



Western Australia

Industrial Relations Legislation Amendment Act 2024

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Industrial Relations Legislation Amendment Act 2024

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Western Australia

Industrial Relations Legislation Amendment Act 2024

No. 43 of 2024

An Act —

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

[Assented to 13 November 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation as follows —

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

Part 2 — *Industrial Relations Act 1979* amended

Division 1 — Preliminary

3. Act amended

This Part amends the *Industrial Relations Act 1979*.

Division 2 — Amendments commencing on 31 January 2025

4. Section 6 amended

In section 6:

- (a) delete paragraph (ac) and insert:
 - (ac) to promote gender equality in the workplace through equal remuneration and eliminating gender-based undervaluation of work; and
- (b) after paragraph (ca) insert:
 - (cb) to prevent and eliminate bullying and sexual harassment in the workplace; and
- (c) delete paragraph (d) and insert:
 - (d) to provide for the observance and enforcement of agreements, awards, the LSL Act, the MCE Act and other entitlement provisions; and

5. Section 7 amended

- (1) In section 7(1) delete the definitions of:
constituent authority
Mines and Metals Association

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

bullying, at work, means behaviour to which section 51BI(1) applies;

electronic means includes —

- (a) an electronic database or document management system; or
- (b) any other means by which a document can be accessed electronically;

employing authority —

- (a) in relation to a public service officer, another employee to whom the *Public Sector Management Act 1994* Part 5 applies or a public sector body — has the meaning given in section 5 of that Act; or
- (b) in relation to a health services employee — has the meaning given in the *Health Services Act 2016* section 103;

flexible working arrangement dispute has the meaning given in section 51D;

government officer has the meaning given in section 36AB;

health services employee means an employee as defined in the *Health Services Act 2016* section 6;

in connection with work, in relation to the sexual harassment of a person, has the meaning given in section 51BR(2);

local government long service leave provision means a provision of regulations made under the *Local Government Act 1995* section 5.48;

Note for this definition:

Regulations made under the *Local Government Act 1995* section 5.48 provide for the long service leave benefits of —

- (a) the employees of local governments; and
- (b) the employees of the Western Australian Local Government Association constituted under section 9.58 of that Act.

minimum condition of employment has the meaning given in the MCE Act section 3(1);

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

reclassification, of an office held by a government officer, has the meaning given in section 36AD(1);

sexually harasses has the meaning given in section 51BQ;

worker has the meaning given in section 51BH.

- (3) In section 7(1) in the definition of ***employee*** in paragraphs (a) and (b) delete “a person” and insert:

an individual

- (4) In section 7(1) at the end of the definition of ***employee*** insert:

Note for this definition:

See section 7A which applies for the purposes of determining whether an individual is an employee of a person.

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

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

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

Note for this definition:

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

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

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

employment; or

(b) after paragraph (c) insert:

(d) a local government long service leave provision;

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

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

- (ha) any matter relating to a flexible working arrangement dispute;

- (9) In section 7(1) in the definition of *public sector award* delete paragraph (a) and insert:
 - (a) a public sector body;

- (10) In section 7(1) in the definition of *record-related civil penalty provision* after paragraph (e) insert:
 - (f) a local government long service leave provision that requires an employer to keep records about employees' employment that are necessary to calculate the employees' entitlements to, and payment for, long service leave;

- (11) In section 7(1) in the definition of *vary* delete "provision." and insert:

provision;

- (12) Delete section 7(2) and (2A) and insert:
 - (2) A matter relating to the bullying of a worker at work or the sexual harassment of a person in connection with work is an industrial matter.

6. Sections 7A and 7B inserted

At the end of Part I insert:

7A. Determining whether individual is employee or person is employer

- (1) This section applies for determining, for the purposes of this Act, the LSL Act or the MCE Act —
 - (a) whether an individual is an employee of a person; or
 - (b) whether a person is an employer of an individual.
- (2) The matter is determined by ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person.
- (3) For the purposes of subsection (2), consideration must be given to the totality of the relationship between the individual and the person, including —
 - (a) the terms of the contract governing the relationship; and
 - (b) other factors relevant to the totality of the relationship, including how the contract is performed in practice.

Note for this section:

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

7B. Determining whether employee is casual employee

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

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

Note for this section:

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

7. Section 13 amended

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

magistrate.

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

8. Section 16 amended

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

Commission includes the Full Bench and the Commission in Court Session.

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

Session.

9. Section 22A deleted

Delete section 22A.

10. Section 23 amended

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

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

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

11. Section 24A inserted

After section 24 insert:

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

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

12. Section 26 amended

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

- (a) a public sector body;

13. Section 29 amended

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

- (e) in the case of a matter relating to the bullying of a worker at work — by the worker; and
- (f) in the case of a matter relating to the sexual harassment of a person in connection with work — by the person; and
- (g) in the case of a decision mentioned in section 36AA(2)(b) — by a public service officer; and
- (h) in the case of a claim relating to the reclassification of an office held by a government officer — by the government officer; and
- (i) in the case of an industrial matter under the *Public Sector Management Act 1994* section 78 that is a decision or finding made in relation to an employee or former employee to which Part 5 of that Act applies — by the employee or former employee; and
- (j) in the case of an industrial matter under the *Health Services Act 2016* section 171 that is a decision or finding made in relation to an employee or former employee to which Part 11

Industrial Relations Legislation Amendment Act 2024

Part 2 Industrial Relations Act 1979 amended

Division 2 Amendments commencing on 31 January 2025

s. 13

of that Act applies — by the employee or former employee; and

- (k) in the case of an industrial matter relating to a flexible working arrangement dispute between an employer and an employee — by the employee.

(2) In section 29(1a):

- (a) delete the passage that begins with “commissioner” and ends with “Part VID —” and insert:

commissioner —

- (b) in paragraph (a) delete “as so constituted”.

(3) Delete section 29(2) and insert:

(2) Subject to subsection (3) —

- (a) a referral under subsection (1)(c) must be made no later than 28 days after the day on which the employee’s employment is terminated; and
- (b) a referral relating to a decision mentioned in section 36AA(2)(b) must be made no later than 28 days after the day on which the decision is made; and
- (c) a referral relating to a decision or finding that is an industrial matter under the *Public Sector Management Act 1994* section 78 or the *Health Services Act 2016* section 171 must be made no later than 28 days after the day on which the decision or finding is made.

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

that is out of time under subsection (2)

14. Section 29C inserted

After section 29B insert:

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

- (1) This section applies if —
- (a) the Commission is dealing with an industrial matter relating to a government officer or group of government officers; and
 - (b) a question arises between 2 or more organisations as to which of them, or whether 1 of them, should —
 - (i) be named as a party to an award or order; or
 - (ii) become a party to an industrial agreement.
- (2) In deciding the question, the Commission must have regard to which organisations were a party to —
- (a) the awards, orders and industrial agreements that have previously covered the government officer or group of government officers; and
 - (b) relevant unregistered industrial agreements.

15. Section 31 amended

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

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

16. Section 33A inserted

After section 33 insert:

33A. Misconduct before Commission

- (1) A person must not insult, obstruct or hinder a commissioner in the performance of the commissioner’s functions as a commissioner.
Penalty for this subsection: a fine of \$10 000.
- (2) A person must not insult, obstruct or hinder a person attending a hearing before the Commission.
Penalty for this subsection: a fine of \$10 000.
- (3) A person must not misbehave at, or interrupt, a hearing before the Commission.
Penalty for this subsection: a fine of \$10 000.
- (4) A person must not obstruct or hinder a person from complying with an order of the Commission or a summons to attend the Commission.
Penalty for this subsection: a fine of \$10 000.
- (5) A person must not use words, in writing or spoken, with the intention of —
 - (a) improperly influencing a commissioner in the performance of the commissioner’s functions as a commissioner; or

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

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

17. Part II Division 2AA inserted

After Part II Division 2 insert:

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

Subdivision 1 — Preliminary

36AA. Industrial matters relating to public sector employment

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

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

Subdivision 2 — Certain industrial matters relating to government officers

36AB. Meaning of government officer

- (1) Each of the following is a *government officer* —
 - (a) a public service officer;
 - (b) a member of the Governor’s Establishment as defined in the *Governor’s Establishment Act 1992* section 3;
 - (c) a person employed as a member of a department of the staff of Parliament under the *Parliamentary and Electorate Staff (Employment) Act 1992*;
 - (d) an electorate officer as defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* section 3(1);
 - (e) another person employed on the salaried staff of a public authority.

- (2) Each of the following is not a **government officer** —
- (a) a teacher;
 - (b) a member of the academic staff of a post-secondary education institution;
 - (c) a person who holds an office for which the remuneration payable is —
 - (i) determined or recommended under the *Salaries and Allowances Act 1975*; or
 - (ii) determined by an Act to be at a fixed rate; or
 - (iii) determined by the Governor under an Act.
- (3) In subsection (2)(a) —
- teacher** —
- (a) includes a person employed —
 - (i) as a member of the teaching staff referred to in the *School Education Act 1999* section 235(1)(b); or
 - (ii) at a community kindergarten registered under the *School Education Act 1999* Part 5 as a member of the teaching staff or another person engaged under section 236(2) of that Act;
- but
- (b) does not include a public service officer, whether or not the officer holds or acts in a position that requires a teaching academic qualification.

Note for this definition:

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

36AC. Commission’s additional power of review for industrial matters relating to government officers

- (1) This section applies if an industrial matter relating to a government officer, a group of government officers or government officers generally is referred to the Commission.
- (2) In exercising its jurisdiction in relation to the matter, the Commission may also, to the extent necessary to deal with the matter —
 - (a) review anything done by an employer in exercising a power in relation to a government officer or an office administered by the employer; and
 - (b) by order, confirm, vary or set aside the thing done by the employer.
- (3) The additional jurisdiction conferred on the Commission under subsection (2) does not apply to the exercise of a power that is —
 - (a) a decision or finding that may be the subject of a referral to the Commission under section 36AA(2)(b) or (c); or
 - (b) the dismissal of a government officer from the officer’s employment.

36AD. Effective date of reclassification decision

- (1) In this section —

reclassification, of an office held by a government officer, means —

 - (a) a determination of the salary, range of salary or title allocated to the office; or

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

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

Despite section 49, no appeal lies from a decision of the Commission on —

- (a) a claim relating to the reclassification of an office held by a government officer; or
- (b) a claim relating to a decision of an employer to downgrade an office usually held by a government officer that is vacant.

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

36AF. Application of Subdivision

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

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

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

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

finding, recommence the process at a specified stage.

