



Queensland

Industrial Relations Act and Other Legislation Amendment Act 2007

Act No. 23 of 2007



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Contents

		Page
Part 1	Preliminary	
1	Short title	10
2	Commencement	10
Part 2	Amendment of Industrial Relations Act 1999	
3	Act amended in pt 2 and schedule	10
4	Amendment of s 3 (Principal object of this Act)	11
5	Insertion of new ch 2, pt 3, div 1A	11
	Division 1A Relationship between parts 3 and 6	
	42A Application of pt 6 for particular purposes	11
6	Amendment of s 43 (Entitlement)	11
7	Amendment of s 68 (How part applies)	11
8	Amendment of s 73 (When is a dismissal unfair)	12
9	Insertion of new s 108A	12
	108A Action under full bench order not prohibited conduct	12
10	Replacement of s 153 (Time for applying for certification)	12
	153 Applying for certification	12
11	Amendment of s 156 (Certifying an agreement)	13
12	Amendment of s 166 (Persons bound)	13
13	Omission of s 178 (No protection if certification application not timely)	14
14	Amendment of s 230 (Action on industrial dispute)	14
15	Amendment of s 232 (Compulsory conference)	14
16	Amendment of s 234 (Remedies on show cause)	14
17	Replacement of s 243 (President of the court)	15
	243 President of the court	15
18	Amendment of s 244 (When a judge is appointed as president)	15

	339N	Vacating office	29
	339O	Removal of ombudsman from office	29
	Part 4	Preservation of rights	
	339P	Preservation of ombudsman's rights if a public service officer	30
	339Q	Preservation of ombudsman's rights if ombudsman becomes public service officer	31
	339R	Preservation of ombudsman's rights if not previously public service officer	31
	Part 5	Establishment of QWRO	
	339S	Queensland Workplace Rights Office	32
	339T	Function of QWRO	32
	339U	Control of QWRO	32
	339V	Officers of QWRO	32
	339W	Officers not subject to direction	33
	339X	Finances of QWRO	33
	Part 6	Other matters	
	339Y	Delegation by ombudsman	33
	339Z	Quarterly report	33
	339ZA	Annual report	34
	339ZB	Offence of subjecting person to any detriment	34
31		Amendment of s 340 (Appeal from court or full bench)	34
32		Amendment of s 341 (Appeal from commission, magistrate or registrar)	35
33		Amendment of s 342 (Appeal from commission, magistrate or registrar)	35
34		Amendment of s 350 (Appointment of inspectors)	35
35		Amendment of s 662 (False or misleading statements)	35
36		Amendment of s 663 (False or misleading documents)	36
37		Amendment of s 686 (Application of Act to State)	36
38		Amendment of s 702 (Protection from liability)	36
39		Insertion of new ch 20, pt 6	37
	Part 6	Transitional provisions for Industrial Relations Act and Other Legislation Amendment Act 2007	
	740	Certification of agreements	37
	741	Appointment as members	37
	742	Appointments by industrial gazette notice	37

	743	Appeals to Court of Appeal from full bench	38
40		Amendment of sch 2 (Appointments)	38
41		Amendment of sch 5 (Dictionary)	38
Part 3		Amendment of Child Employment Act 2006	
42		Act amended in pt 3	39
43		Amendment of s 8 (Meaning of work in relation to a child)	39
44		Insertion of new s 8A	39
	8A	Prohibition on nudity and sexually provocative clothing	39
45		Amendment of s 9 (Restrictions on work performed by children).	40
46		Insertion of new pts 2A and 2B	40
	Part 2A	Minimum employment conditions for children	
	Division 1	Employment conditions	
	15A	Application of pt 2A	41
	15B	Employer to ensure child is not disadvantaged in relation to employment conditions	42
	15C	Industrial commission may decide whether agreement or arrangement reduces child's employment entitlements or protections for s 15B	42
	15D	Affected employer to display State award or order at workplace	43
	15E	Record keeping	43
	Division 2	Compliance notices	
	15F	Issue of compliance notice	44
	15G	Compliance notice may include directions	44
	15H	Withdrawal of compliance notice	45
	15I	Industrial magistrate's powers in proceeding for compliance notice offence	45
	15J	Appeals	46
	15K	Decision on appeal	47
	15L	Revocation or withdrawal of compliance notice does not prevent issue of another notice	48
	15M	Proceedings for offence not affected by compliance notice	48
	15N	Inspector may apply to industrial commission in relation to contravention	48
	15O	Consideration of s 15N application	48
	Part 2B	Dismissal of children by constitutional corporation	

	15P	Dismissal by constitutional corporation	49
47		Amendment of s 26 (Evidentiary provisions)	50
48		Replacement of pt 4 hdg	51
49		Amendment of s 27 (Appeal from decision of the chief executive)	51
50		Amendment of s 29 (Decision on appeal)	51
51		Amendment of schedule (Dictionary)	52
Part 4		Amendment of Education (Work Experience) Act 1996	
52		Act amended in pt 4	52
53		Amendment of s 10 (Certain laws not to apply to work experience placements)	52
Part 5		Amendment of Judicial Review Act 1991	
54		Act amended in pt 5	53
55		Amendment of sch 1 (Operation of other laws)	53
Part 6		Amendment of Magistrates Courts Act 1921	
56		Act amended in pt 6	53
57		Amendment of s 2 (Definitions)	53
58		Insertion of new s 21A	54
	21A	Application of pt 5.	54
59		Insertion of new pt 5A.	54
	Part 5A	Processes for employment claims	
	Division 1	Preliminary	
	42A	Object of pt 5A	55
	42B	Application of pt 5A	55
	42C	Decision of Magistrates Court about whether claim is an employment claim	56
	Division 2	Conciliation of disputes	
	Subdivision 1	What is conciliation	
	42D	Meaning of conciliation process	57
	42E	Functions of conciliator.	57
	Subdivision 2	Starting conciliation process	
	42F	Registrar must appoint conciliator	58
	42G	Requirement for conciliator to start conciliation process	58
	Subdivision 3	Conduct of conciliation process	
	42H	Attendance at and participation in conciliation process	58
	42I	Procedure for conciliation process	59

	42J	Limited right to representation	59
	42K	No fee or costs payable to conciliator by parties	59
	Subdivision 4 Procedure for finishing conciliation process		
	42L	Conciliator to file certificate	60
	42M	Conciliation agreements	60
	42N	Orders giving effect to conciliation agreement	60
	Subdivision 5 Confidentiality, protection and immunity		
	42O	Conciliators to maintain secrecy	61
	42P	Ordinary protection and immunity allowed	61
	42Q	Admission made in conciliation process	62
	42R	No official record of conciliation process	62
	Subdivision 6 Approval of conciliators		
	42S	Approval of members of industrial commission	62
	42T	Approval of other persons by Chief Magistrate	62
	42U	Revocation of approval	63
	42V	Appeal against refusal to approve as, or revocation of approval of, conciliator	63
	42W	Payment of conciliators	63
	42X	Conciliation register	63
	Subdivision 7 Miscellaneous		
	42Y	Rules may be made for conciliation processes	64
	Division 3 Special provisions for proceedings heard in Magistrates Court		
	42Z	Application of div 3	64
	42ZA	Representation of parties	64
	42ZB	No inference may be drawn from failure to settle	64
	42ZC	Limitation on awarding of costs	64
Part 7	Amendment of Public Service Act 1996		
60	Act amended in pt 7		65
61	Amendment of sch 1 (Public service offices and their heads)		65
Part 8	Amendment of Workers' Compensation and Rehabilitation Act 2003		
62	Act amended in pt 8		66
63	Amendment of s 71 (Issue or renewal of licence to a single employer)		66
64	Amendment of s 72 (Issue or renewal of licence to a group employer)		66
65	Amendment of s 370 (Appointment of authorised persons)		66

66	Amendment of s 371 (Authorised person's appointment conditions)	67
67	Amendment of s 372 (Authorised person's identity card)	67
68	Amendment of s 373 (Display of authorised person's identity card)	67
Part 9	Amendment of Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005	
69	Act amended in pt 9	67
70	Amendment of s 70 (Replacement of s 31 of Act No. 25 of 1995)	68
Part 10	Amendment of Workplace Health and Safety Act 1995	
71	Act amended in pt 10	68
72	Insertion of new s 39	68
	39 Regulations relating to occupational certificates under repealed Acts	68
73	Insertion of new pt 7A, div 6	69
	Division 6 Disputes under this part	
	90S Definition for div 6	69
	90T Notice of dispute	69
	90U Action on dispute	70
	90V Compulsory conference	71
	90W Enforcing commission's orders	71
	90X Remedies on show cause notice	73
	90Y Disobeying penalty orders	74
74	Amendment of s 147A (Definitions for pt 11)	74
75	Insertion of new pt 11, div 3A	75
	Division 3A Appeals to full bench	
	151F Definition for div 3A	75
	151G Who may appeal	75
	151H How to start appeal	75
	151I Stay of operation of decisions	76
	151J Hearing procedures	76
	151K Powers of full bench on appeal	76
76	Amendment of s 152 (Who may appeal?)	77
77	Amendment of s 155 (Hearing procedures)	77
78	Amendment of s 157 (Powers of court on appeal)	78
79	Amendment of sch 3 (Dictionary)	78
Schedule	Minor amendments of Industrial Relations Act 1999	79



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Industrial Relations Act and Other Legislation Amendment Act 2007

Act No. 23 of 2007

**An Act to make further provision for industrial relations, and for
other purposes**

[Assented to 28 May 2007]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Industrial Relations Act and Other Legislation Amendment Act 2007*.

