
   (a) each authorisation under section 191(3)(b)(ii) in relation to the child;
   (b) each permission under section 191(4) in relation to the child.

195B. Access to employment records for child employees

(1) In this section —
   employment record means a record under section 195A(1) or (3);
relevant person has the meaning given in the Industrial Relations Act 1979 section 49E(4) and, in the case of an employee who has not reached 15 years of age, includes a parent of that employee.

(2) An employer, on written request by a relevant person, must —

(a) produce to the person the employment records relating to an employee; and
(b) let the person inspect the employment records.

(3) The duty placed on an employer by subsection (2) —

(a) continues so long as the records are required to be kept under section 195A(2) or (3); and
(b) is not affected by the fact that the employee is no longer employed by the employer; and
(c) includes the further duties —

(i) to let the relevant person enter premises of the employer for the purpose of inspecting the records; and
(ii) to let the relevant person take copies of or extracts from the records;

and

(d) must be complied with not later than —

(i) at the end of the next pay period after the request is received; or
(ii) the seventh day after the day on which the request was made to the employer.

136. Section 195 replaced

Delete section 195 and insert:

195. Powers of authorised officers

(1) In this section —

authorised officer means —

(a) an officer designated to be an authorised officer under section 25 for the purposes of this Part; or
(b) an industrial inspector;
compliance purposes means investigating whether a
provision of this Part has been, or is being, complied
with.

(2) An authorised officer has, for compliance purposes, the
functions and powers conferred on an industrial
inspector under the Industrial Relations Act 1979
section 98.

(3) For the purposes of the Industrial Relations Act 1979
section 98(3), an industrial location includes a place in
which a child is employed, or in which the authorised
officer believes on reasonable grounds a child is, or
may in the future be, employed.

(4) A person must not —
   (a) without reasonable excuse, fail to comply with
       a requirement of an authorised officer made for
       compliance purposes; or
   (b) obstruct an authorised officer in the
       performance of the officer’s functions; or
   (c) in purporting to comply with a requirement of
       an authorised officer made for compliance
       purposes, give an answer that the person knows
       is false or misleading.

137. Section 196 amended

In section 196(1)(b) delete “193(5), 194A(3) or (4) or 195(5).”
and insert:

193(5) or 194A(3) or (4).

138. Section 197 inserted

At the end of Part 7 insert:

197. Enforcement of s. 195A, 195B and 195

(1) A contravention of section 195A(1), (2) or (3) or
195B(2) or 195(4) is not an offence but those
subsections are civil penalty provisions for the
purposes of the Industrial Relations Act 1979
section 83E.
(2) The requirements of sections 195A(1), (2) and (3) and 195B(2) are in addition to, and do not limit, the requirements under the *Industrial Relations Act 1979* Part II Division 2F.

(3) If in proceedings under the *Industrial Relations Act 1979* section 83E an industrial magistrate’s court is required to consider whether a contravention of section 195(4)(a) has occurred it may, as an alternative, determine that a contravention of section 195A(1), (2) or (3) has occurred, as is appropriate to the facts of the case.
Part 8 — Amendments about General Orders

139. Act amended

This Part amends the Industrial Relations Act 1979.

140. Section 7 amended

In section 7(1) insert in alphabetical order:

- **General Order** means an order made under Part II Division 3;
- **State Wage order** means a General Order made under section 50A(1);

141. Section 50A amended

(1) Delete section 50A(1) and (2) and insert:

(1) The Commission must before 1 September in each year on its own motion make a General Order (the **State Wage order**) dealing with the matters specified in subsection (2) and sections 50B and 51.

(2) In each State Wage order the Commission must set out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under this Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.

(2) In section 50A(3):

(a) delete “shall take into consideration —” and insert:

must take into consideration the following matters —

(b) in paragraph (a)(i) delete “that Western Australians have”;

(c) delete paragraph (d) and insert:

(d) to the extent that it is practicable, the capacity of employers as a whole to whom the order
relates to bear the costs of increased wages,
  salaries, allowances and other remuneration;

(d) in paragraph (e) delete “Western Australian”;

(e) delete paragraph (f) and insert:

(f) the most recent national minimum wage order
  made under an annual wage review under the
  Fair Work Act 2009 (Commonwealth);

(3) Delete section 50A(4).

(4) In section 50A(5) delete “1 July” and insert:

1 September

(5) In section 50A(8) delete “section 27(1)(m).” and insert:

sections 27(1)(m) and 37A.

Note: The heading to amended section 50A is to read:

State Wage order

142. Section 50B amended

(1) Before section 50B(1) insert:

(1A) In each State Wage order, for the purposes of Part XI
  Division 3, the Commission must set —

(a) the minimum weekly rate of pay applicable
  under section 126 to employees who have
  reached 21 years of age and who are not
  apprentices or employees with a disability; and

(b) the minimum weekly rate or rates of pay
  applicable under section 128 to apprentices;
  and

(c) for the purposes of section 129(3), the
  minimum weekly amount payable to employees
  with a disability mentioned in section 129(3)(a)
  or (b).
(1B) A minimum weekly rate or amount set may differ from, or be the same as, a minimum weekly rate or amount set in the previous State Wage order.

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

subsection (1A)(b),

(2) In section 50B(4)(b)(i) delete “section 50A(1)(a)(i); or” and insert:

subsection (1A)(a); or

Note: The heading to amended section 50B is to read:

Setting minimum rates of pay

143. Section 50C inserted

After section 50B insert:

50C. Rates or amount of wages under awards

(1) In a State Wage order the Commission must —

(a) adjust rates of wages paid under awards, or order that the rates are to be the same as in the previous State Wage order; and

(b) adjust the minimum weekly amount paid under awards to employees with a disability mentioned in section 129(3)(b) in accordance with section 129(3), or order that the amount is to be the same as in the previous State Wage order.

(2) If the Commission adjusts a rate or amount of wages in a State Wage order, the Commission must, having regard to the statement of principles set out in accordance with section 50A(2) —

(a) vary each award affected by the exercise of jurisdiction under subsection (1) to ensure that the award is consistent with the order; and
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(b) if the Commission considers it appropriate to do so, make other consequential changes to specified awards.

(3) The Commission may, in relation to awards generally or specified awards, do any one or more of the following for the purposes of subsection (1) —

(a) adjust all rates of wages;
(b) adjust individual rates of wages;
(c) adjust a series of rates of wages;
(d) adjust specialised rates of wages.

(4) Without limiting the generality of sections 26(1) and 50A, in the exercise of jurisdiction under subsections (1) and (2) the Commission must ensure, to the extent possible, that there is consistency and equity in relation to the variation of awards.

144. Section 51A deleted
Delete section 51A.

145. Sections 51BA and 51BB replaced
Delete sections 51BA and 51BB and insert:

51BA. Submissions in respect of State Wage order

(1) The Commission must, for the purposes of making a State Wage order, ensure that all persons have a reasonable opportunity to make written submissions to the Commission for consideration in the making of the order.

(2) For the purposes of subsection (1) the Commission may set a time within which submissions may be made.

(3) The Commission must publish all submissions made to the Commission under this section for consideration in the making of the order.

(4) However, if a submission made by a person includes information that is claimed by the person to be confidential or commercially sensitive, and the Commission is satisfied that the information is
confidential or commercially sensitive, the
Commission —

(a) may decide not to publish the information; and

(b) may instead publish —

(i) a summary of the information which
contains sufficient detail to allow a
reasonable understanding of the
substance of the information (without
disclosing anything that is confidential
or commercially sensitive); or

(ii) if the Commission considers that it is
not practicable to prepare a summary
that would comply with
subparagraph (i) — a statement that
confidential or commercially sensitive
information in the submission has not
been published.

(5) The Commission must ensure that all persons have a
reasonable opportunity to make written comments to
the Commission, for consideration in the making of the
State Wage order, on the material published under
subsections (3) and (4).

(6) The publishing of material under subsections (3) and
(4) may be on the Commission’s website or by any
other means that the Commission considers
appropriate.

51BB. Hearings

(1) Except as provided in subsection (2), the Commission
is required to hold at least one hearing for the purposes
of making a General Order.

(2) The Commission may, but is not required to, hold one
or more hearings for the purposes of making a State
Wage order.

(3) The Commission must ensure that notice of each initial
hearing is —

(a) given by written notice to UnionsWA, the
Chamber, the Minister, and any other person
the Commission is of the opinion may be of
assistance; and
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(b) published in the required manner and in any other manner the Commission thinks fit.

(4) The Commission must not make a General Order in respect of which a hearing is held until it has afforded —

(a) each person given notice under subsection (3)(a); and

(b) any other employer, employee, or other person permitted by the Commission to be heard,

an opportunity to be heard in relation to the matter.
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146. Act amended

This Part amends the Industrial Relations Act 1979.

147. Section 7 amended

In section 7(1) insert in alphabetical order:

committee of management, in relation to an organisation, means the group or body of persons (however described) that manages the affairs of the organisation;

148. Section 55 amended

(1) After section 55(4) insert:

(5A) If the Commission in Full Session is satisfied that there has been substantial compliance with the authorisation requirements in the rules of the organisation and that any failures to comply with those requirements have been of a technical nature, the Commission in Full Session may determine that it is satisfied for the purposes of subsection (4)(a).

(2) In section 55(5):

(a) delete “whose rules” and insert: has rules

(b) delete “enable it” and insert: enabling it

149. Section 57 amended

In section 57(2) delete “The regulations” and insert:

Regulations made by the Chief Commissioner under section 113
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150. Section 58 amended

1 After section 58(3) insert:

2 (4) Before registering the rules of an organisation, the Registrar may, with the consent of the organisation, correct a typographical, clerical or formal error in the rules.

3 (5) Subsection (4) does not apply to rules of the organisation that relate to its name, qualifications of persons for membership, or a matter referred to in section 71(5).

151. Section 62 replaced

1 Delete section 62 and insert:

2 62. Alteration of registered rules

3 (1) In this section —

4 ordinary alteration to the rules of an organisation means a proposed alteration to the rules of the organisation other than a prescribed alteration;

5 prescribed alteration to the rules of an organisation means a proposed alteration to the rules of the organisation that relates to its name, qualifications of persons for membership, or a matter referred to in section 71(5).

6 (2) After the registration of the rules of an organisation in accordance with section 58(1), an alteration to those rules by the organisation is not effective unless and until the Registrar has given to the organisation a certificate that the alteration has been registered.

7 (3) An organisation seeking an alteration to its rules must lodge the prescribed form of application in the office of the Registrar.

8 (4) If an application for an ordinary alteration to the rules of an organisation has been lodged with the Registrar, the Registrar may, with the consent of the organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.
(5) The Registrar must not register a prescribed alteration to the rules of an organisation unless authorised to do so by the Commission in Full Session.

(6) If an organisation has lodged an application for a prescribed alteration to its rules (the application), the Registrar must publish in the required manner —

(a) a notice of the application; and

(b) a copy of the proposed alteration; and

(c) notice that any person who objects to the proposed alteration and who, having given notice of that objection within the time and in the manner prescribed, satisfies the Commission in Full Session the person has a sufficient interest in the matter, may appear and be heard in objection to the application.

(7) The application is not to be listed for hearing before the Commission in Full Session until after the expiration of 30 days from the day on which the matters referred to in subsection (6) are first published.

(8) The Commission in Full Session must refuse the application unless it is satisfied that —

(a) the application has been authorised in accordance with the rules of the organisation; and

(b) reasonable steps have been taken to adequately inform the members —

(i) of the proposed alteration and the reasons for it; and

(ii) that the members or any of them may object to the proposed alteration by forwarding a written objection to the Registrar,

and, having regard to the structure of the organisation, and any other relevant circumstance, the members have been afforded a reasonable opportunity to object to the proposed alteration; and

(c) less than 5% of the members of the organisation has objected to the proposed alteration or a majority of the members who voted in a ballot conducted in a manner
approved by the Registrar has authorised or approved the proposed alteration.

(9) If the Commission in Full Session is satisfied that there has been substantial compliance with the authorisation requirements in the rules of the organisation and that any failures to comply with those requirements have been of a technical nature, the Commission in Full Session may determine that it is satisfied for the purposes of subsection (8)(a).

(10) If the proposed alteration is or includes an alteration to the qualifications for membership to include persons not currently eligible to be members of the organisation and another registered organisation has rules relating to membership enabling it to enrol as a member some or all of those persons, the Commission in Full Session must refuse the application unless it is satisfied that there is good reason, consistent with the object prescribed in section 6, to authorise the registration of the alteration.

(11) In the case of an ordinary alteration to the rules of an organisation, the Registrar may register the alteration if the Registrar is satisfied that the application for the alteration has been authorised in accordance with the rules of the organisation.

(12) If the Registrar is satisfied that there has been substantial compliance with the authorisation requirements in the rules of the organisation and that any failures to comply with those requirements have been of a technical nature, the Registrar may determine that he or she is satisfied for the purposes of subsection (11).

(13) Despite being satisfied as required in subsection (11), the Registrar may decline to register an ordinary alteration to the rules of an organisation unless the Registrar is satisfied that —

(a) reasonable steps have been taken to adequately inform the members —

(i) of the proposed alteration and the reasons for it; and

(ii) that the members or any of them may object to the proposed alteration by
forwarding a written objection to the Registrar, and, having regard to the structure of the organisation, and any other relevant circumstance, the members have been afforded a reasonable opportunity to object to the proposed alteration; and

(b) less than 5% of the members of the organisation has objected to the proposed alteration or a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the proposed alteration.

(14) Subsections (11) to (13) do not affect the operation of section 71(8).

152. Section 66 amended

(1) In section 66(1) delete “President” and insert:

Chief Commissioner

(2) After section 66(1) insert:

(2A) The Chief Commissioner may refuse to deal with an application for an order or direction under this section made by a person referred to in subsection (1)(a) or (b) if the Chief Commissioner is not satisfied that the applicant has taken all reasonable steps to try to have the matter that is the subject of the application resolved within the organisation.

(2B) At any time after an application for an order or direction under this section is made, the Chief Commissioner may make any interim orders or give any interim directions that the Chief Commissioner considers appropriate and, in particular, orders or directions intended to further the resolution within the organisation of the matter that is the subject of the application.

(2C) An interim order or direction under subsection (2B) continues in force until the completion of the
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1 proceedings relating to the application unless it is
2 expressed to operate for a shorter period or is sooner
3 discharged.

(3) In section 66(2):
   (a) delete “President may make” and insert:
      Chief Commissioner may make
   (b) in paragraph (a) delete “President —” and insert:
      Chief Commissioner —
   (c) in paragraph (b) delete “President” and insert:
      Chief Commissioner
   (d) in paragraph (ca) delete “President” (each occurrence)
      and insert:
      Chief Commissioner
   (e) delete paragraphs (d), (e) and (f) and insert:
      (d) declare the true interpretation of any rule.

(4) Delete section 66(3).

(5) Delete section 66(7) and (8).

(6) Delete section 66(9) and insert:

(9) The power of the Commission under subsection (2)(d)
may, on a reference made under this section by the
Chief Commissioner, be exercised by the Commission
in Full Session.

Note: The heading to amended section 66 is to read:

Power of Chief Commissioner to deal with rules of organisation
153. **Section 67 amended**

In section 67(3) after “Act” insert:

> generally, and this Division and Divisions 5 to 7 in particular,

154. **Section 69 amended**

(1) Delete section 69(9) and insert:

> The secretary of the organisation must, within the time that may be required by the Registrar, lodge with the Registrar a copy of the register of members referred to in section 63.

(10A) The copy of the register referred to in subsection (9) must be —

> (a) held at the office of the person conducting the election; and

> (b) open for inspection during working hours at that office by any member of the organisation or candidate at the election.

(10B) Any member of the organisation or candidate at the election may make a copy of part or all of the copy of the register referred to in subsection (9).

(2) In section 69(10) delete “copy register” and insert:

> copy of the register

(3) After section 69(12) insert:

> A contravention of subsection (6) or (9) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.
155. Section 70A inserted

After section 70 insert:

70A. Ballot papers and other election material to be preserved

(1) If an election for an office in an organisation is conducted under section 69, the Electoral Commissioner appointed under the Electoral Act 1907 and the officer or other person by whom the election is conducted, must take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents relevant to the election are preserved and kept by the Western Australian Electoral Commission for one year after the completion of the election.

(2) Despite anything in the rules of an organisation, if an election for an office in the organisation is conducted by the organisation —

(a) the organisation; and

(b) every officer and employee of the organisation who is able to do so,

must take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents relevant to the election are preserved and kept at the office of the organisation for one year after the completion of the election.

(3) An organisation or an officer or employee of an organisation does not have to comply with subsection (2) if that organisation, officer or employee has a reasonable excuse for not doing so.

(4) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.
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156. Section 73 amended

(1) In section 73(12) delete “shall cancel the registration of an organisation if it is satisfied on the application of the Registrar” and insert:

must cancel the registration of an organisation if, on considering the matter on its own motion or on the application of the Registrar, it is satisfied

(2) Delete section 73(12a) and insert:

(13A) Subsection (1) does not apply in relation to the exercise of the power conferred by subsection (12) but, before cancelling the registration of an organisation under subsection (12)(a), the Commission in Full Session must give the organisation an opportunity to be heard.

157. Sections 74A and 74B inserted

At the end of Part II Division 4 insert:

74A. Dues payable to an organisation may be sued for summarily

(1) In this section —

dues means fines, penalties, subscriptions and levies.

(2) All dues payable to an organisation by a member under the rules of the organisation may, in so far as the dues are owing to the organisation for any period subsequent to its registration, be sued for and recovered in a court of competent jurisdiction as a debt due to the organisation.

(3) Every action for the recovery of dues must be commenced within 12 months from the time when the cause of action arose.

(4) In the case of an association, subsection (2) extends to dues payable by any organisation represented in the association.
74B. Invalidity of certain provisions in organisation rules

(1) Where the rules of an organisation contain a provision that authorises or purports to authorise the imposition of a penalty by way of a fine or levy or otherwise on an employee who complies with the employee’s contract of service the provision is invalid.

(2) An organisation or any person must not enforce or attempt to enforce a provision that is invalid by virtue of subsection (1).

(3) If any money is received in contravention of subsection (2) then, despite any proceedings under this Act in respect of the contravention, the money may be recovered in an industrial magistrate’s court —

   (a) by the person by whom or on whose behalf the money was paid; or

   (b) by an industrial inspector on behalf of that person,

as a debt due to that person.

158. Part II Division 5 heading amended

In the heading to Part II Division 5 after “organisations” insert:

and associations

159. Section 80 deleted and Part II Divisions 6 and 7 inserted

Delete section 80 and insert:

Division 6 — Conduct resulting in disqualification from holding office

80A. Terms used

In this Division —

Commission means the Commission in Full Session;
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court officer means the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country;

exclusion period has the meaning given by section 80C(1), (2) or (3), whichever is applicable;

person who holds office in an organisation includes —

(a) a person who holds office pursuant to a certificate issued under section 71(5); and
(b) a person who holds office pursuant to a scheme approved under section 80P(2);

prescribed person means a person to whom this Division applies under section 80B;

reduced exclusion period has the meaning given by section 80C(4);

relevant decision, in relation to a prescribed person, means —

(a) the conviction mentioned in section 80B(a) or (b); or
(b) the decision mentioned in section 80B(c); or
(c) the determination mentioned in section 80B(d); or
(d) the order mentioned in section 80B(e), because of which this Division applies to the person.