(2) In subsection (1) —

relevant policy instrument means —

- (a) in relation to a decision or finding mentioned in the *Health Services Act 2016* section 171 — the policy framework issued under section 26 of that Act relevant to the decision or finding; or
- (b) in relation to a decision or finding mentioned in the *Public Sector Management Act 1994* section 78 — the Commissioner’s instructions issued under section 22A of that Act relevant to the decision or finding.

36AH. Limit on Commission’s powers in relation to lawful redeployment direction matters

- (1) This section applies if the decision or finding relates to a lawful redeployment direction as defined in the *Health Services Act 2016* section 171(2) or the *Public Sector Management Act 1994* section 75A.
- (2) Despite section 36AG, the Commission may only decide whether or not the lawful redeployment direction was complied with or was capable of being complied with.

18. Section 37D amended

After section 37D(6) insert:

- (7) If the Commission varies the scope of a private sector award under this section, the Commission may also

make other changes to the award that are consequential on the variation of the scope.

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

19. Section 44 amended

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

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

20. Section 45 inserted

At the end of Part II Division 2C insert:

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

- (1) This section applies if a person makes an application in relation to a dispute about the person's entitlement to long service leave as an employee or former employee under both —
 - (a) section 44(7)(a)(iii); and
 - (b) another provision of this Act or another written law.
- (2) The Commission must not exercise its jurisdiction under section 44 in relation to the application under that section unless the application under the other provision of this Act or other law is withdrawn or fails for want of jurisdiction.

21. Section 48 deleted

Delete section 48.

22. Section 49 amended

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.

23. Section 49D amended

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

section 8(1) or (2A) or 32(2)

24. Section 49DA amended

After section 49DA(2) insert:

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

25. Part II Division 2G Subdivision 1 heading inserted

At the beginning of Part II Division 2G insert:

Subdivision 1 — Preliminary

26. Section 49G replaced

Delete section 49G and insert:

49G. Terms used

- (1) In this Division —
authorised representative, of an organisation of employees, means an officer or employee of the organisation who holds a right of entry permit;

conviction —

- (a) means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded; and
- (b) includes —
 - (i) a spent conviction as defined in the *Spent Convictions Act 1988* section 3(1), regardless of sections 13 and 25 to 27 of that Act; and
 - (ii) a conviction against a law of another jurisdiction if, under a law of that jurisdiction, the person concerned is permitted not to disclose the fact that the person was convicted or found guilty of the offence;

expiry day, of a right of entry permit, has the meaning given in section 49Q(3);

federal counterpart, in relation to an organisation, means a federal organisation that is —

- (a) a federal counterpart (as defined in the FW (Registered Organisations) Act section 9A) of the organisation; or
- (b) prescribed to be a federal counterpart of the organisation by regulations made by the Governor;

fit and proper person criteria has the meaning given in section 49P(2);

industrial law means the following —

- (a) this Act, the LSL Act and the MCE Act;
- (b) the FW Act and the FW (Registered Organisations) Act;

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- (c) another law of the Commonwealth, or a law of another State or a Territory, prescribed to be an industrial law by regulations made by the Governor;

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

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

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

work health and safety law means —

- (a) the *Work Health and Safety Act 2020*; or
- (b) a law of the Commonwealth, another State or a Territory prescribed to be a work health and safety law by regulations made by the Governor.
- (2) In this Division, a reference to an officer or employee of an organisation includes a reference to an officer or employee of a federal counterpart of the organisation.

27. Part II Division 2G Subdivision 2 heading inserted

After section 49G insert:

Subdivision 2 — Right of entry and inspection

28. Section 49I amended

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

breach of any of the following —

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

29. Section 49J deleted

Delete section 49J.

30. Section 49L amended

In section 49L(1):

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

right of entry permit,

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

the right of entry permit

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

Right of entry permit must be shown to occupier on request

31. Section 49M amended

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

right of entry permit.

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

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

32. Sections 49N and 49O deleted

Delete sections 49N and 49O.

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

At the end of Part II Division 2G insert:

Subdivision 3 — Right of entry permits

49N. Application for right of entry permit

- (1) The secretary of an organisation of employees may apply to the Commission for an officer or employee of the organisation to be issued a right of entry permit.
- (2) The application must comply with any requirements prescribed by the regulations.
- (3) The officer or employee named in the application is the *nominated official*.

49O. Commission may issue right of entry permit

- (1) The Commission may, on an application under section 49N, issue a right of entry permit to the nominated official if satisfied that the official is a fit and proper person to hold the permit.
- (2) The Commission may decide to issue a right of entry permit subject to conditions.
- (3) The Commission cannot issue a right of entry permit to the nominated official if, when the Commission is deciding the application —
 - (a) a right of entry the official had under an industrial law or work health and safety law is suspended under that law; or
 - (b) the official is disqualified under an industrial law or work health and safety law from exercising, or applying for, a right of entry under that law.

49P. Deciding whether nominated representative is fit and proper person

- (1) In deciding whether a nominated official is a fit and proper person to hold a right of entry permit, the Commission —
 - (a) must consider the fit and proper person criteria in relation to the official; and
 - (b) may consider any other matters the Commission considers relevant.
- (2) The following matters are the *fit and proper person criteria* in relation to a nominated official —
 - (a) whether the official has received appropriate training about the rights and responsibilities of an authorised representative;

- (b) whether the official has ever been convicted of an offence against an industrial law;
- (c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving —
 - (i) entry onto premises; or
 - (ii) fraud or dishonesty; or
 - (iii) the intentional use of violence against another person; or
 - (iv) the intentional damage or destruction of property;
- (d) whether the official, or another person, has ever been ordered to pay a penalty under an industrial law in relation to the actions of the official;
- (e) whether a right of entry permit issued to the official has been revoked, suspended or made subject to conditions;
- (f) whether a right of entry for industrial or work health and safety purposes the official had under an industrial law or a work health and safety law has ever been revoked, suspended or had conditions imposed on it;
- (g) whether the official has ever been disqualified under an industrial law or a work health and safety law from exercising, or applying for, a right of entry for industrial or work health and safety purposes under that law.

49Q. Form of right of entry permit

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

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

49R. Expiry of right of entry permit

- (1) Unless it is earlier revoked, a right of entry permit expires at the earlier of the following times —
 - (a) at the end of the day on its expiry day or, if the Commission decides on a later expiry day under section 49S, the later expiry day;
 - (b) when the authorised representative stops being an officer or employee of the relevant organisation.
- (2) In subsection (1) —

relevant organisation, in relation to an authorised representative, means —

 - (a) if the authorised representative is an officer or employee of the organisation of employees, the secretary of which applied for the permit — that organisation; or
 - (b) if the authorised representative is an officer or employee of a federal counterpart of the

organisation referred to in paragraph (a) — the federal counterpart of that organisation.

49S. Commission may decide on later expiry day

- (1) The Commission may decide on another day (the *later expiry day*), that is later than the expiry day, on which a right of entry permit expires if —
 - (a) the secretary of the organisation that applied for the permit has applied for another right of entry permit (the *new permit*) for the authorised representative; and
 - (b) the application was made at least 1 month before the expiry day of the permit; and
 - (c) the Commission is satisfied the permit is likely to expire before the Commission determines the application for the new permit.
- (2) The Commission may act under subsection (1) of its own motion or on application by the secretary of the organisation.
- (3) The later expiry day must not extend the expiry of the permit longer than the period that the Commission considers necessary to determine the application.
- (4) The Commission must not decide on a later expiry day under subsection (1) if —
 - (a) the Commission has requested or required the secretary of the organisation or authorised representative to provide a document or other information in relation to the application; and
 - (b) the secretary or representative has not complied with the request or requirement; and
 - (c) the Commission is satisfied the secretary or representative does not have a reasonable excuse.

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

Note for this subsection:

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

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

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

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

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

Note for this subsection:

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

49U. When right of entry permit is suspended

The suspension of a right of entry permit does not —

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

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

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

- (1) The secretary of an organisation of employees may apply to the Commission for a right of entry permit issued to an officer or employee of the organisation to be revoked.
- (2) The Commission must revoke the right of entry permit unless subsection (3) applies.
- (3) The Commission must not revoke the right of entry permit if —
 - (a) proceedings in relation to the permit are commenced under section 49T and are not finally determined or otherwise ended; or
 - (b) a decision is made under section 49T in relation to the permit and either —
 - (i) the time for instituting an appeal against the decision has not ended; or
 - (ii) an appeal is instituted against the decision and has not been finally decided or withdrawn.

Subdivision 5 — Miscellaneous

49W. Return of right of entry permit

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

- (b) a condition is imposed on the permit or changed after it is issued;
 - (c) the permit expires;
 - (d) the Commission decides on a later expiry day for the permit.
- (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) After the end of a suspension period, the Commission must return a right of entry permit to the authorised representative if —
 - (a) the authorised representative, or the secretary of the organisation that applied for the permit, applies to the Commission for the return of the permit; and
 - (b) the permit has not expired.

49X. Commission’s powers on dispute about right of entry or investigation

- (1) This section applies if the Commission is exercising its jurisdiction under section 44 in relation to a dispute about the exercise of a power under Subdivision 2 by an authorised representative.
- (2) The Commission may, by order, impose a condition on or change a condition of the right of entry permit held by the authorised representative.
- (3) Section 49T(4) applies to the Commission in deciding whether to make an order under subsection (2).

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

Note for this subsection:

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

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

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

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

34. Section 50A amended

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

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

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

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

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

service; and

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

SWIIP;

35. Part II Division 3AA heading replaced

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

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

36. Part II Division 3AA Subdivision 1 heading inserted

At the beginning of Part II Division 3AA insert:

Subdivision 1 — Preliminary

37. Section 51BF amended

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

sexually harassed

stop bullying or sexual harassment application

stop bullying or sexual harassment order

worker

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

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

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

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

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

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

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

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

Police Act 1892.

38. Section 51BH amended

Before section 51BH(1) insert:

- (1A) In this section —

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

- (a) as an employee who performs the work for the purpose of the business of the individual’s employer; or
- (b) as an individual who performs the work in the textile, clothing or footwear industry under a contract for the provision of services.

39. Sections 51BI to 51BN deleted

Delete sections 51BI to 51BN.

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

At the end of Part II Division 3AA insert:

Subdivision 2 — Bullying at work

51BI. Worker bullied at work

- (1) A worker is *bullied* at work if, while the worker is at work —
 - (a) a person, whether as an individual or as part of a group of individuals, repeatedly behaves unreasonably towards —
 - (i) the worker; or
 - (ii) a group of workers of which the worker is a member;
 - and
 - (b) that behaviour creates a risk to the health or safety of the worker.
- (2) Subsection (1) does not apply to reasonable management action carried out in a reasonable manner.