2 Commencement

- (1) Parts 5 and 6 commence on 1 January 2008.
- (2) The following provisions commence on a day to be fixed by proclamation—
 - sections 10 to 12
 - section 30
 - section 39 (to the extent it inserts section 740)
 - section 41(2) (to the extent it inserts definitions *ombudsman* and *QWRO*)
 - sections 43 to 45
 - part 4
 - part 7.

Part 2 Amendment of Industrial Relations Act 1999

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Industrial Relations Act 1999*.

4 Amendment of s 3 (Principal object of this Act)

Section 3—

insert—

‘(o) promoting collective bargaining and establishing the primacy of collective agreements over individual agreements.’.

5 Insertion of new ch 2, pt 3, div 1A

After section 42—

insert—

‘Division 1A Relationship between parts 3 and 6

‘42A Application of pt 6 for particular purposes

‘To remove any doubt, it is declared that the provisions of part 6 are to be applied when working out an employee’s rights and entitlements to long service leave under this part or an industrial instrument.’.

6 Amendment of s 43 (Entitlement)

Section 43(4)—

insert—

‘(d) the termination is because of the effluxion of time and—

(i) the employee had a reasonable expectation that the employment with the employer would continue until the employee had completed at least 10 years continuous service; and

(ii) the employee was prepared to continue the employment with the employer.’.

7 Amendment of s 68 (How part applies)

Section 68—

insert—

‘(3) However, when working out the minimum period of notice required to be given under section 84 to a transferred employee, any period of notice previously given in relation to the transfer of the calling (whether given before or after the commencement of this subsection) is to be disregarded.

‘(4) In subsection (3)—
transferred employee see section 69(1).’.

8 Amendment of s 73 (When is a dismissal unfair)

Section 73(2)(a), ‘injury within the meaning of part 5’—
omit, insert—

‘injury to which chapter 4, part 6 of the *Workers’ Compensation and Rehabilitation Act 2003* applies’.

9 Insertion of new s 108A

After section 108—
insert—

‘108A Action under full bench order not prohibited conduct

‘Anything done under an order of the full bench made under section 279 is not prohibited conduct.’.

10 Replacement of s 153 (Time for applying for certification)

Section 153—
omit, insert—

‘153 Applying for certification

‘(1) An application for the commission to certify an agreement may be made by a party to the agreement.

‘(2) For an agreement made between a single employer and 1 or more employee organisations, the application may be made even though the agreement has not been signed by or for all the parties if—

(a) all the parties have agreed on the terms of the agreement; and

- (b) the agreement has been approved by a valid majority of the relevant employees at the time in a properly conducted ballot.
- ‘(3) If an agreement has been signed by or for all the parties, the application must be made within 21 days after it is signed.’.

11 Amendment of s 156 (Certifying an agreement)

Section 156—

insert—

- ‘(1A) Subsection (1)(c) does not apply if the commission is satisfied, in the particular circumstances, that—
 - (a) although the agreement has not been signed by or for all the parties, all the parties have agreed on the terms of the agreement; and
 - (b) the application for the certification of the agreement was made within a reasonable time after the agreement was approved by a valid majority of the relevant employees at the time in a properly conducted ballot.
- ‘(1B) For subsection (1A), in deciding whether all parties have agreed on the terms of the agreement, the commission may consider—
 - (a) whether the parties negotiated in good faith as required under section 146; and
 - (b) any other evidence supporting or not supporting the alleged agreement.’.

12 Amendment of s 166 (Persons bound)

Section 166—

insert—

- ‘(1A) Subsection (1) applies even though an employer or employee organisation has not signed the agreement if the commission is satisfied, under section 156(1A) in the particular circumstances, that the agreement does not need to be signed by or for all the parties.’.

13 Omission of s 178 (No protection if certification application not timely)

Section 178—

omit.

14 Amendment of s 230 (Action on industrial dispute)

Section 230(4), ‘commission may’—

omit, insert—

‘commission may do 1 or more of the following’.

15 Amendment of s 232 (Compulsory conference)

(1) Section 232(4), before ‘must’—

omit, insert—

‘under subsection (2) or (3)’.

(2) Section 232(5), ‘The person’—

omit, insert—

‘A person required to attend under subsection (3)’.

16 Amendment of s 234 (Remedies on show cause)

(1) Section 234, heading, after ‘cause’—

insert—

‘notice’.

(2) Section 234(1) and (2), after ‘may’—

insert—

‘do 1 or more of the following’.

(3) Section 234(2)(a), ‘fine’—

omit, insert—

‘penalty’.

17 Replacement of s 243 (President of the court)

Section 243—

omit, insert—

‘243 President of the court

‘(1) The Governor in Council may appoint a person as president of the court if the person is—

- (a) a Supreme Court judge; or
- (b) a lawyer of at least 5 years standing who is not a Supreme Court judge (a *non-judicial appointee*).

‘(2) The Governor in Council may appoint the person—

- (a) if the person is a Supreme Court judge—by gazette notice; or
- (b) if the person is a non-judicial appointee—by commission.

‘(3) A non-judicial appointee can not be—

- (a) a member of the Executive Council or Legislative Assembly; or
- (b) a director of a corporation engaged in a calling; or
- (c) an auditor of a corporation engaged in a calling or of a business; or
- (d) a person who participates in any capacity in the management of—
 - (i) a corporation engaged in a calling; or
 - (ii) a business.’.

18 Amendment of s 244 (When a judge is appointed as president)

(1) Section 244, heading, ‘judge’—

omit, insert—

‘Supreme Court judge’.

(2) Section 244(1), ‘judge of the Supreme or District Court’—

omit, insert—

‘Supreme Court judge’.

(3) Section 244(2)—

omit, insert—

- ‘(2) The Supreme Court judge’s service as president is taken to be service as a Supreme Court judge for all purposes.
- ‘(3) The appointment of, or service by, a Supreme Court judge as president does not entitle the judge to any salary or allowance in addition to the judge’s salary or allowance as the holder of his or her office as a judge.
- ‘(4) However, the Supreme Court judge is entitled to be paid expenses reasonably incurred by the judge in performing the functions of the office of president.
- ‘(5) This section applies despite any other Act.’.

19 Amendment of s 245 (When president holds office)

(1) Section 245(1)(a) to (e)—

renumber as section 245(1)(b)(i) to (v).

(2) Section 245(1), ‘The president holds office until—’—

omit, insert—

‘The president holds office until—

(a) if the president is a Supreme Court judge—

- (i) the term stated in the gazette notice appointing the president ends; or
- (ii) the president resigns by signed notice given to the Governor; or
- (iii) the president stops being a Supreme Court judge; or

(b) if the president is a non-judicial appointee—’.

(3) Section 245(2), ‘The’—

omit, insert—

‘If the president is a non-judicial appointee, the’.

- (4) Section 245(2), ‘address to’—

omit, insert—

‘address of’.

- (5) Section 245(3), after ‘(b)’—

insert—

‘(i) or (ii)’.

- (6) Section 245(4), ‘The person continued in office’—

omit, insert—

‘A person continued in office under subsection (3)’.

- (7) Section 245—

insert—

- ‘(5) The Governor in Council may, by gazette notice, reappoint a president if the president’s term of office ends under subsection (1)(a)(i).’.

20 Amendment of s 246 (Acting president of the court)

- (1) Section 246(2)—

omit, insert—

- ‘(2) The Governor in Council may, by gazette notice, appoint the following persons to act as the president—

(a) if the president is a Supreme Court judge—a person who is a Supreme Court judge;

(b) if the president is a non-judicial appointee—the vice president.’.

- (2) Section 246—

insert—

- ‘(5) The appointment of, or service by, a Supreme Court judge as acting president does not affect—

(a) the judge’s tenure of office as a judge; or

- (b) the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a judge.
- ‘(6) The Supreme Court judge's service as acting president is taken to be service as a Supreme Court judge for all purposes.
- ‘(7) The appointment of, or service by, a Supreme Court judge as acting president does not entitle the judge to any salary or allowance in addition to the judge's salary or allowance as the holder of his or her office as a judge.
- ‘(8) However, the Supreme Court judge is entitled to be paid expenses reasonably incurred by the judge in performing the functions of the office of acting president.
- ‘(9) Subsections (5) to (8) apply despite any other Act.’.

21 **Amendment of s 256 (Composition)**

(1) Section 256(1)—

omit, insert—

- ‘(1) The commission consists of—
- (a) the president; and
- (b) the following persons (*commissioners*)—
- a person holding office as the vice president
 - a person holding office as a deputy president (if any)
 - a person holding office as an industrial commissioner.’.

(2) Section 256(2)(b), ‘including at least 1 presidential member’—

omit.

22 **Insertion of new s 259A**

After section 259—

insert—

‘259A Commissioner may be appointed ombudsman

- ‘(1) A commissioner may also be appointed as the ombudsman under chapter 8A.
- ‘(2) The commissioner’s service as ombudsman is taken to be service as a commissioner for all purposes.
- ‘(3) However, while holding appointment as ombudsman, a commissioner can not perform the functions of office of a commissioner.
- ‘(4) The appointment of, or service by, a commissioner as ombudsman does not entitle the commissioner to any salary or allowance in addition to the commissioner’s salary or allowance as the holder of his or her office as a commissioner.
- ‘(5) However, the commissioner is entitled to be paid expenses reasonably incurred by the commissioner in performing the functions of the office of ombudsman.’.

23 Amendment of s 264 (Administrative responsibilities for the commission and registry)

Section 264(8), ‘A’—

omit, insert—

‘If practicable, a’.

24 Amendment of s 273 (Commission’s functions)

(1) Section 273(1)—

insert—

‘(ha) resolving disputes by performing the functions conferred on the commission under a referral agreement;’.

