

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

**INDUSTRIAL LEGISLATION
AMENDMENT BILL (No. 2) 1995**

A BILL FOR

**AN ACT to amend the *Industrial Relations Act 1979* and
the *Minimum Conditions of Employment Act 1993*.**

The Parliament of Western Australia enacts as follows:

Industrial Legislation Amendment Bill
(No. 2) 1995

cl. 1

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Legislation Amendment Act (No. 2) 1995*.

5 Principal Act

2. In this Act the *Industrial Relations Act 1979** is referred to as the principal Act.

[* *Reprinted as at 11 May 1994.*

10 *For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 102 and
Acts Nos. 1 and 11 of 1995.]*

Commencement

3. (1) Subject to subsections (2) to (4), this Act comes into operation on the day on which it receives the Royal Assent.

15 (2) The provisions of Part 2 come into operation on such day as is fixed by proclamation.

(3) The provisions of Part 3 come into operation on —

20 (a) the day on which Part 2 of the *Industrial Relations Legislation Amendment and Repeal Bill 1995* comes into operation; or

(b) the day on which this Act receives the Royal Assent,
whichever is the later.

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(4) The provisions of Part 4 come into operation on —

(a) the day on which Part 3 of the *Industrial Relations Legislation Amendment and Repeal Bill 1995* comes into operation; or

5 (b) the day on which this Act receives the Royal Assent,

whichever is the later.

PART 2 — STRIKE BALLOTS

Part VIB inserted

4. After Part VIA of the principal Act the following Part is inserted —

5 “

PART VIB — STRIKE BALLOTS

Interpretation

97. (1) In this Part, unless the contrary intention appears —

10 “**related Federal body**”, in relation to an organization, means —

(a) a Counterpart Federal Body of the organization within the meaning of section 71; or

15 (b) a Branch, within the meaning of section 71, that is declared under subsection (2) to operate in conjunction with the organization as if they were the same body;

20 “**strike**” means any industrial action by 2 or more employees, or by an organization of employees, that involves a stoppage of, or ban or limitation on, the performance of work required under the employee’s contract of employment;

25 “**strike ballot**” means a ballot held under this Part;

“this Part” includes regulations made for the purposes of this Part, and the code of practice set out in Schedule 3.

5 (2) The Full Bench may on application in the manner, and by the person, prescribed declare that a Branch, within the meaning of section 71, operates in conjunction with an organization as if they were the same body.

10 (3) In determining an application under subsection (2) the Full Bench shall have regard to whether the Branch —

- 15 (a) has rules as to the qualification of people for membership that enable the members of the organization, or a substantial proportion of them, to be members of the Branch;
- (b) has the same officers and employees, or some of the same officers and employees, as the organization;
- 20 (c) shares premises in the State with the organization;
- (d) has funds or accounts that are jointly owned, managed or controlled by the organization.

25 **Application**

97A. (1) Nothing in this Part takes away, restricts or otherwise affects any right or liability, civil or criminal, arising under any other Part of this Act, or any other enactment or at common law.

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(2) This Part has effect notwithstanding anything contained in the rules of an organization of employees.

5 (3) Nothing in this Part applies to a strike by a party to a workplace agreement in relation to employment under that workplace agreement.

10 (4) This Part does not apply to the continuation of a strike initiated before the coming into operation of section 4 of the *Industrial Legislation Amendment Act (No. 2) 1995* as long as that industrial action does not contravene the rules of the relevant organization of employees and is completed within 28 days of the coming into operation of that section.

Participation in strike

15 **97B.** (1) A member of an organization of employees shall not participate in any form of strike unless —

- (a) a ballot in respect of that form of strike has been conducted in accordance with this Part;
- 20 (b) the member was entitled to vote in that ballot;
- (c) participation in that form of strike is endorsed by that ballot;
- 25 (d) the strike takes place not later than 28 days after the declaration of the result of the strike ballot which endorsed that form of strike; and
- 30 (e) notice of intention to participate in that strike has been given in accordance with section 97H.

(2) An organization of employees shall not —

(a) incite, encourage or assist a member of the organization to participate in a strike in contravention of subsection (1); or

5 (b) in any way by act or omission and directly or indirectly be knowingly concerned in or party to a contravention of subsection (1).