51BJ. Worker may make stop bullying application

- (1) A worker who reasonably believes that the worker has been bullied at work may make an application (a *stop bullying application*) to the Commission for a stop bullying order.
- (2) The *Work Health and Safety Act 2020* section 115 does not apply in relation to a stop bullying application.

51BK. Dealing with stop bullying application

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

Note for this subsection:

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

- (2) Section 44 does not apply to a stop bullying application.
- (3) Section 48A(2) or any other written law providing for the resolution of a grievance or dispute by workers does not limit the Commission's power to deal with a stop bullying application.

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

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

- (a) a covert operation is undertaken by WA Police for the purpose of obtaining information about criminal activity; and
- (b) unless the performance of the function is secret or confidential, it would be likely that —
- (i) the effectiveness of the performance of the function is reduced; or
- (ii) a person is exposed to the danger of physical harm arising from the actions of another person.

51BM. Commission may make stop bullying order

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

51BN. Matters to be taken into account in considering terms of stop bullying order

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

51BO. Person must comply with stop bullying order

- (1) A person to whom a stop bullying order applies must comply with the order.
- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

51BP. Enforcement of contravention of stop bullying order

- (1) This section applies if, on an application under section 83E, the industrial magistrate's court determines that a person contravened a stop bullying order made in relation to the bullying of a worker.
- (2) The court may make 1 or more of the following orders —
 - (a) an order that the person pay the worker compensation for loss or injury suffered as a result of the contravention;
 - (b) an order that the person do a thing or cease an activity specified in the stop bullying order;
 - (c) any other order the court considers appropriate.
- (3) The industrial magistrate's court may make an order under this section in addition to imposing a penalty, or making another order, under section 83E.
- (4) A person must comply with an order made against the person under subsection (2).

Penalty for this subsection:

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

Subdivision 3 — Sexual harassment in connection with work

51BQ. Meaning of sexually harasses

- (1) A person (the *first person*) *sexually harasses* another person (the *second person*) if the first person, whether as an individual or as part of a group of individuals —
 - (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the second person in circumstances a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the second person would be offended, humiliated or intimidated; or
 - (b) engages in other unwelcome conduct of a sexual nature in relation to the second person in circumstances a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the second person would be offended, humiliated or intimidated.

- (2) In subsection (1)(b) —

conduct of a sexual nature, of the first person in relation to the second person, includes —

 - (a) making to, or in the presence of, the second person or another person a statement of a sexual nature concerning the second person, whether by visual, oral, written or electronic communication; or
 - (b) publishing a statement of a sexual nature concerning the second person on the Internet or in any other form of communication.

51BR. Sexual harassment in connection with work prohibited

- (1) A person must not sexually harass another person (the *person*) in connection with the person —
 - (a) being a worker; or
 - (b) seeking to become a worker in a particular business or undertaking.
- (2) Sexual harassment that happens in connection with the circumstances in subsection (1) is sexual harassment *in connection with work*.
- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

51BS. Vicarious liability for sexual harassment in connection with work

- (1) In this section —

principal means a person who —

 - (a) employs an employee; or
 - (b) engages another person as an agent.
- (2) If an employee or agent, in connection with the employee's employment or with the agent's duties, sexually harasses a person in connection with work, this Act applies in relation to the principal of the employee or agent as if the principal had also sexually harassed that person.
- (3) Subsection (2) does not apply if the principal proves that the principal took all reasonable steps to prevent the employee or agent doing acts that would contravene section 51BR.
- (4) Subsection (2) does not limit section 83E(1A) or (1B).

51BT. Aggrieved person may commence sexual harassment proceeding

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

Note for this subsection:

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

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

51BU. Time for commencing sexual harassment proceeding

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

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

51BV. Dealing with sexual harassment proceeding

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

Note for this subsection:

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

- (2) Section 44 does not apply to a sexual harassment proceeding.
- (3) Section 48A(2) or any other written law providing for the resolution of a grievance or dispute by workers does not limit the Commission's power to deal with a sexual harassment proceeding.

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

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

- (a) a covert operation is undertaken by WA Police for the purpose of obtaining information about criminal activity; and
- (b) unless the performance of the function is secret or confidential, it would be likely that —
 - (i) the effectiveness of the performance of the function is reduced; or

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

51BX. Commission may make stop sexual harassment order

- (1) This section applies if —
 - (a) a person (the *aggrieved person*) makes a stop sexual harassment application; and
 - (b) the Commission is satisfied that —
 - (i) a person (the *respondent*) sexually harassed the aggrieved person in connection with work; and
 - (ii) there is a risk that the respondent will continue to do so.
- (2) The Commission may make an order (a *stop sexual harassment order*) it considers appropriate to prevent the respondent sexually harassing the aggrieved person in connection with work.
- (3) Despite subsection (2), the Commission cannot make an order requiring the payment of compensation to the aggrieved person.

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

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

being, or has been, undertaken by another person or body;

- (b) any procedure available to the person to resolve grievances or disputes;
- (c) the final or interim outcomes arising out of a procedure referred to in paragraph (b) in relation to the sexual harassment.

- (2) The Commission may also take into account any other matters the Commission considers relevant.

51BZ. Commission may make declarations and orders for referrals

- (1) This section applies if —
 - (a) a referral (including a sexual harassment referral) has been made to the Commission under section 29 in relation to an allegation that a person (the *respondent*) sexually harassed another person (the *aggrieved person*) in connection with work; and
 - (b) on the referral, the Commission determines the respondent sexually harassed the aggrieved person in connection with work.
- (2) The Commission may make 1 or more of the following orders —
 - (a) an order that the respondent or another person pay compensation to the aggrieved person for loss or injury the aggrieved person suffered because of the sexual harassment;
 - (b) an order that the respondent or another person pay an amount to an aggrieved person for remuneration lost, or likely to have been lost, by the aggrieved person because of the sexual harassment;

- (c) an order requiring the respondent or another person to do a specified thing or cease a specified activity to redress loss or injury suffered by the aggrieved person because of the sexual harassment;
 - (d) an order the Commission considers appropriate to prevent any future sexual harassment of the aggrieved person in connection with work by the respondent or another person;
 - (e) any other order the Commission thinks appropriate.
- (3) The Commission may make either or both of the following declarations —
- (a) a declaration that the respondent sexually harassed the aggrieved person in connection with work;
 - (b) a declaration that the respondent sexually harassed the aggrieved person in connection with work because of the operation of section 51BS.
- (4) In enquiring into and dealing with a sexual harassment referral, the Commission may make a declaration that it would be inappropriate for any further action to be taken in the matter.

51BZA. Person must comply with order made by Commission

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

51BZB. Enforcement of contravention of order

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

51BZC. Enforcement of contravention of prohibition on sexual harassment

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

Note for this subsection:

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

- (2) In addition to imposing a penalty or making an order under section 83E, the court may make 1 or more of the following orders —
- (a) an order that the respondent or another person pay compensation to the aggrieved person for loss or injury suffered because of the contravention;
 - (b) an order that the respondent or another person pay an amount to the aggrieved person for remuneration lost, or likely to have been lost, by the aggrieved person because of the contravention;
 - (c) an order requiring the respondent or another person to do a specified thing or cease a specified activity to redress loss or injury

suffered by the aggrieved person because of the contravention;

- (d) an order the industrial magistrate's court considers appropriate to prevent any future contravention in relation to the aggrieved person by the respondent or another person;
 - (e) any other order the court considers appropriate.
- (3) A person to whom an order made under subsection (2) applies must comply with the order.

Penalty for this subsection:

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

51BZD. Restrictions on multiple actions

- (1) In this section —

anti-discrimination legislation means any of the following —

- (a) the *Anti-Discrimination Act 1977* (New South Wales);
- (b) the *Anti-Discrimination Act 1991* (Queensland);
- (c) the *Anti-Discrimination Act 1992* (Northern Territory);
- (d) the *Anti-Discrimination Act 1998* (Tasmania);
- (e) the *Australian Human Rights Commission Act 1986* (Commonwealth);
- (f) the *Discrimination Act 1991* (Australian Capital Territory);

- (g) the *Equal Opportunity Act 1984*;
- (h) the *Equal Opportunity Act 1984* (South Australia);
- (i) the *Equal Opportunity Act 2010* (Victoria);
- (j) the *Fair Work Act 2009* (Commonwealth);
- (k) the *Sex Discrimination Act 1984* (Commonwealth);

particular allegation means a particular allegation by a person that the person was sexually harassed in connection with work.

- (2) A referral cannot be made under section 29 in relation to a particular allegation —
 - (a) if the allegation is the subject of an application made under section 83E to enforce a contravention of section 51BR(1); and
 - (b) unless the application is withdrawn or fails for want of jurisdiction.
- (3) An application cannot be made under section 83E to enforce a contravention of section 51BR(1) as a civil penalty provision in relation to a particular allegation —
 - (a) if a referral has been made under section 29 in relation to the allegation; and
 - (b) unless the referral is withdrawn or fails for want of jurisdiction.
- (4) A referral under section 29, or an application under section 83E to enforce a contravention of section 51BR(1) as a civil penalty provision, cannot be made in relation to a particular allegation —
 - (a) if a complaint or application has been made under any anti-discrimination legislation in relation to the allegation; and

- (b) unless the complaint or application is withdrawn or fails for want of jurisdiction.
- (5) This section applies despite any other provision of this Act.

51BZE. Other laws not excluded or limited

- (1) This Subdivision does not exclude or limit the operation of other written laws or a law of the Commonwealth, another State or a Territory that is capable of operating concurrently with this Subdivision, including a law that —
 - (a) makes an act or omission an offence or subject to a civil penalty and that (or any similar) act or omission constitutes a contravention of a civil penalty provision in this Subdivision; or
 - (b) allows for an application to be made to a person, court or body for an order or other direction (however described) —
 - (i) to prevent a person from being sexually harassed in connection with work; or
 - (ii) to deal with a dispute relating to an allegation that a person has been sexually harassed in connection with work (whether or not by arbitration).
- (2) For the purposes of subsection (1), it is irrelevant whether —
 - (a) sexual harassment in connection with work has a different meaning for the purposes of the law to the meaning it has for the purposes of this Act; or

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

41. Part II Division 3A heading amended

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

matters

42. Section 51C replaced

Delete section 51C and insert:

51C. Terms used

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

43. Part II Division 3A Subdivision 2 inserted

After Part II Division 3A Subdivision 1 insert:

Subdivision 2 — Disputes relating to flexible working arrangement requests

51D. Flexible working arrangement dispute

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

- (a) the employer either —
 - (i) failed to respond to the employee’s request as required under the MCE Act section 39H; or
 - (ii) refused the employee’s request;
- and
- (b) the employer and employee have made reasonable attempts to resolve the dispute under the MCE Act section 39K.