(2) Section 273(1)—

insert—

‘(k) making declarations about industrial matters.’.

25 Insertion of new s 273A

After section 273—

insert—

‘273A Commission may perform dispute resolution functions conferred by agreement of parties to disputes

- ‘(1) This section applies if—
- (a) there is an industrial dispute between—
 - (i) an employee organisation; and
 - (ii) 1 or more employers or employer organisations; and
 - (b) the parties to the dispute have agreed in writing (the *referral agreement*) that the dispute, or disputes of a class to which the dispute belongs, is or are to be resolved by the commission.
- ‘(2) A party to the dispute may apply to the commission for the commission to perform the functions about resolving the dispute that are conferred on the commission under the referral agreement (the *dispute resolution functions*).
- ‘(3) If an application is made under subsection (2), the commission may perform the dispute resolution functions.
- ‘(4) Without limiting subsections (2) and (3), the dispute resolution functions may include 1 or more of the following—
- (a) conciliating the dispute;
 - (b) arbitrating the dispute;
 - (c) granting a remedy or other relief of the kind provided for under chapter 3, part 2 or chapter 8, part 2, division 4;
 - (d) deciding any other issue or question arising in the dispute.
- ‘(5) A decision made by the commission in performing the dispute resolution functions does not bind the parties to the dispute unless the referral agreement provides for the decision to bind the parties.

- ‘(6) This section does not limit a function or power of the commission under any other provision of this Act to conciliate, arbitrate or otherwise decide a matter.’.

26 Insertion of new s 274A

After section 274—

insert—

‘274A Power to make declarations

- ‘(1) The commission may, on application, make a declaration about an industrial matter.
- ‘(2) The commission may make the declaration whether or not consequential relief is or could be claimed.
- ‘(3) The application may be made by—
- (a) a person who may be directly affected by the declaration; or
 - (b) an inspector; or
 - (c) an organisation of employees or employers of which a person mentioned in paragraph (a) is a member, if it is acting with the person’s written consent; or
 - (d) an organisation of employees or employers who may be directly affected by the declaration.
- ‘(4) Subject to chapter 9, a declaration made by the commission under this section is binding in any proceeding under this Act in relation to the issue determined by the declaration.’.

27 Amendment of s 279 (Orders about representation rights of employee organisations)

- (1) Section 279, heading, before ‘employee’—
insert—
‘associations or’.
- (2) Section 279(1)(a), before ‘another’—
insert—

-
- ‘an association or’.
- (3) Section 279(1)(c), before ‘employee organisation’—
insert—
‘association or’.
- (4) Section 279(3)(a), before ‘organisation’—
insert—
‘association or’.
- (5) Section 279(3)(b)—
renumber as section 279(3)(c).
- (6) Section 279(3)—
insert—
‘(b) the conduct, or threatened conduct, of an association or of an officer, member or employee of the association is preventing, obstructing or restricting negotiations or discussions between the employer and an organisation or the employer and the employer’s employees; or’.
- (7) Section 279(3)(c), as renumbered, after ‘paragraph (a)’—
insert—
‘or (b)’.
- (8) Section 279(5) and (6)—
omit, insert—
- ‘(4A) If the full bench makes an order under this section, it may also make any ancillary order it considers necessary to support the order, including making an order prohibiting—
- (a) an officer or employee of an association or organisation from representing a person in a matter before an industrial tribunal; and
- (b) an association or organisation from arranging for an agent to represent a person in relation to making an agreement under chapter 6; and

- (c) an association or organisation from holding out membership on the basis of being able to provide representation in stated industrial matters.
- ‘(5) An order or ancillary order may—
 - (a) be subject to conditions; and
 - (b) apply to an individual, an association or an organisation.
- ‘(6) An individual, an association or an organisation to which an order applies must comply with the order.’.
- (9) Section 279(8)—

insert—

‘association means a body or entity that is formed or carried on to protect and promote its members’ interests in matters concerning their employment, but is not registered as an organisation under this Act.

industrial tribunal means the court, the commission, the full bench or the registrar.’.

28 Insertion of new s 311A

After section 311—

insert—

‘311A Adoption of result of joint session

- ‘(1) This section applies if the president or member reports the result of the joint session to the full bench under section 311.
- ‘(2) The full bench may make a general ruling under section 287, or a statement of policy under section 288, about the industrial matter that was the subject of the joint session.
- ‘(3) Before making the ruling or statement of policy, the full bench must decide whether any further hearing is necessary in relation to the matter.’.

29 Amendment of s 338 (Rules)

Section 338(4)(a)—

insert—

‘(iii) in or for the performance by the commission of a function conferred on it under a referral agreement;’.

30 Insertion of new ch 8A

After section 339—

insert—

‘Chapter 8A Queensland Workplace Rights Office**‘Part 1 Preliminary****‘339A Definitions for ch 8A**

‘In this chapter—

ombudsman means the Queensland workplace rights ombudsman.

QWRO means the Queensland Workplace Rights Office.

‘339B Purpose of ch 8A

‘The purpose of this chapter is to provide for the appointment of the Queensland workplace rights ombudsman and to establish the Queensland Workplace Rights Office.

- (i) to advise the Minister on the operation of this chapter and generally about industrial relations and other work-related matters;
 - (j) to inform the Minister about strategies to—
 - (i) mitigate the negative effects of legislation from any source about industrial relations and work-related matters; and
 - (ii) improve protection for vulnerable workers; and
 - (iii) promote fair and equitable industrial relations and work practices in Queensland;
 - (k) to ask for help or information from any public entity about work-related matters;
 - (l) other functions conferred on the ombudsman under this or any other Act.
- ‘(2) The ombudsman may carry out the ombudsman’s functions and exercise the ombudsman’s powers if asked by the Minister or any other person or entity or on the ombudsman’s own initiative.
- ‘(3) In this section—
- public entity*** means—
- (a) a government entity under the *Public Service Act 1996*; or
 - (b) a corporation formed for a commercial purpose the shares of which are held beneficially on behalf of the State.

‘339E Ombudsman not subject to direction

‘The ombudsman is not subject to direction by any person about—

- (a) the way the ombudsman performs the ombudsman’s functions under this Act; or
- (b) the priority given to investigations.

‘339F Powers of ombudsman

‘Without limiting the ombudsman’s other powers under this part, the ombudsman may do anything necessary or convenient to be done for, or in connection with, the ombudsman’s functions.

‘339G Restrictions on ombudsman’s functions

- ‘(1) The ombudsman can not represent an individual in a proceeding or otherwise act as an agent for an individual.
- ‘(2) The ombudsman must not deal with, or continue to deal with, a matter if the ombudsman is or becomes aware that the matter is or has been the subject of a proceeding before an industrial tribunal.
- ‘(3) However, if the proceeding is discontinued or did not result in a decision being made, the ombudsman may start to deal, or resume dealing, with the matter.
- ‘(4) In this section—
industrial tribunal means the full bench, the commission, the registrar or any court of the State.

‘Part 3 Particular provisions about the ombudsman

‘339H Appointment of ombudsman

- ‘(1) The ombudsman is appointed by the Governor in Council.
- ‘(2) The ombudsman is appointed under this Act and not the *Public Service Act 1996*.

‘339I Eligibility for appointment

- ‘(1) A person is eligible to be appointed as ombudsman if the person has—

-
- (a) a high level of experience in—
- (i) business or industry; or
 - (ii) an organisation or employer association or a state peak council; or
 - (iii) a department of government; or
 - (iv) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or
- (b) suitable experience, qualifications and standing in the community to be appointed as ombudsman.
- ‘(2) A person is not eligible to be or continue as ombudsman if the person—
- (a) is a member of the Executive Council or Legislative Assembly; or
 - (b) is a director of a corporation engaged in a calling; or
 - (c) is an auditor of a corporation engaged in a calling or of a business; or
 - (d) participates in any capacity in the management of—
 - (i) a corporation engaged in a calling; or
 - (ii) a business; or
 - (e) is insolvent under administration; or
 - (f) is convicted of an indictable offence.
- ‘(3) In this section—
- insolvent under administration* see the Corporations Act, section 9.

‘339J Term of appointment

- ‘(1) The ombudsman holds office for the term, of not more than 3 years, stated in the ombudsman’s instrument of appointment.
- ‘(2) The ombudsman may be reappointed.

- ‘(3) However, a person must not be reappointed if the total of the person’s terms of appointment would be more than 6 years.

‘339K Remuneration and conditions

- ‘(1) If the ombudsman is not a commissioner, the ombudsman is to be paid the remuneration and other allowances decided by the Governor in Council.
- ‘(2) The ombudsman holds office on the conditions stated in the ombudsman’s instrument of appointment.

‘339L Acting ombudsman

‘The Governor in Council may appoint a person eligible for appointment as ombudsman to act as ombudsman—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the ombudsman is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

‘339M Resignation

‘The ombudsman may, at any time, resign office as ombudsman by signed written notice given to the Governor.

‘339N Vacating office

‘The ombudsman is taken to resign office as ombudsman if the ombudsman—

- (a) is no longer eligible to be the ombudsman; or
- (b) is removed from office under section 339O.

‘339O Removal of ombudsman from office

- ‘(1) The Governor in Council may remove the ombudsman from office for—

before the person last stopped being a public service officer; and

(iii) on the remuneration payable to a public service officer on the classification level mentioned in subparagraph (ii); and

(iv) for duties appropriate to the classification level mentioned in subparagraph (ii); and

(b) the person's service as ombudsman is taken to be service as a public service officer for working out the person's rights as a public service officer.