10 (3) For the purposes of subsection (1) (c), participation in a particular form of strike is endorsed by a ballot if the majority of persons who were entitled to vote in the ballot voted “Yes” to the question applicable to participation in that form of strike.

15 (4) For the purposes of subsection (2), ascertaining the views of members as to a contemplated strike, or providing advice or information on a contemplated strike, does not constitute incitement, encouragement or assistance, or concern or participation in a contravention of
20 subsection (1).

Responsibility of members and organizations

25 **97C.** (1) For the purposes of this Part, where a member of an organization of employees who is also a member of its related Federal body participates in a strike then, unless the contrary is proved, the member is taken to have participated in that strike as a member of the organization of employees.

30 (2) An organization of employees is taken to have contravened or failed to comply with section 97B (2) if an officer or employee of the organization —

(a) incites, encourages or assists a member of the organization to participate in a strike in contravention of section 97B (1); or

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- (b) is in any way by act or omission and directly or indirectly knowingly concerned in or party to a contravention of section 97B (1),

5 unless it is proved that —

- (c) the officer or employee acted without the organization's consent or connivance; and
- (d) the organization exercised all such due diligence to prevent the officer or employee so acting as ought to have been exercised having regard to all the circumstances.

10

Application for a strike ballot

97D. (1) If a strike is contemplated by members of an organization of employees, or by any section or class of its members, application may be made to the Commission for a strike ballot to find out whether a majority of those members endorse, or do not endorse, participation in a strike.

15

20

(2) Application for a strike ballot may be made by —

- (a) the organization of employees whose members contemplate participation in the strike; or
- (b) a member of that organization who has a sufficient interest in the matter.

25

(3) An application made under subsection (2) shall be —

- (a) in writing stating the reasons for the application and the facts relevant to the contemplated strike, including a description of the form of the contemplated strike; and

30

(b) accompanied by —

(i) a list of all of the employers of the persons contemplating, or believed to be contemplating, the strike; and

5 (ii) such other particulars as are prescribed.

10 (4) The Commission shall deal with an application under this section as expeditiously as is practicable, and, in any event shall endeavour to make a decision on the application, and give directions and reasons, within 7 days of the making of the application.

Holding of strike ballot

15 **97E.** (1) The Commission shall order a strike ballot to be held if —

(a) it has been applied for under section 97D (2) (a) by an organization of employees pursuant to a resolution of the committee of management of the organization; or

20 (b) it has been applied for under section 97D (2) (a) other than in the circumstances mentioned in paragraph (a), or under section 97D (2) (b), and the Commission is satisfied, after the parties who have a
25 sufficient interest in the matter have been given an opportunity to be heard, that it is justified by the circumstances.

30 (2) Notwithstanding that an application has not been made under section 97D, the Commission may order a strike ballot to be held if the Commission has reason to believe that a form of strike is contemplated

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by members of an organization of employees, or by any section or class of its members, and that a strike ballot in respect of that form of strike is justified by the circumstances.

5 (3) In deciding whether or not a strike ballot is justified, the Commission may take into account information other than that given in the application.

10 (4) In dealing with an application and giving directions under this Part the paramount considerations of the Commission shall be the circumstances of the application and the provisions of this Part.

15 (5) The Commission shall give written notice of any decision under this section and any decision under section 97F (3), the reasons for each decision, and the directions given under section 97F (1) and 97G (1), to —

- (a) the applicant for the strike ballot;
- 20 (b) if the applicant is not the organization of employees whose members contemplate the strike, that organization; and
- (c) any other parties, including interveners, to the proceedings.

25 (6) An applicant under section 97D (2) (b) or an organization of employees may, within 48 hours of being notified under subsection (5) of a decision, or a direction under section 97F (1), appeal to the Full Bench in the manner prescribed against that decision or direction.

30 (7) A person, not being a person referred to in subsection (6), given notice under subsection (5) of a decision or a direction under section 97F (1) may,

5 within 48 hours of being so notified, appeal to the Full Bench in the manner prescribed against that decision or direction on the grounds that the decision or direction is erroneous in law or is in excess of jurisdiction but on no other grounds.

(8) Section 49 shall apply to an appeal against a direction as if the direction were a decision of the Commission.

