

**Commonwealth Powers (Industrial Relations) Act
1996**

Act No. 59/1996

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	2
3. Definitions	2
PART 2—REFERENCE OF MATTERS	4
4. Reference	4
5. Matters excluded from a reference	6
6. Termination of reference	9
7. Supreme Court—limitation of jurisdiction	9
8. Expiry of Act	9
PART 3—EMPLOYEE RELATIONS ACT 1992	10
9. Amendment	10
PART 4—CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS	11
10. Amendment of certain Acts	11
11. Transitional provisions	11
PART 5—ANNUAL LEAVE PAYMENTS ACT 1992	12
12. Repeal	12
PART 6—VOCATIONAL EDUCATION AND TRAINING ACT 1990	13
13. New Part 7A inserted in Vocational Education and Training Act 1990	13

<i>Section</i>	<i>Page</i>
PART 7A—MINIMUM TERMS AND CONDITIONS	13
91AB. Rates of pay	13
<hr/>	
SCHEDULES	16
SCHEDULE 1	16
SCHEDULE 2	19
SCHEDULE 3	26
<hr/> <hr/>	
NOTES	32



Victoria

No. 59 of 1996

Commonwealth Powers (Industrial Relations) Act 1996[†]

[Assented to 12 December 1996]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is—

- (a) to refer to the Parliament of the Commonwealth certain matters relating to industrial relations;
- (b) to amend the **Employee Relations Act 1992**;
- (c) to repeal the **Annual Leave Payments Act 1992**;

(d) to make certain consequential amendments to certain Acts.

2. Commencement

- (1) This Part and Part 5 come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) A proclamation must not be made under subsection (2) (other than a second or subsequent proclamation) unless the proclamation includes a statement that the Governor in Council is satisfied that a Bill has been introduced into the Senate or House of Representatives of the Parliament of the Commonwealth containing provisions about matters to be referred to that Parliament by this Act.

3. Definitions

In this Act—

"employee" includes a law enforcement officer but does not include a person engaged under a contract for services;

"employer" includes a person employing an employee, including the Crown and a public body and, in relation to a person who is a law enforcement officer, means the person nominated by the Governor in Council as the employer of that person;

"law enforcement officer" means a member of the police force, a police reservist, a police recruit or a protective services officer;

"the Commonwealth Act" means—

- (a) the Industrial Relations Act 1988 of the Commonwealth; or

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

- (b) if Schedule 20 to the Workplace Relations and Other Legislation Amendment Act 1996 of the Commonwealth is in force, the Workplace Relations Act 1996 of the Commonwealth;

"public sector" means the public service of Victoria or the service of the State or of a statutory authority or of a State owned enterprise within the meaning of the **State Owned Enterprises Act 1992**.

PART 2—REFERENCE OF MATTERS

4. Reference

- (1) A matter referred to the Parliament of the Commonwealth by a sub-section of this section is so referred subject to the Commonwealth of Australia Constitution Act and pursuant to section 51(xxxvii) of that Act.
 - (2) The matter of conciliation and arbitration for the prevention and settlement of industrial disputes within the limits of the State, to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.
 - (3) The matter of agreements about matters pertaining to the relationship between an employer or employers in the State and an employee or employees in the State, to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.
 - (4) The matter of minimum terms and conditions of employment for employees in the State, to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this
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sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.

- (5) The matter of termination, or proposed termination, of the employment of an employee, other than a law enforcement officer, to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.
- (6) The matter of freedom of association, namely the rights of employees, employers and independent contractors in the State to join an industrial association of their choice, or not to join such an association, to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.
- (7) The matter of the setting and adjusting of minimum wages for employees in the State within a work classification that, immediately before the commencement of this sub-section is a declared work classification under the **Employee Relations Act 1992**, or has been declared, by the Commission within the meaning of that Act, to be an interim work classification, who are not subject to an award or agreement under the Commonwealth Act, to the extent to which that
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matter is not otherwise included in the legislative powers of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.