'(4) If the person, immediately before the appointment, was a member of the scheme under the *Superannuation (State Public Sector) Act 1990*, the person continues to be eligible to be, and to be, a member of the scheme.

'339Q Preservation of ombudsman's rights if ombudsman becomes public service officer

'(1) This section applies if, within 12 months after a person's appointment as ombudsman ends, the person is appointed as a public service officer.

'(2) The person's service as ombudsman under this Act must be regarded as service as a public service officer.

'339R Preservation of ombudsman's rights if not previously public service officer

'(1) This section applies to a person who—

(a) stops holding office as ombudsman because—

(i) the person resigns from office; or

(ii) the person's term of appointment to the office ends; and

(b) was not a public service officer but held another office under the State immediately before appointment as ombudsman.

- '(2) The person is entitled to be appointed to an office under the State with a classification and remuneration corresponding with or higher than that of the office the person held immediately before appointment as ombudsman and the person's service in the office of ombudsman under this Act must be regarded as service in an office under the State.
- '(3) Subsection (2) does not apply to the person if the person is removed from office as ombudsman under section 339O.
- '(4) This section does not apply to the person if the person is a commissioner.

'Part 5 Establishment of QWRO

'339S Queensland Workplace Rights Office

- '(1) An office called the Queensland Workplace Rights Office is established.
- '(2) QWRO consists of the ombudsman and the officers of QWRO.

'339T Function of QWRO

'The function of QWRO is to help the ombudsman perform the ombudsman's functions.

'339U Control of QWRO

'The ombudsman controls QWRO.

'339V Officers of QWRO

'Officers of QWRO are appointed under the *Public Service Act 1996* and are public service officers.

‘339W Officers not subject to direction

‘An officer of QWRO is not subject to direction by any person, other than from within QWRO, about—

- (a) the way the officer performs the officer’s functions under this Act; or
- (b) the priority given to investigations.

‘339X Finances of QWRO

‘QWRO is part of the department for the purposes of the *Financial Administration and Audit Act 1977*.

‘Part 6 Other matters

‘339Y Delegation by ombudsman

‘The ombudsman may delegate the ombudsman’s powers under this chapter, other than this power of delegation, to an appropriately qualified officer of QWRO.

‘339Z Quarterly report

- ‘(1) The ombudsman must prepare and give to the Minister a report (a *quarterly report*) on the activities carried out by QWRO for each quarter of a financial year.
- ‘(2) A quarterly report must be given to the Minister as soon as practicable after the end of the quarter.
- ‘(3) A quarterly report must include the following—
 - (a) details of investigations carried out by QWRO;
 - (b) a summary of information given to employers and employees;
 - (c) details of any other activities undertaken by QWRO.
- ‘(4) The Minister must table a copy of the quarterly report in the Legislative Assembly within 14 days after receiving it.

‘339ZA Annual report

- ‘(1) The ombudsman must give to the Minister a report on the performance of the ombudsman’s functions during each financial year.
- ‘(2) The report must be given as soon as practicable after the end of the financial year, but within 4 months after the year ends.
- ‘(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving it.

‘339ZB Offence of subjecting person to any detriment

- ‘(1) A person must not subject, or threaten to subject, another person to a detriment because a complaint has been made, or information has been given, to the ombudsman about an industrial matter or work-related matter.

Maximum penalty—20 penalty units.

- ‘(2) For subsection (1), subjecting a person to a detriment includes doing any 1 or more of the following—
 - (a) terminating the contract under which the person performs work;
 - (b) injuring the person in relation to the terms or conditions on which the person performs work;
 - (c) altering the position of the person to his or her detriment;
 - (d) refusing to employ or engage the person to perform work;
 - (e) discriminating against the person in the terms or conditions on which the person is to be employed or engaged to perform work.’.

31 Amendment of s 340 (Appeal from court or full bench)

- (1) Before section 340(1)—

insert—

-
- ‘(1A) A defendant who is dissatisfied with a decision of the court in proceedings mentioned in section 248(1)(c) may appeal to the Court of Appeal.’.
- (2) After section 340(3)—
insert—
- ‘(3A) Also, a person can not appeal against a decision of the full bench if that decision was itself an appeal against a decision of the commission.’.

32 Amendment of s 341 (Appeal from commission, magistrate or registrar)

Section 341(1), after ‘149’—

insert—

‘, a decision under section 273A’.

33 Amendment of s 342 (Appeal from commission, magistrate or registrar)

Section 342(1), after ‘149’—

insert—

‘or a decision under section 273A’.

34 Amendment of s 350 (Appointment of inspectors)

Section 350—

insert—

- ‘(4A) Also, an inspector, while the inspector holds the appointment, is an authorised person of the Workers’ Compensation Regulatory Authority under the *Workers’ Compensation and Rehabilitation Act 2003*, but only for the purposes of chapter 4, part 6 of that Act.’.

35 Amendment of s 662 (False or misleading statements)

Section 662(4), definition *official*—

omit, insert—

‘**official** means any of the following—

- (a) an inspector;
- (b) the registrar;
- (c) the ombudsman;
- (d) an officer of QWRO.’.

36 Amendment of s 663 (False or misleading documents)

Section 663(6), definition *official*—

omit, insert—

‘**official** means any of the following—

- (a) an inspector;
- (b) an authorised industrial officer;
- (c) the registrar;
- (d) the ombudsman;
- (e) an officer of QWRO.’.

37 Amendment of s 686 (Application of Act to State)

- (1) Section 686(2)(b) to (e)—

renumber as section 686(2)(c) to (f).

- (2) Section 686(2)—

insert—

‘(b) section 9A(3);’.

38 Amendment of s 702 (Protection from liability)

Section 702(3), definition *official*—

insert—

- ‘(g) the ombudsman; or
- (h) an officer of QWRO.’.

39 Insertion of new ch 20, pt 6

After section 739—

insert—

**‘Part 6 Transitional provisions for
Industrial Relations Act and
Other Legislation Amendment
Act 2007****‘740 Certification of agreements**

- ‘(1) Sections 153, 156 and 166, as in force after the commencement of this section, apply to an agreement only if the application to certify the agreement is made on or after the commencement.
- ‘(2) However, it does not matter whether the agreement is made before or after the commencement.

‘741 Appointment as members

- ‘(1) This section applies if, immediately before the commencement of this section, a person held office as a member of the commission.
- ‘(2) From the commencement—
 - (a) the person continues to hold the office; and
 - (b) the Act as in force after the commencement applies to the person’s appointment.

‘742 Appointments by industrial gazette notice

‘To remove any doubt, it is declared that an appointment by industrial gazette notice made under section 261(2), 297(1), 302(2) or 350(1) before the commencement of this section and in force at the commencement continues to have effect after the commencement as if the appointment were made by gazette notice.

‘743 Appeals to Court of Appeal from full bench

‘Section 340, as in force immediately before the commencement of this section, continues to apply to a decision of the full bench made before the commencement.’.

40 Amendment of sch 2 (Appointments)

(1) Schedule 2, section 2, heading, after ‘Act’—

insert—

‘1957’.

(2) Schedule 2, section 4A—

insert—

‘(3) However, if a commissioner has been appointed as ombudsman, the Minister may grant leave, other than leave mentioned in the pensions Act, section 15, to the commissioner on the terms the Minister considers appropriate.’.

41 Amendment of sch 5 (Dictionary)

(1) Schedule 5, definition *association*—

omit.

(2) Schedule 5—

insert—

‘association—

(a) in relation to a demarcation dispute, see section 279(8);
or

(b) for chapter 12, see section 409.

non-judicial appointee see section 243(1)(b).

ombudsman see section 339A.

QWRO see section 339A.

referral agreement see section 273A(1)(b).’.

- (3) Schedule 5, definition *demarcation dispute*, paragraph (c), before ‘employee’—

insert—

‘association or’.

Part 3 Amendment of Child Employment Act 2006

42 Act amended in pt 3

This part amends the *Child Employment Act 2006*.

43 Amendment of s 8 (Meaning of *work* in relation to a child)

Section 8—

insert—

- ‘(3) However, for section 8A, ***work***, in relation to a child, includes work that is part of work experience, an apprenticeship, a traineeship or a vocational placement.
- ‘(4) Also, for parts 2A and 2B, ***work***, in relation to a child, includes employment that is part of an apprenticeship, a traineeship or a vocational placement.’.

44 Insertion of new s 8A

Part 2, before section 9—

insert—

‘8A Prohibition on nudity and sexually provocative clothing

- ‘(1) An employer must not require or permit a child to work—
- (a) while the child is nude; or
- (b) while the child is clothed or covered in another way so—

- (i) the child's sexual organs or anus are visible; or
- (ii) if the child is a female who is at least 5 years—her breasts are visible.

Maximum penalty—100 penalty units.

- '(2) Subsection (1) does not apply to work in the entertainment industry if—
 - (a) the child is under 12 months; and
 - (b) a parent of the child, who is not the employer of the child, has given the employer written consent to whichever of the following is relevant—
 - (i) the child working while the child is nude;
 - (ii) the child working while the child is clothed or covered in another way so the child's sexual organs or anus are visible; and
 - (c) a parent of the child is present while the child is working in either of the ways mentioned in subsection (1).
- '(3) However, a consent for subsection (2)(b)(ii) need not cover all matters mentioned in the provision so long as all matters in the provision relevant to the work the child is to do are covered.'

45 Amendment of s 9 (Restrictions on work performed by children)

Section 9, heading, 'Restrictions'—

omit, insert—

'Other restrictions'.