Who will be entitled to vote and where

10 **97F.** (1) In any order under section 97E (1) or (2) the Commission, having regard to which members are likely to participate in the strike, shall give directions as to which members, or members of a section or class of members, of the organization of employees or a
15 branch of that organization will be entitled to vote in the strike ballot.

(2) Only an employee who is —

(a) a member, or member of a section or class of members, of the organization of employees or a branch of that organization mentioned in a direction under subsection (1); and
20

(b) included in the list prepared under section 97G (5) (a),

25 is entitled to vote in the strike ballot.

(3) Where the members of an organization who will be entitled to vote in a strike ballot have different places of work the Commission may order —

(a) a separate strike ballot be held for each
30 place of work;

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- (b) a single strike ballot be held for all the places of work; or
- (c) separate strike ballots be held for places of work as specified in the order.

5 (4) A strike ballot only applies in respect of the place or places of work for which it was held.

Conduct of strike ballot

97G. (1) The Commission may direct that a strike ballot is to be conducted —

- 10 (a) by the Registrar or a nominee of the Commission;
- (b) under arrangements made by the Commission with the Electoral Commissioner appointed under the *Electoral Act 1907* for the conduct of the strike ballot by an officer holding office under that Act or by some other person authorized in writing by the Electoral Commissioner; or
- 15 (c) by the organization of employees whose members will be entitled to vote in the strike ballot.
- 20 (c) by the organization of employees whose members will be entitled to vote in the strike ballot.

25 (2) The Commission shall not nominate under subsection (1) (a), and the Electoral Commissioner shall not authorize under subsection (1) (b), an organization of employees, or an officer, employee or member of an organization of employees whose members will be entitled to vote in the strike ballot, to conduct a strike ballot.

(3) The Commission may give directions to the person conducting a strike ballot as to the conduct of a strike ballot and that person shall comply with those directions.

5 (4) The person conducting a strike ballot may seek directions, or further directions, from the Commission as to the conduct of the strike ballot.

(5) The person conducting a strike ballot shall take all reasonable steps to ensure that —

10 (a) a list of the names and addresses of members entitled to vote in the strike ballot, and of the names of employers of those members, is compiled as accurately as is practicable;

15 (b) the votes of individual members remain secret; and

(c) no irregularities occur in or in connection with the strike ballot.

(6) If the Commission —

20 (a) has given a direction under subsection (1) (a) or (b), the person conducting the strike ballot may take such reasonable action and give such reasonable directions as that person considers necessary in order to
25 conduct a ballot in accordance with this Part; or

30 (b) has given a direction under subsection (1) (c), the person conducting the strike ballot may, with the authorization of the Registrar or the Deputy Registrar, take such reasonable action and give such reasonable directions as that person

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considers necessary in order to conduct a
ballot in accordance with this Part.

(7) A person shall not —

(a) refuse or fail to comply with a direction
given under subsection (6); or

(b) obstruct or hinder —

(i) the person conducting a strike ballot
in the conduct of the ballot or the
taking of any action under subsection
(6); or

(ii) any other person in the carrying
out of a direction given under
subsection (6).

(8) A strike ballot shall be conducted in
accordance with the code of practice set out in
Schedule 3.

(9) Any party to an application for a strike ballot,
including an intervener, is entitled to appoint a
scrutineer for a strike ballot in the prescribed manner.

(10) If the Commission has given a direction
under subsection (1) (c) —

(a) the organization of employees, subject to
subsections (8) and (11) and any directions
given by the Commission, shall conduct the
strike ballot in accordance with its rules;

(b) the organization of employees shall lodge
with the Registrar, within a time specified
by the Commission, a copy of the register
kept by the organization under section 63
(1) (a); and

- (c) the Registrar or Deputy Registrar, as directed by the Commission, shall supervise the conduct of the ballot and report to the Commission.

5 (11) To the extent that directions given by the Commission, or regulations made under section 97I, are contrary to or inconsistent with the rules of an organization, the directions or regulations shall prevail.

10 **Notices to employers**

15 **97H.** (1) A person conducting a strike ballot shall ensure that all employers included in the list compiled under section 97G (5) (a) in relation to the ballot are given notice of the results of the ballot in the prescribed manner.