51E. Restriction on application for compulsory conference

- (1) This section applies if a flexible working arrangement dispute has been referred to the Commission under section 29.
- (2) An organisation, association or employer cannot make an application to the Commission under section 44(7)(a)(i) in relation to the flexible working arrangement dispute unless the referral under section 29 is withdrawn or fails for want of jurisdiction.

Note for this section:

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

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

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

51G. Commission may make flexible working arrangement order

- (1) This section applies if the Commission decides, by arbitration, an industrial matter relating to a dispute between an employer and an employee about a flexible working arrangement request.
- (2) If the Commission is satisfied that the employer did not respond, or did not respond adequately, to the employee's flexible working arrangement request, the Commission may order the employer to take specified action, having regard to the matters in the MCE Act sections 39H to 39J.

- (3) If the Commission is satisfied there is no reasonable prospect of the dispute being resolved otherwise, the Commission may —
 - (a) order the employer to grant the flexible working arrangement request; or
 - (b) order the employer to make a specified change in the employee's working arrangements, other than the change requested in the flexible working arrangement request, to accommodate, to any extent, the circumstances mentioned in the MCE Act section 39F(2).
- (4) In making an order under subsection (3), the Commission must take into account fairness between the employer and the employee.
- (5) An order made against an employer under subsection (2) or (3) is a *flexible working arrangement order*.

51H. Employer must comply with flexible working arrangement order

- (1) An employer must comply with a flexible working arrangement order made against the employer.
- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

51HA. Enforcement of contravention of order

- (1) If, on an application under section 83E, the industrial magistrate's court determines that an employer has contravened a flexible working arrangement order, the

court may make either or both of the following orders —

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

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

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

Note for this subsection:

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

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

51HC. Restriction on multiple actions

- (1) A person or organisation cannot apply to the industrial magistrate’s court under section 83 to enforce a

minimum condition of employment in relation to a flexible working arrangement request —

- (a) if proceedings for a flexible working arrangement dispute related to the same request have been commenced in the Commission under section 29 or 44; and
 - (b) unless the proceedings before the Commission are withdrawn or fail for want of jurisdiction.
- (2) A person or organisation cannot refer a flexible working arrangement dispute to the Commission under section 29, or make an application relating to the dispute under section 44(7)(a)(i) —
- (a) if proceedings to enforce a minimum condition of employment in relation to the flexible working arrangement request that is the subject of the dispute have been commenced in the industrial magistrate's court under section 83; and
 - (b) unless the proceedings before the industrial magistrate's court are withdrawn or fail for want of jurisdiction.

Note for this section:

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

44. Section 51I amended

- (1) In section 51I(1):
- (a) delete “Subject to subsection (2), the Commission” and insert:

The Commission in Court Session
 - (b) delete “20%” and insert:

25%
- (2) In section 51I(2)(a) delete “Chamber, the Mines and Metals Association” and insert:

Chamber

45. Part II Division 3A Subdivision 4 heading deleted

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

46. Section 51J amended

In section 51J:

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

section 51I

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

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

Notice of hearings

47. Section 51K amended

In section 51K:

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

section 51I

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

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

Right to be heard before order made

48. Section 51L amended

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

section 51I

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

Limits on orders made under section 51I

49. Section 51M amended

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

an order made under section 51I.

50. Part II Division 4 heading amended

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

Registered

51. Section 53 amended

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

An

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

An

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

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

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

Organisations of employees that may be registered

52. Section 54 amended

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

An

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

An

(3) After section 54(2) insert:

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

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

Organisations of employers that may be registered

53. Sections 64A to 64D deleted

Delete sections 64A to 64D.

54. Section 72A amended

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

Australian Medical Association (WA) Incorporated.

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

Orders as to the employees represented by employee organisation

55. Section 72B amended

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

Australian Medical Association (WA) Incorporated.

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

Part II Divisions 2, 2AA and 3

56. Section 80BH amended

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

employees or an association of employees

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

57. Part IIA deleted

Delete Part IIA.

58. Section 80ZH amended

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

59. Sections 81A and 81AA replaced

Delete sections 81A and 81AA and insert:

81A. Jurisdiction of industrial magistrate’s court

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

- (a) the *Construction Industry Portable Paid Long Service Leave Act 1985* sections 53 and 54A;

- (b) the LSL Act Part IV;
- (c) the *Children and Community Services Act 2004* section 196(2).

81AA. Terms used

In this Division —

general jurisdiction means the jurisdiction of an industrial magistrate's court under section 81A other than the prosecution jurisdiction;

prosecution jurisdiction means the jurisdiction of an industrial magistrate's court under —

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

60. Section 81CA amended

Delete section 81CA(1).

61. Section 81CAA inserted

After section 81CA insert:

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

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

62. Section 81CB amended

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

63. Section 81F amended

In section 81F(1) and (2) delete “jurisdiction (as defined in section 81CA),” and insert:

jurisdiction,

64. Section 81G amended

In section 81G(2):

(a) in paragraph (a) after “court, have” insert:

broad or

(b) in paragraph (a) after “administration” insert:

or operation

(c) in paragraph (b) delete “court.” and insert:

court; or

(d) after paragraph (b) insert:

(c) proceedings in which, in the opinion of the court, the orders sought or likely to be sought may, to a significant extent, affect the rights or entitlements of employees who are not parties to the proceedings.

65. Section 82A amended

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

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

66. Section 83 amended

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

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

- (2) Delete section 83(4)(a) and insert:

- (a) if the contravention is proved — impose a pecuniary penalty under subsection (4A); or

- (3) Delete section 83(4A)(a) and (b) and insert:

- (a) in the case of a body corporate —
- (i) if the contravention is a serious contravention — \$930 000; or
 - (ii) if the contravention is not a serious contravention — \$93 000;
- and
- (b) in the case of an individual —
- (i) if the contravention is a serious contravention — \$180 000; or

- (ii) if the contravention is not a serious contravention — \$18 000.

67. Section 83E amended

- (1) Delete section 83E(1)(a) and (b) and insert:

- (a) in the case of a body corporate —
 - (i) if the contravention is a serious contravention — \$930 000; or
 - (ii) if the contravention is not a serious contravention — \$93 000;
- and
- (b) in the case of an individual —
 - (i) if the contravention is a serious contravention — \$180 000; or
 - (ii) if the contravention is not a serious contravention — \$18 000.

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

- (a) delete “(6a)” and insert:

(6a), (6B)

- (b) after paragraph (b) insert:

- (ba) in the case of a contravention of section 100(1) — any organisation or association; or

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

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

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

Proceedings for contravening civil penalty provisions

68. Section 83EA amended

(1) In section 83EA(2):

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

contravention; or

(b) delete paragraph (b) and insert:

(b) the person is reckless as to whether the contravention would occur.

(2) Delete section 83EA(4) and (5) and insert:

(4) For the purposes of subsection (2)(b), a person is reckless as to whether a contravention would occur if —

(a) the person is aware of a substantial risk that the contravention would occur; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

69. Section 83EB amended

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

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

70. Section 84A amended

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

\$13 000; or

71. Section 84C amended

After section 84C(4) insert:

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

72. Section 84F amended

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

given to

73. Section 84H amended

In section 84H(4):

- (a) after “The” insert:

nominated person or the

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

giving a notice of withdrawal to

74. Section 84M amended

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

if —

- (a) the person has been given a compliance notice as defined in section 84Q in relation to the contravention; and
- (b) the compliance notice has not been —
- (i) cancelled under section 84U(4); or
 - (ii) withdrawn under section 84V.

75. Section 84Q amended

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

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

- (2) After section 84Q(2) insert:
 - (3) The compliance notice must be given within 6 years after the day on which the contravention is alleged to have taken place.
 - (4) A compliance notice may be given by electronic means.

76. Section 84T amended

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

section 83E.

- (2) After section 84T(3) insert:
 - (4) If an industrial magistrate’s court determines under section 83E that a person has contravened subsection (1), the court may —
 - (a) order the person to comply with the compliance notice, wholly or in part; or
 - (b) if the compliance notice requires the person to pay an amount to an employee — order the person to pay the amount to an industrial inspector.

Note for this subsection:

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

- (5) The court may make an order under this section in addition to imposing a penalty, or making another order, under section 83E.
- (6) A person must comply with an order made against the person under this section.

Penalty for this subsection:

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

77. Section 84V amended

In section 84V(1):

- (a) delete “The” and insert:

An

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

giving a notice of withdrawal to

78. Section 96 amended

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

- (c) right of entry permits under Part II Division 2G, including —
 - (i) an application relating to a permit under section 49N, 49S(2) or 49V; and
 - (ii) the return of a permit under section 49W.

- (2) In section 96(3):
- (a) in paragraph (c) delete “section 40B,” and insert:

section 40B; and
 - (b) after paragraph (c) insert:
 - (d) to make an order under section 49T,

79. Section 96A amended

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

- (b) an association of employees; or

80. Section 97U amended

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

Disability Services and Inclusion Act 2023 (Commonwealth);

81. Section 97VS amended

In section 97VS delete the note and insert:

Note for this subsection:

The MCE Act section 5(2) provides that a provision in, or condition of, an industrial instrument or contract of

employment that is less favourable to the employee than a minimum condition of employment has no effect, and the minimum condition is taken to be the term of the industrial instrument or contract of employment instead.

82. Section 98 amended

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

observance of the following, as the Minister directs —

- (a) the provisions of this Act;
- (b) the provisions of an instrument to which this section applies;
- (c) an entitlement provision that is —
 - (i) a provision of the LSL Act or the MCE Act; or
 - (ii) a local government long service leave provision.

83. Section 100 inserted

After section 99 insert:

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

- (1) A person or entity must not make a statement to someone else that the person or entity knows, or could reasonably be expected to know, is false or misleading about either of the following matters —
 - (a) that the person or entity has the right to represent the industrial interests of a person or a particular class or group of persons;

- (b) that, in relation to the industrial interests of a person or a particular class or group of persons, the person or entity has the right to take specified action under this Act or an industrial instrument.
- (2) For the purposes of subsection (1) —
 - (a) a reference to a person or entity does not include a reference to an organisation; and
 - (b) an entity does not have the right to represent the industrial interests of a person or a particular class or group of persons only because the entity's rules state that it has that right.
- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

84. Section 107 amended

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

85. Section 113 amended

- (1) In section 113(1):
 - (a) after paragraph (d)(ii) insert:
 - (iii) a sexual harassment proceeding commenced under section 51BT;
 - (b) delete paragraph (da).
- (2) Delete section 113(2).