46 Insertion of new pts 2A and 2B

After section 15—

insert—

‘Part 2A Minimum employment conditions for children

‘Division 1 Employment conditions

‘15A Application of pt 2A

- ‘(1) This part applies to the employment of a child by a constitutional corporation if the child is employed under—
- (a) an agreement under the *Workplace Relations Act 1996* (Cwlth) entered into after 26 March 2006; or
 - (b) an arrangement entered into after 26 March 2006 that is not an agreement mentioned in paragraph (a); or
 - (c) a preserved collective State agreement under the *Workplace Relations Act 1996* (Cwlth) that has been terminated and not replaced by an agreement under the *Workplace Relations Act 1996* (Cwlth) or an arrangement mentioned in paragraph (b).
- ‘(2) However, this part applies to the employment of a child by a constitutional corporation only if—
- (a) a State award or order is in force that covers employees who perform similar work to that performed by the child but are not employed by a constitutional corporation; or
 - (b) entitlements or protections under the *Industrial Relations Act 1999*, chapter 2, including those entitlements or protections as reviewed under that Act by a general ruling of the full bench, or chapter 3, part 4, division 1AA cover employees who perform similar work to that performed by the child but are not employed by a constitutional corporation.
- ‘(3) Also, for this part, a child to whom subsection (1)(b) applies is taken to be employed under an arrangement.

‘15B Employer to ensure child is not disadvantaged in relation to employment conditions

- ‘(1) An employer of a child to whose employment this part applies (an *affected employer*) must ensure that the agreement or arrangement under which the child is employed does not disadvantage the child in relation to the child’s employment conditions.
- ‘(2) An agreement or arrangement disadvantages a child in relation to the child’s employment conditions only if the agreement or arrangement reduces the child’s employment entitlements or protections.
- ‘(3) In this section—
- employment entitlements or protections*, in relation to a child’s employment conditions, means the entitlements or protections that cover an employee performing similar work to that performed by the child under—
- (a) a State award or order; or
 - (b) the *Industrial Relations Act 1999*, chapter 2, including those entitlements or protections as reviewed by a general ruling of the full bench, or chapter 3, part 4, division 1AA.

‘15C Industrial commission may decide whether agreement or arrangement reduces child’s employment entitlements or protections for s 15B

- ‘(1) On the application of an inspector, or in a proceeding before the industrial commission under this part, including an appeal, the industrial commission may decide whether an agreement or arrangement reduces a child’s employment entitlements or protections.
- ‘(2) For subsection (1), the way the industrial commission decides whether an agreement or arrangement reduces a child’s employment entitlements or protections must be as nearly as possible the way it would decide the same question under the *Industrial Relations Act 1999*, chapter 6, part 1, division 3 in a proceeding before the industrial commission under that Act.

Note—

The *Industrial Relations Act 1999*, chapter 6, part 1, division 3 is about the no-disadvantage test under that Act.

‘15D Affected employer to display State award or order at workplace

‘An affected employer of a child must ensure a copy of a State award or order that is in force and covers employees performing similar work to that performed for the employer by the child is conspicuously displayed at the place where the child is employed.

Maximum penalty—20 penalty units.

‘15E Record keeping

‘(1) An affected employer of a child must keep the same time and wages record for the child as the employer would be required under the *Industrial Relations Act 1999*, section 366 to keep if that section applied to the employer in relation to the child’s employment.

Maximum penalty—40 penalty units.

‘(2) The affected employer must keep the record in the same way and for the same time as the employer would be required under the *Industrial Relations Act 1999*, section 366 to keep the record.

Maximum penalty—40 penalty units.

‘(3) Also, an affected employer must, if the child asks, give the child a certificate of the same kind as an employer would be required to give an employee under the *Industrial Relations Act 1999*, section 366(5) if that section applied to the employer in relation to the child’s employment.

Maximum penalty—40 penalty units.

‘(4) This section does not limit section 39(2)(d).

‘Division 2 Compliance notices

‘15F Issue of compliance notice

- ‘(1) This section applies if an inspector considers an affected employer—
- (a) is contravening section 15B; or
 - (b) has contravened section 15B in circumstances that make it likely that the affected employer will continue to contravene that section or repeat the contravention.
- ‘(2) The inspector may issue to the affected employer a notice (***compliance notice***) requiring the employer to remedy the contravention or the matters giving rise to the contravention within a stated period, of not less than 14 days, after the issue of the notice or the shorter period stated under subsection (4).
- ‘(3) The affected employer must comply with the compliance notice, unless the employer has a reasonable excuse.
- Maximum penalty—100 penalty units.
- ‘(4) For subsection (2), an inspector may state a period of less than 14 days after the issue of the compliance notice if the inspector is satisfied it is reasonably practicable for the employer to comply with the notice within the stated shorter period.
- ‘(5) The compliance notice must—
- (a) state the inspector’s reasons for issuing the notice; and
 - (b) include information about the affected employer’s right to appeal against the issue of the notice or the terms of the notice to the industrial commission.

‘15G Compliance notice may include directions

- ‘(1) An inspector may include in a compliance notice directions in relation to the steps an affected employer must take to remedy a contravention or a matter to which the notice relates or to otherwise comply with the notice.

-
- ‘(2) Without limiting subsection (1), a direction may require an affected employer to pay to a child an amount worked out by the inspector that would have been payable to the child under the *Industrial Relations Act 1999* or a State award or order applying to the child’s employment if the employment was not covered by an agreement or arrangement to which this part applies.
- ‘(3) Also, a direction may offer an affected employer a choice of ways in which the affected employer may remedy the contravention or matter or comply with the notice.

‘15H **Withdrawal of compliance notice**

- ‘(1) If, at any time, the inspector who issued a compliance notice to an affected employer or another inspector authorised by the chief executive for the purpose (both the *appropriate inspector*) is satisfied the compliance notice was issued in error or was incorrect, the appropriate inspector may withdraw the compliance notice by signed notice given to the affected employer.
- ‘(2) The withdrawal has effect when notice of the withdrawal is given to the affected employer.

‘15I **Industrial magistrate’s powers in proceeding for compliance notice offence**

- ‘(1) This section applies in relation to a proceeding against an affected employer for a charge of a compliance notice offence.
- ‘(2) If an industrial magistrate finds the affected employer guilty of the compliance notice offence, the industrial magistrate may, in addition to any penalty that may be imposed for the offence, order the affected employer to pay to each affected child the compliance notice amount for the child or the amount the industrial magistrate considers appropriate for the child.
- ‘(3) Subsection (2) applies whether there is a finding of guilt or the acceptance of a plea of guilty in relation to the compliance notice offence and whether or not a conviction is recorded for the offence.

-
- ‘(4) However, if the industrial magistrate does not find the affected employer guilty of the compliance notice offence but, on the balance of probabilities, is satisfied the affected employer should be required to pay an amount to each affected child, the industrial magistrate may order the affected employer to pay to each affected child the compliance notice amount for the child or the amount the industrial magistrate considers appropriate for the child.
- ‘(5) The industrial magistrate may make the order despite any express or implied provision of an agreement and on the terms the industrial magistrate considers appropriate.
- ‘(6) Without limiting the powers of an industrial magistrate in a proceeding for a compliance notice offence, the industrial magistrate may, before making an order against an affected employer under this section, order that an inspector make an application under section 15N and adjourn the proceeding until a date fixed by the court or a date to be fixed without making a finding of guilt against the employer.
- ‘(7) If the industrial commission makes an order of the kind mentioned in section 15O(2) or (3) on an application under section 15N, the industrial magistrate must not make an order under subsection (4).
- ‘(8) In this section—
- affected child*, in relation to a compliance notice, means a child who is covered by an agreement or arrangement that is the subject of the compliance notice.
- compliance notice amount* means the amount stated in a direction in a compliance notice as the amount an affected employer must pay to a child.
- compliance notice offence* means an offence against section 15F(3).

‘15J Appeals

- ‘(1) An affected employer to whom a compliance notice is issued may appeal against the issue of the notice or the terms of the notice to the industrial commission.

-
- ‘(2) The procedures for the appeal must be as nearly as possible the same procedures as the procedures for an appeal under the *Industrial Relations Act 1999*, chapter 9, division 5.
- ‘(3) In particular, the appeal—
- (a) must be started within 21 days after the person is given the compliance notice; and
 - (b) does not stay the operation of the notice appealed against unless the industrial commission otherwise orders.
- ‘(4) However, the industrial commission may extend the time for starting an appeal.
- ‘(5) A defect in the compliance notice does not affect an affected employer’s right to appeal against the issue of the compliance notice or the terms of the notice.

‘15K Decision on appeal

- ‘(1) The industrial commission may—
- (a) confirm the compliance notice appealed against; or
 - (b) allow the appeal and vary the compliance notice in the way the commission considers appropriate; or
 - (c) allow the appeal and revoke the compliance notice.
- ‘(2) For deciding the appeal, the powers of the industrial commission under this part are—
- (a) the same powers as the industrial commission has in relation to any proceeding for an appeal started under the *Industrial Relations Act 1999*; and
 - (b) the powers an inspector has under this part.
- ‘(3) Also, if, the industrial commission confirms a compliance notice, it may, in the same proceeding, decide any application under section 15N for orders in relation to the contravention to which the compliance notice relates.

‘15L Revocation or withdrawal of compliance notice does not prevent issue of another notice

‘The revocation or withdrawal of a compliance notice issued to an affected employer does not prevent an inspector from issuing another compliance notice to the affected employer.

‘15M Proceedings for offence not affected by compliance notice

‘The issue, variation, revocation or withdrawal of a compliance notice does not affect any proceeding for an offence against this Act or for the recovery of an amount in connection with a matter for which the notice was issued.