80B. Application of this Division to a person

This Division applies to a person if, before or after the commencement of the Labour Relations Legislation Amendment and Repeal Act 2012 section 159 —

(a) the person —

(i) has been convicted of an offence under a written law or a law of the Commonwealth, another State, a Territory, or another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more; or
(ii) has been convicted of, and sentenced to a term of imprisonment for, any other offence under a written law or a law of the Commonwealth, another State, a
Territory, or another country, involving
the intentional use of violence towards
another person, the intentional causing
of death or injury to another person or
the intentional damaging or destruction
of property;

or

(b) the person has been convicted of an offence
under section 78; or

(c) it has been decided under section 83 that a
contravention by the person of section 80O(4)
in relation to a direction under
section 80O(3)(a) is proved; or

(d) it has been determined under section 83E that
the person has contravened section 69(6) or (9),
70(1) or (2) or 70A(2); or

(e) an order has been made against the person
under section 77(2)(b), (c), (d) or (e).

80C. Exclusion periods and reduced exclusion periods

(1) For the purposes of this Division, the exclusion period
in relation to a person to whom this Division applies
because of a conviction mentioned in section 80B(a) is
the period of 5 years beginning —

(a) if the person does not serve a term of
imprisonment resulting from the conviction —
on the day on which the person was convicted;

(b) if the person serves a term of imprisonment
resulting from the conviction — on the day on
which the person is released from prison.

(2) For the purposes of this Division, the exclusion period
in relation to a person to whom this Division applies
because of a conviction mentioned in section 80B(b) is
the period of 5 years beginning on the day on which the
person was convicted.

(3) For the purposes of this Division, the exclusion period
in relation to a person to whom this Division applies
because of a decision, determination or order
mentioned in section 80B(c), (d) or (e) is the period
of 5 years beginning on the day on which the decision,
determination or order was made.
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(4) For the purposes of this Division, a reduced exclusion period is a period specified by the Commission for the purposes of section 80E(2)(b) under section 80F(2)(b) or 80G(2)(b).

80D. Certificate of court or prison officer or Registrar is evidence of facts

(1) A certificate purporting to be signed by a court officer stating that a person was convicted by the court of a specified offence on a specified day is, for the purpose of an application made under section 80E, 80F or 80G, evidence that the person was convicted of the offence on that day.

(2) A certificate purporting to be signed by a court officer stating that a person was acquitted by the court of a specified offence, or that a specified charge against the person was dismissed by the court, is, for the purpose of an application made under section 80E, 80F or 80G, evidence of the facts stated in the certificate.

(3) A certificate purporting to be signed by the officer in charge of a prison stating that a person was released from the prison on a specified day is, for the purpose of an application made under section 80E, 80F or 80G, evidence that the person was released from the prison on that day.

(4) A certificate purporting to be signed by a court officer stating that the sentence of a person who was convicted of a specified offence has been suspended for a specified period is, for the purpose of an application made under section 80E, 80F or 80G, evidence that the sentence was suspended for that period.

(5) A certificate purporting to be signed by the clerk of an industrial magistrate’s court stating the outcome of proceedings under section 83D or 83E is evidence of the facts stated in the certificate.

(6) A certificate purporting to be signed by the Registrar stating the outcome of proceedings under section 77 or 83 is evidence of the facts stated in the certificate.
80E. Certain persons disqualified from holding office in organisations

(1) A prescribed person is not eligible —
(a) to be a candidate during the exclusion period for an election to an office in an organisation; or
(b) to be elected or appointed during the exclusion period to an office in an organisation.

(2) Subsection (1) does not apply if, on an application made by the prescribed person under section 80F or 80G in relation to the relevant decision —
(a) the person was granted leave to hold office in organisations; or
(b) the person was refused leave to hold office in organisations but, under section 80F(2)(b) or 80G(2)(b), the Commission specified a reduced exclusion period, and that period has elapsed.

(3) If a person who holds an office in an organisation becomes a prescribed person, the person ceases to hold the office at the end of the period of 28 days beginning on the day on which the relevant decision was made unless, within the period, the person makes an application to the Commission under section 80F or 80G.

(4) If a person who holds an office in an organisation makes an application to the Commission under section 80F or 80G and the application is not determined —
(a) except in a case to which paragraph (b) applies — within the period of 3 months after the date of the application; or
(b) if the Commission, on application by the person, has extended the period — within the extended period,

the person ceases to hold the office at the end of the period of 3 months or the extended period, as the case may be.
(5) The Commission must not give an extension under subsection (4)(b) unless —
(a) the application for the extension is made before the end of the period of 3 months referred to in subsection (4)(a); or
(b) if the Commission has previously given an extension under subsection (4)(b) — the application for the further extension is made before the end of the extended period.

(6) An organisation, a member of an organisation or the Registrar may apply to the Commission for a declaration whether, because of the operation of this section or section 80F or 80G —
(a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the organisation; or
(b) a person has ceased to hold an office in the organisation.

(7) If on an application made by a prescribed person under section 80F or 80G in relation to the relevant decision leave is granted to the person to hold office in organisations, that leave does not affect the operation of this section or section 80F or 80G in relation to another conviction, decision, determination or order of a kind mentioned in section 80B.

80F. Application for leave to hold office in organisations by prospective candidate for office

(1) A prescribed person who wants —
(a) to be a candidate during the exclusion period for an election to an office in an organisation; or
(b) to be elected or appointed during the exclusion period to an office in an organisation,
may, subject to subsection (4), apply to the Commission for leave to hold office in organisations.

(2) The Commission may —
(a) grant the person leave to hold office in organisations; or
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(b) refuse the person leave to hold office in
organisations but specify, for the purposes of
section 80E(2)(b), a reduced exclusion period
of less than the 5 years referred to in
section 80C(1), (2) or (3); or

(c) refuse the person leave to hold office in
organisations.

(3) If a person —
(a) holds an office in an organisation (the current
office); and
(b) becomes a prescribed person; and
(c) on an application made under subsection (1) in
relation to the relevant decision, is, under
subsection (2)(b) or (c), refused leave to hold
office in organisations,

the person ceases to hold the current office.

(4) A prescribed person is not entitled to make an
application under this section in relation to the relevant
decision if the person has previously made an
application under this section or section 80G in relation
to the relevant decision.

80G. Application for leave to hold office in organisations
by office holder

(1) If a person who holds an office in an organisation (the
current office) becomes a prescribed person, the
person may, subject to subsection (4), within the period
of 28 days beginning on the day on which the relevant
decision was made, apply to the Commission for leave
to hold office in organisations.

(2) The Commission may —
(a) grant the person leave to hold office in
organisations; or
(b) refuse the person leave to hold office in
organisations but specify, for the purposes of
section 80E(2)(b), a reduced exclusion period
of less than the 5 years referred to in
section 80C(1), (2) or (3); or
(c) refuse the person leave to hold office in
organisations.
(3) If the person, is, under subsection (2)(b) or (c), refused leave to hold office in organisations, the person ceases to hold the current office.

(4) A prescribed person is not entitled to make an application under this section in relation to the relevant decision if the person has previously made an application under this section or section 80F in relation to the relevant decision.

80H. Commission to have regard to certain matters

For the purposes of exercising the power under section 80F or 80G to grant or refuse leave to a prescribed person to hold office in organisations, the Commission must have regard to —

(a) the nature of the relevant decision; and

(b) the circumstances of, and the nature of the person’s involvement in, the conduct to which the relevant decision related; and

(c) the general character of the person; and

(d) the fitness of the person to be involved in the management of organisations, having regard to the making of the relevant decision; and

(e) any other matter that, in the Commission’s opinion, is relevant.

80I. Action by Commission

(1) The Commission may, despite anything in the rules of any organisation concerned, make any order that it considers appropriate to give effect to a declaration made under section 80E(6).

(2) If an application is made to the Commission under section 80E(6) —

(a) the person whose eligibility, or whose holding of office, is in question must be given an opportunity of being heard by the Commission; and

(b) if the application is made otherwise than by the organisation concerned — the organisation must be given an opportunity of being heard by the Commission.
(3) If an application is made to the Commission under section 80F or 80G, the organisation concerned must be given an opportunity of being heard by the Commission.

80J. Acting as an officer of an organisation when ineligible to do so

(1) In this section —

ineligible person means a person who —

(a) because of the operation of section 80E, 80F or 80G —

(i) is not eligible to be a candidate for election, or to be elected or appointed, to an office in an organisation; or

(ii) has ceased to hold an office in an organisation;

and

(b) has not been granted leave under section 80F or 80G to hold office in organisations.

(2) An ineligible person must not perform or attempt to perform the functions of an office in an organisation.

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

Division 7 — Validating provisions for organisations and associations

80K. Terms used

In this Division —

collective body of an organisation means the committee of management or a conference, council, committee, panel or other body of or within the organisation;

invalidity or nullity relating to an organisation includes but is not limited to any invalidity or nullity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that —

(a) a relevant person has not been elected or duly elected; or
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(b) a relevant person has purported to be elected by an election that was a nullity; or
(c) a relevant person was not entitled to be elected or to hold office; or
(d) a relevant person was not a member of the organisation; or
(e) a relevant person was elected or purported to be elected, in a case where one or more of the persons who took part in the election or the purported election was or were not entitled to do so or was or were not members of the organisation; or
(f) persons who were not entitled to do so, or were not members of the organisation, took part in the making or purported making or the alteration or purported alteration of the rules of an organisation or branch, as officers or voters or otherwise;

relevant person means —

(a) a member, or each of 2 or more of the members, of a collective body of the organisation; or
(b) one of the persons, or each of 2 or more of the persons, purporting to act as the members of a collective body of the organisation; or
(c) each of 2 or more persons, holding or purporting to hold an office in the organisation.

80L. Validation of certain acts done in good faith

(1) Subject to this section and section 80N, all acts done in good faith by a collective body of an organisation, or by persons purporting to act as a collective body of an organisation, are valid despite any invalidity or nullity that may later be discovered in —

(a) the election of the collective body, any member of the collective body or the persons or any of the persons purporting to act as the collective body; or

(b) the making or alteration of a rule of the organisation.

(2) Subject to this section and section 80N, all acts done in good faith by a person holding or purporting to hold an
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office in an organisation are valid despite any invalidity or nullity that may later be discovered in —

(a) the election of the person; or

(b) the making or alteration of a rule of the organisation.

(3) For the purposes of this section —

(a) a person is not to be treated as purporting to act as a member of a collective body of an organisation or as the holder of an office in an organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the organisation as being, a member or the holder of the office; and

(b) an act is to be treated as done in good faith until the contrary is proved; and

(c) a person who has purported to be a member of a collective body of an organisation or branch is to be treated as having done so in good faith until the contrary is proved; and

(d) knowledge of facts from which an invalidity or nullity arises is not of itself to be treated as knowledge that the invalidity or nullity exists; and

(e) an invalidity or nullity in an election or in the making or alteration of a rule to which this section applies is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity or nullity was known to a majority of the members of the committee of management of the organisation or to a majority of the persons purporting to act as that committee of management.

(4) This section applies —

(a) to an act whenever done (including an act done before the commencement of the Labour Relations Legislation Amendment and Repeal Act 2012 section 159); and

(b) to an act done in relation to an organisation before it became registered.
(5) Nothing in this section validates —
   (a) the expulsion or suspension of a member of an
       organisation; or
   (b) the imposition of a fine or any other penalty on
       a member of an organisation,

that would not have been valid if this section had not
been enacted.

(6) Nothing in this section affects the operation of
section 80O.

80M. Validation of certain acts after 4 years

(1) Subject to this section and section 80N, after the end
of 4 years from —
   (a) the doing of an act —
      (i) by, or by persons purporting to act as, a
          collective body of an organisation and
          purporting to exercise power conferred
          by or under the rules of the
          organisation; or
      (ii) by a person holding or purporting to
           hold an office in an organisation and
           purporting to exercise power conferred
           by or under the rules of the
           organisation;
   or
   (b) the election or purported election to an office in
       an organisation; or
   (c) the making or purported making, or the
       alteration or purported alteration, of a rule of an
       organisation,

the act, election or purported election, or the making or
purported making or alteration or purported alteration
of the rule, is taken to have been done in compliance
with the rules of the organisation.

(2) The operation of this section does not affect the
   validity or operation of —
   (a) an order, judgment, decree, declaration,
       direction, verdict, sentence, decision or similar
       judicial act of any court; or
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(b) an order, declaration, direction or decision of the Commission,

made before the end of the 4 years referred to in subsection (1).

(3) This section extends to an act, election or purported election and to the making or purported making or alteration or purported alteration of a rule —

(a) done or occurring before the commencement of the Labour Relations Legislation Amendment and Repeal Act 2012 section 159; or

(b) done or occurring in relation to an organisation before it became registered.

80N. Order affecting application of section 80L or 80M

(1) In this section —

act includes an election or purported election, and the making or purported making or alteration or purported alteration of a rule.

(2) If, on an application for an order under this section, the Commission is satisfied that the application of section 80L or 80M in relation to an act would do substantial injustice, having regard to the interests of —

(a) the organisation; or

(b) any member or creditor of the organisation; or

(c) any person having dealings with the organisation,

the Commission must, by order, declare accordingly.

(3) If a declaration is made under subsection (2), section 80L or 80M, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.

(4) The Commission may make an order under subsection (2) on the application of the organisation, a member of the organisation or any other person having a sufficient interest in relation to the organisation.

(5) The Commission may determine —

(a) what notice, summons or rule to show cause is to be given to other persons of the intention to
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make an application or an order under this
section; and

(b) whether and how the notice, summons or rule
should be given or served and whether it should
be published in the required manner.

800. Commission may make orders in relation to
consequences of invalidity or nullity

(1) An organisation, a member of an organisation or any
other person having a sufficient interest in relation to
an organisation may apply to the Commission for a
determination of the question whether an invalidity or
nullity has occurred in —

(a) the management or administration of the
organisation; or

(b) an election in the organisation; or

(c) the making or alteration of the rules of the
organisation.

(2) An application under subsection (1) in relation to an
election in an organisation must be dealt with by the
Commission constituted by the Chief Commissioner.

(3) In the case of an application under subsection (1) in
relation to an election in an organisation, the
Commission may —

(a) give the Registrar or any other person any
direction in relation to ballot papers, envelopes,
lists, or other documents of any kind relating to
the election it considers necessary to enable it
to deal with the application; and

(b) make any interim order it considers appropriate
as to the holding of the office to which the
election relates.

(4) Any person to whom an order or direction given or
made under subsection (3) applies must comply with
the direction or order whether or not it is contrary to or
inconsistent with any rule of the organisation
concerned.

(5) On an application under subsection (1), the
Commission may make any declaration it considers
proper.
(6) Where, in a proceeding under subsection (1), the Commission finds that an invalidity or nullity of the kind referred to in that subsection has occurred, the Commission may make any order it considers appropriate —

(a) to rectify the invalidity or nullity or cause it to be rectified; or

(b) to negative, modify or cause to be modified the consequences in law of the invalidity or nullity; or

(c) to validate any act, matter or thing rendered invalid by or because of the invalidity or nullity.

(7) Where an order is made under subsection (6), the Commission may give such ancillary or consequential directions as it considers appropriate.

(8) The Commission must not make an order under subsection (6) unless it is satisfied that the order would not do substantial injustice to —

(a) the organisation; or

(b) any member or creditor of the organisation; or

(c) any person having dealings with the organisation.

(9) The Commission may determine —

(a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and

(b) whether and how the notice, summons or rule should be given or served and whether it should be published in the required manner.

(10) This section applies —

(a) to an invalidity or nullity whenever occurring (including an invalidity or nullity occurring before the commencement of the Labour Relations Legislation Amendment and Repeal Act 2012 section 159); and

(b) to an invalidity or nullity occurring in relation to an organisation before it became registered.
80P. Commission may make orders to enable effective functioning of organisation

(1) An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation (the *applicant*) may apply to the Commission for a declaration that —

(a) a part of the organisation, including a collective body of the organisation, has ceased to exist or function effectively and there are no effective means under the rules of the organisation by which it can be reconstituted or enabled to function effectively; or

(b) an office in the organisation is vacant and there are no effective means under the rules of the organisation to fill the office,

and the Commission may make a declaration accordingly.

(2) Where the Commission makes a declaration under subsection (1), it may, by order, approve a scheme submitted by the applicant for the taking of action by a collective body of the organisation, or by an officer or officers of the organisation —

(a) for the reconstitution of the collective body; or

(b) to enable the collective body to function effectively; or

(c) for the filling of the office.

(3) Where an order is made under this section, the Commission may give any ancillary or consequential directions it considers appropriate.

(4) The Commission must not make an order under this section unless it is satisfied that the order would not —

(a) do substantial injustice to the organisation or any member of the organisation; or

(b) allow an office to be filled by a prescribed person.

(5) The Commission may determine —

(a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
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(b) whether and how the notice, summons or rule should be given or served and whether it should be published in the required manner.

(6) An order or direction of the Commission under this section, and any action taken in accordance with the order or direction, has effect despite anything in the rules of the organisation.

(7) The Commission must not under this section approve a scheme involving provision for an election for an office unless the scheme provides for the election to be held by —

(a) a direct voting system; or

(b) a collegiate electoral system being, in the case of an office the duties of which are of a full-time nature, a one-tier collegiate electoral system.

160. Sections 109 and 110 deleted
Delete sections 109 and 110.

161. Section 112 deleted
Delete section 112.
Part 10 — Amendments about freedom of association

162. Act amended

This Part amends the Industrial Relations Act 1979.

163. Section 96B amended

Delete section 96B(2).

164. Section 96C amended

Before section 96C(1) insert:

(1A) In this section —

treat includes to threaten to treat.

165. Section 96D amended

(1) Delete section 96D(1) and insert:

(1A) In this section —

independent contractor means a person who is engaged under a contract for services;

industrial authority means a person or body having the capacity under an industrial law to seek compliance with that law or an industrial instrument;

industrial instrument means —

(a) an award; or

(b) an industrial agreement; or

(c) an employer-employee agreement; or

(d) an order made by the Commission; or

(e) a contract of employment;

industrial law means this Act, the Long Service Leave Act 1958 or the Children and Community Services Act 2004 Part 7;

principal of an independent contractor means the person who engages the independent contractor under a contract for services.

(1) A person must not —

(a) refuse to employ another person; or
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(b) refuse to engage another person under a contract for services,
on any ground that is forbidden for the purposes of this section.

(2) In section 96D(2):

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

employee; or

(b) after paragraph (c) insert:

(d) intimidate, prejudice, or threaten to prejudice, or attempt to induce another person to intimidate or prejudice, an independent contractor; or

(e) intimidate or induce, whether by threats or promises or otherwise, the principal of an independent contractor to prejudice the independent contractor; or

(f) directly or indirectly hinder or prevent the engagement of a person under a contract for services.

(3) In section 96D(4):

(a) in paragraph (b) delete “employees.” and insert:

employees; or

(b) after paragraph (b) insert:

(c) that the person has made, or intends to make, a complaint or inquiry to an industrial authority.

(4) In section 96D(5) delete “subsection (2)” and insert:

subsection (2)(a) or (b)
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(5) After section 96D(5) insert:

(6) For the purposes of subsection (2)(d) or (e) the independent contractor is prejudiced if the principal —

(a) terminates the contract for services; or

(b) injures the independent contractor in relation to the terms and conditions of the contract for services; or

(c) alters the position of the independent contractor to the independent contractor’s detriment; or

(d) refuses to make use of, or agree to make use of, services offered by the independent contractor; or

(e) refuses to supply, or agree to supply, goods or services to the independent contractor.