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

After section 115 insert:

Part 8 — Transitional and savings provisions

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

87. Part 8 Division 2 heading inserted

After section 116 insert:

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

88. Part 8 Division 3 inserted

After section 117 insert:

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

118. Terms used

In this Division —

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

commencement day means 31 January 2025;

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

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

119. Interpretation Act 1984 not affected

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

120. Representation of parties to proceedings

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

121. Boards of Reference abolished

- (1) In this section —
Board of Reference means a Board of Reference for an award established under repealed section 48.
- (2) If, immediately before the commencement day, a Board of Reference had not finished dealing with a particular matter, repealed section 48 continues to apply in relation to the Board of Reference and the matter as if the *Industrial Relations Legislation Amendment Act 2024* section 21 had not been enacted.
- (3) A person who, immediately before the commencement day, held office as the chairperson or a member of a Board of Reference goes out of office —
 - (a) if subsection (2) applies to the board — on the day after the day on which the board finishes dealing with the matter mentioned in that subsection; or
 - (b) otherwise — on the commencement day.

- (4) A right to appeal against a decision of a Board of Reference, or an appeal made in exercise of that right, under repealed section 48(11) is not affected by the repeal of that section, regardless of whether the decision was made —
 - (a) before the commencement day; or
 - (b) on or after the commencement day in relation to a matter to which subsection (2) applies.
- (5) Despite subsections (2) and (4), the Commission cannot make an order mentioned in repealed section 48(15) after the commencement day.

122. Existing authorities for entry and inspection by authorised representatives

- (1) This section applies in relation to an authority issued to a person under repealed section 49J(1) if the authority is in effect immediately before the commencement day.
- (2) On and from the commencement day, the authority is taken to —
 - (a) be a permit issued by the Commission under Part II Division 2G Subdivision 3; and
 - (b) have an expiry day of the day that is 1 year after the commencement day.

Note for this subsection:

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

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

123. Bullying and sexual harassment at work before commencement day

- (1) In this section —
- former Act* means this Act as in force from time to time before the commencement day;
- post-commencement behaviour* means behaviour referred to in amended section 51BI or 51BR that happened on or after the commencement day;
- pre-commencement behaviour* means behaviour referred to in section 51BI of the former Act that happened before the commencement day.
- (2) The former Act continues to apply in relation to pre-commencement behaviour as if the *Industrial Relations Legislation Amendment Act 2024* had not been enacted.
- (3) Without limiting subsection (2) —
- (a) a worker may make a stop bullying or sexual harassment application in relation to pre-commencement behaviour; and
 - (b) the Commission may deal with, or continue to deal with, a stop bullying or sexual harassment application —
 - (i) referred to in paragraph (a); or
 - (ii) made, but not finally dealt with or withdrawn, before the commencement day;
- and
- (c) sections 51BN and 83E of the former Act continue to apply in relation to a stop bullying or sexual harassment order made before the commencement day or by the Commission under paragraph (b).

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

124. Office of public service arbitrator abolished

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

125. Public Service Appeal Board abolished

- (1) In this section —
appeal means an appeal instituted under repealed section 80I;
Board has the meaning given in repealed section 80C(1).
- (2) If, immediately before the commencement day, an appeal has not been finally determined or withdrawn, repealed Part IIA continues to apply in relation to the appeal as if the *Industrial Relations Legislation Amendment Act 2024* section 57 had not been enacted.
- (3) Without limiting subsection (2) —
 - (a) a Board may be established under repealed section 80H for the purposes of the appeal; and
 - (b) a Board may start, or continue, to hear and determine the appeal.

126. Railways Classification Board abolished

The Railways Classification Board is abolished on the commencement day.

127. No costs to be awarded under section 107

Amended section 107 applies in relation to proceedings that commenced before the commencement day.

128. Deletion of references to Mines and Metals Association

- (1) In this section —
relevant provision means each of the following provisions —
 - (a) sections 51I, 51J and 51K;

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

89. Schedule 1 amended

In Schedule 1:

- (a) in item 2(e) delete “magistrates; and” and insert:

magistrates.
- (b) delete item 2(f);
- (c) delete item 5.

90. Schedule 3 amended

- (1) Delete Schedule 3 clause 1.

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

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

the Commission

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

In the provisions listed in the Table:

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

Chamber

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

UnionsWA and the Chamber

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

Table

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

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

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

- (1) In the provisions listed in the Table:
- (a) delete “A relevant industrial authority” and insert:

The Commission constituted by a commissioner
 - (b) delete “a relevant industrial authority” and insert:

the Commission constituted by a commissioner
 - (c) delete “the relevant industrial authority” and insert:

the Commission constituted by a commissioner

Table

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

- (2) In the provisions listed in the Table:
- (a) delete “the relevant industrial authority” and insert:

the Commission

(b) delete “a relevant industrial authority” and insert:

the Commission

(c) delete “The relevant industrial authority” and insert:

The Commission

Table

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

(3) In the provisions listed in the Table:

(a) delete “the authority” and insert:

the Commission

(b) delete “that authority” and insert:

the Commission

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

a Commissioner

Table

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

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

Table

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

Note: The heading to section 67 is to read:

Registering associations

Note: The heading to section 117 is to read:

Transitioned private sector awards

Division 3 — Amendments commencing on proclamation

93. Section 7 amended

In section 7(1) insert in alphabetical order:

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

94. Section 23 amended

In section 23(2a):

- (a) delete “Notwithstanding” and insert:

Despite

- (b) delete “that Act.” and insert:

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

95. Section 29 amended

- (1) In section 29(1):

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

employee; and

- (b) after paragraph (k) insert:

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

- (2) In section 29(2):
- (a) in paragraph (c) delete “is made.” and insert:

is made; and
 - (b) after paragraph (c) insert:
 - (d) a referral of a breach of public sector standards claim must be made no later than 28 days after the end of the agency resolution period mentioned in section 36AJ(c) for the claim.

96. Section 31 amended

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

- (i), (j) or (l)

97. Section 36AA amended

In section 36AA(2):

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

section 171;
- (b) after paragraph (c) insert:
- (d) a breach of public sector standards claim.

98. Section 36AC amended

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

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

99. Part II Division 2AA Subdivision 4 inserted

At the end of Part II Division 2AA insert:

Subdivision 4 — Breach of public sector standards claims

36AI. Terms used

In this Subdivision —

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

public sector body includes an employing authority of the public sector body;

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

- (a) the transfer of employees;
- (b) the performance management of employees;
- (c) the redeployment of employees;
- (d) the termination of employment of employees;
- (e) if grievance resolution is a human resource management activity — grievance resolution;

- (f) another human resource management activity relating to employees that is prescribed as a specified public sector standard by regulations made by the Governor;

taking action includes —

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

36AJ. Breach of public sector standards claim

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

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

36AK. Particular matters applicable to transfer decisions

- (1) This section applies if —
 - (a) a breach of public sector standards claim relating to a decision of a public sector body to transfer an employee is referred to, or the subject of an application made to, the Commission; and
 - (b) in accordance with procedures prescribed under the *Public Sector Management Act 1994* section 98(a), the decision to transfer the employee has not been given effect.

- (2) The operation of the decision is stayed pending the Commission's decision on the claim, unless the claim is withdrawn.
- (3) Despite subsection (2), the Commission may, on the application of the public sector body, make an interim order allowing the transfer to be given effect pending the Commission's decision on the claim.
- (4) The Commission may dismiss the claim if the Commission is satisfied the claim is solely about the competitive merit of the employee.

36AL. Commission's powers on breach of specified public sector standards claim

- (1) The Commission may make an order under this section if the Commission decides that a public sector body breached a specified public sector standard in taking action to which the standard applied.
- (2) The Commission may —
 - (a) by order —
 - (i) quash the action; or
 - (ii) remit the process for taking the action back to the public sector body to be recommenced from the start or from a specific stage; or
 - (iii) direct the public sector body to take specified steps in the recommenced process;
 - or
 - (b) order the public sector body to take specified action.

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

100. Section 42B amended

Delete section 42B(8) and insert:

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

Notes for this subsection:

1. Section 97J requires a person who carries on business providing industrial advocacy services, and the person's officers and employees, to be registered industrial agents or legal practitioners.
2. **Industrial advocacy services** is defined in section 97I and includes appearing as an agent under section 31, 81E or 91.

101. Part 6C inserted

After section 97H insert:

Part 6C — Industrial agents

97I. Terms used

In this Part —

industrial advocacy services means —

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

prescribed means prescribed by regulations made under section 97N;

registered industrial agent means a person registered as an industrial agent under regulations made under section 97N.

97J. Industrial agents

- (1) A person must not carry on business providing industrial advocacy services, or represent that the person is carrying on business providing industrial advocacy services, unless the person is a registered industrial agent or a legal practitioner.
- (2) A person who carries on business providing industrial advocacy services must not permit an officer or employee of the person to provide industrial advocacy services unless the officer or employee is a registered industrial agent or a legal practitioner.
- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.
- (4) Subsections (1) and (2) do not apply to any of the following —
 - (a) an organisation, UnionsWA or the Chamber;
 - (b) an officer or employee of an organisation, UnionsWA or the Chamber performing the officer's or employee's functions;
 - (c) a public sector body, local government or regional local government;
 - (d) an employee of a public sector body, local government or regional local government performing the employee's functions;
 - (e) a person who acts as a bargaining agent as provided in section 42B, 97UJ or 97WJ.

