

## Industrial Legislation Amendment Bill 2011

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### CONTENTS

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#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2

#### **Part 2 — *Construction Industry Portable Paid Long Service Leave Act 1985* amended**

3.	Act amended	3
4.	Section 3A inserted	3
	3A. Application offshore	3
5.	Section 3 amended	3
6.	Section 6 amended	7
7.	Section 7 amended	8
8.	Section 8 amended	9
9.	Section 21 amended	10
10.	Section 22 amended	11
11.	Section 23 amended	12
12.	Section 24 amended	12
13.	Section 28 amended	12
14.	Section 30 amended	13
15.	Section 31A inserted	14
	31A. Registration of employees	14
16.	Section 31 amended	15
17.	Section 32 amended	16
18.	Section 34 amended	16
19.	Section 35A inserted	17
	35A. Penalty for late payment	17
20.	Section 38 amended	17
21.	Section 45 amended	18
22.	Section 49 amended	18

Contents

---

23.	Section 50 replaced	19
	50. Review of Board's decision	19
	51A. Procedure on review	20
24.	Section 51 amended	21
25.	Section 52 replaced	21
	52. Obstructing inspector or other person	21
26.	Section 53 replaced	22
	53. Protection of persons giving information under this Act	22
	54A. Remedies for breach of section 53	23
27.	Section 55 amended	24
 <b>Part 3 — Industrial Relations Act 1979 amended</b>		
<b>Division 1 — Preliminary</b>		
28.	Act amended	25
<b>Division 2 — Amendments consequential to Part 2 amendments</b>		
29.	Section 81AA amended	25
30.	Section 81CA amended	25
31.	Section 83E amended	26
<b>Division 3 — Amendments relating to Commonwealth legislation</b>		
32.	Section 7 amended	26
33.	Section 31 amended	27
34.	Section 71 amended	27
35.	Section 73 amended	27
36.	Section 80H amended	28
37.	Section 80ZJ amended	28
38.	Section 97VS amended	28
39.	Various references to “the Australian Commission” amended	28
<b>Division 4 — Other amendments</b>		
40.	Section 7 amended	29
41.	Section 29A amended	30
42.	Section 81AA amended	31
43.	Section 85 amended	31
44.	Section 93 amended	31
45.	Section 98 amended	32
46.	Sections 99A to 99D inserted	33

	[Section 3 amended by No. 33 of 2011 s. 4.]99A.	Identity card	33
	99B.	Production of identification	33
	99C.	Staff	34
	99D.	Designation of officers, generally	34
47.	Section 113 amended		35
48.	Various references to “the Council” amended		36
	<b>Part 4 — <i>Minimum Conditions of Employment Act 1993</i> amended</b>		
49.	Act amended		37
50.	Schedule 1 amended		37
	<b>Part 5 — <i>Employment Dispute Resolution Act 2008</i> amended</b>		
51.	Act amended		38
52.	Section 3 amended		38
53.	Section 26 deleted		39
54.	Section 27 replaced		39
	27.	Application for IR Commission to conduct dispute resolution process	39
55.	Section 28 amended		39
56.	Section 29 amended		40
57.	Section 31 amended		40
	<b>Part 6 — <i>Litter Act 1979</i> amended</b>		
58.	Act amended		41
59.	Section 9 amended		41
	<b>Part 7 — <i>Occupational Safety and Health Act 1984</i> amended</b>		
60.	Act amended		42
61.	Section 6 amended		42



Western Australia

LEGISLATIVE COUNCIL

## **Industrial Legislation Amendment Bill 2011**

**A Bill for**

**An Act to amend the following Acts —**

- **the *Construction Industry Portable Paid Long Service Leave Act 1985*;**
  - **the *Industrial Relations Act 1979*;**
  - **the *Minimum Conditions of Employment Act 1993*;**
  - **the *Employment Dispute Resolution Act 2008*,**
- and to make minor amendments to other Acts.**

The Parliament of Western Australia enacts as follows:

1  
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4  
5  
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7  
8  
9

**Part 1 — Preliminary**

**1. Short title**

This is the *Industrial Legislation Amendment Act 2011*.

**2. Commencement**

This Act comes into operation as follows —

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

1           **Part 2 — Construction Industry Portable Paid Long**  
2                                   **Service Leave Act 1985 amended**

3       **3. Act amended**

4           This Part amends the *Construction Industry Portable Paid Long*  
5           *Service Leave Act 1985*.

6       **4. Section 3A inserted**

7           After section 2 insert:  
8

9           **3A. Application offshore**

10          (1) In this section —

11                           *offshore area* means an area referred to in the  
12                           *Industrial Relations Act 1979* section 3(3).

13          (2) Where, under the *Industrial Relations Act 1979*  
14           section 3, that Act applies to and in relation to any  
15           construction industry carried on wholly or partly in an  
16           offshore area, then —

17                           (a) this Act applies to and in relation to employers  
18                           and employees in that industry in that area; and

19                           (b) subsection (4) of that section applies with all  
20                           necessary changes for the purposes of this Act.  
21

22       **5. Section 3 amended**

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

24                           *award*

25                           *employee*

26                           *employer*

**s. 5**

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

2

3

4

***apprentice*** means a person who is an apprentice under a training contract that —

5

6

7

8

(a) provides for training in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification; and

9

10

11

12

(b) is registered under the *Vocational Education and Training Act 1996* Part 7 Division 2 or an Act of another State or a Territory that corresponds to that Act;

13

14

15

***approved form*** means a form approved by the Board for the purposes of the provision in which the term is used;

16

***employee*** means —

17

18

19

20

21

(a) a person who is employed under a contract of service in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification; or

22

(b) an apprentice;

23

***employer*** means —

24

25

26

(a) a natural person, firm or body corporate who or which engages persons as employees in the construction industry; or