(2) A member of an organization of employees who intends to participate in a strike endorsed by a strike ballot shall give notice of that intention to the employer of that member.

20 (3) Subsection (2) does not apply if notice of that intention is given to the employer by the organization of employees on behalf of the member in accordance with subsection (4).

25 (4) Notice under subsection (2) or (3) shall be given —

- (a) as directed by the Commission, or, if no direction is given, within the period prescribed; and
- (b) in the manner, if any, prescribed.

Regulations

97I. (1) The Governor may make regulations —

- (a) providing for the conduct of strike ballots;
- 5 (b) providing for the appointment of, and prescribing the functions of, scrutineers;
- (c) prescribing the functions of the Registrar and Deputy Registrar under section 97G (10) (c);
- 10 (d) prescribing questions and other matters that must be presented to a voter in a strike ballot;
- (e) prescribing the functions of a person conducting a strike ballot;
- 15 (f) providing for the manner in which expenses incurred in conducting a strike ballot are to be met, including the extent to which those expenses may be met by the State;
- (g) authorizing the payment by the State of expenses incurred in a strike ballot;
- 20 (h) providing that contravention of or failure to comply with a regulation constitutes an offence, and providing for penalties not exceeding \$2 000 for offences against regulations made under this section; and
- 25 (i) providing for any matter or thing which is required or permitted to be prescribed for the purposes of this Part.

(2) Regulations under subsection (1) are in addition to, and do not derogate from, the code of practice set out in Schedule 3.

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5 Schedule 3 added

5. After Schedule 2 to the principal Act the following Schedule is added —

“

SCHEDULE 3 [Section 97G (8)]

STRIKE BALLOTS — CODE OF PRACTICE

Conduct of strike ballot

1. A strike ballot shall be conducted —

- 15 (a) as expeditiously as is reasonably practicable; and
- (b) so far as is reasonably practicable in a manner that ensures that individuals voting —
- (i) do so in secret; and
- 20 (ii) do so without incurring expense by reason of voting.

Strike ballots involving more than one organization

25 **2.** If the members of more than one organization of employees are entitled to vote in strike ballots in connection with the same dispute or potential dispute, the arrangements for the different ballots shall be co-ordinated by the persons conducting those ballots so that, as far as practicable, they are held at the same time and the results are notified at the same time.

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Questions

3. (1) A question presented to a voter in relation to a strike shall specify —

- (a) the form of the strike; and
- (b) the purpose of the strike,

and shall require the person answering it to say, by answering “Yes” or “No”, whether that person is prepared to participate in that form of strike for that purpose.

(2) Separate questions shall be presented to the voter in respect of each form of strike which the voter may endorse.

(3) The question or questions presented to a voter shall be simply expressed and each question shall be presented separately from any other question that might also appear.

(4) Neither the required question or questions, nor any commentary or other matter which is presented to the voter, shall —

- (a) be presented in a way which might encourage a voter to answer one way rather than another as a result of that presentation; or
- (b) include any commentary which endeavours to influence the outcome of a voter’s response to any question on the voting paper.

”.

Consequential amendment

6. Section 66 of the principal Act is amended by inserting after subsection (7) the following subsection —

“

(8) Within 6 months of the coming into operation of section 4 of the *Industrial Legislation Amendment Act (No. 2) 1995* the Registrar shall review the rules of each organization of employees and shall, by application pursuant to this section, bring before the President the rules of any organization of employees if, in the opinion of the Registrar, any of those rules is contrary to or inconsistent with Part VIB.

”.

PART 3 — POLITICAL DONATIONS BY ORGANIZATIONS

Sections 97U and 97V inserted

7. After section 97T of the principal Act (*as inserted by section 4 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) the following sections are inserted —

“

Proceedings for breach of section 97P

97U. (1) If a person contravenes or fails to comply with section 97P —

- 10 (a) a member of the organization;
- (b) the Registrar or a Deputy Registrar; or
- (c) an Industrial Inspector,

may apply in the prescribed manner to an industrial magistrate's court for the enforcement of section 97P.