97K. Authorisation for *Legal Profession Uniform Law (WA)*

- (1) Despite the *Legal Profession Uniform Law (WA)* section 10, the following persons are authorised to provide industrial advocacy services —
 - (a) a registered industrial agent;
 - (b) an officer or employee of an organisation, UnionsWA, the Chamber or a prescribed body performing the officer's or employee's functions;
 - (c) an employee of a public sector body, local government or regional local government performing the employee's functions.
- (2) Subsection (1) does not apply to a person who is disqualified from legal practice.
- (3) A person is ***disqualified from legal practice*** if —
 - (a) the person is a disqualified person as defined in the *Legal Profession Uniform Law (WA)* section 6(1); or
 - (b) the person's Australian practising certificate is varied in a way that adversely affects the person's entitlement to engage in legal practice under the Law; or
 - (c) the person's name has been removed from an official roll of lawyers (whether admitted, practising or otherwise) kept in a foreign country.
- (4) Despite subsection (3)(a), a person is not ***disqualified from legal practice*** if the person's Australian practising certificate is suspended or has been cancelled (and not replaced by the grant of a later

Australian practising certificate) other than because of action taken —

- (a) under the *Legal Profession Uniform Law (WA)* by a designated local regulatory authority, designated tribunal or a court; or
 - (b) under a corresponding law by a corresponding authority.
- (5) In subsections (3) and (4), each of the following terms has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1) —

Australian practising certificate

corresponding authority

corresponding law

designated local regulatory authority

designated tribunal

engage in legal practice

97L. Eligibility for registration as industrial agent

- (1) A person is eligible for registration as an industrial agent if —
 - (a) the person meets the prescribed criteria for registration; and
 - (b) the person is not disqualified under this Act from applying for registration, or being registered, as an industrial agent.
- (2) A person is disqualified from being registered as an industrial agent if the person is disqualified from legal practice as specified in section 97K(3).
- (3) Regulations made under section 97N may prescribe other matters that disqualify a person from being registered as an industrial agent.

97M. 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 that complies with the prescribed requirements; or
 - (b) the person is an officer or employee of a registered industrial agent.
- (2) A registered industrial agent must maintain professional indemnity insurance that complies with the prescribed requirements.
- (3) Subsection (2) does not apply to a registered industrial agent who is an officer or employee of another registered industrial agent.
- (4) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

97N. Regulations may provide for registration

- (1) The Governor may make regulations —
 - (a) to provide for a scheme of registration of persons as industrial agents; and
 - (b) that are required or permitted to be made, or necessary or convenient, for giving effect to the scheme.
- (2) Without limiting subsection (1), regulations may provide for the following —
 - (a) the process for registration, including applying for registration and the renewal of registration and assessing applications;
 - (b) qualifications, experience and other criteria for registration;

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

970. Disciplinary inquiry by Registrar

- (1) The Registrar may inquire into the conduct of a registered industrial agent to determine whether there are grounds for disciplinary action against the industrial agent.
- (2) There are grounds for disciplinary action against a registered industrial agent if —
 - (a) the industrial agent’s registration was improperly obtained; or
 - (b) the industrial agent has contravened —
 - (i) a provision of this Act; or
 - (ii) a condition or restriction of the industrial agent’s registration;or
 - (c) the industrial agent has done or omitted to do something, or engaged in conduct, that makes 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 there are grounds for disciplinary action against the registered industrial agent, the Registrar must refer the matter to the Full Bench to hear and determine.

97P. Disciplinary action by Full Bench

- (1) If the Full Bench hears a matter referred to it under section 97O(4) and determines there are grounds for disciplinary action against a registered industrial agent, the Full Bench may do 1 or more of the following —
 - (a) decline to make an order;
 - (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) impose a penalty of an amount it considers just, but not exceeding \$13 000;
 - (e) order that the registration of the industrial agent be suspended for a period, not exceeding 12 months, specified in the order;
 - (f) order that the industrial agent’s registration be cancelled.
- (2) In subsection (1) —

grounds for disciplinary action means the grounds for disciplinary action stated in section 97O(2).

102. Section 97UJ amended

Delete section 97UJ(6) and insert:

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

Notes for this subsection:

1. Section 97J requires a person who carries on business providing industrial advocacy services, and the person's officers and employees, to be registered industrial agents or legal practitioners.
2. **Industrial advocacy services** is defined in section 97I and includes appearing as an agent under section 31, 81E or 91.

103. Section 112A deleted

Delete section 112A.

104. Sections 129 and 130 inserted

At the end of Part 8 Division 3 insert:

129. Existing breach of public sector standards claims

- (1) In this section —

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

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

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

Public Sector Commissioner means the Commissioner as defined in the *Public Sector Management Act 1994* section 3(1).

- (2) Subsection (3) applies if, before the commencement day —
 - (a) a person made a claim for relief to a public sector body mentioned in section 36AJ(a) in accordance with the prescribed procedures; and
 - (b) under the prescribed procedures, the public sector body sent the person's claim to the Public Sector Commissioner; and
 - (c) the Public Sector Commissioner had not finished dealing with the claim.
- (3) The Public Sector Commissioner may continue to deal with the claim under the prescribed procedures —
 - (a) as if the *Industrial Relations Legislation Amendment Act 2024* section 99 had not been enacted; and
 - (b) if the prescribed procedures are amended on or after the commencement day in relation to breaches of public sector standards claims — as if the prescribed procedures had not been amended.
- (4) Subsection (5) applies if —
 - (a) before the commencement day, a person made a claim for relief to a public sector body mentioned in section 36AJ(a) in accordance with the prescribed procedures; and
 - (b) on the commencement day —
 - (i) the agency resolution period for the claim had not ended; or

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

130. Industrial agents: transitional regulations

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

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

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

105. Act amended

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

106. Section 2A inserted

After section 2 insert:

2A. Objects of Act

The objects of this Act are —

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

107. Section 3 amended

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

award

employee

employer-employee agreement

industrial instrument

medical practitioner

public holiday

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

award has the meaning given in the IR Act section 7(1);

Commission has the meaning given in the IR Act section 7(1);

compensated employee has the meaning given in section 18B(1)(b);

compensated employee rate, in relation to a compensated employee, has the meaning given in section 18B(2);

employee has the meaning given in the IR Act section 7(1);

Note for this definition:

See also the IR Act sections 7A and 7B, which apply for the purposes of determining, for this Act, whether an individual is an employee or a casual employee of a person.

entitled to receive income compensation, in relation to an employee, has the meaning given in section 18B(1)(a);

family and domestic violence means family violence as defined in the *Restraining Orders Act 1997* section 5A;

flexible working arrangement dispute has the meaning given in the IR Act section 51D;

flexible working arrangement request has the meaning given in section 39F(1);

income compensation has the meaning given in the *Workers Compensation and Injury Management Act 2023* section 5;

industrial instrument means —

- (a) an award; or
- (b) an employer-employee agreement as defined in the IR Act section 7(1); or

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- (c) an industrial agreement registered under the IR Act Part II Division 2B; or
- (d) an order of the Commission under the IR Act;

organisation has the meaning given in the IR Act section 7(1);

paid family and domestic violence leave means —

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

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

year of service does not include any period of unpaid leave.

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

industrial instrument,

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

Note for this definition:

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

- (5) In section 3(1) in the definition of *member of the employee’s family or household*:
- (a) in paragraph (b) after “employee” insert:

or the employee’s spouse or de facto partner
 - (b) in paragraphs (c) and (d) delete “employee;” and insert:

employee or the employee’s spouse or de facto partner;
- (6) In section 3(1) in the definition of *minimum condition of employment*:
- (a) in paragraph (a) delete “this Act; or” and insert:

Part 3; or
 - (b) in paragraph (b) delete “this Act; or” and insert:

Part 3A; or
 - (c) delete paragraphs (c) and (d) and insert:
 - (c) an entitlement prescribed by Part 4 relating to paid personal leave, unpaid personal leave, paid annual leave, paid bereavement leave or unpaid family and domestic violence leave; or
 - (d) the use, in a manner prescribed by Part 4, of an entitlement to leave referred to in paragraph (c), including in relation to —
 - (i) taking leave; or
 - (ii) payment for leave; or

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- (iii) proof of entitlement to leave;
- or
- (d) in paragraph (f) delete “39E(1);” and insert:
 - 39E(1); or
- (e) after paragraph (f) insert:
 - (g) an entitlement prescribed by Part 4 relating to a public holiday, including —
 - (i) to be absent from work on a public holiday; or
 - (ii) to be paid if absent from work on a public holiday; or
 - (iii) to refuse (on reasonable grounds) a request to work on a public holiday;
 - or
 - (h) an entitlement prescribed by Part 4 relating to a day or part of a day that is substituted for a public holiday; or
 - (i) an entitlement or obligation prescribed by Part 4A relating to a flexible working arrangement request, including —
 - (i) an entitlement to make a request in any of the circumstances referred to in section 39F(2); or
 - (ii) an obligation to respond to that request.

108. Section 5 amended

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

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

(2) In section 5(2):

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

industrial instrument

(b) delete “effect.” and insert:

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

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

Minimum conditions extend to and bind all employers and employees

109. Section 6 amended

(1) In subsection (1):

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

Where, under the IR Act section 3,

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

the IR Act section 3(4)

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

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

110. Section 6A inserted

After section 6 insert:

6A. Application to police officers

This Act applies to a police officer as if —

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

111. Section 7 amended

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

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

112. Section 8 amended

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

paid

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

- (2) A benefit is not equivalent to forgone paid annual leave unless the employee is paid at least the amount the employee would have been paid had the employee taken the forgone leave.
- (2A) The employer and employee may make a subsequent agreement in relation to the same year of service.
- (2B) Subsection (1) applies to a subsequent agreement as if a reference to the amount of paid annual leave in subsection (1)(a) were a reference to the total amount of paid annual leave forgone under all agreements made in relation to that year of service.
- (2C) An agreement referred to in subsection (1) or (2A) is of no effect if —
- (a) the employer’s offer of employment was made on the condition that the employee would be required to enter into the agreement; or
 - (b) it does not comply with subsection (1) or (2B).

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

paid

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

Cashing out accrued paid annual leave

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113. Section 11 amended

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

(a) delete paragraph (a) and insert:

(a) 25%; or

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

25%

114. Section 13 amended

In section 13 delete “up”.

115. Section 15 amended

(1) In section 15 insert in alphabetical order:

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

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

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

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

Disability Services Act 1986 (Commonwealth) section 7; and”
and insert:

service; and

116. Section 17BA amended

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

industrial instrument

117. Section 17C amended

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

an industrial instrument

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

Methods for paying employee

118. Section 17D amended

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

an industrial instrument

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- (2) In section 17D(2):
- (a) delete “so deducted” and insert:

deducted under subsection (1)
 - (b) delete “employer-employee agreement, award,” and insert:

industrial instrument,

119. Section 17E amended

In section 17E(1), (3) and (4) delete “award, employer-employee agreement” and insert:

industrial instrument

120. Note for Part 4 inserted

At the beginning of Part 4 insert:

Note for this Part:

This Part does not provide for entitlements to parental leave. The *Fair Work Act 2009* (Commonwealth) Part 6-3 Division 2 extends unpaid parental leave and related entitlements to non-national system employees.