27

28

29

30

31

32

33

(b) a labour hire agency which arranges for a person who is a party to a contract of service with the agency (***person A***) to do work in the construction industry for another person (***person B***), even though person A is working for person B under an arrangement between the agency and person B,

34

35

but does not include a Minister, authority or local government prescribed under subsection (4)(c);



- 1                    **industrial instrument** means —
- 2                    (a) an award, industrial agreement or order made
- 3    under the *Industrial Relations Act 1979*; or
- 4                    (b) an award, determination, enterprise agreement
- 5    or order made under the *Fair Work Act 2009*
- 6    (Commonwealth); or
- 7                    (c) an award, determination or agreement given
- 8    continuing effect under the *Fair Work*
- 9    (*Transitional Provisions and Consequential*
- 10    *Amendments*) Act 2009 (Commonwealth),
- 11                    irrespective of whether or not the instrument has, since
- 12    it was made or given continuing effect, ceased to be in
- 13    force;
- 14                    **inspector** means a person engaged or appointed under
- 15    section 44(1);
- 16                    **labour hire agency** means a person or entity that
- 17    conducts a business of the kind commonly known as a
- 18    labour hire agency;
- 19                    **prescribed** means prescribed by regulations made
- 20    under this Act;
- 21                    **training contract** means a contract that complies with
- 22    the *Vocational Education and Training Act 1996*
- 23    section 60E;
- 24                    **WAIRC** means The Western Australian Industrial
- 25    Relations Commission continued and constituted under
- 26    the *Industrial Relations Act 1979*;
- 27
- 28                    (3) In section 3(1) in the definition of **construction industry**:
- 29    (a) after paragraph (a)(i) insert:
- 30
- 31    (ia) swimming pools and spa pools;
- 32

**Industrial Legislation Amendment Bill 2011**

**Part 2** Construction Industry Portable Paid Long Service Leave Act  
1985 amended

**s. 5**

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- 1 (b) in paragraph (a)(xvi) delete “for the use on” and insert:  
2  
3 for use on or for the use of  
4
- 5 (c) in paragraph (f) delete “for an employer who” and  
6 insert:  
7  
8 for an employer, or another person under an  
9 arrangement with a labour hire agency, who  
10
- 11 (4) In section 3(1) in the definition of *union* delete “Schedule 1 of  
12 the *Workplace Relations Act 1996* of the Commonwealth” and  
13 insert:  
14  
15 the *Fair Work (Registered Organisations) Act 2009*  
16 (Commonwealth)  
17
- 18 (5) Delete section 3(3).
- 19 (6) In section 3(4):  
20 (a) delete “award” (each occurrence) and insert:  
21  
22 industrial instrument  
23
- 24 (b) in paragraph (a) delete “definition of *employee*,” and  
25 insert:  
26  
27 definitions of *apprentice* and *employee*;  
28

- 1     **6.     Section 6 amended**
- 2     (1)   Delete section 6(1)(b) and (c) and insert:
- 3
- 4           (b)   2 persons appointed from among persons  
5                whose names are on a panel of 4 names  
6                comprised of —
- 7                (i)   2 names submitted by the Master  
8                    Builders’ Association of Western  
9                    Australia; and
- 10              (ii) 2 names submitted by the Chamber of  
11                    Commerce and Industry of Western  
12                    Australia (Inc);
- 13           (c) 2 persons appointed from among persons  
14                whose names are on a panel of 4 names  
15                comprised of —
- 16                (i) 2 names submitted by UnionsWA; and
- 17                (ii) 2 names submitted by The Building  
18                    Trades Association of Unions of  
19                    Western Australia (Association of  
20                    Workers);
- 21           (d) one person who in the Minister’s opinion  
22                represents the interests of employers in the  
23                construction industry;
- 24           (e) one person who in the Minister’s opinion  
25                represents the interests of employees in the  
26                construction industry.
- 27
- 28     (2)   After section 6(4) insert:
- 29
- 30     (5)   Despite subsection (1) —
- 31           (a)   subject to section 8, each of the persons holding  
32                office as a member of the Board under  
33                subsection (1)(b) or (c) immediately before the

**s. 7**

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- 1 coming into operation of the *Industrial*  
2 *Legislation Amendment Act 2011* section 6(1)  
3 continues to hold office for the remainder of  
4 their term of appointment; and
- 5 (b) the Minister is not to appoint a person under  
6 subsection (1)(d) until a person referred to in  
7 paragraph (a) ceases to hold office as a member  
8 under subsection (1)(b); and
- 9 (c) the Minister is not to appoint a person under  
10 subsection (1)(e) until a person referred to in  
11 paragraph (a) ceases to hold office as a member  
12 under subsection (1)(c).
- 13 (6) The regulations may amend subsection (1)(b) or (c) in  
14 order to reflect a change in the name of any body  
15 referred to in that paragraph.  
16

17 **7. Section 7 amended**

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

- 19
- 20 (1) If —
- 21 (a) a member appointed under section 6(1)(b) or  
22 (c) is absent or temporarily incapable of  
23 fulfilling the duties of a member; or
- 24 (b) the office of a member appointed under  
25 section 6(1)(b) or (c) is vacant,
- 26 the Minister may, on the nomination of the relevant  
27 body referred to in section 6(1)(b) or (c), appoint a  
28 person to act in the place of that member during that  
29 absence or incapacity, or until the vacancy is filled, as  
30 the case requires.  
31

- 1       (2) Delete section 7(3) and insert:  
2
- 3       (3) If —  
4           (a) the chairman or a member appointed under  
5                section 6(1)(d) or (e) is absent or temporarily  
6                incapable of fulfilling the duties of a member;  
7                or  
8           (b) the office of the chairman or a member  
9                appointed under section 6(1)(d) or (e) is vacant,  
10           the Minister may appoint a person to act in the place of  
11           that member.
- 12       (4A) While acting in the place of a member under this  
13           section an acting member has all the functions and  
14           entitlements of the member.  
15