- (8) The matter of attempting to settle, conciliate or arbitrate, or exercising any other power in relation to, an industrial matter or industrial dispute, being an industrial matter or industrial dispute that arose before the commencement of Part 3 and in relation to which the Employee Relations Commission of Victoria exercised, or could have exercised, powers (other than an industrial matter or industrial dispute in respect of which that Commission in Full Session had made a decision before that commencement), to the extent to which it is not otherwise included in the legislative powers of the Commonwealth, is referred to the Commonwealth for a period commencing on the day on which this sub-section commences and ending on the day fixed under or by section 6 as the day on which the reference of that matter under this Act terminates but no longer.

5. *Matters excluded from a reference*

- (1) A matter referred by a sub-section of section 4 does not include—
- (a) matters pertaining to the number, identity, appointment (other than terms and conditions of appointment) or discipline (other than matters pertaining to the termination of employment) of employees, other than law enforcement officers, in the public sector;

- (b) matters pertaining to the number, identity, appointment (other than matters pertaining to terms and conditions of appointment not referred to in this paragraph), probation, promotion, transfer from place to place or position to position, physical or mental fitness, uniform, equipment, discipline or termination of employment of law enforcement officers;
 - (c) matters pertaining to the number or identity of employees in the public sector dismissed or to be dismissed on grounds of redundancy;
 - (d) matters pertaining to the following subject matters—
 - (i) workers' compensation;
 - (ii) superannuation;
 - (iii) occupational health and safety;
 - (iv) apprenticeship;
 - (v) long service leave;
 - (vi) days to be observed as public holidays;
 - (vii) equal opportunity—but not so as to prevent the inclusion in awards or agreements made under the Commonwealth Act of provisions in relation to those matters to the extent to which the Commonwealth Act, as enacted as at 30 November 1996 (whether or not in force), allows such awards or agreements to include such provisions;
 - (e) the matter of the making of an award or order as, or declaring any term of an award or order to be, a common rule in the State for an industry;
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- (f) matters pertaining to Ministers, members of the Parliament, judicial officers or members of administrative tribunals;
 - (g) matters pertaining to persons holding office in the public sector to which the right to appoint is vested in the Governor in Council or a Minister;
 - (h) matters pertaining to persons holding senior executive offices in the service of a Department within the meaning of the **Public Sector Management Act 1992**;
 - (i) matters pertaining to persons employed at the higher managerial levels in the public sector;
 - (j) matters pertaining to persons employed as ministerial assistants or ministerial advisers in the service of Ministers;
 - (k) matters pertaining to persons holding office as Parliamentary officers;
 - (l) matters pertaining to the transfer or redundancy of employees of a body as a result of a restructure by an Act;
 - (m) matters pertaining to the duties of employees if a situation of emergency is declared by or under an Act or an industry or project is, by or under an Act, declared to be a vital industry or vital project and whose work is directly affected by that declaration.
- (2) Insofar as a matter specified in sub-section (1) of this section does not fall within the terms of a sub-section of section 4, sub-section (1) of this section must be taken to have been enacted for the avoidance of doubt.
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6. Termination of reference

- (1) The Governor in Council, by proclamation published in the Government Gazette, may fix a day as the day on which the reference under a subsection of section 4 terminates.
- (2) The references under this Act terminate on 1 July 1997 unless, before that date, the Governor in Council has, by Order published in the Government Gazette, declared that an agreement has been entered into between the Minister administering the Commonwealth Act and the Minister administering this Act about the matters referred by this Act to the Parliament of the Commonwealth.

7. Supreme Court—limitation of jurisdiction

It is the intention of item 4.10(a) of Schedule 2 to alter or vary section 85 of the **Constitution Act 1975**.

8. Expiry of Act

This Act expires on 1 July 1997 unless, before that date, a proclamation has been made under section 2(2).

PART 3—EMPLOYEE RELATIONS ACT 1992

9. *Amendment*

The **Employee Relations Act 1992** is amended as set out in Schedule 1.

**PART 4—CONSEQUENTIAL AMENDMENTS AND
TRANSITIONAL PROVISIONS**

10. *Amendment of certain Acts*

An Act specified in the heading to an item in
Schedule 2 is amended as set out in that item.