15 (2) On the hearing of an application under subsection (1) the industrial magistrate's court may, if the contravention or failure to comply is proved, do any one or more of the following things —

- 20 (a) impose a penalty on the respondent of such amount as the industrial magistrate's court considers just, but not exceeding —
- (i) in the case of an individual, \$1 000;
 and
- (ii) in any other case, \$5 000;

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(b) order the forfeiture to the Crown of any unauthorized payment by the political party, candidate or candidates which or who received the payment or incurred the expenses in respect of which the payment was made or, in a case to which section 97N (2) (e) applies, the person to whom the payment was made;

(c) order the respondent to do any specified thing.

(3) The industrial magistrate's court may, by order, dismiss an application under subsection (1).

(4) Subject to subsection (5) an order under subsection (2) or (3) may be made with or without costs.

(5) Costs shall not be given against the Registrar, a Deputy Registrar or an Industrial Inspector in relation to proceedings under this section.

(6) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the industrial magistrate, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

(7) Where the industrial magistrate's court orders money to be paid under this section by way of a penalty, forfeiture or costs it shall state in the order the name of the person liable to pay the money and the name of the person to whom the money is payable.

(8) The Registrar, a Deputy Registrar or an Industrial Inspector may apply in the prescribed manner to an industrial magistrates's court for the

recovery of an unauthorized payment ordered to be forfeited under subsection (2) (b) or any part of it that is outstanding.

5 (9) If the respondent is an officer of an organization and an unauthorized payment is not recovered, or not fully recovered, under subsections (2) and (8), the unrecovered amount is a debt due by the officer to the Crown.

10 (10) The Registrar, a Deputy Registrar or an Industrial Inspector may apply in the prescribed manner to an industrial magistrate's court for the recovery of the unrecovered amount.

(11) In this section —

“unauthorized payment” means —

15 (a) a payment made contrary to section 97P; or

(b) a payment made from moneys that have been credited contrary to section 97P.

20 **Failure to comply with order**

97V. A person who fails to comply with an order under section 97U (2) (c) commits an offence.

Penalty for an individual: \$1 000.

Penalty in any other case: \$5 000.

25 Daily penalty for an individual: \$100.

Daily penalty in any other case: \$500.

”.

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Consequential amendments

8. (1) Section 81A of the principal Act (*as inserted by section 19 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) is amended by inserting before “110” the following —

5 “ 97U, ”.

(2) Section 81CA (1) of the principal Act (*as inserted by section 21 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) is amended in paragraph (a) of the definition of “general jurisdiction” by inserting before “110” the following —

10 “ 97U, ”.

(3) The principal Act is amended as set out in the following Table —

Table

	Provision amended	Amendment
15	s. 84A (1) (a)	Before “) or” insert — “ or 97P ”.
	s. 93 (9)	Before “or to” insert — “ or 97U ”.
	s. 102A (1) and (2)	At the end insert — “ or 97U ”.
20	s. 103 (3)	At the end of the definition of “application” insert — “ or 97U ”.

PART 4 — OFFICIALS OF ORGANIZATIONS

Section 74 amended

9. Section 74 (13) of the principal Act (*as inserted by section 8 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) is amended by deleting “This section” and substituting the following —

“ Subject to section 79, this section ”.

Section 77 amended

10. Section 77 (2) (b) of the principal Act (*as inserted by section 8 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) is amended by inserting after “subsection (3)” the following —

“ and section 79 (5) (a) ”.

Sections 78 and 79 inserted

11. After section 77 of the principal Act (*as inserted by section 8 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) the following sections are inserted —

“

Failure to comply with order

78. A person who fails to comply with an order under section 77 (2) (e) commits an offence.

Penalty: \$5 000.

Daily penalty: \$500.

Effect on or of other proceedings

5 **79.** (1) Subject to subsection (3), where an application is made to an industrial magistrate's court under section 77, the matter to which the application relates (whether as shown in the application or as emerging in the course of the determination of the application) is not justiciable by another court in civil proceedings unless —

10 (a) that matter was before that other court at the time when the application was made to the industrial magistrate's court; or

 (b) the application to the industrial magistrate's court is withdrawn or not pursued.

15 (2) Where a matter that an industrial magistrate's court has jurisdiction to determine under section 77 is before another court in civil proceedings, that other court may order that the matter be transferred to and determined by the industrial
20 magistrate's court.