16   **8.       Section 8 amended**

- 17       (1) Delete section 8(1) and insert:  
18
- 19       (1) The Minister may remove a member from office on the  
20           grounds of —  
21           (a) mental or physical inability to carry out the  
22                duties of the office in a satisfactory manner; or  
23           (b) neglect of duty; or  
24           (c) misconduct; or  
25           (d) absence, without leave of the Minister or an  
26                excuse which is satisfactory to the Minister,  
27                from 3 consecutive meetings of the Board of  
28                which the member has had notice.  
29

**Industrial Legislation Amendment Bill 2011**

**Part 2** Construction Industry Portable Paid Long Service Leave Act  
1985 amended

**s. 9**

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- 1 (2) In section 8(2):  
2 (a) in paragraph (b) delete “his appointment is terminated”  
3 and insert:  
4  
5 the member is removed from office  
6  
7 (b) delete paragraph (c).
- 8 **9. Section 21 amended**
- 9 (1) In section 21(1) delete “award” and insert:  
10  
11 any industrial instrument  
12
- 13 (2) After section 21(2) insert:  
14
- 15 (3A) In addition to the provisions set out in subsection (2),  
16 for the purposes of calculating the entitlement of an  
17 employee to long service leave under subsection (1),  
18 any period of service which occurred —  
19 (a) before a break in service; and  
20 (b) when the person was not registered as an  
21 employee under this Act; and  
22 (c) after the coming into operation of the *Industrial*  
23 *Legislation Amendment Act 2011* section 9(2),  
24 is not to be counted as service.  
25

- 1       (3) In section 21(3) delete “subsection (1) —” and insert:  
2  
3               this section —  
4               **break in service** means —  
5               (a) in the case of a person who has been engaged  
6               as an employee for any number of days that  
7               does not exceed 1 100 days of service — a  
8               period within which the person is not so  
9               engaged of 2 years or more commencing from  
10              the last day of that engagement; or  
11              (b) in the case of a person who has been engaged  
12              as an employee for any number of days  
13              exceeding 1 100 days of service — a period  
14              within which the person is not so engaged of  
15              4 years or more commencing from the last day  
16              of that engagement;  
17

18       **10. Section 22 amended**

- 19       (1) Delete section 22(1)(b)(ii) and insert:  
20  
21               (ii) for any period of service after the  
22               completion of 10 years of service which  
23               is not part of the period of an accrued  
24               entitlement under section 21(1), a sum  
25               which bears the same proportion to the  
26               money value of the entitlement referred  
27               to in section 21(1)(a) as the period of  
28               service bears to 10 years.  
29  
30       (2) After section 22(2) insert:  
31  
32       (3) When a lump sum payment is made to an employee or  
33       in respect of a deceased employee under this section,

**s. 11**

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1 the Board must remove the name of that person from  
2 the register of employees.

3 (4) Nothing in subsection (3) prevents a person referred to  
4 in subsection (1) from becoming entitled to registration  
5 as an employee under this Act by virtue of any  
6 subsequent service as an employee.  
7

8 **11. Section 23 amended**

9 In section 23(1)(a) and (b) after “1 100 days” insert:

10

11 of service  
12

13 **12. Section 24 amended**

14 Delete section 24(2).

15 **13. Section 28 amended**

16 (1) In section 28(1) and (2) delete the Penalty.

17 (2) After section 28(3) insert:  
18

19 (4A) A contravention of subsection (1) or (2) is not an  
20 offence but those subsections are civil penalty  
21 provisions for the purposes of the *Industrial Relations*  
22 *Act 1979* section 83E.

23 (4B) Subsection (4A) extends to a contravention that  
24 occurred within the period of 12 months ending on the  
25 coming into operation of the *Industrial Legislation*  
26 *Amendment Act 2011* section 13 unless the person was  
27 charged with an offence in respect of that  
28 contravention.  
29



1   **14.   Section 30 amended**

2       (1) Delete section 30(1) to (8) and insert:

3

4           (1) Every employer must register as an employer under  
5           this Act.

6           (2) An application for registration as an employer must —

7               (a) be made in the approved form; and

8               (b) contain the information required by the form.

9           (3) An applicant for registration as an employer must  
10           include in the application every name under which, and  
11           address from which, the applicant operates as an  
12           employer.

13           (4) An employer must notify the Board if the employer  
14           ceases to operate as an employer under any name or  
15           from any address included in an application for  
16           registration by the employer.

17           (5) A contravention of subsection (1), (3) or (4) is not an  
18           offence but those subsections are civil penalty  
19           provisions for the purposes of the *Industrial Relations*  
20           *Act 1979* section 83E.

21           (6) Subsection (5) extends to a contravention that occurred  
22           within the period of 12 months ending on the coming  
23           into operation of the *Industrial Legislation Amendment*  
24           *Act 2011* section 14 unless the person was charged with  
25           an offence in respect of that contravention.  
26

**s. 15**

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1 (2) In section 30(10)(a) delete “employer or employee as the case  
2 requires; and” and insert:

3

4 employer; and

5

6 Note: The heading to amended section 30 is to read:

7

**Registration of employers**

8 **15. Section 31A inserted**

9 After section 30 insert:

10

11 **31A. Registration of employees**

12 (1) Subject to subsection (5), the Board must —

13 (a) register as an employee under this Act any  
14 employee in respect of whom an employer  
15 makes a statement under section 31(1); and

16 (b) issue to the employee a certificate of  
17 registration.

18 (2) A person who desires to register as an employee under  
19 this Act may apply in writing to the Board for  
20 registration.

21 (3) An application made under subsection (2) must —

22 (a) be made in the approved form; and

23 (b) contain the information required by the form.