166. Section 96I amended

(1) In section 96I(2):

(a) delete “or (2)” (each occurrence) and insert:

(a) or (2)(a), (b) or (c)

(b) delete “that section)” and insert:

section 96D(5))

(c) in paragraph (b) delete “employees,” and insert:

employees; or

(d) after paragraph (b) insert:

(c) after the person made, or disclosed an intention to make, a complaint or inquiry to an industrial authority as defined in section 96D(1A),
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(2) After section 96I(2) insert:

(3A) Where in any proceedings for an offence against section 96D(1)(b) or (2)(d), (e) or (f) it is proved that a person was refused engagement under a contract for services, or prejudiced (within the meaning of section 96D(6)) or that the engagement of a person under a contract for services was hindered or prevented —

(a) while the person was or was not a member or officer of an organisation of employees; or

(b) after the person disclosed an intention to become or cease to be a member or officer of an organisation of employees; or

(c) after the person made, or disclosed an intention to make, a complaint or inquiry to an industrial authority as defined in section 96D(1A),

it is to be taken to be proved, unless the contrary is shown, that the person was refused engagement under a contract for services, or prejudiced, or that the engagement of the person under a contract for services was hindered or prevented in contravention of section 96D(1)(b) or (2)(d), (e) or (f) as the case may require.
Part 11 — Amendments about industrial agents

167. Act amended

This Part amends the Industrial Relations Act 1979.

168. Section 7 amended

In section 7(1) delete the definition of registered industrial agent and insert:

registered industrial agent means a person registered as an industrial agent under regulations made under section 112D;

169. Section 42B amended

Delete section 42B(8) and insert:

(8) Nothing in this section affects the requirements of section 112A in relation to appearing as an agent under section 31, 81E or 91.

170. Section 97UJ amended

Delete section 97UJ(6) and insert:

(6) Subject to section 112A(3)(d)(i), subsection (1)(d) does not affect the requirements of section 112A in relation to appearing as an agent under section 31, 81E or 91.

171. Part IX heading inserted

Before section 112A insert:

Part IX — Industrial agents
172. Section 112A replaced

Delete section 112A and insert:

112A. Industrial agents

(1) In this section —

public sector body has the meaning given in the Public Sector Management Act 1994 section 3(1).

(2) In this section a reference to carrying on business as an industrial agent is a reference to —

(a) carrying on business as a person who or which does either or both of the following —

(i) appears as an agent under section 31, 81E or 91;

(ii) provides advice or other services in relation to industrial matters;

or

(b) while an employee of a person carrying on business as referred to in paragraph (a), acting on behalf of that person by doing either or both of the following —

(i) appearing as an agent under section 31, 81E or 91;

(ii) providing advice or other services in relation to industrial matters.

(3) Despite subsection (2), a reference to a person carrying on business as an industrial agent does not include the following —

(a) an organisation, UnionsWA or the Chamber or an employee of that body, acting on behalf of that body;

(b) a public sector body or an employee of that body, acting on behalf of that body;

(c) a person who acts as a bargaining agent within the meaning of section 42B(4);

(d) a person —

(i) appearing in proceedings as provided by section 97WJ; or
(ii) providing advice or other services in relation to industrial matters, in the capacity of a bargaining agent under section 97UJ.

(4) Except as provided under this section a person who or which, not being a registered industrial agent or a legal practitioner, in any way carries on business as an industrial agent, or holds himself or herself out as carrying on business as an industrial agent, commits an offence.

Penalty: a fine of $2 000.

(5) A person must not permit an employee of that person to carry on business as an industrial agent unless the employee is a registered industrial agent or a legal practitioner.

Penalty: a fine of $2 000.

(6) For the purposes of the *Legal Profession Act 2008* section 12 a person who or which is —

(a) a registered industrial agent; or

(b) an employee or officer of any organisation, UnionsWA, the Chamber, or a prescribed body or class of body, acting on behalf of that body; or

(c) a person employed in a public sector body, acting on behalf of that body,

is authorised to —

(d) appear for a party, person or body under section 31, 81E or 91; and

(e) provide advice and other services in relation to industrial matters.

112B. Eligibility for registration as industrial agent

(1) A person is eligible for registration as an industrial agent if —

(a) the person is not disqualified under this Act from applying for registration, or being registered, as an industrial agent; and

(b) the person meets any other criteria for registration prescribed by regulations made under section 112D.
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(2) An individual whose name has been struck off the roll of legal practitioners, or who is suspended from practice as a legal practitioner, in this State or elsewhere in the Commonwealth, is not eligible to be registered as an industrial agent.

(3) Regulations made under section 112D may specify other matters that disqualify a person from registration as an industrial agent.

112C. Professional indemnity insurance

(1) A person is not eligible to be registered as an industrial agent unless the person can demonstrate that —

(a) the person has, or on registration will have, professional indemnity insurance arrangements that comply with regulations made under section 112D; or

(b) the employer of the person —

(i) is a registered industrial agent; and

(ii) has professional indemnity insurance arrangements that comply with regulations made under section 112D.

(2) A registered industrial agent must maintain professional indemnity insurance arrangements that comply with regulations made under section 112D. Penalty: a fine of $2 000.

(3) Subsection (2) does not apply to a registered industrial agent employed by another registered industrial agent.

112D. Registration as an industrial agent

(1) Regulations made by the Governor are to provide for a scheme of registration of persons as industrial agents and the procedure for obtaining registration.

(2) Without limiting subsection (1) the regulations may provide for the following —

(a) applications for registration and the renewal of registration and the assessment of applications;

(b) qualifications, experience and other criteria for registration, either generally or in specified cases;
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1. (c) the imposition of conditions or restrictions to which registration is subject, either generally or in specified cases;
(d) disqualification from registration;
(e) professional indemnity insurance arrangements;
(f) fees;
(g) any other matter or thing which is authorised or required to be prescribed for the purposes of this section.

112E. Disciplinary inquiry

(1) The Registrar may inquire into the conduct of a registered industrial agent to determine whether proper grounds for disciplinary action in respect of the registered industrial agent exist.

(2) Proper grounds for disciplinary action exist if —
(a) the registration of the industrial agent was improperly obtained; or
(b) the industrial agent has contravened —
(i) a provision of this Act; or
(ii) a condition or restriction attached to the registration of that industrial agent;
or
(c) the industrial agent has done or omitted to do any thing, or engaged in any conduct, that renders the person unfit to be a registered industrial agent; or
(d) the industrial agent has engaged in conduct as a registered industrial agent that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent registered industrial agent.

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

(4) If, on completion of the inquiry, the Registrar is satisfied that proper grounds for disciplinary action exist, the Registrar must refer the matter to the
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Commission in Full Session for hearing and determination.

112F. Disciplinary action

(1) In this section —

proper grounds for disciplinary action has the meaning given in section 112E(2).

(2) If, after a hearing in relation to a reference to it under section 112E(4), the Commission in Full Session determines that proper grounds for disciplinary action exist in respect of a registered industrial agent, it may do one or more of the following —

(a) decline to make an order under this section;
(b) caution or reprimand the industrial agent;
(c) impose a condition or restriction on the registration of the industrial agent, or amend an existing condition or restriction;
(d) order that the registration of the industrial agent be suspended for a period, not exceeding 12 months, specified in the order;
(e) order that the industrial agent’s registration be cancelled.

173. Part X heading inserted
Before section 113 insert:

Part X — Miscellaneous

174. Schedule 5 amended
In Schedule 5 delete “[s. 97VC(4), 97WM]” and insert:

[s. 97VC(4), 97WM, 112E(3)]
Part 12 — The State employment standards

Division 1 — Part XI inserted

175. Act amended

This Division amends the Industrial Relations Act 1979.

176. Part XI inserted

Before Schedule 1 insert in numerical order:

Part XI — The State employment standards

Division 1 — Preliminary

116. Terms used

(1) In this Part, unless the contrary intention appears —

authorised leave means leave, or an absence, that is authorised —

(a) by an employee’s employer; or

(b) by or under a term or condition of an employee’s employment; or

(c) by or under a law, or an instrument in force under a law, of the State or the Commonwealth;

continuous service has the meaning given in subsection (2);

employee means a person who is an employee within the meaning of section 7(1), but does not include a person who belongs to a class of persons prescribed by the regulations as persons not to be treated as employees for the purposes of this Part;

employee paid by results means —

(a) an employee whose services are remunerated wholly or partially by commission or percentage reward; or

(b) an employee whose services are remunerated wholly or partially at piece rates;

Fair Work Act means the Fair Work Act 2009 (Commonwealth);

industrial instrument means —

(a) an award; or
(b) an industrial agreement; or
(c) an order made by the Commission; or
(d) an employer-employee agreement;

member of the employee’s family or household means any of the following persons and it does not matter whether the child of a person is an adult —
(a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee;
(b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee;
(c) any other person who, at or immediately before the relevant time for assessing the employee’s eligibility to take leave, lived with the employee as a member of the employee’s household;

public holiday has the meaning given in subsection (3);
State system employee means a non-national system employee, as defined in the Fair Work Act section 12;
transmission of business agreement means an agreement mentioned in section 173(1).

(2) For the purposes of this Part, an employee’s continuous service is service under an unbroken contract of employment with an employer and for the purposes of calculating the length of an employee’s continuous service —
(a) any period of absence that is not authorised leave does not count as service; and
(b) any period of unpaid authorised leave does not break the employee’s continuous service but does not count towards the length of the employee’s continuous service; and
(c) the employee’s continuous service is not broken by the employer interrupting or terminating the employment for the sole purpose of avoiding the employer’s obligation under Division 11 Subdivision 4 to pay redundancy pay.

Note: Section 174(4) also affects the calculation of the length of the continuous service of an employee involved in certain transmission of business agreements.
(3) In this Part —

public holiday, in respect of an area in the State, means a day mentioned in the Table that is a public holiday in that area.

### Table

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<th>Australia Day</th>
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<td>Easter Monday</td>
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<td>Western Australia Day</td>
<td>Celebration Day for the anniversary of the birthday of the reigning Sovereign (the day appointed by proclamation published in the <em>Gazette under the Public and Bank Holidays Act 1972</em>)</td>
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<td>Christmas Day</td>
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<td>Any special day</td>
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<td><em>Public and Bank Holidays Act 1972</em> section 7 to be a public holiday</td>
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</tbody>
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#### 117. State employment standards

The provisions set out in the Table constitute the State employment standards.

### Table

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<tr>
<th>Provision</th>
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 Provision | Subject matter
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 Div. 6    | Annual leave, subject to s. 120
 Div. 7    | Compassionate leave
 Div. 8    | Bereavement leave
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 Div. 10   | Parental leave
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 Div. 12   | Employment changes
 Sch. 6 Div. 1 Subdiv. 8 cl. 20(3) and (5) | Minimum amount of pay for certain "under-rate employees"

118. State employment standards apply to all employees and employers

(1) The State employment standards extend to and bind all employees and employers in the way prescribed by this Part.

Note: A State employment standard is enforceable under section 83.

(2) A provision in, or condition of, an industrial instrument or a contract of employment that is less favourable to the employee than a State employment standard has no effect.

(3) A provision in, or condition of, an agreement or arrangement that purports to exclude the operation of this Part has no effect, but without prejudice to other provisions or conditions of the agreement or arrangement.

(4) A purported waiver of a right under this Part has no effect.
This section has effect subject to sections 120 and 159.

119. Employment permitted under Supported Wage System

A person may be employed under the provisions of the Supported Wage System.

120. Limited contracting out of annual leave conditions

(1) In this section —

annual leave means annual leave to which an employee is entitled under section 141(2).

(2) After the completion of any year of service by an employee, the employer and employee may agree that the employee may forgo taking annual leave to which the employee became entitled in relation to that year of service if —

(a) the amount of annual leave forgone does not exceed 50% of the whole amount of annual leave to which the employee became entitled in relation to that year of service; and

(b) the employee is given an equivalent benefit in lieu of the amount of annual leave forgone; and

(c) the agreement is in writing.

(3) An agreement referred to in subsection (2) has no effect if the employer’s offer of employment was made on the condition that the employee would be required to enter into the agreement.

(4) The employer must not —

(a) require the employee to forgo taking an amount of annual leave; or

(b) exert undue influence or undue pressure on the employee in relation to the making of a decision by the employee whether or not to forgo taking an amount of annual leave.

(5) A contravention of subsection (4) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.
121. **Paid leave, how pay calculated**

(1) Where an employee’s leave is paid leave, payment must be made at the rate that, under the industrial instrument or contract of employment that applies to the employee, the employee would have received as the employee’s payment at the time the leave is taken.

(2) If an employee is an employee paid by results, for the purpose of payment for leave under subsection (1) —

(a) in the case of an employee who has worked at least 52 weeks immediately before the time the leave is taken, the employee’s rate of pay is the average weekly rate earned by the employee in the 52 week period ending on the day immediately before the time the leave is taken; or

(b) in the case of an employee who has worked fewer than 52 weeks immediately before the time the leave is taken, the employee’s rate of pay is the average weekly rate earned by the employee in the period worked.

(3) If the number of hours for which an employee is entitled to be paid for a period of leave cannot be determined or have varied over the period of employment, for the purpose of payment for leave under subsection (1) —

(a) in the case of an employee who has worked at least 52 weeks immediately before the time the leave is taken, the total number of hours worked in that 52 week period by the employee under the industrial instrument or contract of employment that applies to the employee are to be averaged as hours worked each week; and

(b) in the case of an employee who has worked fewer than 52 weeks immediately before the time the leave is taken, the total number of hours worked by the employee in that period under the industrial instrument or contract of employment that applies to the employee are to be averaged as hours worked each week.
(4) In determining any rate for the purposes of this section
the following are not required to be taken into
account —
   (a) any kind of loading;
   (b) any kind of monetary allowance;
   (c) overtime or penalty rates;
   (d) any other separately identifiable amount (not
       including, in the case of an employee paid by
       results, the payment for those results).

Division 2 — Reasonable hours of work

122. Maximum hours of work

   (1) An employee is not to be required or requested by an
       employer to work more than —
       (a) either —
           (i) the employee’s ordinary hours of work
               as specified in an industrial instrument
               that applies to the employee; or
           (ii) if there is no industrial instrument that
                specifies the employee’s ordinary hours
                of work, 38 hours per week;
       and
       (b) reasonable additional hours as determined
           under section 123.

   (2) For the purpose of subsection (1), in calculating the
       number of hours that an employee has worked in a
       particular week, the hours worked by the employee are
       taken to include any hours of authorised leave, whether
       paid or unpaid, taken by the employee during the week.

   (3) Nothing in this section, or section 118(2), restricts the
       number of ordinary hours of work that may be
       specified in an industrial instrument.

123. Reasonable additional hours

   (1) For the purposes of section 122(1)(b), in determining
       whether additional hours that an employee is required
       or requested by an employer to work are reasonable
       additional hours, all relevant factors are to be taken
       into account.
(2) The factors that may be taken into account include, but are not limited to, the following —

(a) any risk to the employee’s health and safety that might reasonably be expected to arise if the employee worked the additional hours;

(b) the employee’s personal circumstances (including family responsibilities);

(c) the conduct of the operations or business in relation to which the employee is required or requested to work the additional hours;

(d) any notice given by the employer of the requirement or request that the employee work the additional hours;

(e) any notice given by the employee of the employee’s intention to refuse to work the additional hours;

(f) whether any of the additional hours are on a public holiday in the area of the State where the employee is required or requested to work;

(g) the employee’s hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

**Division 3 — Minimum rates of pay**

**124. Minimum rate of pay, entitlement to be paid**

(1) An employee is entitled to be paid, for each hour worked by the employee in a week, the minimum weekly rate of pay applicable to the employee under section 126, 127 or 128, divided by 38.

(2) Subsection (1) does not apply to —

(a) an employee paid wholly by results; or

(b) an employee with a disability,

but nothing in this section prevents an industrial instrument from providing for minimum rates of pay for an employee paid wholly by results or an employee with a disability.
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(3) In subsection (2) —

employee paid wholly by results means —

(a) an employee whose services are remunerated wholly by commission or percentage reward; or

(b) an employee whose services are remunerated wholly at piece rates.

(4) An employee with a disability whose rate of pay is not provided for in an industrial instrument is entitled to be paid, for each week worked by the employee, the higher of the following amounts —

(a) for each hour worked by the employee in the week, the minimum weekly amount payable to the employee under section 129(1) divided by 38;

(b) the minimum weekly amount payable to the employee under section 129(3), regardless of the number of hours actually worked.

(5) An employee with a disability whose rate of pay is provided for in an industrial instrument that incorporates the Supported Wage System is entitled to be paid, for each week worked by the employee, the minimum weekly amount payable to the employee under section 129(3), regardless of the number of hours actually worked.

(6) A person who is employed for a trial period for the purpose of an assessment of the employee’s productive capacity under the Supported Wage System is entitled to be paid, for each week worked in the trial period, the minimum weekly amount payable to the employee under section 129(3), regardless of the number of hours actually worked.

(7) When calculating for the purposes of subsection (1) or (4)(a) the number of hours worked by an employee, a period during which the employee is on call and does not undertake any duty of employment other than being on call must not be included.

(8) For the purposes of subsection (7), an employee is on call in a period if —

(a) the period is outside the employee’s ordinary working hours; and
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(b) in that period, the employee is required to be available at short notice to undertake other duties of employment,

and it does not matter whether the employee is required to be at his or her place of employment or may be elsewhere while on call.

125. Minimum rate of pay for casual employees includes a loading

(1) In this section —

prescribed percentage means —

(a) 20%; or

(b) if a percentage higher than 20% is set by order under section 511 for the purposes of this section, that percentage.

(2) A casual employee is entitled to be paid the amount which he or she is entitled to be paid under section 124(1) or (4)(a) plus the prescribed percentage of that amount.

126. Minimum weekly rate of pay for employees aged 21 or more

The minimum weekly rate of pay applicable at a particular time to an employee —

(a) who has reached 21 years of age; and

(b) who is not an apprentice; and

(c) who is not an employee with a disability,

is the rate in effect at that time under section 50B(1A)(a) in relation to employees who have reached 21 years of age and who are not apprentices or employees with a disability.

127. Minimum weekly rate of pay for employees aged under 21

The minimum weekly rate of pay applicable at a particular time to an employee —

(a) who is of the age mentioned in the first column in the Table; and

(b) who is not an apprentice; and
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(c) who is not an employee with a disability,

is the percentage, set out opposite that age in the
second column in the Table, of the rate referred to in
section 126 in effect at that time, rounded up to the
nearest 10 cents.

Table

<table>
<thead>
<tr>
<th>Age</th>
<th>Percentage of 21 year old rate (s. 126)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 years</td>
<td>90%</td>
</tr>
<tr>
<td>19 years</td>
<td>80%</td>
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<tr>
<td>18 years</td>
<td>70%</td>
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<tr>
<td>17 years</td>
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<tr>
<td>16 years</td>
<td>50%</td>
</tr>
<tr>
<td>Under 16 years</td>
<td>40%</td>
</tr>
</tbody>
</table>

128. Minimum weekly rates of pay for apprentices

The minimum weekly rate of pay applicable at a
particular time to an employee who is an apprentice —
(a) in the case where a rate is in effect at that time
under section 50B(1A)(b) in relation to the
class of apprentice to which the employee
belongs, is that rate; and

(b) otherwise, is the rate in effect at that time under
section 50B(1A)(b) in relation to apprentices
generally.

129. Minimum weekly amount payable to certain
employees with disability

(1) The minimum weekly amount payable at a particular
time to an employee with a disability whose rate of pay
is not provided for in an industrial instrument is the
percentage of the rate referred to in section 126, in
effect at that time, that corresponds in the Table to the
employee’s assessed productive capacity, rounded up
to the nearest 10 cents.
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<table>
<thead>
<tr>
<th>Employee’s assessed productive capacity</th>
<th>Percentage of 21 year old rate (s. 126)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>10%</td>
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<tr>
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<td>80%</td>
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<tr>
<td>90%</td>
<td>90%</td>
</tr>
</tbody>
</table>

(2) In subsection (1) —

*assessed productive capacity*, in relation to an employee, means the employee’s productive capacity as assessed under the Supported Wage System.