‘15N Inspector may apply to industrial commission in relation to contravention

- ‘(1) An inspector may apply to the industrial commission for a decision whether an affected employer—
- (a) is contravening section 15B; or
 - (b) has contravened section 15B in circumstances that make it likely that the affected employer will continue to contravene that section or repeat the contravention.
- ‘(2) The application may be made whether or not a compliance notice has been issued to the affected employer.
- ‘(3) If the application is made because of non-compliance with a compliance notice and relates to a direction in the notice to pay a child an amount, the application must be made within 6 years after the amount became payable.
- ‘(4) However, the application can not relate to an amount payable before 27 March 2006.

‘15O Consideration of s 15N application

- ‘(1) This section applies if, after considering an application under section 15N, the industrial commission decides the affected employer is contravening or has contravened section 15B.

-
- ‘(2) The industrial commission may order the affected employer to remedy the contravention or the matter of the contravention as required under the compliance notice or in another way.
- ‘(3) Also, if the matter of the non-compliance relates to a direction in a compliance notice to pay a child a stated amount, the industrial commission must make an order of the kind mentioned in the *Industrial Relations Act 1999*, section 278(8)(a).
- ‘(4) The industrial commission may make an order under subsection (3) despite any express or implied provision of an agreement to the contrary and may order the payment to be made on the terms the industrial commission considers appropriate.
- ‘(5) To the extent an order made under subsection (3) relates to contributions to a superannuation fund, the industrial commission may, in the order, require the contributions to be paid in the same way as it could if the order was made under the *Industrial Relations Act 1999*, section 278(9) on an application of a kind mentioned in section 278(1) of that Act.
- ‘(6) If the order includes a requirement about superannuation contributions and either of the following applies, the contributions must be paid to the unclaimed moneys fund—
- (a) the child can not be located after reasonable inquiry; or
 - (b) after being required to do so, the child does not nominate a superannuation fund for the purposes of the order.

‘Part 2B

Dismissal of children by constitutional corporation

‘15P Dismissal by constitutional corporation

- ‘(1) This section applies in relation to a dismissal of a child from employment by a constitutional corporation on or after the introduction day (a *relevant dismissal*).

- ‘(2) However, this section applies to a relevant dismissal only if it is a dismissal of a kind that could be the subject of an application under the *Industrial Relations Act 1999*, chapter 3 (the *dismissal provisions*) if the employer of the child were not a constitutional corporation.
- ‘(3) A person who alleges that a child has been dismissed and that the dismissal is a relevant dismissal may apply to the industrial commission or an industrial magistrate under this Act for an order of a kind that may be made under the dismissal provisions.
- ‘(4) The industrial commission or industrial magistrate—
- (a) must consider the application in the same way as it would consider an application made to it under the dismissal provisions; and
 - (b) may make the same kinds of orders in relation to the application as it could make if the application were an application under the dismissal provisions.
- ‘(5) For this section, a reference in the dismissal provisions to—
- (a) employment is taken to be a reference to employment of a child by a constitutional corporation; or
 - (b) an employer is taken to be a reference to an employer who is a constitutional corporation; or
 - (c) an employee is taken to be a reference to a child who is employed by a constitutional corporation; or
 - (d) a proceeding under chapter 3 is taken to be a reference to a proceeding under chapter 3 as applied by this section.
- ‘(6) In this section—
- introduction day* means the day the Bill for the *Industrial Relations Act and Other Legislation Amendment Act 2007* was introduced into the Legislative Assembly.’.

47 **Amendment of s 26 (Evidentiary provisions)**

Section 26(b)—

omit, insert—

- ‘(b) a document appearing to be a copy of 1 of the following is evidence of what it states—
- (i) a compliance notice issued by an inspector;
 - (ii) a special circumstances certificate granted by the chief executive;
 - (iii) a work limitation notice issued by the chief executive; and’.

48 Replacement of pt 4 hdg

Part 4, heading—

omit, insert—

‘Part 4 Appeals against decisions of chief executive’.

49 Amendment of s 27 (Appeal from decision of the chief executive)

Section 27(2)—

omit, insert—

- ‘(2) The procedures for the appeal must be, as nearly as possible, the same procedures as the procedures for an appeal under the *Industrial Relations Act 1999*.’.

50 Amendment of s 29 (Decision on appeal)

Section 29(2)—

omit, insert—

- ‘(2) For deciding the appeal, the powers of the industrial commission under this part are—
- (a) the same powers as the industrial commission has in relation to a proceeding started under the *Industrial Relations Act 1999*; and
 - (b) the powers of the chief executive.’.

51 Amendment of schedule (Dictionary)

Schedule—

insert—

‘affected employer, for part 2A, see section 15B(1).

compliance notice, for part 2A, see section 15F(2).

constitutional corporation means a corporation to which section 51(xx) of the Commonwealth Constitution applies.

Note—

Section 51(xx) of the Commonwealth Constitution confers powers on the Commonwealth Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

employment entitlements or protections see section 15B(3).

State award or order, for part 2A, means either of the following—

- (a) an award under the *Industrial Relations Act 1999*;
- (b) an order under the *Industrial Relations Act 1999*, chapter 5, part 5.’.

Part 4 Amendment of Education (Work Experience) Act 1996

52 Act amended in pt 4

This part amends the *Education (Work Experience) Act 1996*.

53 Amendment of s 10 (Certain laws not to apply to work experience placements)

- (1) Section 10(3)(b)—
renumber as section 10(3)(c).
- (2) Section 10(3)—

conciliator means a person approved as a conciliator under section 42S or 42T.

dispute means—

- (a) for part 5A—a dispute that is the subject of an employment claim; or
- (b) otherwise—
 - (i) a dispute in an action; or
 - (ii) something else about which the parties are in dispute that may be dealt with in a mediation at the same time as an ADR dispute.

employment claim see section 42B.

referring court, for a conciliation process, means the Magistrates Court the registrar of which appointed a conciliator for the dispute.

relevant organisation, for a person, means an organisation or federal organisation within the meaning of the *Industrial Relations Act 1999*, section 409, of which the person is a member or is eligible to become a member.’.

58 Insertion of new s 21A

Part 5, division 1—

insert—

‘21A Application of pt 5

‘This part does not apply to a dispute that is the subject of an employment claim.’.

59 Insertion of new pt 5A

After section 42—

insert—

- (b) arising out of a breach of a contract of employment between the employee and employer.
- ‘(2) However, a claim is not an employment claim if the cause of action to which the claim relates is within the jurisdiction of the industrial relations commission.
- ‘(3) Subsection (4) applies if a person making an employment claim also makes a claim for relief or the imposition of a penalty under the *Workplace Relations Act 1996* (Cwlth) in relation to the same employer.
- ‘(4) This part applies to the person’s claim under the *Workplace Relations Act 1996* (Cwlth) as if it were an employment claim.

‘42C Decision of Magistrates Court about whether claim is an employment claim

- ‘(1) In a proceeding started under this part in a Magistrates Court, the court may, on the application of a party to the proceeding, decide whether the claim made in the proceeding is or is not an employment claim.
- ‘(2) Subsection (3) applies if—
 - (a) a Magistrates Court decides a claim is not an employment claim because of section 42B(2); and
 - (b) the plaintiff discontinues or withdraws the proceeding in the Magistrates Court; and
 - (c) the plaintiff later starts a proceeding based on the claim in the industrial relations commission.
- ‘(3) For the *Industrial Relations Act 1999*—
 - (a) if there is a time limit under that Act for starting the proceeding mentioned in subsection (2)(c), the period starting on the day the proceeding was started in the Magistrates Court and ending on the day the court’s decision is made must be disregarded; and
 - (b) any conciliation of the dispute under this part is taken to be conciliation of the dispute by the industrial relations commission.

‘Division 2 Conciliation of disputes

‘Subdivision 1 What is conciliation

‘42D Meaning of *conciliation process*

- ‘(1) A *conciliation process* is a process of conciliation under which the parties to a dispute are helped and encouraged by a conciliator to resolve the dispute.
- ‘(2) In subdivision 5, a *conciliation process* includes all the steps involved in the process of conciliation, including, for example, each of the following—
- (a) telephone conferencing;
 - (b) joint sessions;
 - (c) private sessions.

‘42E Functions of conciliator

‘The functions of a conciliator include each of the following—

- (a) encouraging the settlement of a dispute by arranging, and helping to conduct, negotiations between the parties;
- (b) promoting the open exchange by the parties of information relevant to the dispute;
- (c) giving the parties information about the operation of this Act and other laws relevant to the settlement of the dispute;

Example of other laws that may be relevant—

Uniform Civil Procedure Rules

- (d) informing the parties about the conciliator’s assessment of the merits of the employment claim and the possible consequences if the claim is heard by a Magistrates Court, including the orders that may be made by the court;

- (e) helping in the settlement of the dispute in any other appropriate way.

‘Subdivision 2 Starting conciliation process

‘42F Registrar must appoint conciliator

‘The registrar of a Magistrates Court in which an employment claim is filed must, as soon as practicable—

- (a) appoint a conciliator for the dispute; and
(b) ensure the parties are notified of the name and contact details of the conciliator appointed for the dispute.

‘42G Requirement for conciliator to start conciliation process

‘A conciliator appointed for a dispute must start conciliating the dispute as soon as practicable after being appointed.

‘Subdivision 3 Conduct of conciliation process

‘42H Attendance at and participation in conciliation process

- ‘(1) A conciliator may, by written notice, require the parties to a dispute to participate in a conciliation process in a particular way.

Examples of ways of participating in a conciliation process—

- attending before the conciliator at a stated time and place to participate in the conciliation process
- participating in a telephone conference

- ‘(2) The parties must comply with a requirement made by the conciliator under subsection (1).