 (3) Where a matter that a court has jurisdiction to determine in civil proceedings is before an industrial magistrate's court, the industrial
25 magistrate's court may order that the matter be transferred to and determined by that other court.

 (4) In making an order for compensation, restitution or forfeiture under section 77 (2) (c) or (d) an industrial magistrate's court is to have regard to
30 any amount that the respondent has been ordered to pay in civil proceedings relating to the same matter in another court.

 (5) If criminal proceedings are instituted under any other enactment in respect of conduct that also

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constitutes a contravention of or failure to comply
with section 74 —

5

- (a) an industrial magistrate's court is not to
impose a penalty under section 77 (2) (b) in
proceedings under section 77 in respect of
the matter; but

10

- (b) the outcome of the criminal proceedings is
not to be taken into consideration in the
determination of proceedings under
section 77 in respect of the matter.

”.

PART 5 — MISCELLANEOUS AMENDMENTS

Section 7 amended and transitional provisions

12. (1) Section 7 of the principal Act is amended —

5 (a) in the definition of “industrial matter” in subsection (1) by deleting paragraph (g); and

 (b) in subsection (2) by deleting “Subject to paragraph (g) of the definition of “industrial matter” in subsection (1), the” and substituting the following —

“ The ”.

10 (2) On and from the coming into operation of this section a provision of an award, order or industrial agreement implementing an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization is of no effect, and any
15 agreement so implemented is of no effect.

 (3) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall —

20 (a) review each award, order and industrial agreement in force on the coming into operation of this section;

 (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —

25 (i) notice of any proposal to vary an award, order or industrial agreement under this section; and

 (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within

the time and in the manner specified in the notice, may appear and be heard on the proposal;

and

- 5 (c) after affording employers and organizations who make application under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement by omitting any provision that is of no effect under subsection (2).

Section 49A amended

- 10 **13.** Section 49A of the principal Act (*as inserted by section 11 of the Industrial Relations Legislation Amendment and Repeal Act 1995*) is amended by inserting after subsection (1) the following subsections —

“

- 15 (1a) The procedures referred to in subsection (1) shall provide for the persons involved in the question, dispute or difficulty to confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to
20 the Commission.

- (1b) The Commission may refuse to exercise any powers under section 44, to deal with any industrial matter referred to it, or to deal with any application made under section 46, if it is of the opinion that any
25 applicable procedure in an award, order or industrial agreement for resolution of the matter before it have not been complied with as far as is reasonably practicable in the circumstances.

”.

**PART 6 — MINIMUM CONDITIONS OF EMPLOYMENT
ACT 1993**

Minimum Conditions Act

14. In this Part the *Minimum Conditions of Employment Act*
5 1993* is referred to as the Minimum Conditions Act.

[* Act No. 14 of 1993.]

Section 3 amended

15. Section 3 of the Minimum Conditions Act is amended —

10 (a) by inserting after the section designation “3.” the
subsection designation “(1)”; and

(b) by inserting the following subsections —

“

15 (2) In this Act a reference to a period
worked does not include a reference to a
period outside the hours the employee was
required ordinarily to work during which
the employee was on call.

20 (3) For the purposes of subsection (2),
the employee was “**on call**” in a period if,
in that period the employee was
required —

(a) to remain at his or her place of
employment; or

25 (b) to be available to undertake
duties of employment,

but was not required to undertake any
other duty of employment.

”.

Section 24 amended

16. Section 24 of the Minimum Conditions Act is amended by repealing subsection (2) and substituting the following subsections —

5 “

(2) If an employee's employment terminates before the employee has taken annual leave to which he or she is entitled, the employee is to be paid for all of the untaken annual leave.

10 (3) Subsection (2) does not apply to an employee who terminates his or her employment unlawfully or is dismissed for misconduct.

15 (4) If an employee terminates his or her employment unlawfully before the employee has taken annual leave to which he or she is entitled, the employee is to be paid for any untaken annual leave that relates to a completed year of service.

20 (5) If an employee is dismissed for misconduct and the dismissal takes effect before an employee has taken annual leave to which he or she is entitled, the employee is to be paid for any untaken annual leave that relates to a year of service completed before the misconduct occurred.

25 (6) In this section —

“**year**” does not include any period of unpaid leave.

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