(3) Despite subsection (1), the minimum weekly amount payable at a particular time to —

(a) an employee with a disability whose rate of pay is not provided for in an industrial instrument; or

(b) an employee with a disability whose rate of pay is provided for in an industrial instrument that incorporates the Supported Wage System,

must not be less than $76.00 or a higher amount that is set by the Commission under section 50B(1A)(c).
Division 4 — Other requirements as to pay

130. Employee not to be compelled to spend pay in a particular way

(1) An employee is not to be directly or indirectly compelled by an employer to spend any part of his or her pay in a particular way.

(2) In proceedings by an employee for recovery of any amount due as his or her pay any amount that the employee has been compelled to spend contrary to subsection (1) must be treated as if it had never been paid to the employee.

131. Employee’s pay, method and frequency of payment

(1) An employer must pay an employee amounts payable to the employee in relation to the performance of work —
   (a) in full (except as provided by sections 132 and 133); and
   (b) in money by one, or a combination, of the methods referred to in subsection (2); and
   (c) at least monthly.

(2) The methods are as follows —
   (a) cash;
   (b) cheque, money order, postal order or similar order, payable to the employee;
   (c) the use of an electronic funds transfer system to credit an account held by the employee;
   (d) a method authorised under an industrial instrument.

(3) Despite subsection (1)(b), if an industrial instrument specifies a particular method by which the money must be paid, then the employer must pay the money by that method.

132. Authorised deductions from pay for employee’s benefit

(1) An employer may deduct from an employee’s pay —
   (a) an amount the employer is authorised, in writing, by the employee to deduct and pay on behalf of the employee; and
1 (b) an amount the employer is authorised to deduct
2 and pay on behalf of the employee under an
3 industrial instrument or a written contract of
4 employment; and
5
6 (c) an amount the employer is authorised or
7 required to deduct by order of a court or under
8 a law of the State or the Commonwealth.
9
10 (2) The employee is entitled to have any amount so
11 deducted paid by the employer in accordance with the
12 employee’s instructions or in accordance with the
13 requirements of the industrial instrument or written
14 contract of employment that applies to the employee,
15 or a court order or law of the State or the
16 Commonwealth (as the case may be).
17
18 (3) Any variation in the amount of a deduction authorised
19 under subsection (1)(a) must be authorised in writing
20 by the employee.
21
22 (4) An employee may, by giving written notice to the
23 employer, withdraw an authorisation under
24 subsection (1)(a).
25
26 (5) Nothing in this section requires an employer to make
27 deductions requested by an employee.
28
29 133. Impermissible deductions and payments from pay
30 for employer’s benefit, employees under 18
31
32 (1) In this section —
33
34 impermissible deduction or payment means —
35
36 (a) a deduction or payment of an amount that —
37
38 (i) is directly or indirectly for the benefit of
39 the employer, or a party related to the
40 employer; and
41
42 (ii) is not reasonable in the circumstances;
43 or
44
45 (b) in relation to an employee who has not reached
46 18 years of age, a deduction or payment that is
47 not agreed to in writing by a parent or guardian
48 of the employee.
(2) A provision of an industrial instrument or a written contract of employment has no effect to the extent that the provision —

(a) purports to allow an employer to make an impermissible deduction from monies due to an employee; or

(b) purports to require an employee to make an impermissible payment to an employer or another person.

(3) A deduction is reasonable for the purposes of this section if it is by way of withholding, from unpaid wages or accrued annual leave entitlements due to a non-complying employee as defined in section 159, monies for a no-notice period as defined in that section.

(4) The regulations may prescribe other circumstances in which a deduction or payment is reasonable or is not reasonable for the purposes of this section.

(5) A deduction or payment that is directly or indirectly for the benefit of the employer, or a party related to the employer, but is not an impermissible deduction or payment must not be made —

(a) unless the amount and purpose of the deduction or payment is authorised in writing by the employee before the deduction or payment is made; or

(b) if the employee has not reached 18 years of age, unless the amount and purpose of the deduction or payment is authorised in writing by a parent or guardian of the employee before the deduction or payment is made.

(6) Nothing in this section prevents the employer from recovering from the employee, in civil or criminal proceedings, money or other property, or damages or compensation in respect of the loss of or damage to the employer’s property.

134. Payment of earnings during jury duty not affected

Nothing in this Part is intended to affect the operation of the Juries Act 1957 section 58B(3), (5) or (7).
Division 5 — Personal/carer’s leave

135. Term used: personal/carer’s leave

In this Division —

personal/carer’s leave means —

(a) paid personal/carer’s leave under section 136(2); or

(b) unpaid carer’s leave under section 138.

136. Paid personal/carer’s leave, entitlement to

(1) In this section —

year does not include any period of unpaid leave.

(2) An employee, other than a casual employee, is entitled for each year of service to be paid personal/carer’s leave for the number of hours the employee is required ordinarily to work in a 2 week period during that year, up to 76 hours.

(3) An entitlement under subsection (2) accrues pro rata on a weekly basis.

(4) Entitlements under subsection (2) are cumulative.

137. Taking paid personal/carer’s leave

(1) An employee may take paid personal/carer’s leave if the employee is unable to work as a result of an illness or injury of the employee that is not attributable to —

(a) the employee’s serious and wilful misconduct in the course of the employee’s employment; or

(b) the employee’s gross and wilful neglect in the course of the employee’s employment.

(2) An employee may take paid personal/carer’s leave to provide care or support to a member of the employee’s family or household who requires care or support because of —

(a) an illness or injury of the member; or

(b) an unexpected emergency affecting the member.
138. **Unpaid carer’s leave**

(1) An employee is entitled to unpaid carer’s leave of up to 2 days for each occasion (a *permissible occasion*) when a member of the employee’s family or household requires care or support because of —

   (a) an illness or injury of the member; or
   
   (b) an unexpected emergency affecting the member.

(2) An employee is entitled to unpaid carer’s leave for a particular permissible occasion only if the employee cannot take paid personal/carer’s leave during the period.

(3) In subsection (2) —

*paid personal/carer’s leave* means paid personal/carer’s leave authorised by the employer or by an industrial instrument, a contract of employment or section 136(2).

139. **Certain matters as to personal/carer’s leave not State employment standards**

Nothing in this Division requires —

(a) personal/carer’s leave to be taken as a whole working day, being a day on which the employee is required to work under the industrial instrument or contract of employment that applies to the employee; or

(b) an employer to pay an employee in lieu of the employee’s untaken entitlement under section 136(2), on the termination of the employee’s employment.

140. **Personal/carer’s leave notice and evidence**

(1) An employee must give his or her employer notice of the taking of personal/carer’s leave by the employee —

   (a) as soon as practicable (which may be a time after the leave has started); and
   
   (b) specifying the period, or expected period, of the leave; and
   
   (c) specifying the purpose for which the leave is taken.
(2) An employee who claims to be entitled to personal/carer’s leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that —

(a) if it is paid personal/carer’s leave, the leave is taken for a reason specified in section 137(1) or (2); or

(b) if it is unpaid carer’s leave, the leave is taken for a permissible occasion in circumstances specified in section 138(1).

(3) An employee who does not comply with subsection (1) or (2) is not entitled to take personal/carer’s leave unless the employer agrees to provide the leave despite the non-compliance.

(4) An industrial instrument may include provisions relating to the kind of evidence that an employee must provide in order to be entitled to personal/carer’s leave and those provisions may apply instead of subsection (2).

Division 6 — Annual leave

141. Paid annual leave, entitlement to

(1) In this section — year does not include any period of unpaid leave.

(2) An employee, other than a casual employee, is entitled for each year of service, to paid annual leave for the number of hours the employee is required ordinarily to work in a 4 week period during that year, up to 152 hours.

(3) An entitlement under subsection (2) accrues pro rata on a weekly basis.

(4) Entitlements under subsection (2) are cumulative.

142. Annual leave payments, when to be made

(1) An employee must be paid for a period of annual leave at the time payment is made in the normal course of the employment, unless the employee requests in writing that he or she be paid before the period of leave
commences in which case the employee must be so
paid.

(2) If, when the employment of an employee ends the
employee has accrued an entitlement to paid annual
leave for a period but has not taken the leave, the
employer must pay the employee the amount that
would have been payable to the employee had the
employee taken that period of leave.

(3) An employee is not entitled to be paid an amount under
subsection (2) for a period of untaken annual leave if,
under a transmission of business agreement, the second
employer agrees to take responsibility for the
employee’s annual leave entitlements which accrued
during the employee’s employment with the first
employer.

(4) An employee is not entitled to be paid an amount
under subsection (2) for a period of untaken annual
leave if—

(a) the employee’s employment with the employer
is terminated as a consequence of serious
misconduct justifying dismissal without notice;
and

(b) the entitlement to the leave accrued for a period
that is less than one year of service.

143. Annual leave, when may be taken

(1) Paid annual leave may be taken for a period agreed
between an employee and his or her employer.

(2) In the event that an employee and his or her employer
are not able to agree the period for which the employee
can take paid annual leave, the leave may be taken in
accordance with the provisions, if any, of an industrial
instrument that deal with the taking of paid annual
leave.

(3) The employer must not unreasonably refuse to agree to
a request by the employee to take paid annual leave.

(4) An employer is not to be taken to unreasonably refuse
to agree to a request by the employee to take paid
annual leave if the employer has complied with the
provisions, if any, of an industrial instrument that deal
with the taking of paid annual leave.
(5) An employer may require an employee whose contract of employment is not governed by an industrial instrument to take a period of paid annual leave, but only if the requirement is reasonable.

(6) An industrial instrument or a contract of employment may include provisions dealing with the taking of paid annual leave including, but not limited to provisions —

(a) requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable; or

(b) allowing an employee to take paid annual leave before it accrues; or

(c) requiring paid annual leave to be taken within a specified period of time after it accrues.

144. Public holidays in annual leave period

If —

(a) the period during which an employee takes paid annual leave includes a day or part day that is a public holiday in an area of the State; and

(b) under an industrial instrument or a contract of employment, the employee is not required to work on that day solely because that day is a public holiday in that area,

the employee is taken not to be on paid annual leave on that public holiday.

Division 7 — Compassionate leave

145. Compassionate leave, entitlement to

(1) An employee is entitled to compassionate leave to spend time with a member of the employee’s family or household —

(a) who has contracted or developed an illness that poses a serious and imminent threat to the member’s life; or

(b) who has sustained an injury that poses a serious and imminent threat to the member’s life.
(2) An employee other than a casual employee —
   (a) is entitled to paid compassionate leave; and
   (b) is not entitled to unpaid compassionate leave; and
   (c) is not entitled to paid compassionate leave if the employee has an entitlement to at least 2 days paid personal/carer’s leave at the time proposed by the employee for the compassionate leave to be taken.

(3) In subsection (2) —

   paid personal/carer’s leave means paid personal/carer’s leave authorised by the employer or by an industrial instrument, a contract of employment or section 136(2).

(4) A casual employee —
   (a) is entitled to unpaid compassionate leave; and
   (b) is not entitled to paid compassionate leave.

146. Taking compassionate leave

Compassionate leave —
   (a) may be taken for up to 2 days in relation to the same illness or injury; and
   (b) need not be taken on consecutive days; and
   (c) may be taken at any time after the illness is contracted or the injury is sustained; and
   (d) cannot be taken after the death of the member of the employee’s family or household (but this paragraph does not affect the employee’s entitlement to bereavement leave in that case).

147. Compassionate leave notice and evidence

(1) An employee must give his or her employer notice of the taking of compassionate leave by the employee —
   (a) as soon as practicable (which may be a time after the leave has started); and
   (b) specifying the period, or expected period, of the leave.

(2) An employee who claims to be entitled to compassionate leave must, if required by the employer, give the employer evidence that would satisfy a
(3) An employee who does not comply with subsection (1) or (2) is not entitled to take compassionate leave unless the employer agrees to provide the leave despite the non-compliance.

(4) An industrial instrument may include provisions relating to the kind of evidence that an employee must provide in order to be entitled to compassionate leave and those provisions may apply instead of subsection (2).

Division 8 — Bereavement leave

148. Paid bereavement leave, entitlement to and taking

(1) An employee is entitled to bereavement leave on the death of a member of an employee’s family or household.

(2) An employee including a casual employee is entitled to paid bereavement leave.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

(4) Bereavement leave —
   (a) may be taken for up to 2 days; and
   (b) need not be taken on consecutive days.

149. Bereavement leave notice and evidence

(1) An employee must give his or her employer notice of the taking of bereavement leave by the employee —
   (a) as soon as practicable (which may be a time after the leave has started); and
   (b) specifying the period, or expected period, of the leave.

(2) An employee who claims to be entitled to bereavement leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person as to —
   (a) the death that is the subject of the leave sought; and
(3) An employee who does not comply with subsection (1) or (2) is not entitled to take bereavement leave unless the employer agrees to provide the leave despite the non-compliance.

(4) An industrial instrument may include provisions relating to the kind of evidence that an employee must provide in order to be entitled to bereavement leave and those provisions may apply instead of subsection (2).

**Division 9 — Public holidays**

150. Public holidays, entitlement to be paid for

An employee, other than a casual employee, who in any area of the State is not required to work on a day solely because that day is a public holiday in that area, is entitled to be paid as if he or she were required to work on that day.

151. Penalty rates for work on public holidays not a State employment standard

(1) Section 150 is not to be read as requiring an employer to pay a penalty rate in respect of work done on a public holiday.

(2) Nothing in this Division affects any obligation that an employer has under an industrial instrument or contract of employment to pay penalty rates.

**Division 10 — Parental leave**

152. Terms used

(1) In this Division —

modified basis, in relation to an employee, means a basis that involves the employee working —

(a) on different days or at different times, or both;

or

(b) on fewer days or for fewer hours, or both,

than the employee worked immediately before starting parental leave;
pre-parental leave working arrangements, in relation
to an employee, means working on the same basis as
the employee worked immediately before starting
parental leave.

(2) If —
   (a) before the employee started parental leave a
   change took place in the days on which, times
   at which or hours for which the employee
   worked; and
   (b) the change was a direct result of the employee’s
   pregnancy,

   a reference —
   (c) in this Division to the employee’s pre-parental
   leave working arrangements; or
   (d) in the definition of modified basis in
   subsection (1) to the employee’s basis of work
   immediately before starting parental leave,

is a reference to the employee’s work immediately
before the change took place.

153. Scope of this Division

This Division provides entitlements to State system
employees, in relation to the birth or adoption of
children, that are more beneficial than the entitlements
under the extended parental leave provisions as defined
in the Fair Work Act section 744(3).

Notes:

1. The provisions of the Fair Work Act that provide for unpaid parental
   leave and related entitlements apply to State system employees, along
   with the related provisions identified in the Fair Work Act
   section 744(2), with some modifications.

2. The Fair Work Act section 747 provides that the Fair Work Act does
   not apply to the exclusion of a State law providing a more beneficial
   entitlement for State system employees.

154. Return to work on a modified basis

A State system employee may request the employer to
permit the employee, on finishing parental leave, to
work on a modified basis in a position to which the
employee is entitled under the Fair Work Act
section 84.
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155. Resumption of pre-parental leave working arrangements

(1) If, on finishing parental leave, a State system employee has been permitted by the employer to work on a modified basis under section 154, the employee may subsequently request the employer to permit the employee to resume pre-parental leave working arrangements.

(2) If, on finishing parental leave, a State system employee has been permitted by the employer to work on a modified basis under section 154, the employer may subsequently, if entitled to do so under subsection (3)(a) or (b), require the employee to resume pre-parental leave working arrangements.

(3) A requirement can be made under subsection (2) if, and only if —

(a) the requirement is made on grounds relating to the adverse effect that the employee continuing to work on a modified basis would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person; or

(b) the employee no longer has a child who has not reached the compulsory education period as defined in the School Education Act 1999 section 6.

156. Making request or requirement under this Division

(1) A State system employee’s request under section 154 of an employer to permit the employee, on finishing parental leave, to work on a modified basis, must be made by notice in writing at least 6 weeks before the day on which the employee finishes the leave.

(2) A State system employee’s request under section 155(1) of an employer to permit the employee to resume pre-parental leave working arrangements must be made by notice in writing at least 6 weeks before the day on which the employee wishes to resume those arrangements.

(3) A requirement under section 155(2) of an employee to resume pre-parental leave working arrangements must be made by notice in writing at least 6 weeks before the
day on which the employer wishes the employee to resume those arrangements, and the notice must set out the reasons for the requirement.

157. Determination of request or requirement under this Division

(1) The employer must agree to a request under section 154 to permit the employee, on finishing parental leave, to work on a modified basis unless —

(a) the employer, having considered the employee’s circumstances, is not satisfied that the request is genuinely based on the employee’s parental responsibilities; or

(b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person.

(2) The employer must agree to a request under section 155(1) to permit the employee to resume pre-parental leave working arrangements unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of the operations or business of the employer and those grounds would satisfy a reasonable person.

(3) The employer must give the employee written notice of the employer’s decision on a request under section 154 or 155(1) and, if the request is refused, the notice must set out the reasons for the refusal.

(4) Without limiting subsection (1) or section 155(3)(a) the grounds on which a refusal under subsection (1)(b), or a requirement under section 155(2) for an employee to resume pre-parental leave working arrangements, may be based include the following —

(a) cost;

(b) lack of adequate replacement staff;

(c) loss of efficiency;

(d) impact on the production or delivery of products or services by the employer.
(5) On the hearing of an application under section 83(1) to enforce compliance with subsection (1) or (2), the onus lies on the employer to demonstrate that the refusal of the request was justified under subsection (1) or (2), whichever is applicable.

Division 11 — Termination and redundancy

Subdivision 1 — Preliminary

158. Term used: base rate of pay

(1) In this Division —

base rate of pay, of an employee, is the rate of pay specified in the industrial instrument or contract of employment that applies to the employee as payable to the employee for the employee’s ordinary hours of work, but not including any of the following —

(a) any kind of loading;
(b) any kind of monetary allowance;
(c) overtime or penalty rates;
(d) any other separately identifiable amount (not including, in the case of an employee paid by results, the payment for those results).

(2) For the purposes of this Division an employee is made redundant if the employee’s employment is terminated at the employer’s initiative because the employer no longer requires the job done by the employee to be done by anyone.

Subdivision 2 — Termination of employment

Notes about notice of termination of employment at the initiative of the employer:

1. The provisions of the Fair Work Act that provide for an employer to give written notice of termination or payment in lieu of notice apply to State system employees, along with the related provisions identified in the Fair Work Act section 759(2), with some modifications.

Notes about unlawful termination of employment:

1. The Fair Work Act Part 6-4 Division 2 makes it unlawful for an employer to terminate a State system employee’s employment for certain reasons.
Notes about notification and consultation requirements relating to certain terminations of employment:

1. The Fair Work Act Part 6-4 Division 3 sets out notification requirements (to Centrelink and relevant registered employee associations) and consultation requirements (of relevant registered employee associations) in relation to certain terminations of employment including the employment of State system employees.

159. Industrial instrument provisions about termination of employment at initiative of employee

(1) In this section —

no-notice period means the number of days in the notice period that an employee is required under an industrial instrument to give to his or her employer in order to terminate his or her employment, less the number of days of notice actually given by the employee;

non-complying employee means an employee who does not comply with a requirement of an industrial instrument that specifies the period of notice the employee must give in order to terminate his or her employment.

(2) Despite section 118(1) and (2), section 124(1) does not entitle a non-complying employee to be paid for the number of days actually worked by the employee equating to the number of days in the no-notice period.