24 (4) The Board may by written notice require —

25 (a) an employee in respect of whom an employer  
26 makes a statement under section 31(1); or

27 (b) an employer who makes a statement in respect  
28 of an employee under section 31(1); or

- 1 (c) an applicant for registration under  
2 subsection (2),  
3 to supply information the Board requires in relation to  
4 the proposed registration of the employee or applicant,  
5 and may require the information to be verified by  
6 statutory declaration.
- 7 (5) If the Board is not satisfied with any information given  
8 in an application or under subsection (4), the Board  
9 may —  
10 (a) in the case of an employee to whom  
11 subsection (1) applies, refuse to register the  
12 employee; or  
13 (b) in the case of an applicant for registration under  
14 subsection (2), return the application and refuse  
15 to register the applicant.  
16

17 **16. Section 31 amended**

- 18 (1) In section 31(1):  
19 (a) delete “each prescribed period —” and insert:  
20  
21 each prescribed period, within 15 days after the end of  
22 that period —  
23  
24 (b) delete paragraph (a) and insert:  
25  
26 (a) a statement in the approved form giving the  
27 information required by the form; and  
28

**s. 17**

---

1 (2) Delete section 31(2) and insert:

2

3 (2) A contravention of subsection (1) is not an offence but  
4 that subsection is a civil penalty provision for the  
5 purposes of the *Industrial Relations Act 1979*  
6 section 83E.

7 (3) Subsection (2) extends to a contravention that occurred  
8 within the period of 12 months ending on the coming  
9 into operation of the *Industrial Legislation Amendment*  
10 *Act 2011* section 16 unless the person was charged with  
11 an offence in respect of that contravention.  
12

13 **17. Section 32 amended**

14 Delete section 32(3) and insert:

15

16 (3) A contravention of subsection (1) or (2) is not an  
17 offence but those subsections are civil penalty  
18 provisions for the purposes of the *Industrial Relations*  
19 *Act 1979* section 83E.

20 (4) Subsection (3) extends to a contravention that occurred  
21 within the period of 12 months ending on the coming  
22 into operation of the *Industrial Legislation Amendment*  
23 *Act 2011* section 17 unless the person was charged with  
24 an offence in respect of that contravention.  
25

26 **18. Section 34 amended**

27 After section 34(1) insert:

28

29 (2A) In subsection (1) a reference to a person employed as  
30 an employee does not include an apprentice.  
31

1 **19. Section 35A inserted**

2 After section 34 insert:

3

4 **35A. Penalty for late payment**

5 (1) Without limiting section 34, if an employer fails to pay  
6 to the Board an amount of contribution within the time  
7 required under section 31(1) the employer is liable to  
8 pay to the Board, by way of penalty, a surcharge  
9 determined by the Board.

10 (2) The surcharge becomes due and payable 30 days after  
11 the employer is notified in writing by the Board of the  
12 determination of the surcharge.  
13

14 **20. Section 38 amended**

15 (1) After section 38(1) insert:

16

17 (2A) A contravention of subsection (1) is not an offence but  
18 that subsection is a civil penalty provision for the  
19 purposes of the *Industrial Relations Act 1979*  
20 section 83E.

21 (2B) Subsection (2A) extends to a contravention that  
22 occurred within the period of 12 months ending on the  
23 coming into operation of the *Industrial Legislation*  
24 *Amendment Act 2011* section 20 unless the person was  
25 charged with an offence in respect of that  
26 contravention.  
27

28 (2) Delete section 38(3) to (6).

**s. 21**

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1 **21. Section 45 amended**

2 Delete section 45(2) and insert:

3

4 (2) A person must not, without reasonable excuse, fail to  
5 comply with a requirement made under subsection (1).

6 (3) A contravention of subsection (2) is not an offence but  
7 that subsection is a civil penalty provision for the  
8 purposes of the *Industrial Relations Act 1979*  
9 section 83E.

10 (4) Subsection (3) extends to a contravention that occurred  
11 within the period of 12 months ending on the coming  
12 into operation of the *Industrial Legislation Amendment*  
13 *Act 2011* section 21 unless the person was charged with  
14 an offence in respect of that contravention.  
15

16 **22. Section 49 amended**

17 After section 49(1) insert:

18

19 (2A) In any proceedings against a person for recovery of a  
20 surcharge determined under section 35A, a certificate  
21 purporting to be signed by the chief executive officer  
22 certifying any of the following —

23 (a) that the employer named in the certificate was  
24 liable to pay the surcharge;

25 (b) that the determination of the surcharge was  
26 duly made;

27 (c) that the amount of the surcharge is as stated in  
28 the certificate,

29 is admissible in evidence in the proceedings and is, in  
30 the absence of evidence to the contrary, conclusive  
31 proof of the matters stated in the certificate.  
32

1   **23.     Section 50 replaced**

2           Delete section 50 and insert:

3

4           **50.     Review of Board's decision**

5           (1) In this section —

6                 *reviewable decision* means a decision by the Board —

- 7                     (a) to refuse to register an employee; or
- 8                     (b) to require an employer to register under this
- 9                             Act; or
- 10                    (c) to remove the name of an employer or
- 11                             employee from the employers register or the
- 12                             employees register respectively; or
- 13                    (d) as to the assessment of the amount of ordinary
- 14                             pay of an employee under section 34; or
- 15                    (e) as to the entitlement of an employee to long
- 16                             service leave; or
- 17                    (f) as to the amount of any moneys to be paid in
- 18                             respect of a long service leave entitlement
- 19                             whether pro rata or otherwise.

20           (2) A person who is aggrieved by a reviewable decision

21                     may, in the manner and time prescribed by regulations

22                     made under section 51A(3), refer the decision for

23                     review to the WAIRC constituted by a single

24                     commissioner.