11. *Transitional provisions*

Schedule 3 contains transitional provisions.

PART 5—ANNUAL LEAVE PAYMENTS ACT 1992

12. Repeal

- (1) The **Annual Leave Payments Act 1992** is **repealed**.
 - (2) Sub-section (1) does not revive anything in any determination or contract made before the commencement of the **Annual Leave Payments Act 1992** that, by reason of that Act, had no force or effect.
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No. 60/1992.

**PART 6—VOCATIONAL EDUCATION AND TRAINING
ACT 1990**

**13. *New Part 7A inserted in Vocational Education and
Training Act 1990***

**After Part 7 of the Vocational Education and
Training Act 1990 insert—**

**"PART 7A—MINIMUM TERMS AND
CONDITIONS**

91AB. *Rates of pay*

- (1) An employer must pay a student the relevant minimum rate of pay that would be applicable under paragraph 1(c) of Schedule 1A to the Workplace Relations Act 1996 of the Commonwealth if the student were an employee within the meaning of Part XV of that Act.
 - (2) Sub-section (1) does not apply in respect of a student—
 - (a) holding a certificate of exemption under this section; or
 - (b) to whom an exemption order under this section applies.
 - (3) The Secretary to the Department of Education may give a student a certificate of exemption if the Secretary is satisfied that the student—
 - (a) is undertaking a post-secondary education course; and
 - (b) is required to work during those studies for the purpose of gaining knowledge and skill which relates to those studies.
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- (4) The Secretary to the Department of Education may impose conditions on a certificate of exemption.
- (5) The student and any employer must comply with any condition imposed under subsection (4).
- Penalty: 10 penalty units.
- (6) The Secretary to the Department of Education may make an exemption order in relation to any class of students if the Secretary is satisfied that the students—
- (a) are undertaking a post-secondary education course; and
 - (b) are required to work to satisfy the practical training and experience requirements of the course.
- (7) The exemption order may—
- (a) in the case of any students, provide that the students are not required to be paid for the work; and
 - (b) in the case of students required to work more than 240 hours as part of a course requirement, specify the appropriate rate of pay which may be less than the minimum rate of pay that would be the applicable rate of pay referred to in subsection (1).
- (8) A certificate of exemption in force under section 16 of the **Employee Relations Act 1992**, as in force immediately before its repeal, or an exemption order in force under section 16A of that Act, continues in force
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s. 13

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

for the purposes of this section as if it had been given or made, as the case requires, under this section."

SCHEDULES

SCHEDULE 1

AMENDMENT OF EMPLOYEE RELATIONS ACT 1992

1. Title

In the title, for "Employee Relations" substitute "Long Service Leave".

2. New section 1 substituted

For section 1 substitute—

"1. Purpose

The purpose of this Act is to make provision with respect to the long service leave entitlements of certain employees."

3. Repeal of section 3

Section 3 is **repealed**.

4. Amendment of definitions

In section 4—

- (a) the definition of "**business day**" is **repealed**;
- (b) the definitions of "**Chief Commission Administration Officer**", "**Commission**", "**employee**" and "**employer**" are **repealed**;
- (c) the definitions of "**Federal Commission**", "**industrial action**", "**industrial authority**", "**industrial dispute**" and "**industrial matter**" are **repealed**;
- (d) the definition of "**industry**" is **repealed**;
- (e) the definitions of "**panel**", "**President**", "**public body**" and "**recognised association**" are **repealed**;
- (f) the definitions of "**registered medical practitioner**", "**shop**", "**trade union**" and "**workplace**" are **repealed**.

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

5. Repeal of section 5

Section 5 is **repealed**.

6. Amendment of section 7

In section 7, sub-section (2) is **repealed**.

7. Repeal of certain provisions

- (1) Parts 2, 3 and 4 are **repealed**.
- (2) In Part 5, Divisions 1 to 5 are **repealed**.