Subdivision 3 — Redundancy

160. Limits on scope of this Subdivision

This Subdivision does not apply to either of the following employees —

(a) a casual employee;

(b) an employee who is an apprentice.

161. Employee entitled to be informed of proposed redundancy

(1) If an employer decides to make an employee redundant, the employee is entitled —

(a) to be informed by the employer, as soon as reasonably practicable after the decision has been made, of the proposed redundancy; and
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(b) to discuss with the employer how the employee
is likely to be affected by the redundancy.

(2) Nothing in this Part requires an employer, when
providing information or holding a discussion under
subsection (1) to disclose information that may
seriously harm —
(a) the employer’s business undertaking; or
(b) the employer’s interest in the carrying on, or
disposition, of the business undertaking.

162. Paid leave for job interviews, entitlement to

(1) An employee, other than an employee employed for the
duration of a specified season, who has been informed
that he or she has been, or will be, made redundant is
entitled to paid leave of up to 8 hours for the purpose
of being interviewed for further employment.

(2) The 8 hours need not be consecutive.

(3) An employee who claims to be entitled to paid leave
under subsection (1) must provide to the employer
evidence that would satisfy a reasonable person of the
entitlement.

(4) Payment for leave under subsection (1) must be made
in accordance with section 121.

163. Industrial instrument, contract provisions about
redundancy

An industrial instrument or a contract of employment
may include provisions about redundancy in addition to
the requirements in this Subdivision and Subdivision 4,
including but not limited to the following —
(a) providing reasons for the decision to make an
employee redundant, and discussing those
reasons with the employee;
(b) providing information about, and discussing
with the employee, how adverse effects of the
redundancy on the employee may be avoided or
minimised;
(c) the means by which information about
redundancy must be provided;
(d) notifying, providing information to, or
consulting, a person nominated by an employee
to represent the employee, about matters concerning the employee’s redundancy;

c) transferring an employee to lower paid duties during the redundancy notice period;

(f) the employee leaving during the redundancy notice period.

Subdivision 4 — Redundancy pay

164. Limits on scope of this Subdivision

(1) This Subdivision does not apply to any of the following employees —

(a) a casual employee;

(b) an employee who is an apprentice;

(c) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;

(d) an employee whose period of continuous service with the employer is less than one year immediately before the day on which the employee’s employment terminates;

(e) an employee whose employment is terminated because of serious misconduct justifying dismissal without notice;

(f) an employee who holds an office for which the remuneration payable is determined or recommended under the Salaries and Allowances Act 1975.

(2) Subsection (1)(c) does not prevent this Subdivision from applying to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this Subdivision.

165. Redundancy pay, entitlement to

(1) In this section —

redundancy day, for an employee, means the day on which the employee is informed of the proposed redundancy.
(2) An employee who is made redundant is entitled to be paid redundancy pay by the employer.

(3) The amount of redundancy pay for an employee is the employee’s base rate of pay, as at the day immediately before redundancy day, for the number of weeks set out in column 2 of the Table that corresponds to the period of the employee’s continuous service with the employer calculated up to the end of the day on which the employee’s employment terminates.

<table>
<thead>
<tr>
<th>Period of continuous service with the employer at termination of employment</th>
<th>Redundancy pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>Nil</td>
</tr>
<tr>
<td>1 year and less than 2 years</td>
<td>4 weeks’ pay</td>
</tr>
<tr>
<td>2 years and less than 3 years</td>
<td>6 weeks’ pay</td>
</tr>
<tr>
<td>3 years and less than 4 years</td>
<td>7 weeks’ pay</td>
</tr>
<tr>
<td>4 years and less than 5 years</td>
<td>8 weeks’ pay</td>
</tr>
<tr>
<td>5 years and less than 6 years</td>
<td>10 weeks’ pay</td>
</tr>
<tr>
<td>6 years and less than 7 years</td>
<td>11 weeks’ pay</td>
</tr>
<tr>
<td>7 years or longer</td>
<td>12 weeks’ pay</td>
</tr>
</tbody>
</table>

(4) For the purpose of payment for redundancy under subsection (3), the rate of pay of an employee paid by results is the average weekly rate earned by the employee in the 52 week period ending on the day immediately before redundancy day.

(5) If the ordinary hours of work for an employee cannot be determined or have varied over the period of employment, for the purpose of payment for redundancy under subsection (3), the total number of hours worked by the employee in the 52 week period ending on the day immediately before redundancy day under the industrial instrument or contract of employment that applies to the employee are to be averaged as hours worked each week.
166. Variation of redundancy pay for other employment or incapacity to pay

(1) This section applies if —

(a) an employee is entitled to be paid an amount of redundancy pay by the employer because of section 165 (having regard to section 168(1) and (2)); and

(b) the employer —

(i) obtains other acceptable employment for the employee; or

(ii) cannot pay the amount.

(2) On application by the employer, the Commission may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that the Commission considers appropriate.

(3) The amount of redundancy pay to which the employee is entitled under section 165 is the reduced amount specified in the determination.

167. Exclusions from obligation to pay redundancy pay

(1) Section 165 does not apply to the termination of an employee’s employment if, immediately before the day on which the employee’s employment terminates, or at the time when the person was given notice of the termination as described in the Fair Work Act section 117(1) (whichever happened first), the employer employs fewer than 15 employees.

(2) An industrial instrument may include provisions specifying other situations in which section 165 does not apply to the termination of an employee’s employment.

(3) A provision of an industrial instrument has no effect to the extent that it purports to entitle an employee to redundancy pay if, immediately before the day on which the employee’s employment terminates, or at the time when the person was given notice of the termination as described in the Fair Work Act section 117(1) (whichever happened first), the employer employs fewer than 15 employees.
(4) For the purpose of calculating the number of employees employed by the employer at a particular time —
   (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
   (b) a casual employee is not to be counted unless, at that time, that employee has been employed by the employer on a regular and systematic basis.

(5) To avoid doubt, in determining whether an employer employs fewer than 15 employees at a particular time in relation to the termination of an employee's employment, the employees that are to be counted include (subject to subsection (4)(b)) —
   (a) the employee whose employment is being terminated; and
   (b) any other employee of the employer whose employment is also being terminated.

168. Employee not entitled to redundancy pay if accepts or refuses employment in certain circumstances as to transmission of business

(1) An employee is not entitled to redundancy pay under section 165 in relation to the termination of his or her employment with the first employer if —
   (a) the employee accepts employment with the second employer; and
   (b) under a transmission of business agreement or otherwise, the employee's period of continuous service with the first employer is recognised by the second employer for the purposes of this Subdivision.

(2) An employee is not entitled to redundancy pay under section 165 in relation to the termination of his or her employment with the first employer if —
   (a) the employee rejects an offer of employment made by the second employer that is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the first employer.
employer immediately before the day on which
the employee’s employment terminates; and
(b) under a transmission of business agreement or
otherwise, either —

(i) the employee’s period of continuous
service with the first employer is
recognised by the second employer for
the purposes of this Subdivision; or
(ii) the employee’s period of continuous
service with the first employer would
have been recognised by the second
employer for the purposes of this
Subdivision but for the rejection of the
offer of employment.

Division 12 — Employment change

169. Term used: employment change

In this Division —

employment change, in relation to an employee,
means —

(a) a major change in the composition, operation or
size of the employer’s workforce that will
affect the employee; or

(b) a major change in the skills required in the
employer’s workforce that will affect the
employee; or

(c) the elimination or reduction of —

(i) a job opportunity; or

(ii) a promotion opportunity; or

(iii) job tenure,
for the employee; or

(d) a significant increase or decrease in the
employee’s hours of work; or

(e) a requirement for the employee to retrain; or

(f) a requirement for the employee to transfer to
another job or work location; or

(g) the restructure of the employee’s job.
170. Limits on scope of this Division

This Division does not apply to either of the following employees —

(a) a casual employee;
(b) an employee who is an apprentice.

171. Employee entitled to be informed of proposed employment change

(1) If an employer decides to effect an employment change, the employee is entitled —

(a) to be informed by the employer, as soon as reasonably practicable after the decision has been made, of the proposed change; and
(b) to discuss with the employer —

(i) how the employee is likely to be affected by the proposed change; and
(ii) measures that may be taken by the employee or the employer to avoid or minimise adverse effects on the employee of the proposed change.

(2) Nothing in this Part requires an employer, when providing information or holding a discussion under subsection (1) to disclose information that may seriously harm —

(a) the employer’s business undertaking; or
(b) the employer’s interest in the carrying on, or disposition, of the business undertaking.

(3) An industrial instrument may provide for matters relating to notification about, information about, and discussion of, employment changes.

Division 13 — Transmission of business agreements

172. Terms used

In this Division —

business includes any, or any part of a, trade, process, profession or occupation;

first employer, in relation to a transmitted business, means the employer from which the business is transmitted;
leave entitlement means an entitlement to leave under Division 5 or 6;

second employer, in relation to a transmitted business, means the employer to which the business is transmitted;

transmit, in relation to a business, includes the transfer, conveyance, assignment of the business or succession to the business, whether by agreement or by operation of law.

173. Agreement to recognise service, take responsibility for State employment standard leave entitlements

(1) A transmission of business agreement may be entered into by the employer from which a business is transmitted (the first employer) and the employer to which the business is transmitted (the second employer).

(2) A transmission of business agreement can be entered into only if the second employer employs, or offers to employ, an employee of the first employer.

(3) In a transmission of business agreement the employers may agree that the second employer will take responsibility for one, some or all of the employee’s leave entitlements that accrued during the employee’s employment with the first employer and if so, the employers must, in the agreement, as is relevant in the case —

(a) specify that the second employer will take responsibility for all the employee’s leave entitlements; or

(b) specify each of the employee’s leave entitlements for which the second employer will take responsibility if the second employer does not intend to take responsibility for all the employee’s leave entitlements.

(4) If employers agree a matter mentioned in subsection (3), the second employer is taken to recognise the employee’s period of service with the first employer so that that period counts as service when calculating the employee’s period of service with the second employer for the purpose of ascertaining a
leave entitlement for which the second employer will take responsibility.

(5) In a transmission of business agreement the employers may agree, in addition to or instead of a matter mentioned in subsection (3), that the second employer recognises the employee’s period of service with the first employer so that that period counts as service of the employee when calculating the employee’s period of service with the second employer for the purpose of ascertaining the employee’s entitlement to redundancy pay under this Part.

(6) A transmission of business agreement must be in writing and executed by the first employer and the second employer.

(7) If a transmission of business agreement applies to a particular employee, the second employer must provide the employee with a copy of the agreement when the employee’s employment with the second employer starts.

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

174. Effects of transmission of business agreement

(1) A provision in a transmission of business agreement has no effect to the extent that it purports to transfer to the second employer the first employer’s duty under the Fair Work Act section 117 to give an employee notice of termination or payment in lieu of notice.

(2) If, under a transmission of business agreement, the second employer agrees to take responsibility for an employee’s annual leave entitlements under section 141(2) which accrued during the employee’s employment with the first employer, the first employer does not have to pay the employee the amount that otherwise would have been payable to the employee under section 142(2).

(3) If an employee to whom a transmission of business agreement applies has already had the benefit of an entitlement the amount of which was calculated by reference to a period of service with the first employer, that period of service with the first employer must not
be counted again when calculating the employee’s entitlements of that kind as an employee of the second employer.

(4) If, under a transmission of business agreement an employee’s period of service is recognised by the second employer, the period between the termination of the employment with the first employer and the start of the employment with the second employer does not break the employee’s continuous service with the second employer, but does not count towards the length of the employee’s continuous service with the second employer.

(5) A provision in a transmission of business agreement has no effect to the extent that it is inconsistent with the Public Sector Management Act 1994 and any regulation made under that Act about redundancy.

(6) Nothing in this Division is intended to affect the operation of the Long Service Leave Act 1958 section 6 in respect of the continuation of employment, for long service leave purposes, in the event of a transmission of a business.

Note: Section 83(3A) provides for enforcement of a State employment standard where a transmission of business agreement applies to the affected employee.

175. Transfer of employee records

(1) This section applies if, under a transmission of business agreement —

(a) an employee’s period of service is recognised by the second employer; or

(b) the second employer agrees to take responsibility for some or all of the employee’s leave entitlements that accrued during the employee’s employment with the first employer.

(2) The first employer must ensure that, by the time the employee’s employment with the second employer starts, the second employer has been given —

(a) a copy of each relevant employment record under section 49D relating to the employee; and
Part 12

Repeal of legislation relating to minimum conditions of employment

Division 2

Written laws repealed

These written laws are repealed:
(a) the Minimum Conditions of Employment Act 1993;
(b) the Minimum Conditions of Employment Regulations 1993.

Division 3 — Other amendments about State employment standards

Act amended

This Division amends the Industrial Relations Act 1979.

Section 7 amended

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

employment record

MCE Act

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

employee with a disability means an employee whose productive capacity —
(a) has been assessed under either the Supported Wage System or supported wage provisions; and
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Division 3  Other amendments about State employment standards

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

employment record means any of the following —
(a) a record kept under section 49D;
(b) a copy of an employment record mentioned in section 175(2)(a);
(c) a statutory declaration mentioned in section 175(2)(b);

State employment standard means any of the State employment standards within the meaning of section 117;
supported wage provisions means provisions in an industrial instrument that enable the assessment of whether, and the extent to which, a person’s productive capacity is reduced because of a disability;

Supported Wage System means the scheme established by the Commonwealth Government to enable the assessment of whether, and the extent to which, a person’s productive capacity is reduced because of a disability;

180.  Section 8A inserted

At the end of Part 1 insert:

8A.  Application to Crown

This Act binds the Crown.

181.  Section 51B amended

(1) In section 51B(1) delete “minimum condition of employment as defined in the MCE Act.” and insert:

State employment standard.
(2) In section 51B(2) delete "minimum condition of employment as
defined in the MCE Act if the General Order is more favourable
to employees than the minimum condition of employment." and
insert:

State employment standard if the General Order is more
favourable to employees than the State employment standard.

Note: The heading to amended section 51B is to read:

Commission's power to make General Orders as to matters the
subject of State employment standards

182. Part II Division 3A heading replaced
Delete the heading to Part II Division 3A and insert:

Division 3A — State employment standard functions

183. Section 51C amended
Delete section 51C(2).

184. Section 511 amended
In section 511(1) delete "section 11 of the MCE Act." and
insert:

section 125.

185. Section 83 amended
After section 83(2) insert:

(3A) If a transmission of business agreement applies to an
employee, a State employment standard that is a
subject of the agreement —

(a) may be enforced only against the person who,
under the agreement, has the obligation to
comply with the standard; and

(b) must be enforced having regard to the
provisions of the agreement but only if the
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s. 186 agreement is in accordance with the provisions of Part XI Division 13.

186. Section 97U amended

(1) In section 97U(1) delete the definitions of:

Supported Wage System

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

section 97UM(2).

187. Section 97UE amended

In section 97UE(3) delete “section 5 of the MCE Act.” and insert:

section 118.

188. Sections 97VD and 97VN amended

In sections 97VD(1)(c) and 97VN(1)(c) delete “minimum condition of employment under the MCE Act.” and insert:

State employment standard.

189. Section 97VV amended

Delete section 97VV(b) and insert:

(b) the EEA provides for the payment of wages to the employee of an amount that is not less than the amount to which the employee is entitled to be paid under section 124(4) or (5).
190. **Section 98 amended**

In section 98(6) delete the definition of *instrument to which this section applies* and insert:

*instrument to which this section applies* means any of the following —

(a) an award;
(b) an industrial agreement;
(c) an order made by the Commission;
(d) an employer-employee agreement;
(e) a contract of a kind mentioned in the definition of *safety net contractual entitlement* in section 83BA(1).

191. **Section 113 amended**

After section 113(3b) insert:

(3C) The Governor may make regulations prescribing all matters that are required or permitted by Part XI to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of Part XI.

192. **Schedule 4 amended**

In Schedule 4 clause 1(1)(f) delete “minimum condition of employment under the MCE Act;” and insert:

State employment standard;

Note: The Note to amended Schedule 4 clause 1(1)(f) is to read:

Under section 118(2), a provision of an employer-employee agreement that is less favourable as mentioned in paragraph (f) has no effect.

**Division 4 — Consequential amendments to other Acts about State employment standards**

193. **Various references to “Minimum Conditions of Employment Act 1993” amended**

(1) This section amends the Acts listed in the Table.
(2) In the provisions listed in the Table delete “the Minimum Conditions of Employment Act 1993” and insert:

a State employment standard as defined in the Industrial Relations Act 1979 section 7(1)

<table>
<thead>
<tr>
<th>Table</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemistry Centre (WA) Act 2007</td>
<td>s. 17(3)(b)</td>
</tr>
<tr>
<td>Conservation and Land Management Act 1984</td>
<td>s. 20(4)(a)(ii)</td>
</tr>
<tr>
<td>Corruption and Crime Commission Act 2003</td>
<td>s. 179(5)(b) and 210(5)(b)</td>
</tr>
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<td>Electricity Corporations Act 2005</td>
<td>s. 18(3)(b)</td>
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<td>Forest Products Act 2000</td>
<td>s. 39(3)(b)</td>
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<td>Police Act 1892</td>
<td>s. 38B(2)(b)(ii) and 38G(2)(b)(ii)</td>
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<td>Port Authorities Act 1999</td>
<td>s. 16(3)(b)</td>
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<td>Racing and Wagering Western Australia Act 2003</td>
<td>s. 22(3)(b)</td>
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<td>School Education Act 1999</td>
<td>s. 236(3)(b)</td>
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<td>Water Corporation Act 1995</td>
<td>s. 15(3)(b)</td>
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<td>s. 11(3)(b)</td>
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<td>Western Australian Treasury Corporation Act 1986</td>
<td>s. 8B(3)(b)</td>
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<tr>
<td>Workers’ Compensation and Injury Management Act 1981</td>
<td>Sch. 1 cl. 11(2) def. of Amount E</td>
</tr>
<tr>
<td>Zoological Parks Authority Act 2001</td>
<td>s. 25(3)(a)(ii)</td>
</tr>
</tbody>
</table>

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[Draft Bill for public comment]
194. **Equal Opportunity Act 1984 amended**

(1) This section amends the *Equal Opportunity Act 1984*.

(2) In section 66ZS(1)(b) delete “a provision of the Minimum Conditions of Employment Act 1993, an award or industrial agreement within the meaning of the Industrial Relations Act 1979 or an award within the meaning of the Industrial Relations Act 1988 of the Commonwealth” and insert:

an industrial provision

(3) Delete section 66ZS(2) and insert:

(2) In subsection (1)(b) —

- advertisement has the meaning given by section 68(2);
- industrial provision means any of the following —
  
  a provision of the repealed Minimum Conditions of Employment Act 1993;

  a provision constituting a State employment standard within the meaning of the Industrial Relations Act 1979 section 7;

  a provision of an award, industrial agreement or order made under the Industrial Relations Act 1979;

  a provision of an award within the meaning of the repealed Industrial Relations Act 1988 (Commonwealth) or the repealed Workplace Relations Act 1996 (Commonwealth);

  a provision of an award, determination, enterprise agreement or order made under the Fair Work Act 2009 (Commonwealth);

  an award, determination or agreement given continuing effect under the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Commonwealth).