25           (3) On a referral of a decision under subsection (2), the

26                     WAIRC is to inquire into the circumstances relevant to

27                     the decision and may —

- 28                     (a) affirm the decision; or
- 29                     (b) vary the decision; or
- 30                     (c) set aside the decision and —
- 31                             (i) substitute another decision; or

**s. 23**

---

- 1 (ii) send the matter back to the Board for  
2 reconsideration in accordance with any  
3 directions or recommendations that the  
4 WAIRC considers appropriate.

5 **51A. Procedure on review**

- 6 (1) The provisions of the *Industrial Relations Act 1979*  
7 sections 22B, 26(1)(a) and (b) and (3), 27, 28, 31(1),  
8 (2) and (3), 34(3) and (4), 36 and 49 that apply to and  
9 in relation to the exercise of the jurisdiction of the  
10 WAIRC constituted by a commissioner apply to and in  
11 relation to the exercise of the jurisdiction conferred by  
12 section 50 —
- 13 (a) with any modifications that may be prescribed  
14 by the Chief Commissioner under the *Industrial*  
15 *Relations Act 1979* section 113; and
- 16 (b) with any other modifications that may be  
17 necessary or appropriate.
- 18 (2) For the purposes of subsection (1), the *Industrial*  
19 *Relations Act 1979* section 31(1) applies as if  
20 paragraph (c) were deleted and the following paragraph  
21 were inserted —
- 22
- 23 (c) by a legal practitioner.
- 24
- 25 (3) The Chief Commissioner may make regulations under  
26 the *Industrial Relations Act 1979* section 113 providing  
27 for —
- 28 (a) the manner in which, and time within which, a  
29 decision may be referred for review under  
30 section 50; and
- 31 (b) the practice and procedure to be followed for  
32 the purposes of a review under section 50.  
33



1   **24.     Section 51 amended**

2           In section 51(1) delete “by virtue of continuous service with an  
3           employer” and insert:

4  
5           under another Act or under an industrial instrument

6  
7   **25.     Section 52 replaced**

8           Delete section 52 and insert:

9  
10   **52.     Obstructing inspector or other person**

11          (1) A person must not without reasonable excuse —

12               (a) obstruct or hinder an inspector performing a  
13               function under this Act; or

14               (b) fail to comply with a lawful requirement or  
15               direction of an inspector under this Act; or

16               (c) conceal any person from, or prevent any person  
17               from appearing before, an inspector, or attempt  
18               to conceal a person from, or prevent a person  
19               from appearing before, an inspector; or

20               (d) hinder a person authorised by a union to do so  
21               from inspecting any records required to be  
22               maintained by an employer under this Act.

23          (2) A contravention of subsection (1) is not an offence but  
24          that subsection is a civil penalty provision for the  
25          purposes of the *Industrial Relations Act 1979*  
26          section 83E.

27          (3) Subsection (2) extends to a contravention of section 52  
28          as in force immediately before the coming into  
29          operation of the *Industrial Legislation Amendment*  
30          *Act 2011* section 25 that occurred within the period of  
31          12 months ending on that coming into operation unless

**s. 26**

---

1 the person was charged with an offence in respect of  
2 that contravention.  
3

4 **26. Section 53 replaced**

5 Delete section 53 and insert:  
6

7 **53. Protection of persons giving information under this**  
8 **Act**

- 9 (1) A person must not —  
10 (a) dismiss a person from, or otherwise injure a  
11 person in, that person's employment; or  
12 (b) detrimentally alter a person's employment  
13 position; or  
14 (c) refuse to promote a person; or  
15 (d) refuse to employ another person; or  
16 (e) directly or indirectly hinder or prevent the  
17 employment of another person or the promotion  
18 of a person,

19 when a reason for doing so is that the person or other  
20 person has given information to an inspector or to the  
21 chief executive officer under this Act.

- 22 (2) A contravention of subsection (1) is not an offence but  
23 that subsection —

- 24 (a) is a civil penalty provision for the purposes of  
25 the *Industrial Relations Act 1979* section 83E;  
26 and  
27 (b) is also enforceable under section 54A.

- 28 (3) Subsection (2) extends to a contravention of  
29 section 53(1) as in force immediately before the  
30 coming into operation of the *Industrial Legislation*  
31 *Amendment Act 2011* section 26 that occurred within

1                   the period of 12 months ending on that coming into  
2                   operation unless the person was charged with an  
3                   offence in respect of that contravention.

4                   **54A. Remedies for breach of section 53**

5                   (1) If an industrial magistrate's court determines under the  
6                   *Industrial Relations Act 1979* section 83E that an  
7                   employer has contravened section 53(1) in relation to a  
8                   person who is or was an employee of that person, the  
9                   court may make an order under subsection (2).

10                  (2) The court may order the employer —  
11                   (a) to reinstate the person if he or she was  
12                   dismissed from employment; or  
13                   (b) subject to subsection (6), to pay to the person  
14                   compensation for any loss or injury suffered as  
15                   a result of the contravention,

16                   or to do both of those things.

17                  (3) If an industrial magistrate's court determines under the  
18                   *Industrial Relations Act 1979* section 83E that a person  
19                   has contravened section 53(1) in relation to a person  
20                   other than an employee of the person, the court may,  
21                   subject to subsection (6), order the person found to  
22                   have contravened section 53(1) to pay compensation to  
23                   that other person for any loss or injury suffered as a  
24                   result of the contravention.

25                  (4) The court may make an order under this section in  
26                   addition to imposing a penalty under the *Industrial*  
27                   *Relations Act 1979* section 83E.

28                  (5) A person is not entitled to compensation both under  
29                   this section and otherwise for the same dismissal, loss  
30                   or injury.