- ‘(3) If a party does not comply with a requirement made by the conciliator under subsection (1), a Magistrates Court may, subject to this part, impose sanctions against the party,

including, for example, by ordering that any claim for relief by the defaulting party is stayed until further order.

‘42I Procedure for conciliation process

- ‘(1) For a conciliation process, the conciliator—
- (a) must decide the procedure to be used; and
 - (b) may adopt any procedure that will, in the conciliator’s opinion, enable the conciliator to perform the conciliator’s functions.

Example of a procedure that may be used—

a conciliation conference

- ‘(2) A Magistrates Court may, at any time of its own initiative or on the application of a party or the conciliator, give directions about the procedure to be used for a conciliation process.

‘42J Limited right to representation

- ‘(1) For a conciliation process, a party may be represented by a relevant organisation.
- ‘(2) Also, a party may be represented by a person other than a relevant organisation if—
- (a) either—
 - (i) the other party agrees to the party being represented by the person; or
 - (ii) the conciliator is satisfied the party should be permitted to be represented by the person; and
 - (b) the person is appointed as the party’s representative in writing.

‘42K No fee or costs payable to conciliator by parties

‘The parties are not liable to pay any fee or costs for a conciliation process to the conciliator.

‘Subdivision 4 Procedure for finishing conciliation process

‘42L Conciliator to file certificate

- ‘(1) As soon as practicable after a conciliation process is finished, the conciliator must file with the registrar of the referring court a certificate about the conciliation process in the form prescribed under the rules.
- ‘(2) A Magistrates Court must not hear and decide a dispute that is not entirely or partly resolved during the conciliation process unless the conciliator has filed a certificate about the conciliation process under subsection (1).
- ‘(3) Subsection (2) does not stop the court making a decision under section 42C.

‘42M Conciliation agreements

- ‘(1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the dispute.
- ‘(2) The agreement must be written down and signed by or for each party and by the conciliator.
- ‘(3) The agreement has the same effect as any other compromise.

‘42N Orders giving effect to conciliation agreement

- ‘(1) A party may apply to a Magistrates Court for an order giving effect to an agreement reached in a conciliation process.
- ‘(2) However, a party may apply for the order only after the conciliator’s certificate about the conciliation process is filed with the registrar of the referring court.
- ‘(3) The court may make any order giving effect to an agreement reached in a conciliation process the court considers appropriate in the circumstances.

‘Subdivision 5 Confidentiality, protection and immunity

‘42O Conciliators to maintain secrecy

‘(1) A conciliator must not, without reasonable excuse, disclose information coming to the conciliator’s knowledge during a conciliation process.

Maximum penalty—50 penalty units.

‘(2) It is a reasonable excuse to disclose information if the disclosure is made—

- (a) with the agreement of all parties to the dispute; or
- (b) for this part; or
- (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the conciliation process; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process; or
- (f) under a requirement imposed under this or another Act.

‘42P Ordinary protection and immunity allowed

‘(1) A conciliator has, in performing the conciliator’s functions, the same protection and immunity as a magistrate performing the functions of a magistrate.

‘(2) A person who is a party, or a party’s representative, participating in the conciliation process for a dispute has the same protection and immunity the person would have if the dispute were being heard before a Magistrates Court.

‘(3) A document produced during, or used for, a conciliation process has the same protection during the process it would have if produced before a Magistrates Court.

‘42Q Admission made in conciliation process

- ‘(1) Evidence of anything done or said, or an admission made, during the conciliation process for a dispute is admissible at the trial of the dispute or in another civil proceeding in a Magistrates Court or elsewhere only if all the parties to the dispute agree.
- ‘(2) In subsection (1)—
- civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

‘42R No official record of conciliation process

- ‘(1) A person must not make an official record of anything said for the purposes of a conciliation process.
- Maximum penalty—20 penalty units.
- ‘(2) A conciliator does not commit an offence against subsection (1) merely by making notes of the conciliation process or complying with section 42L(1).

‘Subdivision 6 Approval of conciliators**‘42S Approval of members of industrial commission**

- ‘(1) A person who is a member of the industrial commission is approved as a conciliator.
- ‘(2) In this section—
- member*, of the industrial commission, does not include the president of the commission.

‘42T Approval of other persons by Chief Magistrate

- ‘(1) The Chief Magistrate may approve, or refuse to approve, a person as a conciliator.

- ‘(2) A person may be approved as a conciliator under this section only if the person has the skills or experience appropriate to perform the function of a conciliator.

‘42U Revocation of approval

- ‘(1) The Chief Magistrate may revoke the approval under section 42T of a person as a conciliator.
- ‘(2) The Chief Magistrate must give the person a statement of reasons for the revocation.

‘42V Appeal against refusal to approve as, or revocation of approval of, conciliator

‘An appeal lies to the District Court against—

- (a) a refusal to approve a person as a conciliator under section 42T; or
- (b) the revocation of approval of a person as a conciliator under section 42U.

‘42W Payment of conciliators

‘A person approved as a conciliator under section 42T is entitled to be paid the fees prescribed under a regulation.

‘42X Conciliation register

- ‘(1) A registrar of a Magistrates Court nominated by the Chief Magistrate for the purpose must keep a register of information about conciliation processes.
- ‘(2) The register may be kept in the form, whether or not in a documentary form, the registrar considers appropriate.
- ‘(3) Without limiting subsection (2), the registrar may change the form in which all or part of the register is kept.
- ‘(4) The register must contain each of the following—
- (a) the name and contact details of each conciliator;

- (b) other information prescribed under the rules;
- (c) other information decided by the Chief Magistrate.

‘Subdivision 7 Miscellaneous

‘42Y Rules may be made for conciliation processes

‘The rules may prescribe matters for conciliation processes.

‘Division 3 Special provisions for proceedings heard in Magistrates Court

‘42Z Application of div 3

‘This division applies to a proceeding heard in a Magistrates Court involving an employment claim.

‘42ZA Representation of parties

- ‘(1) A relevant organisation may appear for a party to the proceeding without special leave of the court.
- ‘(2) This section applies despite section 18.

‘42ZB No inference may be drawn from failure to settle

‘No inference may be drawn against a party to the proceeding because of the failure to resolve all or part of the dispute during a conciliation process.

‘42ZC Limitation on awarding of costs

- ‘(1) The court may order a party to the proceeding (the *paying party*) to pay the costs of another party to the proceeding, including costs incurred for a conciliation process, only if the court is satisfied—

66 Amendment of s 371 (Authorised person's appointment conditions)

Section 371—

insert—

- ‘(4) This section does not apply to an authorised person who is an inspector under the *Industrial Relations Act 1999*.’.

67 Amendment of s 372 (Authorised person's identity card)

Section 372—

insert—

- ‘(4) This section does not apply to an authorised person who is an inspector under the *Industrial Relations Act 1999*.’.

68 Amendment of s 373 (Display of authorised person's identity card)

Section 373—

insert—

- ‘(3) In this section—

identity card includes an identity card given to an inspector under the *Industrial Relations Act 1999*.’.

Part 9 **Amendment of Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005**

69 Act amended in pt 9

This part amends the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005*.

70 Amendment of s 70 (Replacement of s 31 of Act No. 25 of 1995)

- (1) Section 70, inserted section 30B(3)—
omit.
- (2) Section 70, inserted section 30B(4) to (6)—
renumber as section 30B(3) to (5).
- (3) Section 70, inserted section 30C(2)—
omit.

Part 10 Amendment of Workplace Health and Safety Act 1995

71 Act amended in pt 10

This part amends the *Workplace Health and Safety Act 1995*.

72 Insertion of new s 39

Part 4, division 1, after section 38—
insert—

‘39 Regulations relating to occupational certificates under repealed Acts

- ‘(1) A regulation may make provision in relation to an occupational certificate including, for example, a provision about its continued effectiveness, duration or expiry.

Example—

A regulation may be made converting an occupational certificate to a licence, with or without changes or expiring an occupational certificate.

- ‘(2) In this section—

former Act means the repealed *Workplace Health and Safety Act 1989*.

occupational certificate means a certificate to work in, or in a part of, an occupation prescribed under the former Act that was granted or continued in force under the former Act and continues to be in force under this Act.

Example of an occupational certificate continued in force under the former Act—

a certificate of competency issued under the repealed *Inspection of Machinery Act 1951*.

73 Insertion of new pt 7A, div 6

After section 90R—

insert—

‘Division 6 Disputes under this part

‘90S Definition for div 6

‘In this division—

full bench means the full bench of the industrial commission constituted by 3 or more members of the commission including at least 1 presidential member other than the president of the commission.

‘90T Notice of dispute

‘(1) This section applies if—

- (a) a dispute exists between an authorised representative for an employee organisation and the occupier of a place about the exercise or purported exercise of a power under this part; and
- (b) the dispute remains unresolved after the parties have genuinely attempted to settle the dispute.

‘(2) A notice of the dispute may be given to the industrial registrar by—

- (a) either party to the dispute; or
- (b) an inspector; or
- (c) the chief executive.

- ‘(3) The notice—
- (a) may be given by letter, fax, email, or other means of written communication; and
 - (b) must state—
 - (i) the names of the parties to the dispute; and
 - (ii) the place where the dispute exists; and
 - (iii) the subject matter of the dispute; and
 - (iv) the contact details for all of the parties to the dispute; and
 - (v) if the notice is given by an inspector or the chief executive—the name and contact details of an inspector; and
 - (vi) anything else required under the rules.