195. **Public Sector Management Act 1994 amended**

(1) This section amends the *Public Sector Management Act 1994*. 
Delete section 95(1) and insert:

(1) Subject to subsection (2), to the extent that there is an inconsistency between this Part or a regulation referred to in section 94 or both, and —

(a) any other provision of this Act other than section 7, 8 or 9; or

(b) the Industrial Relations Act 1979 Part XI Division 11; or

(c) an award or order under the Industrial Relations Act 1979 (including a General Order as defined in section 7(1) of that Act),

this Part or that regulation or both, as the case requires, prevails.
Part 13 — Amendments about right of entry

196. Act amended
This Part amends the Industrial Relations Act 1979.

197. Section 25 amended
In section 25(1) delete “Division and Divisions 2A to 2G” and insert:

Division, Divisions 2A to 2F and Part XII

198. Section 41 amended
In section 41(2) delete “and 49N,” and insert:

and 212,

199. Section 49FA inserted
At the end of Part II Division 2F insert:

49FA. Certain powers of Commission restricted
Section 212 applies to the making of an award or order or the registration of an agreement conferring, or making provision for the exercise of, powers of inspection.

200. Part II Division 2G deleted
Delete Part II Division 2G.

201. Section 96 amended
Delete section 96(2)(c) and insert:

(c) the issue of entry permits under Part XII Division 6 Subdivision 1;
(d) the imposition and recording of conditions on entry permits under section 206;
(e) the extension of entry permits under section 207(2);
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(f) the return of entry permits under section 208(2);
(g) the issue of exemption certificates under section 210;
(h) the issue of affected member certificates under section 211.

202. Part XII inserted

Before Schedule 1 insert in numerical order:

Part XII — Right of entry

Division 1 — Terms used

176. Terms used

(1) In this Part —

affected employer has the meaning given in subsection (2);
affected member certificate has the meaning given in section 211;
entry notice has the meaning given in section 185(1);
entry permit has the meaning given in section 202;
exemption certificate has the meaning given in section 210(1);
industrial law has the meaning given in the Fair Work Act 2009 (Commonwealth) section 12;
non-member record or document, in relation to a permit holder, means a record or document that —
(a) relates to the employment of a person who is not a member of the permit holder’s organisation; and
(b) does not also substantially relate to the employment of a person who is a member of the permit holder’s organisation,
but does not include a record or document that relates only to a person or persons who are not members of the permit holder’s organisation if the person or persons have consented in writing to the record or document being inspected or copied by the permit holder;
occupier, of premises, includes a person in charge of premises;

official, of an organisation, means a person who holds office in, or is an employee of, the organisation;

permit holder means a person who holds an entry permit;

State or Territory OHS law means a law of a State or a Territory prescribed by regulations made by the Governor.

(2) A person is an affected employer —

(a) in relation to an entry onto premises under section 177 by a permit holder, if —

(i) the person employs a member of the permit holder’s organisation whose industrial interests the organisation is entitled to represent; and

(ii) the member performs work on the premises; and

(iii) the suspected contravention relates to, or affects, the member;

and

(b) in relation to an entry onto premises under section 181 by a permit holder, if —

(i) the person employs a person whose industrial interests the organisation is entitled to represent; and

(ii) the person performs work on the premises; and

(iii) the suspected contravention relates to, or affects, the person.

Division 2 — Entry rights

Subdivision 1 — Entry to investigate suspected contravention

177. Entry to investigate suspected contravention

(1) In this section —

industrial instrument means —

(a) an award; or
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(b) an order made by the Commission; or
(c) an industrial agreement; or
(d) an employer-employee agreement.

(2) A permit holder may enter premises and exercise a
right under section 178 or 179 for the purpose of
investigating a suspected contravention of —
(a) this Act; or
(b) the Long Service Leave Act 1958; or
(c) an industrial instrument.

(3) The suspected contravention must relate to, or affect, a
member of the permit holder’s organisation —
(a) whose industrial interests the organisation is
entitled to represent; and
(b) who performs work on the premises.

(4) The industrial instrument must apply, or have applied,
to the member.

(5) If the industrial instrument is an industrial agreement,
the permit holder’s organisation must be, or have been,
a party to the agreement.

(6) If the industrial instrument is an employer-employee
agreement, the permit holder must have been
authorised in writing to exercise the power under
subsection (2)(c) by the employee who is a party to the
agreement.

(7) The permit holder must reasonably suspect that the
contravention has occurred, or is occurring.

(8) The burden of proving that the suspicion referred to in
subsection (7) is reasonable lies on the person asserting
that fact.

178. Rights that may be exercised while on premises

(1) While on the premises pursuant to section 177, the
permit holder may do the following —
(a) inspect any work, process or object relevant to
the suspected contravention;
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(b) interview any person about the suspected contravention if the person —

(i) agrees to be interviewed; and

(ii) is a person whose industrial interests the permit holder’s organisation is entitled to represent;

(c) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document (other than a non-member record or document) that is directly relevant to the suspected contravention and that —

(i) is kept on the premises; or

(ii) is accessible from a computer that is kept on the premises.

(2) However, an occupier or affected employer is not required under subsection (1)(c) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the State or the Commonwealth.

(3) An occupier or affected employer must not contravene a requirement under subsection (1)(c).

Note: This subsection is a civil penalty provision. See section 213.

179. Later access to records or document

(1) A permit holder investigating a suspected contravention under section 177 may, by written notice, require an affected employer to produce, or provide access to, a record or document (other than a non-member record or document) that is directly relevant to the suspected contravention on a later day or days specified in the notice.

(2) However, an affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the State or the Commonwealth.

(3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.

(4) The notice may be given —

(a) while the permit holder is on the premises; or
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(b) within 5 days after the entry.

An affected employer must not contravene a requirement under subsection (1).

Note: This subsection is a civil penalty provision. See section 213.

The permit holder may inspect, and make copies of, the record or document at —

(a) the premises; or

(b) if another place is agreed upon by the permit holder and the affected employer — that other place.

Subdivision 2 — Entry to hold discussions

A permit holder may enter premises for the purposes of holding discussions with one or more employees —

(a) who perform work on the premises; and

(b) whose industrial interests the permit holder’s organisation is entitled to represent; and

(c) who wish to participate in those discussions.

Subdivision 3 — Entry to investigate suspected health and safety law contravention

A permit holder may enter premises and exercise a right under section 182 or 183 for the purpose of investigating a suspected contravention of —

(a) the Occupational Safety and Health Act 1984; or

(b) the Mines Safety and Inspection Act 1994,

that relates to, or affects, a person whose industrial interests the permit holder’s organisation is entitled to represent.

The permit holder must reasonably suspect that the contravention has occurred, or is occurring.
(3) The burden of proving that the suspicion referred to in subsection (2) is reasonable lies on the person asserting that fact.

182. Rights that may be exercised while on premises

(1) While on the premises pursuant to section 181, the permit holder may do the following —

(a) inspect any work, process or object relevant to the suspected contravention;

(b) interview any person about the suspected contravention if the person —

(i) agrees to be interviewed; and

(ii) is a person whose industrial interests the permit holder’s organisation is entitled to represent;

(c) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document (other than a non-member record or document) that is directly relevant to the suspected contravention and that —

(i) is kept on the premises; or

(ii) is accessible from a computer that is kept on the premises.

(2) However, an occupier or affected employer is not required under subsection (1)(c) to allow the permit holder to inspect, and make copies of, a record or document if to do so would contravene a law of the State or the Commonwealth.

(3) An occupier or affected employer must not contravene a requirement under subsection (1)(c).

Note: This subsection is a civil penalty provision. See section 213.

183. Later access to records or document

(1) A permit holder investigating a suspected contravention under section 181 may, by written notice, require an affected employer to produce, or provide access to, a record or document (other than a non-member record or document) that is directly relevant to the suspected contravention on a later day or days specified in the notice.
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(2) However, an affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the State or the Commonwealth.

(3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.

(4) The notice may be given —
   (a) while the permit holder is on the premises; or
   (b) within 5 days after the entry.

(5) An affected employer must not contravene a requirement under subsection (1).

Note: This subsection is a civil penalty provision. See section 213.

(6) The permit holder may inspect, and make copies of, the record or document at —
   (a) the premises; or
   (b) if another place is agreed upon by the permit holder and the affected employer — that other place.

Division 3 — Requirements for permit holders

184. Permit holder must not contravene this Division

Division 2 does not authorise a permit holder to enter or remain on premises, or exercise any other right, if the permit holder contravenes this Division, or regulations prescribed under section 214, in exercising that right.

185. Giving entry notice or exemption certificate

(1) An entry notice for an entry is a notice that complies with section 209.

(2) Unless the Commission has issued an exemption certificate for the entry, the permit holder must —
   (a) before entering premises under section 177 — give the occupier of the premises and any affected employer an entry notice for the entry; and
(b) before entering premises under section 180 —
give the occupier of the premises an entry
notice for the entry.

(3) An entry notice for an entry under section 177 or 180
must be given during working hours at least 24 hours,
but not more than 14 days, before the entry.

(4) If the Commission has issued an exemption certificate
for the entry, the permit holder must, either before or as
soon as practicable after entering the premises, give a
copy of the certificate to —
(a) the occupier of the premises or another person
who apparently represents the occupier; and
(b) any affected employer or another person who
apparently represents the employer,
if the occupier, employer or other person is present at
the premises.

186. **Contravening entry permit conditions**
The permit holder must not contravene a condition
imposed on the entry permit.

187. **Producing authority documents**

(1) In this section —

*authority documents*, for an entry under section 177
or 180, means —

(a) the permit holder’s entry permit; and

(b) either —

(i) a copy of the entry notice for the entry;
or

(ii) if the Commission has issued an
exemption certificate for the entry —
the certificate.

(2) If the permit holder has entered premises under
section 177, the permit holder must produce his or her
authority documents for inspection by the occupier of
the premises, or an affected employer —

(a) on request; and

(b) before making a requirement under
section 178(1)(c) or 179(1).
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(3) If the permit holder has entered premises under section 180, the permit holder must produce his or her authority documents for inspection by the occupier of the premises on request.

(4) If the permit holder has entered premises under section 181, the permit holder must, as soon as is reasonably practicable after entering the premises, give the occupier of the premises and any affected employer an entry notice.

(5) Subsection (4) does not apply if to give the notice would unreasonably delay the permit holder in an urgent case.

(6) If the notice is not given in accordance with subsection (4) because of the application of subsection (5), the entry notice must be given to the occupier of the premises and any affected employer not later than 24 hours after the permit holder enters the premises.

188. When right may be exercised

(1) The permit holder may exercise a right under Division 2 only during working hours.

(2) The permit holder may hold discussions under section 180 only during mealtimes or other breaks.

(3) The permit holder may enter premises under section 177 or 180 only on a day specified in the entry notice or exemption certificate for the entry.

189. Occupational health and safety requirements

The permit holder must comply with any reasonable request by the occupier of the premises for the permit holder to comply with an occupational health and safety requirement that applies to the premises.

190. Conduct of interviews in particular room etc.

(1) The permit holder must comply with any reasonable request by the occupier of the premises to —

(a) conduct interviews or hold discussions in a particular room or area of the premises; or
(b) take a particular route to reach a particular room or area of the premises.

(2) Without limiting when a request under subsection (1) might otherwise be unreasonable, a request under subsection (1)(a) is unreasonable if —

(a) the room or area is not fit for the purpose of conducting the interviews or holding the discussions; or

(b) the request is made with the intention of —

(i) intimidating persons who might participate in the interviews or discussions; or

(ii) discouraging persons from participating in the interviews or discussions; or

(iii) making it difficult for persons to participate in the interviews or discussions, whether because the room or area is not easily accessible during mealtimes or other breaks, or for some other reason.

(3) However, a request under subsection (1) is not unreasonable only because the room, area or route is not that which the permit holder would have chosen.

(4) Regulations made by the Governor may prescribe circumstances in which a request under subsection (1) is or is not reasonable.

191. Residential premises

The permit holder must not enter any part of premises that is used mainly for residential purposes.

Division 4 — Prohibitions

192. Permit holder must not hinder or obstruct

A permit holder exercising, or seeking to exercise, rights in accordance with this Part must not intentionally hinder or obstruct any person, or otherwise act in an improper manner.

Note: This section is a civil penalty provision. See section 213.
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193. **Person must not refuse or delay entry**

A person must not refuse or unduly delay entry onto premises by a permit holder who is entitled to enter the premises in accordance with this Part.

Note: This section is a civil penalty provision. See section 213.

194. **Person must not hinder or obstruct permit holder**

(1) A person must not intentionally hinder or obstruct a permit holder exercising rights in accordance with this Part.

Note: This subsection is a civil penalty provision. See section 213.

(2) To avoid doubt, failure to agree on a place as referred to in section 179(6)(b) or 183(6)(b) does not constitute hindering or obstructing a permit holder.

(3) Without limiting subsection (1), that subsection extends to hindering or obstructing that occurs after an entry notice is given but before a permit holder enters premises.

195. **Misrepresentation about things authorised by this Part**

(1) A person must not take action —

   (a) with the intention of giving the impression; or

   (b) reckless as to whether the impression is given,

   that the doing of a thing is authorised by this Part if it is not so authorised.

Note: This subsection is a civil penalty provision. See section 213.

(2) Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorised.

196. **Unauthorised use or disclosure of information or documents**

A person must not use or disclose information or a document obtained under section 178, 179, 182 or 183 in the investigation of a suspected contravention for a purpose that is not related to the investigation or rectifying the suspected contravention, unless —

   (a) the use or disclosure is required or authorised by or under law; or
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(b) the Commission has by order authorised the use or disclosure.

Note: This section is a civil penalty provision. See section 213.

Division 5 — Powers of Commission

197. Commission may deal with dispute about operation of this Part

(1) The Commission may deal with a dispute about the operation of this Part (including a dispute about whether a request under section 189 or 190 is reasonable).

(2) This Act applies for the purposes of subsection (1) as if the dispute were an industrial matter referred to the Commission.

(3) Without limiting subsection (2), the Commission may deal with the dispute by making one or more of the following orders —

(a) an order imposing conditions on an entry permit;
(b) an order suspending an entry permit;
(c) an order revoking an entry permit;
(d) an order about the future issue of entry permits to one or more persons;
(e) any other order it considers appropriate.

(4) The Commission may deal with the dispute on application by any of the following to whom the dispute relates —

(a) a permit holder;
(b) a permit holder’s organisation;
(c) an employer;
(d) an occupper of premises.

(5) In dealing with the dispute the Commission must not confer rights on a permit holder that are additional to, or inconsistent with, rights exercisable in accordance with Division 2, unless the dispute is about whether a request under section 189 or 190 is reasonable.
Commision may take action against permit holder

(1) The Commission may, on application by an industrial inspector or a person with a sufficient interest in the matter, take the following action against a permit holder —
   (a) impose conditions on any entry permit issued to the permit holder;
   (b) suspend any entry permit issued to the permit holder;
   (c) revoke any entry permit issued to the permit holder.

(2) In deciding whether to take action under subsection (1), the Commission must take into account the permit qualification matters set out in section 203.

Commission may restrict rights if organisation or official has misused rights

(1) In this section —
   Commission means the Commission in Full Session.

(2) The Commission may, on application by an industrial inspector or a person with a sufficient interest in the matter, restrict the rights that are exercisable under this Part by an organisation, or officials of an organisation, if the Commission is satisfied that the organisation, or an official of the organisation, has misused those rights.

(3) The action that the Commission may take under subsection (2) includes the following —
   (a) imposing conditions on entry permits;
   (b) suspending entry permits;
   (c) revoking entry permits;
   (d) requiring some or all of the entry permits that might in future be issued in relation to the organisation to be issued subject to specified conditions;
   (e) banning, for a specified period, the issue of entry permits in relation to the organisation, either generally or to specified persons;
   (f) making any order it considers appropriate.
(4) Without limiting subsection (2), an official misuses rights exercisable under this Part if —
(a) the official exercises those rights repeatedly with the intention or with the effect of hindering, obstructing or otherwise harassing an occupier or employer; or
(b) in exercising a right under section 180, the official encourages a person to become a member of an organisation and does so in a way that is unduly disruptive —
(i) because the exercise of the right is excessive in the circumstances; or
(ii) for some other reason.

200. When Commission must revoke or suspend entry permit

(1) The Commission must, under this subsection, revoke or suspend each entry permit held by a permit holder if it is satisfied that any of the following has happened since the first of those permits was issued —
(a) the permit holder was found, in proceedings under this Act, to have contravened section 195;
(b) the permit holder has contravened section 196;
(c) the permit holder, or another person, was ordered to pay a pecuniary penalty under this Act in relation to a contravention of this Part by the permit holder;
(d) a court, or other person or body, under an industrial law —
(i) cancelled or suspended a right of entry for industrial purposes that the permit holder had under that law; or
(ii) disqualified the permit holder from exercising, or applying for, a right of entry for industrial purposes under that law;
(e) the permit holder has, in exercising a right of entry under a State or Territory OHS law, taken action that was not authorised by that law.
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(2) Despite subsection (1), the Commission is not required to suspend or revoke an entry permit under subsection (1)(c) or (e) if the Commission is satisfied that the suspension or revocation would be harsh or unreasonable in the circumstances.

(3) Subsection (1) does not apply in relation to a circumstance referred to in a paragraph of that subsection if the Commission took the circumstance into account when taking action under that subsection on a previous occasion.

(4) A suspension under subsection (1) must be for a period that is at least as long as the period (the minimum suspension period) specified in whichever of the following paragraphs applies —

(a) if the Commission has not previously taken action under subsection (1) against the permit holder — 3 months;

(b) if the Commission has taken action under subsection (1) against the permit holder on only one occasion — 12 months;

(c) if the Commission has taken action under subsection (1) against the permit holder on more than one occasion — 5 years.

(5) If the Commission takes action under subsection (1), it must also ban the issue of any further entry permit to the permit holder for a specified period (the ban period).

(6) The ban period must —

(a) begin when the action is taken under subsection (1); and

(b) be no shorter than the minimum suspension period.

201. General rules for suspending entry permits

If the Commission suspends an entry permit, the suspension —

(a) must be for a specified period; and

(b) does not prevent the revocation of, or the imposition of conditions on, the entry permit during the suspension period; and
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(c) does not alter the times at which the entry permit would otherwise expire.

Division 6 — Entry permits, entry notices and certificates

Subdivision 1 — Entry permits

202. Commission may issue entry permits

The Commission may, on application by the secretary of an organisation of employees, issue a permit (an entry permit) to an official of the organisation if the Commission is satisfied that the official is a fit and proper person to hold the entry permit.

203. Considering application

In deciding whether the official is a fit and proper person, the Commission must take into account the following permit qualification matters —

(a) whether the official has received appropriate training about the rights and responsibilities of a permit holder;

(b) whether the official has ever been convicted of an offence against this Act or any other industrial law;

(c) whether the official has ever been convicted of an offence against a law of the State, the Commonwealth, another State, a Territory or a foreign country, involving —

(i) entry onto premises; or

(ii) fraud or dishonesty; or

(iii) intentional use of violence against another person or intentional damage or destruction of property;

(d) whether the official, or any other person, has ever been ordered to pay a penalty under this Act or any other industrial law in relation to action taken by the official;

(e) whether a permit issued to the official under this Part, or under a similar law of the State (no matter when in force), has been revoked or suspended or made subject to conditions;
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(f) whether a court, or other person or body, under another industrial law or a State or Territory OHS law, has —

(i) cancelled, suspended or imposed conditions on a right of entry for industrial or occupational health and safety purposes that the official had under that law; or

(ii) disqualified the official from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under that law;

(g) any other matters that the Commission considers relevant.

204. When Commission must not issue permit

The Commission must not issue an entry permit to an official at a time when a suspension or disqualification, imposed by a court or other person or body —

(a) applies to the official’s exercise of; or

(b) prevents the official from exercising or applying for,

a right of entry for industrial or occupational health and safety purposes under an industrial law or a State or Territory OHS law.

205. Authorisation to investigate occupational health and safety breaches

(1) The Commission must not issue an entry permit that authorises an official of an organisation to investigate suspected contraventions of the Occupational Safety and Health Act 1984 or the Mines Safety and Inspection Act 1994 unless the Commission is satisfied that the official has satisfactorily completed the training prescribed by regulations made by the Governor.