121. Section 18 replaced

Delete section 18 and insert:

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

- (1) An employee must be paid for paid leave at the rate the employee would have received as payment under an industrial instrument or contract of employment (whichever provides for the higher rate) at the time the employee takes the leave.
- (2) If the number of hours an employee is entitled to be paid for a period of paid leave cannot be determined, the hours are to be worked out by averaging, as hours worked each week, the total number of hours the employee worked during the shorter of the following periods —
 - (a) the 365 days immediately before the leave is taken;
 - (b) the period of employment immediately before the leave is taken.
- (3) The following periods are not to be counted as part of a period referred to in subsection (2)(a) or (b) —
 - (a) a period of unpaid leave;
 - (b) a period during which the employee is stood down in accordance with an industrial instrument, contract of employment or written law;
 - (c) a period during which the employee is or was a compensated employee.
- (4) Payments for overtime, penalty rates or any kind of allowance are not required to be included in a rate of pay under subsection (1).

- (5) Despite subsection (4), casual loading payable under an industrial instrument or contract of employment may be included in the rate of pay for bereavement leave under section 27 or 27A.
- (6) Matters in relation to payment for leave under this Part or Part 5 may be prescribed by the regulations.
- (7) This section is subject to sections 18A and 18B.

18A. Rate of pay for paid leave for employee paid wholly by commission or percentage reward or at piece rates

- (1) An employee paid wholly by commission or percentage reward or at piece rates must be paid for paid leave at the highest of the following rates —
 - (a) the rate payable under an industrial instrument or contract of employment (whichever provides for the higher rate);
 - (b) the rate calculated according to the employee's average weekly earnings during the 365 days immediately before the leave is taken, not counting any period referred to in section 18(3)(a) to (c);
 - (c) the minimum rate of pay applicable to the employee under section 10.
- (2) Payments for overtime, penalty rates or any kind of allowance are not required to be included in a rate of pay under subsection (1).
- (3) Despite subsection (2), casual loading payable under an industrial instrument or contract of employment may be included in the rate of pay for bereavement leave under section 27 or 27A.

18B. Rate of pay for paid leave for employee entitled to receive income compensation

- (1) For the purposes of this Part —
 - (a) an employee is *entitled to receive income compensation* if the employee is entitled to be paid income compensation under the *Workers Compensation and Injury Management Act 2023* Part 2 Division 3; and
 - (b) an employee who is entitled to receive income compensation is a *compensated employee*, whether or not the employee also performs work for the employee's employer while entitled to receive income compensation.
- (2) A compensated employee must be paid for paid leave at the higher of the following rates (the *compensated employee rate* for the leave) —
 - (a) the compensated employee's rate of pay at the time the leave is taken;
 - (b) the compensated employee's rate of pay immediately before the employee became entitled to receive income compensation.
- (3) For the purposes of subsection (2), the employee's *rate of pay* is the rate that the employee would have been entitled to receive as payment under an industrial instrument or contract of employment (whichever provides for the higher rate), had the employee not become entitled to receive income compensation.
- (4) A compensated employee's *average weekly hours* are the average hours the employee worked each week during the shorter of the following periods —
 - (a) the 365 days immediately before the employee became entitled to receive income compensation;

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- (b) the period of employment immediately before the employee became entitled to receive income compensation.
- (5) A period referred to in section 18(3) is not to be counted as part of a period referred to in subsection (4)(a) or (b).

122. Section 20 replaced

Delete section 20 and insert:

20. Entitlement to paid personal leave

- (1) For each year of service, an employee (other than a casual employee) is entitled to paid personal leave for the number of hours the employee is ordinarily required to work in a 2-week period during that year, up to a maximum of 76 hours.
- (2) An employee's entitlement to paid personal leave —
 - (a) accrues pro rata on a weekly basis; and
 - (b) is cumulative.
- (3) For the purposes of subsection (1), the hours an employee is ordinarily required to work in relation to a particular year of service must not include a period during which the employee is or was a compensated employee.

Note for this subsection:

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

- (4) If the hours a compensated employee would ordinarily work in a 2-week period in a particular year of service cannot be determined, the employee's hours for each week in that period are the average weekly hours under section 18B(4).

20A. Taking paid personal leave

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

Note for this subsection:

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

- (2) However, the employee is not entitled to be paid for any period of absence from work resulting from personal circumstances involving personal illness or injury affecting the employee if the circumstances are attributable to either of the following in the course of the employee's employment —
- (a) the employee's serious and wilful misconduct;
 - (b) the employee's gross and wilful neglect.
- (3) If, while on paid personal leave, an employee takes paid family and domestic violence leave, the employee is taken not to be on paid personal leave for the period of the paid family and domestic violence leave.
- (4) This section is subject to the *Workers Compensation and Injury Management Act 2023* section 61.

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123. Section 21 amended

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

under section 20A.

124. Part 4 Division 3 replaced

Delete Part 4 Division 3 and insert:

Division 3 — Paid annual leave

23. Entitlement to paid annual leave

- (1) For each year of service, an employee (other than a casual employee) is entitled to paid annual leave for the number of hours the employee is ordinarily required to work in a 4-week period during that year, up to a maximum of 152 hours.
- (2) An employee’s entitlement to paid annual leave —
 - (a) accrues pro rata on a weekly basis; and
 - (b) is cumulative.
- (3) For the purposes of subsection (1), the hours an employee is ordinarily required to work in relation to a particular year of service must not include a period during which the employee is or was a compensated employee.

Note for this subsection:

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

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

24. Taking paid annual leave

- (1) If an employer and an employee have not agreed when the employee is to take paid annual leave, the employer must not refuse the employee taking, at a time suitable to the employee, a period of paid annual leave the employee became entitled to more than 12 months before that time.
- (2) The employee is to give the employer at least 2 weeks' notice of the period during which the employee intends to take paid annual leave.
- (3) If, while on paid annual leave, an employee takes paid family and domestic violence leave, the employee is taken not to be on paid annual leave for the period of the paid family and domestic violence leave.

Note for this section:

See the *Workers Compensation and Injury Management Act 2023* section 61(2)(a) for an employee's entitlement to take annual leave while entitled to receive income compensation.

25. When employee must be paid for paid annual leave

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

26. Paying out paid annual leave when employment ends

- (1) An employee is entitled to be paid out for all untaken paid annual leave when the employee's employment ends.
- (2) However, an employee is not entitled to be paid out for untaken paid annual leave that relates to a partly completed year of service if the employee's employment is ended —
 - (a) unlawfully by the employee; or
 - (b) by the employer because of the fault of the employee.
- (3) Despite subsection (2), if an employee's employment is ended by the employer because of the employee's misconduct, the employee is not entitled to be paid out for untaken paid annual leave that relates to a year of service completed after the misconduct.
- (4) An employee must be paid out for untaken paid annual leave at a rate as follows —
 - (a) if the employee is a compensated employee when the employment is ended — the compensated employee rate;
 - (b) in any other case — the rate the employee would have received as payment for that leave under an industrial instrument or contract of employment (whichever provides for the higher rate) at the time the leave is paid out.

125. Heading to Part 4 Division 4 replaced

Delete the heading to Part 4 Division 4 and insert:

Division 4 — Paid bereavement leave

126. Section 27 amended

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

Paid bereavement

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

Entitlement to paid bereavement leave

127. Section 27A inserted

After section 27 insert:

27A. Paid bereavement leave for compensated employee

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

Note for this subsection:

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

- (2) On the death of a member of the employee’s family or household, the employee is entitled to take paid bereavement leave in accordance with section 27.
- (3) The employee must be paid for that leave at the compensated employee rate.

128. Section 28 amended

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

paid bereavement leave under this Division

129. Sections 30 and 31 replaced

Delete sections 30 and 31 and insert:

29. Application of Division

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

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

- (1) An employee is entitled to be absent from work on a day or part of a day that is a public holiday.
- (2) However, an employer may request that an employee work on a day or part of a day that is a public holiday if the request is reasonable.
- (3) If an employer makes a request, the employee may refuse the request if —
 - (a) the request is not reasonable; or
 - (b) the refusal is reasonable.
- (4) In determining whether a request or refusal is reasonable, the following must be taken into account —
 - (a) the nature and conduct of the employer’s business or operations;
 - (b) the nature of the employee’s work;

- (c) the employee's personal circumstances, including family responsibilities;
 - (d) whether the employee could reasonably expect that the employer might request work on the public holiday;
 - (e) whether the employee is entitled to receive overtime payments, penalty rates or other compensation (including compensation in the form of an annualised salary) for, or a level of remuneration that reflects an expectation of, work on the public holiday;
 - (f) the type of employment of the employee (for example, whether full-time, part-time, casual or shift work);
 - (g) the amount of notice in advance of the public holiday given —
 - (i) by the employer when making the request; or
 - (ii) by the employee when refusing the request.
- (5) Subsection (4) does not limit the matters that may be taken into account in determining whether a request or refusal is reasonable.

31. Employee entitled to be paid for public holiday

- (1) This section applies to an employee who is absent from work on a day or part of a day that is a public holiday in accordance with section 30, other than —
- (a) a casual employee; or
 - (b) an employee who would not ordinarily work on the public holiday; or
 - (c) an employee who is on unpaid leave on the public holiday.

- (2) The employee is entitled to be paid —
 - (a) as if the employee were required to work their ordinary hours on the public holiday; and
 - (b) at the rate the employee would have received as payment for those hours under an industrial instrument or contract of employment, whichever provides for the higher rate.
- (3) No penalty rate or allowance is required to be taken into account in determining any rate of pay for the purposes of subsection (2)(b).
- (4) This section and section 30 do not require an employer to pay a penalty rate for work done by an employee on a public holiday.

32. Substituted public holiday

- (1) An industrial instrument may provide for an employer and employee to agree to substitute —
 - (a) another day for a day that is a public holiday; or
 - (b) part of another day for part of a day that is a public holiday.
- (2) An employer and an employee whose employment is not governed by an industrial instrument may agree to substitute —
 - (a) another day for a day that is a public holiday; or
 - (b) part of another day for part of a day that is a public holiday.
- (3) An agreement under subsection (2) must be —
 - (a) in writing; and
 - (b) signed by the employer and the employee.

- (4) If another day or part of another day is substituted for a public holiday —
 - (a) the substituted day or part of the day is taken to be the public holiday; and
 - (b) the employee has the same entitlements and obligations under this Division in relation to the substituted day or part of the day as to the public holiday.

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

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

130. Part 4 Division 6 deleted

Delete Part 4 Division 6.