8. Long service leave

In Division 6 of Part 5—

- (a) in section 61(1) and (2), for "Commission" **substitute** "Industrial Division of the Magistrates' Court";
- (b) in section 65(1)(b), (2), (3), (4) and (5), for "Commission" **substitute** "Industrial Division of the Magistrates' Court";
- (c) in section 66(3) and (4), for "Commission" **substitute** "Industrial Division of the Magistrates' Court";
- (d) sections 76 and 77 are **repealed**;
- (e) in section 80(1)—
 - (i) for "Chief Commission Administration Officer" **substitute** "Chief Administrator";
 - (ii) for "the Commission" **substitute** "him or her".

9. Repeal of Parts relating to ERCV

Parts 6, 7, 8, 9, 10, 11, 12 and 13 are **repealed**.

10. Inspectors

- (1) Part 14 is **repealed**.
- (2) In section 154(5), paragraph (b) is **repealed**.

11. Judicial notice of signatures

In section 155(a)—

- (a) **omit** "the President, a Deputy President, a Commissioner,";
- (b) for ", an officer to whom section 154(1)(c) applies, the Chief Commission Administration Officer or an

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

Sch. 1

inspector" **substitute** "or an officer to whom section 154(1)(c) applies".

12. *Repeal of sections 156, 157 and 162*

Sections 156, 157 and 162 are **repealed**.

13. *Amendment of section 160*

Section 160(3) is **repealed**.

14. *Repeal of sections 163, 165, 166 and 167*

Sections 163, 165, 166 and 167 are **repealed**.

15. *Amendment of section 168*

In section 168—

(a) in paragraph (a), **omit** "19(1), 37(1) or";

(b) paragraphs (b) and (c) are **repealed**.

16. *Regulations*

In section 169(1), paragraphs (c), (e) and (ea) are **repealed**.

17. *Further repeals*

(1) Part 18 is **repealed**.

(2) Schedules 1 to 6 are **repealed**.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

1. *Adult, Community and Further Education Act 1991*

Section 44 is **repealed**.

2. *Appeal Costs Act 1964*

Section 13(4) is **repealed**.

3. *BLF (De-recognition) Act 1985*

3.1 In section 3—

- (a) the definitions of "**Chief Commission Administration Officer**" and "**Commission**" are **repealed**;
- (b) in the definition of "**Commonwealth Act**", for "Industrial Relations Act 1988" **substitute** "Workplace Relations Act 1996".

3.2 In section 6(2)—

- (a) omit "the **Employee Relations Act 1992** or";
- (b) paragraphs (a), (b), (g), (h) and (i) are **repealed**.

3.3 Section 6(3) is **repealed**.

4. *Construction Industry Long Service Leave Act 1983*

4.1 In section 3—

- (a) in paragraph (a) of the definition of "award", for "under" **substitute** "entered into under Part 2 of";
- (b) the definition of "Employee Relations Commission" is **repealed**.

4.2 In section 30A(1) and (2), for "Employee Relations Commission" **substitute** "Industrial Division of the Magistrates' Court".

4.3 In section 30A(3) and (4), for "Commission" **substitute** "Court".

4.4 In section 30A, sub-sections (5) and (7) are **repealed**.

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

Sch. 2

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- 4.5 In section 30A(6), **omit** "a copy or certificate of which has been filed with the principal registrar of the Magistrates' Court".
- 4.6 In section 32(6) and (7), for "Employee Relations Commission" **substitute** "Industrial Division of the Magistrates' Court".
- 4.7 Section 75 is **repealed**.
- 4.8 In section 76(10), for "Employee Relations Commission" **substitute** "Industrial Division of the Magistrates' Court".
- 4.9 In section 78(1), (2) and (3), for "Employee Relations Commission" **substitute** "Industrial Division of the Magistrates' Court".
- 4.10 In section 79—
- (a) in sub-section (1), for "Employee Relations Commission" **substitute** "Industrial Division of the Magistrates' Court";
 - (b) sub-sections (2) and (3) are **repealed**.
- 5. Country Fire Authority Act 1958**
- In section 18(1) and (2), after "or under" **insert** "Part 2 of".
- 6. Education Act 1958**
- In the definition of "law" in section 64L, after "under" **insert** "Part 2 of".
- 7. Food Act 1984**
- In section 60(2)(i), for "Part 2 of the **Employee Relations Act 1992**" **substitute** "the **Long Service Leave Act 1992**".
- 8. Fundraising Appeals Act 1984**
- In section 6(1), for paragraphs (g) and (h) **substitute**—
- "(g) an organisation registered under the Workplace Relations Act 1996 of the Commonwealth;"
- 9. Health Services (Conciliation and Review) Act 1987**
- In the definition of "Industrial Tribunal" in section 3, paragraph (b) is **repealed**.
- 10. Intellectually Disabled Persons' Services Act 1986**
- In section 67(2), **omit** "or the **Employee Relations Act 1992**".
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Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