**Industrial Legislation Amendment Bill 2011**

**Part 2** Construction Industry Portable Paid Long Service Leave Act  
1985 amended

**s. 27**

---

- 1 (6) The court does not have jurisdiction under this section  
2 to order that there be paid —  
3 (a) to an employee who has been dismissed, any  
4 amount exceeding 6 months' remuneration of  
5 the employee; and  
6 (b) in any other case, any amount exceeding \$5 000  
7 or such other amount as is prescribed by the  
8 regulations.
- 9 (7) For the purposes of subsection (6)(a) the court may  
10 calculate the amount on the basis of an average rate  
11 received during any relevant period of employment.
- 12 (8) A person must comply with an order made against the  
13 person under this section.  
14 Penalty: a fine of \$5 000 and a daily penalty of \$500.  
15

16 **27. Section 55 amended**

17 In section 55 delete "award" and insert:

18

19 any industrial instrument  
20

1           **Part 3 — *Industrial Relations Act 1979* amended**

2                           **Division 1 — Preliminary**

3   **28.     Act amended**

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

5   **Division 2 — Amendments consequential to Part 2 amendments**

6   **29.     Section 81AA amended**

7       (1) In section 81AA delete “on it by —” and insert:

8

9           on it by the following —

10

11       (2) Before section 81AA(ba) insert:

12

13                       (a) the *Construction Industry Portable Paid Long*  
14                               *Service Leave Act 1985* section 53;

15

16   **30.     Section 81CA amended**

17       In section 81CA(1) in the definition of ***general jurisdiction***:

18           (a) in paragraph (b) delete “1958;” and insert:

19

20                       1958; or

21

22           (b) after paragraph (b) insert:

23

24                       (c) the *Construction Industry Portable Paid Long*  
25                               *Service Leave Act 1985* section 53;

26

1 **31. Section 83E amended**

2 (1) In section 83E(6) delete “An application” and insert:

3

4 Except as provided in subsections (6a) and (7A), an application

5

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

7

8 (7A) In the case of a contravention of a provision under the  
9 *Construction Industry Portable Paid Long Service*  
10 *Leave Act 1985* that is a civil penalty provision —

11 (a) subsection (6) does not apply; and

12 (b) an application for an order under this section  
13 may be made, with the written consent of the  
14 Construction Industry Long Service Leave  
15 Payments Board established under section 5 of  
16 that Act, by an officer of the Board.

17

18 (3) In section 83E(7) delete “subsection (6)” and insert:

19

20 subsection (6) or (7A)(b)

21

22 **Division 3 — Amendments relating to**  
23 **Commonwealth legislation**

24 **32. Section 7 amended**

25 (1) In section 7(1) delete the definition of *Australian Commission*.

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

27

28 *Fair Work Australia* means the body established by  
29 the *Fair Work Act 2009* (Commonwealth) section 575;

30

1   **33.   Section 31 amended**

2           In section 31(1)(c)(i) delete “Commonwealth Act; or” and  
3           insert:

4  
5           *Fair Work Act 2009* (Commonwealth); or  
6

7   **34.   Section 71 amended**

8           In section 71(1) in the definition of **Branch** delete  
9           “Commonwealth Act;” and insert:

10  
11                   *Fair Work (Registered Organisations) Act 2009*  
12                   (Commonwealth);  
13

14   **35.   Section 73 amended**

15           (1) In section 73(3)(a)(ii) delete “under the Commonwealth Act,”  
16           and insert:

17  
18                                   made under the *Fair Work Act 2009*  
19                                   (Commonwealth) or continued in  
20                                   existence under the *Fair Work*  
21                                   *(Transitional Provisions and*  
22                                   *Consequential Amendments) Act 2009*  
23                                   (Commonwealth),  
24

25           (2) In section 73(7b) delete “under the Commonwealth Act,” and  
26           insert:

27  
28                                   made under the *Fair Work Act 2009* (Commonwealth)  
29                                   or continued in existence under the *Fair Work*  
30                                   *(Transitional Provisions and Consequential*  
31                                   *Amendments) Act 2009* (Commonwealth),  
32

**Industrial Legislation Amendment Bill 2011**

**Part 3** Industrial Relations Act 1979 amended

**Division 3** Amendments relating to Commonwealth legislation

**s. 36**

---

1 **36. Section 80H amended**

2 In section 80H(6) delete “Commonwealth Act” and insert:

3

4 *Fair Work (Registered Organisations) Act 2009*  
5 (Commonwealth)

6

7 **37. Section 80ZJ amended**

8 In section 80ZJ(1) delete “Commonwealth Act” and insert:

9

10 *Fair Work Act 2009* (Commonwealth)

11

12 Note: The heading to amended section 80ZJ is to read:

13 **Exercise of powers conferred under Fair Work Act**

14

15 **38. Section 97VS amended**

16 In section 97VS(5)(a) delete “under the Commonwealth Act,”  
17 and insert:

18

19 made under the *Fair Work Act 2009*  
20 (Commonwealth) or continued in existence  
21 under the *Fair Work (Transitional Provisions*  
22 *and Consequential Amendments) Act 2009*  
23 (Commonwealth),

24

25 **39. Various references to “the Australian Commission”**  
26 **amended**

27 In the provisions listed in the Table delete “the Australian  
28 Commission” (each occurrence) and insert:

29

30 Fair Work Australia

31



1

**Table**

s. 7(1) def. of <i>secondary office</i>	s. 14A
s. 14B(1)	s. 22(2)(c)
s. 29AA(1) and (2)	s. 80ZF
s. 80ZG(1), (2) and (3)	s. 80ZH(1), (2), (3) and (4)
s. 80ZI(2) and (3)	

2

Notes:

3

1. The heading to amended section 80ZF is to read:

4

**References to Fair Work Australia**

5

2. The heading to amended section 80ZH is to read:

6

**Reference of industrial matters to Fair Work Australia for  
determination under this Act**

7

8

**Division 4 — Other amendments**

9

**40. Section 7 amended**

10

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

11

***Council***

12

***deputy registrar***

13

***industrial inspector***

14

***Registrar***

15

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

16

17

***CEO*** means the chief executive officer of the  
Department;

18

19

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

20

21

22

***departmental officer*** means a person employed in the  
Department as referred to in section 99C(2);

23

**Industrial Legislation Amendment Bill 2011**

**Part 3** Industrial Relations Act 1979 amended

**Division 4** Other amendments

**s. 41**

---

1 *deputy registrar* means a person designated as a deputy  
2 registrar under this Act;

3 *industrial inspector* means a person designated as an  
4 industrial inspector under this Act;

5 *officer of the Commission* means —

6 (a) the Registrar, a deputy registrar or any other  
7 Registrar’s Department officer assisting the  
8 Commission in the performance of its  
9 functions; or

10 (b) an officer appointed under section 93(1a);

11 *officer of the Court* means the clerk of the Court or  
12 any other Registrar’s Department officer assisting the  
13 Court in the performance of its functions;

14 *Registrar* means the chief executive officer of the  
15 Registrar’s Department or, if another person is  
16 designated as the Registrar under this Act, that person;

17 *Registrar’s Department* means the department of the  
18 Public Service known as the Department of the  
19 Registrar Western Australian Industrial Relations  
20 Commission;

21 *Registrar’s Department officer* means a person  
22 employed in the Registrar’s Department as referred to  
23 in section 99C(3);

24

25 **41. Section 29A amended**

26 Delete section 29A(2a) and insert:

27

28 (2A) The Chief Commissioner may, if of the opinion that it  
29 is appropriate to do so in the circumstances, direct that  
30 the area and scope provisions of the proposed award or  
31 industrial agreement —

32 (a) need not be published in the *Industrial Gazette*;  
33 or

1                   (b) need not be published at all.  
2

3 **42. Section 81AA amended**

4 Delete section 81AA(bb).

5 **43. Section 85 amended**

6 Delete section 85(7) and insert:  
7

8                   (7) Subject to subsection (9), the chief executive officer of  
9                   the Registrar's Department is to be the clerk of the  
10                   Court.

11                   (8) The *Public Sector Management Act 1994* section 32(1)  
12                   does not apply to the performance of functions of the  
13                   clerk of the Court by the chief executive officer of the  
14                   Registrar's Department.

15                   (9) The chief executive officer of the Registrar's  
16                   Department may designate a Registrar's Department  
17                   officer as the clerk of the Court.  
18

19 **44. Section 93 amended**

20                   (1) Delete section 93(1) and insert:  
21

22                   (1) Subject to subsection (1AB), the chief executive officer  
23                   of the Registrar's Department is to be the Registrar.

24                   (1AA) The *Public Sector Management Act 1994* section 32(1)  
25                   does not apply to the performance of functions of the  
26                   Registrar by the chief executive officer of the  
27                   Registrar's Department.

28                   (1AB) The chief executive officer of the Registrar's  
29                   Department may, after consultation with the Chief

**Industrial Legislation Amendment Bill 2011**

**Part 3** Industrial Relations Act 1979 amended

**Division 4** Other amendments

**s. 45**

---

- 1 Commissioner, designate a Registrar's Department  
2 officer as the Registrar.
- 3 (1AC) The Registrar may designate a Registrar's Department  
4 officer as a deputy registrar.
- 5 (1AD) There are to be as many deputy registrars as are  
6 necessary for the purposes of this Act.  
7
- 8 (2) In section 93(1a) delete "appointed under and subject to Part 3  
9 of the *Public Sector Management Act 1994*." and insert:  
10  
11 public service officers.  
12
- 13 (3) After section 93(2) insert:  
14
- 15 (3A) Subsection (2) applies despite the *Public Sector*  
16 *Management Act 1994* but if the chief executive officer  
17 of the Registrar's Department is the Registrar, nothing  
18 in that subsection affects the functions of the Registrar  
19 as chief executive officer.  
20
- 21 **45. Section 98 amended**
- 22 Delete section 98(1) and insert:  
23
- 24 (1) The CEO may designate a departmental officer as an  
25 industrial inspector.
- 26 (2A) There are to be as many industrial inspectors as are  
27 necessary to perform the functions conferred on  
28 industrial inspectors by this Act or any other written  
29 law.  
30

1 **46. Sections 99A to 99D inserted**

2 After section 98 insert:

3

4 **99A. Identity card**

- 5 (1) Every industrial inspector is to be provided with an  
6 identity card signed by the CEO or a departmental  
7 officer authorised in that behalf by the CEO.
- 8 (2) An identity card purporting to have been provided  
9 under subsection (1) is, without proof of the signature  
10 of the person purporting to have signed it or of the  
11 person's authority to have signed it, evidence in a  
12 court —
- 13 (a) of the appointment to which the identity card  
14 purports to relate; and
- 15 (b) of any other matter specified on the identity  
16 card.
- 17 (3) If the designation of a person under section 98(1) is  
18 revoked or ceases to have effect, the person must, as  
19 soon as practicable, but within 21 days, after the  
20 designation is revoked or ceases to have effect, return  
21 the identity card to the CEO or a departmental officer  
22 authorised by the CEO to receive it, unless the person  
23 has a reasonable excuse.
- 24 Penalty: a fine of \$2 000.

25 **99B. Production of identification**

- 26 (1) An industrial inspector must, if requested to do so by a  
27 person in respect of whom the industrial inspector has  
28 exercised, or is about to exercise, a power under this  
29 Act or any other written law, produce the industrial  
30 inspector's identity card for the person's inspection.