(2) A permit holder is not authorised to investigate suspected contraventions of the Occupational Safety and Health Act 1984 or the Mines Safety and Inspection Act 1994, unless authorisation to do so is recorded on the entry permit.
206. **Conditions on entry permit**

(1) The Commission may impose conditions on an entry permit when it is issued.

(2) In deciding whether to impose conditions under subsection (1), the Commission must take into account the permit qualification matters set out in section 203.

(3) The Commission must record on an entry permit any conditions that have been imposed on its use (whether under subsection (1) or any other provision of this Part).

(4) If the Commission imposes a condition on an entry permit after it has been issued, the permit ceases to be in force until the Commission records the condition on the permit.

(5) To avoid doubt, a permit holder does not contravene a Commission order merely because the permit holder contravenes a condition imposed on his or her permit by order (whether the condition is imposed at the time the entry permit is issued or at any later time).

207. **Expiry of entry permit**

(1) Unless it is revoked, an entry permit expires at the earlier of the following times —

   (a) at the end of the period of 3 years beginning on the day it is issued, or that period as extended under subsection (2);

   (b) when the permit holder ceases to be an official of the organisation that applied for the permit.

(2) The Commission may extend the period of 3 years referred to in subsection (1)(a) by a specified period if —

   (a) the organisation that applied for the permit (the *old permit*) has applied for another entry permit for the permit holder; and

   (b) the application was made at least one month before the old permit would otherwise have expired under subsection (1)(a); and

   (c) the Commission is satisfied that the old permit is likely to expire before the Commission determines the application.
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(3) The period specified must not be longer than the period that the Commission considers necessary for it to determine the application.

(4) The Commission must not extend the period under subsection (2) if —
   (a) the Commission has requested or required the organisation or permit holder to provide copies of records or documents, or to provide any other information, in relation to the application; and
   (b) the organisation or permit holder has not complied with the request or requirement; and
   (c) the Commission is satisfied that the organisation or permit holder does not have a reasonable excuse.

208. Return of entry permit

(1) A permit holder must return an entry permit to the Commission within 7 days of any of the following things happening —
   (a) the permit is revoked or suspended;
   (b) conditions are imposed on the permit after it is issued;
   (c) the permit expires.

Note: This subsection is a civil penalty provision. See section 213.

(2) After the end of a suspension period, the Commission must return the entry permit to the permit holder if —
   (a) the permit holder, or the permit holder’s organisation, applies to the Commission for the return of the entry permit; and
   (b) the entry permit has not expired or been revoked.

Subdivision 2 — Entry notices

209. Entry notice requirements

(1) An entry notice must specify the following —
   (a) the premises that are proposed to be entered;
   (b) the day of entry;
(2) An entry notice given for an entry under section 177 must —

(a) specify that section as the provision that authorises entry; and

(b) specify the particulars of the suspected contravention, or contraventions; and

(c) contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a member, who performs work on the premises, and —

(i) to whom the suspected contravention or contraventions relate; or

(ii) who is affected by the suspected contravention or contraventions; and

(d) specify the provision of the permit holder’s organisation’s rules that entitles the organisation to represent the member.

(3) An entry notice given for an entry under section 180 must —

(a) specify that section as the provision that authorises entry; and

(b) contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of an employee who performs work on the premises; and

(c) specify the provision of the permit holder’s organisation’s rules that entitles the organisation to represent the employee.

(4) An entry notice given for an entry under section 181 must —

(a) specify that section as the provision that authorises entry; and

(b) specify the particulars of the suspected contravention, or contraventions; and
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(c) contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of an employee, who performs work on the premises, and —

(i) to whom the suspected contravention or contraventions relate; or

(ii) who is affected by the suspected contravention or contraventions;

and

(d) specify the provision of the permit holder’s organisation’s rules that entitles the organisation to represent the employee.

Subdivision 3 — Exemption certificates

210. Exemption certificates

(1) The Commission must issue a certificate (an exemption certificate) to an organisation for an entry under section 177 if —

(a) the organisation has applied for the certificate; and

(b) the Commission reasonably believes that advance notice of the entry given by an entry notice might result in the destruction, concealment or alteration of relevant evidence.

(2) An exemption certificate must specify the following —

(a) the premises to which it relates;

(b) the organisation to which it relates;

(c) the day or days on which the entry may occur;

(d) particulars of the suspected contravention, or contraventions, to which the entry relates;

(e) section 177 as the provision that authorises entry.

Subdivision 4 — Affected member certificates

211. Affected member certificates

(1) The Commission must, on application by an organisation, issue a certificate (an affected member
certificate) to the organisation if the Commission is satisfied that —

(a) a member of the organisation performs work on particular premises; and

(b) the organisation is entitled to represent the industrial interests of the member; and

(c) a suspected contravention of a kind referred to in section 177 relates to, or affects, the member.

(2) An affected member certificate must state the following —

(a) the premises to which it relates;

(b) the organisation to which it relates;

(c) particulars of the suspected contravention, or contraventions, to which it relates;

(d) that the Commission is satisfied as to the matters referred to in subsection (1)(a), (b) and (c).

(3) An affected member certificate must not reveal the identity of the member or members to whom it relates.

Division 7 — Miscellaneous

212. Certain powers of Commission restricted

(1) The Commission does not have jurisdiction to make an award or order or register an industrial agreement conferring, or making provision for the exercise of, powers of entry and inspection that are additional to, or inconsistent with, the powers of entry and inspection under section 49E and this Part and the provisions as to the exercise of those powers.

(2) To the extent that the provisions of an award, order or industrial agreement, whether made or registered before or after the coming into operation of the Labour Relations Legislation Amendment and Repeal Act 2012 section 202 (the amending provision), confer or make provision for the exercise of powers of entry and inspection that are additional to, or inconsistent with, the powers of entry and inspection under section 49E and this Part or the provisions as to the exercise of those powers, those provisions have no effect.
(3) A provision of an award, order or industrial agreement made or registered before the coming into operation of the amending provision does not cease to have effect by reason of the operation of subsection (2) until 28 days after the coming into operation of the amending provision.

213. Enforcement: civil penalty provisions

A contravention of a provision listed in the Table is not an offence but that provision is a civil penalty provision for the purposes of section 83E.

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214. Regulations under this Part

Regulations made by the Chief Commissioner under section 113 may provide for, and in relation to, the following —

(a) the form of entry permits, entry notices, exemption certificates and affected member certificates;

(b) additional information to be included on, or given with, entry permits, entry notices, exemption certificates and affected member certificates;

(c) the manner in which entry permits, entry notices, exemption certificates and affected member certificates are to be given;

(d) any other matter in relation to entry permits, entry notices, exemption certificates and affected member certificates.
Part 14 — Amendments about compliance, enforcement and appeals

203. Act amended

This Part amends the Industrial Relations Act 1979.

204. Section 29AA amended

After section 29AA(4) insert:

(5A) Subject to subsection (5B), the Commission must not determine a claim that an employer has not allowed an employee a benefit to which the employee is entitled under a contract of employment if an application in respect of the entitlement has been made under section 83BA.

(5B) Despite subsection (5A), the Commission may determine the claim if the application under section 83BA is withdrawn or struck out.

205. Section 42J amended

Delete section 42J(4) and insert:

(4) An enterprise order is enforceable under section 83.

206. Section 81A replaced

Delete section 81A and insert:

81A. Jurisdiction of industrial magistrate’s court under this Act

An industrial magistrate’s court has the jurisdiction conferred on it by the provisions listed in the Table.

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<td>s. 97YG</td>
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</table>

207. **Section 81B amended**

Delete section 81B(2) to (6) and insert:

(2) Each person holding office as a magistrate is, by virtue of holding that office, an industrial magistrate.

208. **Section 81CA amended**

In section 81CA(1) in the definition of general jurisdiction delete paragraph (a) and insert:

(a) section 74B, 77, 83(1) to (7), 83A, 83BA, 83B(1) to (9), 83E(1) to (8) and (10), 96J, 97V(3), 97VJ(3), 97YC(1) to (3), 97YG(1) to (6) or 111; or

209. **Section 82 deleted**

Delete section 82.

210. **Section 82A replaced**

Delete section 82A and insert:

82A. **Time for application**

An application under section 77, 83, 83BA, 83B or 83E must be made within 6 years from the time of the alleged contravention or failure to comply.
211. Section 83 amended

(1) In section 83(1):

(a) delete "or fails to comply with a provision of an instrument" and insert:

a provision

(b) delete paragraphs (c), (d), (e) and (f) and insert:

(c) in the case of a provision of an award or industrial agreement, an organisation or association named as a party to the award or industrial agreement;

(d) in the case of a provision of an award, an organisation or association entitled to represent the industrial interests of one or more employers or employees covered by the award;

(e) in the case of a provision of an award, industrial agreement, enterprise order or other order, an employer bound by the award, industrial agreement or order;

(f) in the case of a provision of an enterprise order, an organisation or association specified in the order under section 42J(5)(b);

(g) in the case of a State employment standard, any person to whom it applies;

(h) any person on his or her own behalf who is a party to the instrument in which the provision occurs or to whom the provision applies;

(i) if an employee under an employer-employee agreement is a represented person, a representative acting on his or her behalf.

(2) After section 83(1) insert:

(2A) In this section —

contravene, in relation to any requirement or condition prescribed in a provision to which this section applies, includes a failure to comply with that requirement or condition;
1. *provision to which this section applies* has the meaning given in subsection (2).

(2B) A person who is involved in a contravention of a provision to which this section applies is taken to have contravened that provision.

(2C) A person is *involved in* a contravention of a provision to which this section applies if, and only if, the person —

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced the contravention, whether by threats or promises or otherwise; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(d) has conspired with others to effect the contravention.

(2D) For the purposes of this section, 2 or more contraventions of a provision to which this section applies are, subject to subsection (2E), taken to constitute a single contravention if —

(a) the contraventions are committed by the same person; and

(b) the contraventions arose out of a course of conduct by the person.

(2E) Subsection (2D) does not apply to a contravention of a provision to which this section applies that is committed by a person after an industrial magistrate’s court has imposed a pecuniary penalty under subsection (4)(a)(ii) on the person for an earlier contravention of the provision.

(3) Delete section 83(2) and insert:

(2) This section applies to the following provisions —

(a) a provision set out in the Table to section 117 that constitutes a State employment standard;

(b) a provision of —

(i) an award; or
1. (ii) an industrial agreement; or
2. (iii) an employer-employee agreement; or
3. (iv) an enterprise order; or
4. (v) any other order made, or direction or declaration given, by the Commission, other than an order made under Part II Division 2AA.

(4) In section 83(3) delete “an instrument” and insert:

a provision

(5) In section 83(4)(a) delete “or failure to comply”.

(6) In section 83(4)(a)(ii):

(a) delete “$2 000” and insert:

$5 000

(b) delete “$500” and insert:

$1 000

(7) In section 83(5):

(a) delete “or failure to comply with a provision of an instrument to which this section applies”; 
(b) delete “contravention or failure to comply with the provision.” and insert:

contravention.

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

Enforcement of certain provisions

212. Section 83A amended

In section 83A(1) delete “an instrument” and insert:

a provision
213. Section 83BA inserted

After section 83A insert:

83BA. Orders in relation to safety net contractual entitlements

(1) In this section —

safety net contractual entitlement means an entitlement of an employee (the employee) under a contract between the employee and an employer (the employer) that relates to any of the subject matters described in a provision to which section 83 applies.

(2) If an application is made to an industrial magistrate’s court for an order under section 83, the applicant may also make an application to the court for an order in relation to a contravention of a safety net contractual entitlement.

(3) If the application is made by a person other than the employee, it is taken to have been made on behalf of the employee.

(4) Subject to subsection (5), the court must dismiss the application if the employee has referred a claim in respect of the safety net contractual entitlement to the Commission under section 29(1)(b).

(5) Despite subsection (4), the court may deal with the application if the reference of the claim to the Commission is withdrawn or struck out.

(6) The court may order the employer to pay an amount to, or on behalf of, the employee if the court is satisfied that the employer was required to pay the amount under the safety net contractual entitlement.

214. Section 83C deleted

Delete section 83C.
215. Section 83D amended

In section 83D(1) delete “Act other than an offence under section 80(3),” and insert:

Act.

216. Section 83E amended

(1) After section 83E(1) insert:

(2A) A person who is involved in a contravention of a civil penalty provision is taken to have contravened that provision.

(2B) A person is involved in a contravention of a civil penalty provision if, and only if, the person —

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced the contravention, whether by threats or promises or otherwise; or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(d) has conspired with others to effect the contravention.

(2) After section 83E(3) insert:

(4A) For the purposes of this section, 2 or more contraventions of section 49D(2) or (3) or of section 49EA are, subject to subsection (4B), taken to constitute a single contravention if —

(a) the contraventions are committed by the same person; and

(b) the contraventions arose out of a course of conduct by the person.

(4B) Subsection (4A) does not apply to a contravention of section 49D(2) or (3) or of section 49EA that is committed by a person after an industrial magistrate’s court has imposed a pecuniary penalty under
subsection (1) on the person for an earlier contravention of that provision.

(3) Delete section 83E(6)(d) and insert:

(d) an industrial inspector; or
(e) an officer designated to be an authorised officer under the Children and Community Services Act 2004 section 25 for the purposes of Part 7 of that Act.

(4) In section 83E(6a) delete “section 8(3), 44(3) or 45(1) of the MCE Act or of section 26(2) or 26A(1) of the Long Service Leave Act 1958.” and insert:

section 120(4), or of the Long Service Leave Act 1958 section 26(2) or 26A(1).

(5) In section 83E(10) after “subsection 6” insert:

or (7A)

(6) Delete section 83E(11) and (12) and insert:

(11) If a penalty is imposed on a person under subsection (1) in relation to particular conduct, the person is not liable to be ordered under some other enactment to pay a pecuniary penalty (other than a fine) in relation to that conduct.

217. Section 83FA inserted

After section 83E insert:

83FA. Regulations dealing with infringement notices

(1) The Governor may make regulations providing for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the State as an alternative to civil proceedings.
(2) The penalty must not exceed one-tenth of the maximum penalty that an industrial magistrate’s court could have ordered the person to pay under section 83E(1) if the court was satisfied that the person had contravened the civil penalty provision.

218. Section 83FB inserted

Before section 83F insert:

83FB. Costs generally

(1) Subject to subsection (2), an order under section 83, 83A, 83BA, 83B or 83E may be made in any case with or without costs, but in no case are any costs to be given against the Registrar, a deputy registrar, or an industrial inspector or an officer mentioned in section 83E(6)(e).

(2) An industrial magistrate’s court must not order a party (the first person) to bear some or all of the costs of another person in relation to proceedings before the court under section 83, 83BA, 83B or 83E unless —

(a) the court is satisfied that the first person commenced the proceedings, or the first person responded to the proceedings, vexatiously or without reasonable cause; or

(b) the court is satisfied that it should have been reasonably apparent to the first person that the proceedings commenced by the first person, or the first person’s response to the proceedings, had no reasonable prospect of success.

219. Section 83F amended

In section 83F(1) after “83A,” insert:

83BA,

220. Section 84A deleted

Delete section 84A.
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221. Section 85A inserted

At the end of Part III insert:

85A. No contracting out

(1) Except as expressly permitted under this Act, a provision in a contract or agreement, whether in writing or not, that purports to exclude, modify or restrict the operation of an award, industrial agreement, employer-employee agreement or order of the Commission has no effect.

(2) A provision in a contract or agreement that has no effect because of subsection (1) does not prejudice or affect the operation of other provisions of the contract or agreement.

222. Section 86 amended

Delete section 86(2) and insert:

(2) Subject to subsection (4) the Court, in the exercise of its jurisdiction, may make such orders as it thinks just as to costs and expenses (including expenses of witnesses) of proceedings before the Court.

(3) In subsection (2) —

proceedings before the Court includes proceedings dismissed for want of jurisdiction.

(4) The Court must not order a party (the first person) to bear some or all of the costs of another person in relation to proceedings before the Court unless —

(a) the Court is satisfied that the first person commenced or defended the proceedings vexatiously or without reasonable cause; or

(b) the Court is satisfied that it should have been reasonably apparent to the first person that the proceedings commenced by the first person, or the first person’s defence, had no reasonable prospect of success.
223. Section 90 amended
Delete section 90(1)(a) and (b) and insert:
(a) on the ground that the decision is in excess of jurisdiction; or
(b) on the ground that the decision is erroneous in law; or

224. Section 97WQ amended
(1) At the beginning of section 97WQ insert:
(1) The provisions of an EEA are enforceable under section 83.

(2) In section 97WQ delete “In any” and insert:
(2) In any

Note: The heading to amended section 97WQ is to read:
Enforcement of EEAs

225. Part VII heading replaced
Delete the heading to Part VII and insert:

Part VII — Industrial inspectors and other staff

226. Section 98 amended
(1) Delete section 98(2) and insert:
(2) In addition to other functions conferred on an industrial inspector by this Act and other written laws, an industrial inspector may —
(a) carry out an investigation in relation to compliance with this Act or any instrument to which this section applies; and
(b) report to the CEO in relation to the investigation.
(3A) The Minister may direct an industrial inspector to —
(a) carry out an investigation under subsection (2)(a) in respect of a matter specified by the Minister; and
(b) report to the Minister in relation to the investigation.

(3B) An industrial inspector must comply with a direction under subsection (3A).

(3C) In subsections (3) and (4B) to (4E) —
*produce* means produce, exhibit, send or deliver.

(2) In section 98(3)(a) delete “subsection” and insert:

section

(3) Delete section 98(3)(e) and (f) and insert:

(e) by notice in writing or orally require a person to produce a record for inspection; and

(f) inspect and —
(i) seize; or
(ii) retain for as long as is necessary for the purposes of carrying out the function to which the record is relevant; or
(iii) take extracts from or copies of,

any record that is kept at an industrial location or is accessible from a computer that is kept in the industrial location or that is produced for the industrial inspector’s inspection in compliance with a requirement made under this subsection; and

(4) After section 98(3) insert:

(4A) The power of an industrial inspector under subsection (3)(e) —
(a) may be exercised whether or not the industrial inspector has entered, or proposes to enter, an industrial location; and
(b) if exercised when the industrial inspector has entered an industrial location, may be exercised in relation to any record whether or not it is kept at the industrial location.

(4B) If a requirement under subsection (3)(e) is exercised in respect of a record that is kept at an industrial location at which the industrial inspector is present, the inspector must specify the way in which the record is to be produced and —

(a) require the record to be produced while the inspector is at the industrial location; or

(b) specify a period of not less than 7 days for its production.

(4C) Unless subsection (4B) applies, the industrial inspector must specify the way in which a record is to be produced and specify a period of not less than 7 days for its production.

(4D) A person is not excused from producing a record under subsection (3)(e) on the ground that the production of the record might tend to incriminate the person or expose the person to a penalty.

(4E) However none of the following are admissible in evidence against the person in criminal proceedings —

(a) the record produced;

(b) producing the record;

(c) anything obtained as a direct or indirect consequence of producing the record.

(4F) Subsection (4E) does not apply to proceedings for an offence under this Act or the Children and Community Services Act 2004 Part 7.

227. Section 99 replaced

Delete section 99 and insert:

99. Power to ask for person’s name and address

(1) An industrial inspector may require a person to tell the inspector the person’s name and address if the industrial inspector reasonably believes that the person
has contravened a provision to which section 83 applies or a civil penalty provision.

(2) If the industrial inspector reasonably believes that the name or address is false, the industrial inspector may require the person to give evidence of its correctness.