11. *Juries Act 1967*

In section 50(4A)—

- (a) for "the **Employee Relations Act 1992** or in any employment agreement under that Act" **substitute** "any employment agreement entered into under Part 2 of the **Employee Relations Act 1992**";
- (b) for "that Act" (where secondly occurring) **substitute** "section 4(1) of the Workplace Relations Act 1996 of the Commonwealth".

12. *Legal Practice Act 1996*

In section 315(1)(a), after "**1992**" **insert** "or an AWA or certified agreement within the meaning of the Workplace Relations Act 1996 of the Commonwealth".

13. *Market Court Act 1978*

In section 4(4A) and (6), paragraph (b) is **repealed**.

14. *Mental Health Act 1986*

In section 97(2), **omit** "or the **Employee Relations Act 1992**".

15. *Metropolitan Fire Brigades Act 1958*

- 15.1 In sections 33A(1) and 34(1)(ca), for "under the" **substitute** "under any employment agreement entered into under Part 2 of the".
- 15.2 In section 33A(2), after "or under" **insert** "Part 2 of".
- 15.3 In section 85—
 - (a) for the expression beginning "The powers" and ending "; and any" **substitute** "Any";
 - (b) for "Commission" (wherever occurring) **substitute** "Employee Relations Commission of Victoria";
 - (c) after "with respect to long service leave" **insert** "of officers and members of the Metropolitan Fire Brigade or of officers, servants or employees of the Board".

16. *Occupational Health and Safety Act 1985*

- 16.1 In section 4, the definition of "Employee Relations Commission" is **repealed**.
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Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

Sch. 2

16.2 In section 26(7), for "Employee Relations Commission"
substitute "Industrial Division of the Magistrates' Court";

16.3 In section 32—

(a) in sub-section (3), for "Employee Relations
Commission" **substitute** "Industrial Division of the
Magistrates' Court";

(b) sub-section (4) is **repealed**.

16.4 In section 36—

(a) in sub-section (1), for "Full Session of the Employee
Relations Commission" **substitute** "Industrial
Division of the Magistrates' Court";

(b) in sub-sections (2) and (3), for "Employee Relations
Commission" **substitute** "Industrial Division of the
Magistrates' Court".

16.5 In section 40(5), for "Employee Relations Commission"
substitute "Industrial Division of the Magistrates' Court".

16.6 In section 46—

(a) in sub-sections (1), (2), (3) and (4)(a), for "Full
Session of the Employee Relations Commission"
substitute "Industrial Division of the Magistrates'
Court";

(b) in sub-section (3)(b), for "a Commissioner of the
Employee Relations Commission assigned for that
purpose by the President thereof" **substitute** "the
Industrial Division of the Magistrates' Court".

17. *Parliamentary Officers Act 1975*

17.1 In section 12B, sub-sections (1), (2), (3) and (5) are
repealed.

17.2 In section 12C, sub-sections (1) and (2) are **repealed**.

18. *Police Regulation Act 1958*

Division 1 of Part IV is **repealed**.

19. *Pre-School Teachers and Assistants (Leave) Act 1984*

19.1 In paragraph (b) of the definition of "award" in section 3, for
"made under the Industrial Relations Act 1988" **substitute**
"or agreement under the Workplace Relations Act 1996".