131. Note for Part 4 Division 7 heading inserted

At the beginning of Part 4 Division 7 insert:

Note for this Division:

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

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132. Section 39A replaced

Delete section 39A and insert:

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

In this Division —

unpaid family and domestic violence leave means leave required for reasons relating to family and domestic violence that is unpaid leave.

133. Part 4A inserted

After section 39E insert:

Part 4A — Flexible working arrangement requests

39F. Employee may request flexible working arrangement

- (1) If an employee would like to change their working arrangements because any of the circumstances referred to in subsection (2) apply to the employee, the employee may make a request to the employer for a change in working arrangements relating to those circumstances (a *flexible working arrangement request*).
- (2) The circumstances are as follows —
 - (a) the employee is pregnant;
 - (b) the employee is the parent of, or has responsibility for the care of, a child;

- (c) the employee is a carer as defined in the *Carers Recognition Act 2004* section 5;
 - (d) the employee has a disability;
 - (e) the employee is 55 years of age or older;
 - (f) the employee is experiencing family and domestic violence;
 - (g) the employee provides care or support to a member of the employee's family or household who requires care or support because the member is experiencing family and domestic violence.
- (3) In subsection (2) —
- child** means a child who is of compulsory school age in accordance with the *School Education Act 1999* or who is younger than that age.
- (4) A flexible working arrangement request may include changes to —
- (a) the employee's hours of work, including working on fewer days or for fewer hours, or both; or
 - (b) the employee's pattern of work, including working on different days or at different times, or both; or
 - (c) the location of the employee's work.
- (5) The employee is not entitled to make the request unless —
- (a) for an employee other than a casual employee — immediately before making the request, the employee has completed at least 12 months of continuous service with the employer; or

- (b) for a casual employee, the employee —
 - (i) immediately before making the request, has been employed by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and
 - (ii) has a reasonable expectation of continuing employment with the employer on a regular and systematic basis.

39G. Formal requirements

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

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

39H. Responding to flexible working arrangement request

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

- (c) subject to subsection (3) — state that the employer refuses the request and include the matters required by section 39J.
- (3) The employer may refuse the request only if —
 - (a) the employer has —
 - (i) discussed the request with the employee; and
 - (ii) genuinely tried to reach an agreement with the employee about making changes to the employee’s working arrangements to accommodate the circumstances referred to in section 39F(2);
 - and
 - (b) the employer and the employee have not reached an agreement; and
 - (c) the employer has considered the consequences of the refusal for the employee; and
 - (d) there are reasonable business grounds for refusing the request.
- (4) To avoid doubt, subsection (3)(a)(ii) does not require the employer to agree to a flexible working arrangement if the employer would have reasonable business grounds for refusing the request.
- (5) Despite subsection (3), the employer may refuse a request if agreeing to the request would contravene a provision of an industrial instrument which extends to and binds the employer and employee.

39I. Reasonable business grounds for refusing request

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

- (a) the requested arrangement would be too costly for the employer;
- (b) there is no capacity to change the working arrangements of other employees to accommodate the requested arrangement;
- (c) it would be impracticable to change the working arrangements of other employees, or recruit new employees, to accommodate the requested arrangement;
- (d) the requested arrangement would be likely to result in a significant loss to the employer's efficiency or productivity;
- (e) the requested arrangement would be likely to have a significant negative impact on customer service.

39J. Employer must explain grounds for refusal

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

- (a) include details of the reasons for the refusal; and
- (b) set out the employer's particular business grounds for refusing the request and explain how those grounds apply to the request; and
- (c) either —
 - (i) set out the changes in the employee's working arrangements (other than the requested changes) that the employer would be willing to make to

accommodate, to any extent, the employee's circumstances referred to in section 39F(2); or

- (ii) state that there are no such changes;
- and
- (d) advise the employee of the process in section 39K and the IR Act Part II Division 3A Subdivision 2 in relation to a flexible working arrangement dispute.

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

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

Note for this section:

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

- (2) A party to a dispute may authorise a person or organisation to support or represent the party in the discussions.

Part 4 — Other Acts amended

Division 1 — *Equal Opportunity Act 1984* amended

134. Act amended

This Division amends the *Equal Opportunity Act 1984*.

135. Section 83B inserted

After section 83A insert:

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

(1) In this section —

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

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

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

(i) a referral under section 29; or

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

and

- (b) unless the referral or application is withdrawn or fails for want of jurisdiction.
- (3) This section applies despite any other provision of this Act.

Division 2 — *Health Services Act 2016* amended

136. Act amended

This Division amends the *Health Services Act 2016*.

137. Section 160 replaced

Delete section 160 and insert:

160. Term used: lawful redeployment breach of discipline

In this Division —

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

138. Section 163 amended

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

lawful redeployment

139. Section 165 amended

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

lawful redeployment

140. Section 166 amended

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

lawful redeployment

141. Part 11 Division 4 replaced

Delete Part 11 Division 4 and insert:

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

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

- (1) Subject to section 118, each of the following is an industrial matter for the purposes of the *Industrial Relations Act 1979* —
- (a) a decision under section 147, 148 or 164(1)(a) to suspend an employee or former employee on partial pay or without pay;
 - (b) a decision under section 150(1), 163(3)(b) or 166(b) to take disciplinary action in relation to an employee or former employee;

- (c) a decision under section 159(1)(b) or (c) in relation to an employee or former employee;
- (d) a finding mentioned in section 165(5)(a)(ii) made in relation to an employee or former employee;
- (e) a decision under section 168(1) to terminate the employment of an employee or former employee;
- (f) if proceedings have been taken under this Part against an employee or former employee for a suspected breach of discipline arising out of alleged disobedience to, or disregard of, a lawful redeployment direction —
 - (i) a finding mentioned in section 163(3)(a), 165(5)(a)(i) or 166(a) made in relation to the employee or former employee; or
 - (ii) a decision under section 164(1)(a) to suspend the employee or former employee on partial pay or without pay.

Note for this section:

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

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

142. Section 174 amended

In section 174(2):

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

174A

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

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

143. Section 174A inserted

At the end of Part 12 insert:

174A. Lawful directions under applied provisions

- (1) In this section —

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

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

- (2) A direction referred to in applied section 94(2)(b) or (3)(c)(i) is a lawful order for the purposes of section 161(a) if —
- (a) the direction is given to the employee concerned in accordance with the relevant regulations referred to in applied section 94; and
 - (b) either —
 - (i) the direction is upheld by the Industrial Commission on a referral under applied section 95(2); or
 - (ii) the period referred to in applied section 95(3) expired without the direction being referred.
- (3) This section does not limit the meaning of lawful order in section 161(a).

Division 3 — *Long Service Leave Act 1958* amended

144. Act amended

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

145. Section 4 amended

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

Note for this definition:

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

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

Note for this definition:

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

146. Section 11 amended

Delete section 11(2) and insert:

- (2) Jurisdiction granted under subsection (1) —
- (a) does not limit —
- (i) a person's right under the IR Act section 44(7)(a)(i) or (iii) to apply to the Commission in relation to a dispute about an entitlement to long service leave under this Act; or
 - (ii) the jurisdiction of the Commission under the IR Act in relation to an application made under section 44(7)(a)(i) or (iii) of that Act;
- and
- (b) is otherwise exclusive of any other court except where an appeal lies to that other court.

Division 4 — *Public Sector Management Act 1994* amended

147. Act amended

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

148. Section 29 amended

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

1979; and

- (2) After section 29(1)(h)(i) insert:

- (ia) the requirements of an employer-employee agreement under the *Industrial Relations Act 1979* Part VID; and

149. Section 75A inserted

At the beginning of Part 5 Division 1 insert:

75A. Term used: lawful redeployment direction

In this Part —

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

150. Section 76 amended

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

lawful redeployment direction,

151. Section 78 replaced

Delete section 78 and insert:

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

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

- (a) a decision made in relation to an employee or former employee under section 79(3)(b) or (c) or (4);
- (b) a decision made under section 82 to suspend an employee or former employee on partial pay or without pay;
- (c) a decision to take disciplinary action in relation to an employee or former employee made under section 82A(3)(b)(i), 88(b)(i) or 92(1);
- (d) a finding made in relation to an employee or former employee in the exercise of a power under section 87(3)(a)(ii);
- (e) if proceedings were taken under this Part against an employee or former employee for a suspected breach of discipline arising out of

alleged disobedience to, or disregard of, a lawful redeployment direction —

- (i) a decision made under section 82 to suspend the employee or former employee on partial pay or without pay; or
- (ii) a finding made in relation to the employee or former employee referred to in section 82A(3)(a), 87(3)(a)(i) or 88(a).

Note for this section:

See the *Industrial Relations Act 1979* section 36AA and Part II Division 2AA Subdivision 3 for the Industrial Commission's jurisdiction to hear and determine an industrial matter mentioned in this section.

152. Section 80A amended

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

redemption direction breach of discipline means a breach of discipline arising out of disobedience to, or disregard of, a lawful redeployment direction;

153. Section 95 amended

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

lawful redeployment direction).

154. Schedule 1 amended

In Schedule 1 delete item 13.

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

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

redeployment direction

Table

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

Division 5 — Other consequential amendments

156. 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 the items for:
Public service arbitrator
Chairman, or deputy of the chairman, of the Railways Classification Board
- (3) Delete Schedule V Part 2 Division 1.
- (4) Delete the heading to Schedule V Part 2 Division 2.

157. *Gold Corporation Act 1987* amended

- (1) This section amends the *Gold Corporation Act 1987*.
- (2) In section 52(3) delete “Division 2 of Part IIA of the *Industrial Relations Act 1979*.” and insert:

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

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

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

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

- (1) This section amends the *Owner-Drivers (Contracts and Disputes) Act 2007*.
- (2) In section 34B(3)(b)(i) delete “an authority issued under the IR Act section 49J(1)” and insert:

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

- (3) In section 34C(1):
 - (a) delete “an authority or” and insert:
 - a
 - (b) delete “authority or” (2nd occurrence).

Industrial Relations Legislation Amendment Act 2024

Part 4 Other Acts amended

Division 5 Other consequential amendments

s. 159

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

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

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

- (1) This section amends the *University of Notre Dame Australia Act 1989*.
- (2) In section 25(3)(b) delete “Division 2 of Part IIA of the *Industrial Relations Act 1979*.” and insert:

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

160. *Work Health and Safety Act 2020* amended

- (1) This section amends the *Work Health and Safety Act 2020*.
- (2) In section 4 in the definition of ***IR entry authority*** delete paragraph (a) and insert:
- (a) a right of entry permit as defined in the *Industrial Relations Act 1979* section 49G(1);
or

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