(3) A person must comply with a requirement under subsection (1) or (2) if —

(a) the industrial inspector advises the person that he or she may contravene a civil penalty provision if he or she fails to comply with the requirement; and

(b) the industrial inspector shows his or her identity card to the person.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

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

228. Part VIII heading inserted

Before section 102 insert:

Part VIII — Miscellaneous offences, proceedings and other provisions

229. Section 102 amended

(1) After section 102(1) insert:

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

(2) After section 102(3) insert:

(4) If in proceedings under section 83E an industrial magistrate’s court is required to consider whether a contravention of subsection (1)(a) has occurred it may,
230. Section 114 deleted
Delete section 114.

231. Various references to “section 84A” deleted
Amend the provisions listed in the Table as set out in the Table.

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Part 15 — Miscellaneous amendments

Division 1 — *Industrial Relations Act 1979* amended

232. Act amended

This Division amends the *Industrial Relations Act 1979*.

233. Section 7 amended

(1) In section 7(1) delete the definition of *Commonwealth Act*.

(2) In section 7(4) delete “subsection (3)(b)” and insert:

subsection (3)

(3) In section 7(5):

(a) in paragraph (a) delete “agreement or collective agreement (as that term is defined in the Commonwealth Act); and” and insert:

agreement; and

(b) in paragraph (b) delete “agreement or collective agreement (as that term is defined in the Commonwealth Act).” and insert:

agreement.

234. Section 49E amended

In section 49E(4) in the definition of *relevant person* delete paragraph (d) and insert:

(d) a Registrar’s department officer authorised in writing by the Registrar.

235. Part II Division 3B deleted

Delete Part II Division 3B.
236. **Section 93 amended**

(1) In section 93(4) delete “such form” and insert:

such form, electronic or otherwise,

(2) Delete section 93(6), (6a) and (7) and insert:

(6) The Registrar must keep all awards under review.

(7) If the Registrar considers it necessary or desirable, or is directed by the Commission to do so, the Registrar must publish in the *Industrial Gazette* and —

(a) in a newspaper circulating throughout the State;

or

(b) on a website maintained by the Commission,

a consolidation of an award.

237. **Section 97VQ amended**

In section 97VQ(1) delete “Commission” and insert:

Chief Commissioner

238. **Section 97XW amended**

In section 97XW(1) delete “Commission” and insert:

Chief Commissioner

239. **Section 97YI amended**

Delete section 97YI(2) and insert:

(2) A review is to be carried out at such times as the Minister may in writing request.
240. Section 98 amended

In section 98(7) delete "subsection (1)." and insert:

subsection (2A).

241. Section 99D amended

In section 99D(5) delete "Minister," and insert:

CEO,

242. Section 108 deleted

Delete section 108.

243. Section 111 replaced

Delete section 111 and insert:

111. No premium to be taken for employment

(1) A person must not ask for, or receive, a premium, payment or reward for or in respect of the employment or engagement of any employee.

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

(3) Subsection (1) does not apply to —

(a) employment or engagement through the agency of an employment agent acting in the ordinary course of business under the Employment Agents Act 1976; or

(b) the payment or receipt of a premium, payment or reward under an arrangement approved by the Minister.

(4) If money is received in contravention of subsection (1), the money received may be recovered in an industrial magistrate’s court —

(a) if the person by whom or on whose behalf the money was paid applied for an order under
section 83E in respect of the contravention, by 
that person; or 
(b) by another person who applied for an order 
under section 83E in respect of the 
contravention on behalf of that person, 
as a debt due to that person. 
(5) Subsection (4) applies irrespective of any penalty that 
may be imposed under section 83E.

244. Section 113 amended
(1) In section 113(1)(a) after “prescribing” insert: 
or providing for the approval of 
(2) In section 113(2) delete “Commission shall,” and insert: 
Chief Commissioner must, 
(3) In section 113(4) delete “$1 000” and insert: 
$2 000

245. Part VIII deleted
Delete Part VIII.

Division 2 — Other amendments

246. Litter Act 1979 amended
(1) This section amends the Litter Act 1979. 
(2) In section 9(2) delete “(k), (ka)” and insert: 
(k)
Part 16 — Repeals

Division 1 — Coal Industry Tribunal of Western Australia Act 1992

Subdivision 1 — Repeals

247. Written laws repealed

These written laws are repealed:

(a) the Coal Industry Tribunal of Western Australia Act 1992;
(b) the Coal Industry Tribunal of Western Australia Regulations 1992.

Subdivision 2 — Consequential amendments

248. Constitution Acts Amendment Act 1899 amended

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

(2) In Schedule V Part 1 Division 1 delete “Chairperson or deputy chairperson of the Coal Industry Tribunal of Western Australia constituted under the Coal Industry Tribunal of Western Australia Act 1992.”

(3) Delete Schedule V Part 2 Division 1.

(4) In Schedule V Part 2 delete the heading to Schedule V Part 2 Division 2.

249. Industrial Relations Act 1979 amended

(1) This section amends the Industrial Relations Act 1979.

(2) In section 97U(1) delete the definition of award and insert:

award, except in section 97UG(2)(c), Division 6 Subdivision 1 and sections 97YA(1)(a) and 97YB(2)(a), includes an industrial agreement or order of the Commission under this Act;

(3) Delete section 97UF(4).

(4) In section 97UG(7) delete the definition of award and insert:

award includes an enterprise order.
(5) In section 97VR delete the definition of award.

(6) Delete section 97YA(3).

**Division 2 — Conspiracy and Protection of Property Act of 1900**

**Subdivision 1 — Conspiracy and Protection of Property Act of 1900 repealed**

**250. Workers’ Compensation and Injury Management Act 1981 amended**

(1) This section amends the Workers’ Compensation and Injury Management Act 1981.

(2) In section 5(1) in the definition of industrial award delete paragraph (c).

**Subdivision 2 — Industrial Relations Act 1979 amended**

**251. Act repealed**

The Conspiracy and Protection of Property Act of 1900 is repealed.

**252. Act amended**

This Subdivision amends the Industrial Relations Act 1979.

**253. Sections 108A and 108B inserted**

After section 107 insert:

**108A. Acts in furtherance of industrial dispute**

An agreement or combination by 2 or more persons to do, or procure to be done, an act in contemplation or furtherance of an industrial dispute is not punishable as a conspiracy unless the act, if committed by one person, would be punishable as an offence.

**108B. Exclusion of common law rules as to restraint of trade**

(1) In this section —

union means any temporary or permanent combination (whether or not registered as an organisation or association under this Act) —

(a) for regulating the relations between —

(i) employees and employers; or
(ii) employees and employees; or

(iii) employers and employers;

or

(b) for imposing restrictive conditions on the conduct of any trade or business,

whether or not such a combination would, except for this section, be an unlawful combination because one or more of its purposes is in restraint of trade.

(2) The purposes of a union are not, by reason only that they are in restraint of trade, unlawful so as —

(a) to make any member of the body liable to criminal proceedings for conspiracy or otherwise; or

(b) to make any agreement or trust void or voidable.

Division 3 — Labour Relations Reform Act 2002

254. Act repealed

The Labour Relations Reform Act 2002 is repealed.
Part 17 — Transitional provisions

255. Act amended

This Part amends the Industrial Relations Act 1979.

256. Section 115A inserted

After section 115 insert:

115A. Transitional provisions

(1) Schedule 6 sets out transitional provisions in relation to the amendments to this Act.

(2) Schedule 6 does not affect the operation of the Interpretation Act 1984 Part V.

(3) If Schedule 6 does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of amendments to this Act, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.

(4) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —

(a) of Schedule 6; or

(b) of the Interpretation Act 1984 as it applies to the amendments made to this Act,

the Governor may by regulation —

(c) modify that provision to remove that anomaly; and

(d) make such provision as is necessary or expedient to carry out the intention of that provision.

(5) If regulations made under subsection (3) or (4) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the Gazette but not earlier than the commencement day, the regulations have effect according to their terms.
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(6) If regulations contain a provision referred to in subsection (5), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

257. Schedule 6 inserted
After Schedule 5 insert:

Schedule 6 — Transitional provisions

Division 1 — Provisions for the Labour Relations Legislation Amendment and Repeal Act 2012

Subdivision 1 — Preliminary

1. Term used: amending Act

In this Division —

amending Act means the Labour Relations Legislation Amendment and Repeal Act 2012.

2. Interpretation Act 1984 not affected

Except where the contrary intention appears, the provisions of this Division do not prejudice or affect the application of the Interpretation Act 1984 to and in relation to the repeals effected by the amending Act.

Subdivision 2 — Provisions for amending Act Part 2

3. Designation of commissioner to exercise Occupational Safety and Health Act 1984 jurisdiction

(1) In this clause —

commencement day means the day on which the amending Act section 11 comes into operation.
(2) The commissioner who, immediately before the commencement day, was designated under section 16(2A) (as in force immediately before the commencement day) is, on and from the commencement day, to be taken to be designated under section 16AA(1) to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G.

4. **Acting President: continuation in office**

(1) In this clause —

*commencement day* means the day on which the amending Act section 12(2) comes into operation.

(2) A person who holds the office of acting President immediately before the commencement day (the *former acting President*) may, for such period as is approved by the Minister, remain in office with the functions of the former acting President for the purpose of completing any matter, proceeding or inquiry entered upon and not completed by that person before the commencement day or to deal with matters for the purposes of the continued operation of former section 62 under clause 15.

(3) The Minister may from time to time extend any further period approved under subclause (2) despite the expiry of that further period for such further period or periods as the Minister thinks fit.

5. **Pension entitlements of President**

Despite the amendments made by the amending Act section 15(3) (the *amending section*), section 20(12) and (13), as in force before the amending section came into operation, continues to apply in relation to a person who held office as President or acting President before the coming into operation of the amending section or the surviving spouse, de facto partner or child of such a person.

6. **Judicial notice of signature and appointment of President**

All courts and persons acting judicially must take judicial notice of the official signature of every person who has continued in office under clause 4 or has at any time been or acted in the office of President of the Commission under the Act and of the fact that such person has held or acted in such office.
7. **Commission in Court Session**

   A reference in any instrument to the Commission in Court Session is to be taken to be or include a reference to the Commission in Full Session unless the context otherwise requires.

8. **Changes in constitution of Commission**

   (1) **amending provision** means a provision of the amending Act that changes the way in which the Commission is required to be constituted under this Act;

   **pending proceedings** means any application or other claim made to the Commission that was commenced before the Commission, and not abandoned or finally determined before the coming into operation of an amending provision.

   (2) Any pending proceedings before the Commission as constituted prior to the coming into operation of an amending provision may be dealt with as if the amending provision were not in operation.

9. **Constituent authorities: pending proceedings continued**

   (1) **deleted Part** means Part IIA as in force before the coming into operation of the amending Act section 53;

   **former constituent authority** means a person or body who or which was a constituent authority under the deleted Part;

   **pending proceedings** means any application, appeal or other claim made to a former constituent authority under the deleted Part that was commenced before that former constituent authority, and not abandoned or finally determined before the coming into operation of the amending Act section 53.

   (2) Any pending proceedings before a former constituent authority may be dealt with after the coming into operation of the amended Act section 53 as if the deleted Part were still in operation.

**Subdivision 3 — Provisions for amending Act Part 3**

10. **Transitional provisions relating to the repeal of section 48**

   (1) **award** means —

   (a) an enterprise award; and
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1. (b) the following awards made before the commencement of the amending Act section 97 —

   (i) a pre-modern State award;

   (ii) a public sector award.

2. Despite the deletion of section 48 by the amending Act section 97, a Board of Reference constituted under section 48 in relation to an award immediately before the repeal continues in existence, and —

   (a) section 48; and

   (b) section 13(b),

have effect in respect of that Board as if they had not been deleted, so long as the relevant award remains in force and a Board is required to be constituted in relation to it.

11. Saving for non-compliance with former section 48

   (1) In this clause —

      award means —

      (a) an enterprise award; and

      (b) a pre-modern State award made before the commencement of the amending Act section 97 and a public sector award so made.

   (2) Anything done or omitted —

      (a) under this Act; or

      (b) by a court or tribunal,

in relation to an award for which no Board of Reference was in existence under section 48(1) deleted by the amending Act section 97 is, and is to be taken always to have been, as valid as if section 48(1) had not been enacted.

Subdivision 4 — Provision for amending Act Part 5

12. Unfair dismissal transitional provisions

   (1) Part II Division 2AA operates in respect of any dismissal that occurs on or after the coming into operation of the amending Act section 122.

   (2) Sections 23(3)(h), 23A, 29 and 29AA as in force before the amending Act section 122 comes into operation continue to operate in respect of any dismissal that occurred before the amending Act Part 5 Division 1 comes into operation.
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Subdivision 5 — Provision for amending Act Part 8

13. Minimum rates of pay and wages under awards

Any minimum rate of pay, or rate of wages paid under an award, set under the State Wage order made under section 50A and in effect immediately before the coming into operation of the amending Act section 141 has effect as if it were set in accordance with section 50B or 51 as the case requires.

Subdivision 6 — Provisions for amending Act Part 9

14. Applications for registration

(1) In this clause —

former section 55 means section 55 as in force before the coming into operation of the amending Act section 43;

pending registration application means an application for registration of an organisation lodged in the office of the Registrar under former section 55 and not abandoned or finally dealt with before the coming into operation of the amending Act section 43.

(2) Any pending registration application is to be dealt with after the coming into operation of the amending Act section 43 as if the former section 55 were still in operation.

15. Applications for alteration of rules

(1) In this clause —

former section 62 means section 62 as in force before the coming into operation of the amending Act section 151;

pending rules application means an application for registration of an alteration of the rules of an organisation lodged in the office of the Registrar under former section 62 and not abandoned or finally dealt with before the coming into operation of the amending Act section 151.

(2) Any pending rules application is to be dealt with after the coming into operation of the amending Act section 151 as if the former section 62 were still in operation.

16. Disqualification from office

(1) In this clause —

commencement day means the day on which the amending Act section 159 comes into operation;

prescribed person and relevant decision have the meanings given in section 80A.
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(2) If the relevant decision in relation to a prescribed person was made before the commencement day —

(a) the person is to be regarded for the purposes of sections 80E(3), 80F(3)(b) and 80G(1) as having become a prescribed person on the commencement day; and

(b) the references in sections 80E(3) and 80G(1) to the day on which the relevant decision was made are to be regarded as references to the commencement day.

Subdivision 7 — Provision for amending Act Part 11

17. Industrial agents: transitional regulations

Regulations made under section 112D may include provisions of a savings or transitional nature consequential on the enactment of the amending Act section 172.

Subdivision 8 — Provisions for amending Act Part 12

18. Terms used

In this Subdivision —

\textit{commencement day}, except in clause 21, means the day on which the amending Act section 177(a) comes into operation;

\textit{repealed Act} means the Minimum Conditions of Employment Act 1993 as in force immediately before commencement day.

19. Enforcement of minimum conditions

(1) Any proceedings to enforce a minimum condition of employment that were started but not finalised before the commencement day must be dealt with after the commencement day —

(a) as if the repealed Act had not been repealed; and

(b) as if the Minimum Conditions of Employment Regulations 1993 had not been repealed; and

(c) as if this Act had not been amended by the Labour Relations Legislation Amendment and Repeal Act 2012.

(2) Despite the Interpretation Act 1984 section 37(1) if, immediately before commencement day, a minimum condition of employment may have been enforced in accordance with section 7 of the repealed Act but proceedings had not commenced, the minimum condition of employment may be enforced after the commencement day.
under section 83 of this Act, as amended by the Labour Relations Legislation Amendment and Repeal Act 2012, as if it were a State employment standard.

20. “Under-rate employee” provisions in awards

(1) In this clause —

assessment means assessment of an employee’s productive capacity under the Supported Wage System or supported wage provisions;

assessment period means the period ending 6 months after the commencement day;

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

under-rate employee means an employee who was, immediately before the commencement day, entitled to be paid under an under-rate employee provision by reason of infirmity;

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

(2) On and from the commencement day each under-rate employee provision is of no effect to the extent to which it applies to an employee who by reason of infirmity is unable to earn the minimum wage.

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

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

(b) the minimum weekly amount payable under section 129(3) to employees with a disability regardless of the number of hours actually worked.

(4) If an employee’s assessment is completed within the assessment period, subclause (3) ceases to apply to the employee on the day of completion.

(5) If an employee is not assessed, or the employee’s assessment is not completed, within the assessment period then on and after the expiry of the assessment period the employee is entitled to be paid in accordance with section 124(1) until such time as the employee’s productive capacity is determined, on an assessment, to be reduced by a disability.
21. **TCR General Order repealed and savings**

(1) In this clause —

*commencement day* means the day on which the amending Act section 257 (to the extent that it inserts Schedule 6 Division 1 Subdivision 8) comes into operation;

*industrial instrument* has the meaning given in section 116(1);

*TCR General Order* means the General Order relating to termination of employment, introduction of change and redundancy made by the Western Australian Industrial Relations Commission on 1 June 2005 and published in the *Western Australian Industrial Gazette* on 22 June 2005 at page 1667 and the Schedule attached to that order published in the same *Gazette* on page 1682.

(2) Repeal the TCR General Order.

(3) An employee who was made redundant before the commencement day may, after the commencement day, enforce any entitlement in relation to the redundancy that the employee had under the TCR General Order immediately before the commencement day, as if that Order had not been repealed and this Act had not been amended by the Labour Relations Legislation Amendment and Repeal Act 2012.

(4) Unless the contrary intention appears or the context otherwise requires, on and from the commencement day, any reference in an industrial instrument to a provision of the TCR General Order about redundancy must be read as a reference to the provision of Part XI Division 11 that most closely corresponds to the provision of the TCR General Order.

Subdivision 9 — Provision for amending Act Part 13

22. **Right of entry: transitional provisions**

(1) In this clause —

*amending provision* means the amending Act section 200;

*old Division* means Part II Division 2G as in force before the amending provision comes into operation.

(2) Subject to subclause (3), an authority that is in force under the old Division immediately before the amending provision comes into operation continues in force after the coming into operation of that provision, and Part XII has effect as if —

(a) the authority were an entry permit in force under that Part; and
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(b) the holder of the authority were the permit holder under that Part.

(3) An authority continued in force under subclause (2) as if it were an entry permit expires when —

(a) the holder of the authority is issued with an entry permit under Part XII; or

(b) the authority is suspended or revoked under Part XII; or

(c) a period of 6 months elapses after the coming into operation of the amending provision,

whichever occurs first.

(4) Part XII applies as if —

(a) the reference in section 200(1)(c) to “this Part” included a reference to the old Division; and

(b) the reference in section 200(4)(a) to the Commission not having previously taken action under subsection (1) against the permit holder included a reference to the Commission not having taken action against the permit holder under section 49J(5) as in operation before the coming into operation of the amending provision; and

(c) the reference in section 200(4)(b) and (c) to the Commission having previously taken action under subsection (1) against the permit holder included a reference to the Commission having taken action against the permit holder under section 49J(5) as in operation before the coming into operation of the amending provision.

(5) Contraventions of sections 49J(9) and 49M(1), (2) and (3) of the old Division before the coming into operation of the amending provision may be dealt with under Part III as if those sections remained civil penalty provisions for the purposes of section 83E.

Subdivision 10 — Provision for amending Act Part 14

23. Section 84A: pending proceedings continued

(1) In this section —

former section 84A means section 84A as in force before the coming into operation of the amending Act section 220;

pending proceedings means any proceedings commenced under former section 84A, and not abandoned or finally
determined before the coming into operation of the amending Act section 220.

(2) Any pending proceedings are to be dealt with after the coming into operation of the amending Act section 220 as if former section 84A were still in operation.