**Industrial Legislation Amendment Bill 2011**

**Part 3** Industrial Relations Act 1979 amended

**Division 4** Other amendments

**s. 46**

---

- 1 (2) Subsection (1) only applies if the industrial inspector is  
2 in the physical presence of the person in respect of  
3 whom the power has been, or is about to be, exercised.
- 4 (3) If for any reason it is not practicable to comply with  
5 subsection (1), the industrial inspector must produce  
6 the identity card for inspection by the person at the first  
7 reasonable opportunity.

8 **99C. Staff**

- 9 (1) In this section —  
10 *employed* in the Department or the Registrar's  
11 Department includes seconded to perform functions or  
12 services for, or duties in the service of, that department.
- 13 (2) As many public service officers are to be employed in  
14 the Department as are necessary for the purposes of  
15 this Act.
- 16 (3) As many public service officers are to be employed in  
17 the Registrar's Department as are necessary —  
18 (a) for the performance of the Court's functions;  
19 and  
20 (b) for the performance of the Commission's  
21 functions; and  
22 (c) otherwise for the purposes of this Act.

23 **99D. Designation of officers, generally**

- 24 (1) This section applies to the following —  
25 (a) the designation of a person under section 85(9)  
26 to be the clerk of the Court;  
27 (b) the designation of a person under  
28 section 93(1AB) to be the Registrar;  
29 (c) the designation of a person under  
30 section 93(1AC) to be a deputy registrar;



**Industrial Legislation Amendment Bill 2011**

**Part 3** Industrial Relations Act 1979 amended

**Division 4** Other amendments

**s. 48**

---

1 **48. Various references to “the Council” amended**

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

4  
5 UnionsWA  
6

7 **Table**

s. 29A(2)(a)(i) and (b)	s. 31(1)(c)(i)
s. 38(1) and (1a)(a)	s. 40B(2) and (3)(a)
s. 47(5)(a)	s. 50(2)
s. 51A(1)	s. 51BA(1)(a)
s. 51I(2)(a)	s. 51J(a)
s. 51K	s. 97VZ(3) def. of <i>peak industrial body</i>
s. 112A(1a)(a) and (3)(c)	



1                   **Part 4 — *Minimum Conditions of Employment***  
2   ***Act 1993* amended**

3   **49.       Act amended**

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

6   **50.       Schedule 1 amended**

7                   In Schedule 1:

8                   (a)   delete the reference after the heading and insert:

9

10   [s. 3(1)]

11

12                   (b)   after “Boxing Day.” insert:

13

14                   Any special day appointed by proclamation under the *Public and Bank*  
15                   *Holidays Act 1972* section 7 to be a public holiday.

16

1                    **Part 5 — *Employment Dispute Resolution***  
2    ***Act 2008* amended**

3    **51. Act amended**

4                    This Part amends the *Employment Dispute Resolution Act 2008*.

5    **52. Section 3 amended**

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

7                    ***Commonwealth workplace agreement***

8                    ***Workplace Relations Act***

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

10  
11                                    ***Commonwealth enterprise agreement*** means an  
12                                    enterprise agreement as defined in the *Fair Work*  
13                                    *Act 2009* (Commonwealth) or any other agreement or  
14                                    arrangement prescribed under the IR Act section 113  
15                                    for the purposes of this definition;

16  
17            (3) In section 3(1) in the definition of ***organisation*** delete  
18                    paragraph (b) and insert:

19  
20                                    (b) an organisation registered under the *Fair Work*  
21                                    (*Registered Organisations*) *Act 2009*  
22                                    (Commonwealth);

23  
24            (4) In section 3(1) in the definition of ***referral proceeding*** delete  
25                    “Division 2;” and insert:

26  
27                    Division 2.  
28

1   **53.     Section 26 deleted**

2             Delete section 26.

3   **54.     Section 27 replaced**

4             Delete section 27 and insert:

5

6             **27.     Application for IR Commission to conduct dispute**  
7                   **resolution process**

8             A party to an employment dispute may apply to the IR  
9             Commission to have a dispute resolution process  
10            conducted by the IR Commission in relation to the  
11            employment dispute if —

- 12            (a)    the parties to the employment dispute are bound  
13                    by a Commonwealth enterprise agreement; and
- 14            (b)    the Commonwealth enterprise agreement  
15                    authorises, permits or provides for the IR  
16                    Commission, or a member of the IR  
17                    Commission, to conduct a dispute resolution  
18                    process under dispute settlement procedures set  
19                    out in the agreement.

20

21   **55.     Section 28 amended**

22             In section 28(2) and (3) delete “workplace” (each occurrence)  
23             and insert:

24

25             enterprise

26

1 **56. Section 29 amended**

2 (1) Delete section 29(1)(a) and (b) and insert:

3

4 (a) the Commonwealth enterprise agreement  
5 concerned; and

6 (b) the *Fair Work Act 2009* (Commonwealth).

7

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

9

10 (2) The *Fair Work Act 2009* (Commonwealth) section 740  
11 applies to a dispute resolution process conducted under  
12 this Division.

13

14 **57. Section 31 amended**

15 In section 31(1) after “may be made” insert:

16

17 by the Chief Commissioner

18

1  
2  
3  
4  
5  
6  
7  
8  
9

**Part 6 — *Litter Act 1979* amended**

**58. Act amended**

This Part amends the *Litter Act 1979*.

**59. Section 9 amended**

Delete section 9(1)(ka) and insert:

- (k) one shall be appointed on the nomination of UnionsWA;

1                    **Part 7 — *Occupational Safety and Health***  
2    ***Act 1984* amended**

3    **60. Act amended**

4                    This Part amends the *Occupational Safety and Health Act 1984*.

5    **61. Section 6 amended**

6                    In section 6(2)(d)(ii) delete “the body known as The Trades and  
7                    Labor Council of Western Australia; and” and insert:

8

9                    UnionsWA; and

10

=====