‘90U Action on dispute

- ‘(1) This section applies if notice of a dispute has been given by a party under section 90T(2).
- ‘(2) The industrial commission may take the steps it considers appropriate for the prompt settlement or resolution of the dispute, by—
- (a) conciliation in the first instance; and
 - (b) if the commission considers conciliation has failed and the parties are unlikely to resolve the dispute—arbitration.
- ‘(3) Without limiting subsection (2), the industrial commission may do 1 or more of the following—
- (a) make orders, or give directions, of an interlocutory nature;
 - (b) make orders or exercise the powers of the commission that the commission considers appropriate for the settlement or resolution of the dispute;
 - (c) make any order or decision the commission considers appropriate under section 90Q or 90R.

‘90V Compulsory conference

- ‘(1) This section applies if the industrial commission, when taking action under section 90U, considers that holding a conference is desirable to settle or resolve the dispute.
- ‘(2) The commission may, by attendance notice, require a person to attend a conference at a stated time and place.
- ‘(3) A person may be required to attend even though not directly involved in the dispute, if the commission considers the person’s presence would be conducive to the settlement or resolution of the dispute.
- ‘(4) A person required to attend under subsection (2) or (3) must—
 - (a) attend the conference at the stated time and place; and
 - (b) continue to attend as directed by the commission.Maximum penalty—40 penalty units.
- ‘(5) A person required to attend under subsection (3) is entitled to be paid by the State an amount certified by the commission as reasonable compensation for the person’s expenses and loss of time.
- ‘(6) At the commission’s discretion, a conference may be held—
 - (a) in public or private; or
 - (b) partly in public and partly in private.
- ‘(7) In this section—
attendance notice see the *Industrial Relations Act 1999*, schedule 5.

‘90W Enforcing commission’s orders

- ‘(1) The industrial commission may direct an order or decision to settle or resolve a dispute to—
 - (a) a party to the dispute; or
 - (b) an employee organisation.
- ‘(2) If an order may be directed to an employee organisation or a person, the commission may direct the order to the person

only after considering whether it would be more appropriate to direct the order to the organisation.

- ‘(3) An order must—
- (a) if the order is made against a person—state the person’s name; and
 - (b) state a time for complying with the order; and
 - (c) direct any of the following to file an affidavit with the industrial registrar within a stated time—
 - (i) the employee organisation or person;
 - (ii) the party to the proceedings who sought the order;
 - (iii) any other party to the proceedings the commission considers appropriate.
- ‘(4) An affidavit under subsection (3)(c) must state whether there has been compliance with the order and, if the order has not been complied with, the steps the person is aware of that have been taken to comply.
- ‘(5) The commission may extend a time stated under subsection (3)(b) or (c).
- ‘(6) At the end of the time stated for filing an affidavit, or the time as extended by the commission, the industrial registrar must, in order to decide whether there has been substantial compliance with the order—
- (a) examine all affidavits filed; and
 - (b) if all affidavits required to be filed have not been filed in the stated time—make all necessary further inquiries.
- ‘(7) If the industrial registrar is not satisfied that there has been substantial compliance with the order, the registrar must issue a notice under the *Industrial Relations (Tribunals) Rules 2000* calling on the employee organisation or person to whom the order was directed to show cause to the full bench at a stated time why the organisation or person should not be dealt with under section 90X.

‘90X Remedies on show cause notice

- ‘(1) If an employee organisation issued with the notice does not show cause at the stated time, the full bench may do 1 or more of the following—
- (a) impose on the organisation a penalty of not more than 1000 penalty units;
 - (b) make the other orders it considers appropriate to secure the organisation’s compliance with the commission’s order; or
 - (c) order the organisation to pay the costs of the show cause proceedings.
- ‘(2) If a person issued with the notice does not show cause at the stated time, the full bench may do 1 or more of the following—
- (a) impose on the person a penalty of—
 - (i) for a corporation—not more than 1000 penalty units; or
 - (ii) for an individual—not more than 40 penalty units;
 - (b) make any order or decision it considers appropriate under section 90Q or 90R;
 - (c) make the other orders it considers appropriate to secure the person’s compliance with the commission’s order; or
 - (d) order the person to pay the costs of the show cause proceedings.
- ‘(3) All persons concerned must comply with an order or direction made or given by the full bench.
- ‘(4) In this section—

organisation includes a branch of the organisation.

stated time means at the time stated in the notice to show cause under section 90W(7), or at a time to which the proceedings are adjourned.

‘90Y Disobeying penalty orders

- ‘(1) A person must obey a penalty order, unless the person has a reasonable excuse.

Maximum penalty—the penalty provided for in the order.

- ‘(2) In this section—

penalty order means an order of the full bench under this division that provides for payment of a penalty if the order is disobeyed.’.

74 Amendment of s 147A (Definitions for pt 11)

Section 147A, definition *original decision*—

omit, insert—

‘original decision—

- (a) for division 2, means a decision of an inspector; or
- (b) for division 3, means—
 - (i) a decision of the industrial registrar under section 90D, including a decision about a condition of appointment; or
 - (ii) a decision of the industrial registrar under section 90W; or
- (c) for division 3A, means an order or decision of the industrial commission under section 90U; or
- (d) for division 4, means—
 - (i) a decision of the chief executive; or
 - (ii) an order or decision of the industrial commission under section 90Q or 90R; or
 - (iii) an order or decision of the industrial commission under section 90U; or
 - (iv) an order or decision of the full bench under section 90X.’.

75 Insertion of new pt 11, div 3A

After section 151E—

insert—

‘Division 3A Appeals to full bench**‘151F Definition for div 3A**

‘In this division—

full bench means the full bench of the industrial commission constituted by the president and 2 or more commissioners.

‘151G Who may appeal

- ‘(1) A person whose interests are affected by an original decision may appeal against the decision to the full bench.
- ‘(2) If the decision is a decision of the industrial commission under section 90U, the person may appeal against the decision only on a ground other than—
 - (a) error of law; or
 - (b) excess, or want, of jurisdiction.
- ‘(3) Despite section 152(2), if a person wants to appeal against a decision of the commission both on a ground mentioned in section 152(2) and on a ground mentioned in subsection (2) of this section, the person may only appeal against the decision to the full bench.
- ‘(4) The person has a right to a statement of—
 - (a) the decision; and
 - (b) the reasons for the decision.

‘151H How to start appeal

- ‘(1) An appeal is started by—
 - (a) filing written notice of appeal with the industrial registrar; and

- (b) complying with the rules applying to appeals to the full bench under the *Industrial Relations Act 1999*.
- ‘(2) The notice of appeal must be filed within 30 days after the day the appellant receives notice of the original decision.
- ‘(3) The full bench may at any time extend the period for filing the notice of appeal.
- ‘(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

‘151I Stay of operation of decisions

- ‘(1) The full bench may grant a stay of a decision appealed against to secure the effectiveness of the appeal.
- ‘(2) A stay—
 - (a) may be given on the conditions the full bench considers appropriate; and
 - (b) operates for the period fixed by the full bench; and
 - (c) may be revoked or amended by the full bench.
- ‘(3) The period of a stay must not extend past the time when the full bench decides the appeal.
- ‘(4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

‘151J Hearing procedures

- ‘(1) The procedure for an appeal is to be under the rules applying to appeals to the full bench under the *Industrial Relations Act 1999* or, if the rules make no provision or insufficient provision, in accordance with directions of the full bench.
- ‘(2) An appeal is by way of rehearing, unaffected by the decision of the industrial commission.

‘151K Powers of full bench on appeal

- ‘(1) In deciding an appeal, the full bench may—

- (a) confirm the decision appealed against; or
 - (b) vary the decision appealed against; or
 - (c) set aside the decision appealed against and make a decision in substitution for the decision set aside; or
 - (d) set aside the decision appealed against and return the issue to the industrial commission with directions the full bench considers appropriate.
- ‘(2) If on appeal the full bench acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the industrial commission.’.

76 Amendment of s 152 (Who may appeal?)

- (1) Section 152, heading, ‘appeal?’—
omit, insert—
‘appeal’.
 - (2) Section 152(2)—
renumber as section 152(3).
 - (3) Section 152—
insert—
- ‘(2) If the decision is a decision of the industrial commission under section 90U, the person may appeal only on the ground of—
- (a) error of law; or
 - (b) excess, or want, of jurisdiction.’.

77 Amendment of s 155 (Hearing procedures)

- Section 155(2), ‘chief executive’s decision’—
omit, insert—
‘decision of the chief executive, industrial commission or full bench’.

78 Amendment of s 157 (Powers of court on appeal)

Section 157(2), after ‘chief executive’—

insert—

‘, industrial commission or full bench’.

79 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘full bench—

(a) for part 7A, division 6, see section 90S; or

(b) for part 11, division 3A, see section 151F.’.

Schedule **Minor amendments of Industrial Relations Act 1999**

section 3

- 1 **Section 230(4)(a), (b) and (c), ‘; or’—**
omit, insert—
‘;’.
- 2 **Section 234(1)(a), (b), (c), (d), (e)(ii), (f), (g) and (h)(ii),
‘; or’—**
omit, insert—
‘;’.
- 3 **Section 234(2)(a) and (b)(ii), ‘; or’—**
omit, insert—
‘;’.
- 4 **Section 261(2), 297(1), 302(2) and 350(1), ‘industrial
gazette notice’—**
omit, insert—
‘gazette notice’.
- 5 **Schedule 2, section 3(1)(a), 4, heading and
subsection (1), 4A(1) and (2), ‘Judges (Pensions and
Long Leave) Act 1957’—**
omit, insert—
‘pensions Act’.

Schedule (continued)

6 Schedule 2, section 4(2), ‘section 15 of that Act’—

omit, insert—

‘the pensions Act, section 15’.

7 Schedule 5—

insert—

‘*pensions Act*, for schedule 2, means the *Judges (Pensions and Long Leave) Act 1957*.’.