19.2 In sections 4(1)(b), 4(2)(b) and 5(d), for "Employee
Relations" **substitute** "Long Service Leave".

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

20. Public Sector Management Act 1992

- 20.1 In section 3(a), for "**Employee Relations Act 1992**" **substitute** "Workplace Relations Act 1996 of the Commonwealth".
- 20.2 In section 25, sub-sections (1) and (2) are **repealed**.
- 20.3 In section 41(1)(b), for "under the **Employee Relations Act 1992**" **substitute** "entered into under Part 2 of the **Employee Relations Act 1992** or AWA or certified agreement under the Workplace Relations Act 1996 of the Commonwealth".
- 20.4 In section 82, for "under the **Employee Relations Act 1992**" **substitute** "entered into under Part 2 of the **Employee Relations Act 1992** or AWA or certified agreement under the Workplace Relations Act 1996 of the Commonwealth".
- 20.5 In section 83—
- (a) sub-sections (1) to (4) are **repealed**;
 - (b) in sub-section (5)—
 - (i) after "1992" (where first occurring) **insert** "as continued in effect by the Workplace Relations Act 1996 of the Commonwealth";
 - (ii) **omit** the expression beginning "and, in determining" and ending at the end of the sub-section.
- 20.6 In section 104(2), **omit** ", the **Employee Relations Act 1992**".

21. Teaching Service Act 1981

- 21.1 In section 2—
- (a) the definition of "Employee Relations Commission" is **repealed**;
 - (b) in the definition of "industrial association of employees" for "association of employees or a group of associations of employees recognised under Part 12 of the **Employee Relations Act 1992**" **substitute**

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

Sch. 2

"organisation of employees registered under the
Workplace Relations Act 1996 of the Commonwealth.

21.2 Section 15 is **repealed**.

21.3 In section 18(1), **omit** "the **Employee Relations Act 1992**
and".

21.4 In section 21—

(a) sub-sections (1) and (3) are **repealed**;

(b) in sub-section (2), for "made or entered into under"
substitute "entered into under Part 2 of".

22. Trade Unions Act 1958

In section 3(2), for "Chief Commission Administration
Officer of the Employee Relations Commission under the
Employee Relations Act 1992" **substitute** "Head of the
Department for which the Minister is responsible".

23. Transport Act 1983

In section 83(2), after "made under" **insert** "Part 2 of".

24. Vocational Education and Training Act 1990

24.1 In section 34A(3), **omit** "the **Employee Relations Act 1992**
and".

24.2 Section 53A(4) is **repealed**.

24.3 In section 57(2), for "the **Employee Relations Act 1992** or
an employment agreement or contract of employment
referred to in that Act" **substitute** "any employment
agreement or any other contract of employment".

24.4 In section 63(4), for "described in section 14(4)(b) or
25(1)(b) of the **Employee Relations Act 1992** or the
deduction of payment in accordance with item 1 of Schedule
5 to that Act" **substitute** "of the contract of training for the
standing-down of trainees who cannot be usefully employed
because of any strike, breakdown of machinery or any
stoppage of work for any cause for which the employer
cannot reasonably be held responsible or the deduction of
payment for any part of a day during which a trainee is so
stood-down".

24.5 In section 93(1), **omit** "or the **Employee Relations Act**
1992".

24.6 In Schedule 2, clauses 1 and 3 are **repealed**.

Sch. 2

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

24.7 In clause 5(4) of Schedule 3, for "the **Employee Relations Act 1992** or any other" substitute "any".

25. *Vocational Education and Training (College Employment) Act 1993*

Section 19(5) is **repealed**.

SCHEDULE 3

TRANSITIONAL PROVISIONS

1. *Definitions*

In this Schedule—

"commencement day" means the day on which section 11 comes into operation;

"former Act" means the **Employee Relations Act 1992** as in force immediately before the commencement day;

"former Commission" means the Employee Relations Commission of Victoria established by section 82 of the **Employee Relations Act 1992**.

2. *Abolition of Commission*

- (1) The Employee Relations Commission of Victoria established by section 82 of the **Employee Relations Act 1992** is abolished and the members of that Commission go out of office.
- (2) The Commission Administration Office established by section 88 of the **Employee Relations Act 1992** is abolished and the Chief Commission Administration Officer goes out of office.

3. *Proceedings*

- (1) In this clause, **"relevant proceeding"** means a proceeding under an Act other than the former Act (except under Division 1 of Part 5 of that Act)—
 - (a) begun before the former Commission before the commencement day and which had not been completed at that day; and
 - (b) that could have been brought before the Industrial Division of the Magistrates' Court or, in the case of an application under Division 1 of Part 5 of the former Act, the Australian Industrial Relations Commission if it had been begun on or after the commencement day.

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

- (2) If before the commencement day the former Commission had begun to hear any relevant proceeding and at that day evidence on any question of fact material to that proceeding had been given to the former Commission but the proceeding had not been finally determined, any party to the proceeding may apply in writing to the Industrial Division of the Magistrates' Court for a determination under sub-clause (3).
- (3) On an application under sub-clause (2), the Industrial Division of the Magistrates' Court may determine—
- (a) to accept the proceeding as part-heard and to continue the hearing; or
 - (b) to re-hear the proceeding—
- in accordance with the Act under which it is brought.
- (4) If a relevant proceeding is continued to be heard, or is re-heard, by the Industrial Division of the Magistrates' Court in accordance with a determination under sub-clause (3), anything done in relation to that proceeding before the commencement day shall, so far as consistent with the Act under which it is brought, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court and the Court may, for the purposes of the hearing or re-hearing, have regard to any record of the earlier proceeding before the former Commission.
- (5) If before the commencement day a relevant proceeding was pending before the former Commission but the former Commission had not begun to hear it or had begun to hear it but at the commencement day had not been given evidence on any question of fact material to it, the proceeding is to be heard and determined by the Industrial Division of the Magistrates' Court or, in the case of an application under Division 1 of Part 5 of the former Act, the Australian Industrial Relations Commission in accordance with the Act under which it is brought and anything done in relation to that proceeding must, so far as consistent with that Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court or the Australian Industrial Relations Commission, as the case requires.
- (6) If any difficulty arises in any particular matter because of the operation of this clause, the Chief Magistrate or the
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President of the Australian Industrial Relations Commission, as the case requires, may make any order that he or she considers appropriate to resolve the difficulty.

- (7) The Chief Magistrate or the President of the Australian Industrial Relations Commission may make an order under sub-clause (6) on the application of a party to the matter, or on the Chief Magistrate's or the President's own initiative.
- (8) An order under sub-clause (6) has effect despite anything to the contrary in the former Act or in the Act under which the matter arises.

4. Pending proceedings under former Act

- (1) In this clause, "**relevant proceeding**" means a proceeding under the former Act except under Division 1 of Part 5 of that Act—
 - (a) begun before the former Commission before the commencement day and which had not been completed at that day; and
 - (b) that could have been brought before the Australian Industrial Relations Commission if it had been begun on or after the commencement day; and
 - (c) with respect to the hearing and determination of which provision is not made on the commencement day by the Commonwealth Act or the Workplace Relations and Other Legislation Amendment Act (No. 2) 1996 of the Commonwealth.
- (2) If before the commencement day the former Commission had begun to hear any relevant proceeding and at that day evidence on any question of fact material to that proceeding had been given to the former Commission but the proceeding had not been finally determined, any party to the proceeding may apply in writing to the Industrial Division of the Magistrates' Court for a determination under sub-clause (3).
- (3) On an application under sub-clause (2), the Industrial Division of the Magistrates' Court may determine—
 - (a) to accept the proceeding as part-heard and to continue the hearing; or
 - (b) to re-hear the proceeding—in accordance with the former Act.

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

- (4) If a relevant proceeding is continued to be heard, or is re-heard, by the Industrial Division of the Magistrates' Court in accordance with a determination under sub-clause (3), anything done in relation to that proceeding before the commencement day shall, so far as consistent with the former Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court and the Court may, for the purposes of the hearing or re-hearing, have regard to any record of the earlier proceeding before the former Commission.
- (5) If before the commencement day a relevant proceeding was pending before the former Commission but the former Commission had not begun to hear it or had begun to hear it but at the commencement day had not been given evidence on any question of fact material to it, the proceeding is to be heard and determined by the Industrial Division of the Magistrates' Court in accordance with the former Act and anything done in relation to that proceeding must, so far as consistent with that Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court.
- (6) If any difficulty arises in any particular matter because of the operation of this clause, the Chief Magistrate may make any order that he or she considers appropriate to resolve the difficulty.
- (7) The Chief Magistrate may make an order under sub-clause (6) on the application of a party to the matter, or on the Chief Magistrate's own initiative.
- (8) An order under sub-clause (6) has effect despite anything to the contrary in the former Act.

5. *New proceedings under former Act*

- (1) In this clause, "**relevant proceeding**" means a proceeding under the former Act except under Division 1 of Part 3 or Division 6 of Part 5—
 - (a) that was not brought before the former Commission before the commencement day; and
 - (b) that could have been brought before the former Commission before the commencement day; and
 - (c) with respect to the hearing and determination of which provision is not made on the commencement day by the Commonwealth Act or the Workplace Relations
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Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

Sch. 3

and Other Legislation Amendment Act (No. 2) 1996
of the Commonwealth.

- (2) A relevant proceeding may be brought before the Industrial Division of the Magistrates' Court in accordance with the former Act and the Industrial Division may hear and determine the proceeding in accordance with that Act and, for this purpose, that Act has effect as if a reference in it to the former Commission were a reference to the Industrial Division.
- (3) If any difficulty arises in any particular matter because of the operation of this clause, the Chief Magistrate may make any order that he or she considers appropriate to resolve the difficulty.
- (4) The Chief Magistrate may make an order under sub-clause (3) on the application of a party to the matter, or on the Chief Magistrate's own initiative.
- (5) An order under sub-clause (3) has effect despite anything to the contrary in the former Act.

6. *References to employment agreements*

A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to an employment agreement within the meaning of the **Employee Relations Act 1992** must be taken to be a reference to an employment agreement within the meaning of that Act as in force immediately before the repeal of Part 2 of that Act.

7. *References to recognised associations*

A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a recognised association within the meaning of the **Employee Relations Act 1992** must be taken to be a reference to an organisation registered under the Workplace Relations Act 1996 of the Commonwealth.

8. *References to Employee Relations Act 1992*

- (1) A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a provision of the **Employee Relations Act 1992** that is repealed by Schedule 1 to this Act must be taken, unless the contrary intention appears, to be a reference to that provision of the former Act.

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

- (2) A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a provision of the **Employee Relations Act 1992** that is not repealed by Schedule 1 to this Act must be taken, unless the contrary intention appears, to be a reference to that provision of the **Long Service Leave Act 1992**.

9. *Savings and transitional regulations*

- (1) The Governor in Council may make regulations that contain provisions of a savings and transitional nature consequent on—
- (a) the enactment of this Act; or
 - (b) the enactment by the Parliament of the Commonwealth of an Act consequent on the enactment of this Act.
- (2) A provision mentioned in sub-clause (1) may be retrospective in operation.
- (3) Regulations under this clause have effect despite anything to the contrary in any Act other than this Act or in any instrument made under an Act.

10. *Interpretation of Legislation Act 1984*

This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

Commonwealth Powers (Industrial Relations) Act 1996
Act No. 59/1996

Notes

NOTES

† *Minister's second reading speech—*

Legislative Assembly: 19 November 1996

Legislative Council: 3 December 1996

The long title for the Bill for this Act was "to refer to the Parliament of the Commonwealth certain matters relating to industrial relations and for other purposes. "

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 19 November 1996

Legislative Council: 3 December 1996

Absolute majorities:

Legislative Assembly: 21 November 1996 and 6 December 1996

Legislative Council: 4 and 5 December 1996