Queensland

INDUSTRIAL RELATIONS ACT 1990

Reprinted as in force on 22 February 1995
(includes amendments up to Act No. 76 of 1994)

Reprint No. 3 revised edition

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel

Information about this reprint

This Act is reprinted as at 22 February 1995. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update references (Pt 4, Div 3)
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- insert references to schedule, appendix or body of law (s 33B)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit unnecessary referential words (s 41)
- omit historical notes (s 42)
- correct minor errors (s 44).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the Endnotes.

Also see Endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
  - **Table of changed names and titles**
  - **Table of obsolete and redundant provisions**
  - **Table of corrected minor errors**
  - **Table of comparative legislation**
  - **Tables of renumbered provisions**
- **editorial changes made in earlier reprints.**

Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

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INDUSTRIAL RELATIONS ACT 1990

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INDUSTRIAL RELATIONS ACT 1990

[as amended by all amendments that commenced on or before 22 February 1995]

An Act to provide with respect to industrial relations in Queensland and for related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations Act 1990*.

Commencement

2.(1) Section 1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Section 1.4(2) commences on 30 June 1991.

(3) Except as provided by subsections (1) and (2), the provisions of this Act commence on a day appointed by proclamation.

Objects

3. The objects of this Act are—

(a) to provide a framework for the orderly conduct of industrial relations in Queensland and for adaptation to changes in technology and social and economic circumstances from time to time in the interests of employers, employees and the community; and

(b) to encourage and assist the making of agreements, between the parties involved in industrial relations, to decide matters about the

relationship between employers and employees, particularly at the enterprise or workplace level; and

(c) to provide the means for—

(i) establishing and maintaining an effective framework for protecting wages and employment conditions through awards; and

(ii) ensuring that labour standards meet Australia's international obligations; and

(d) to provide a framework of rights and responsibilities for the parties involved in industrial relations that—

(i) encourages fair and effective bargaining; and

(ii) ensures the parties abide by agreements between them; and

(e) to encourage and facilitate conciliation in industrial matters, including settlement of industrial disputes between employers and employees, and to provide for arbitration in relation to such matters, where it is necessary; and

(f) to ensure that agreements made between employers, or industrial organisations of employers, and employees, or industrial organisations of employees, in relation to industrial matters and decisions made or given by a tribunal constituted for the purposes of this Act are respected; and

(g) to encourage the formation and registration of organisations representative of employers and organisations representative of employees to provide adequate and competent representation for their members in respect of industrial matters; and

(h) to encourage the democratic control of industrial organisations, and the participation by their members in the affairs of industrial organisations; and

(i) to encourage the efficient management of industrial organisations; and

(j) to encourage and facilitate the amalgamation of industrial organisations where this will contribute to the attainment of the object mentioned in paragraph (g); and

(k) to help prevent and eliminate discrimination on the basis of—

(i) an attribute for which discrimination is prohibited under the *Anti-Discrimination Act 1991*; or

(ii) family responsibilities; and

(l) to encourage and facilitate rationalisation of the coverage of industrial organisations, particularly by reducing the number of industrial organisations that are in an industry or enterprise.

Application

4.(1) A person may be exempted from the application of a provision of this Act by regulation.

(2) The exemption may be subject to a condition specified by regulation.

(3) If a person's exemption is subject to a condition, the exemption applies only while the person complies with the condition.

(4) If—

(a) an exemption applies to a person; and

(b) a decision purports to apply to the person for something covered by the exemption;

the decision is inoperative to that extent.

(5) If, pursuant to subsection (1), the provisions of this Act, or any of them, do not apply to a person or a class of person, a decision is inoperative to the extent to which it purports to apply to that person or a member of that class of person, at all or, as the case may be, in respect of the subject matter of the provisions that do not apply.

(6) In its application this Act does not create a right, privilege or benefit for a person in respect of any period of service as an employee where, in respect of that period, the like right, privilege or benefit has been granted or given to or received by that person in accordance with a corresponding provision of any of the repealed Acts.

(7) In its application this Act does not affect—

(a) the entitlement of a person to an office in an industrial organisation, which entitlement the person has acquired in

accordance with law at any time before the commencement of this Act;

(b) the entitlement of a person to an office in an industrial organisation, which entitlement the person acquires pursuant to a process of election or selection being conducted in accordance with law at the commencement of this Act;

(c) the further conduct of a process of election or selection for an office in an industrial organisation being conducted in accordance with law at the commencement of this Act.

PART 2—INTERPRETATION

Meaning of terms

5. In this Act—

"accounting records", in relation to an industrial organisation, includes books of account and such working papers and other documents as are necessary to explain the methods and calculations by which the accounts of the industrial organisation are made up.

"Anti-Discrimination Conventions" means—

(a) the Equal Remuneration Convention; and

(b) the Convention on the Elimination of all Forms of Discrimination against Women (the English text of which is set out in Schedule 3); and

(c) the Discrimination (Employment and Occupation) Convention; and

(d) Articles 3 and 7 of the Economic, Social and Cultural Rights Covenant.

"apprentice" means an apprentice within the meaning of section 4 of the *Vocational Education, Training and Employment Act 1991*.

"approved occupational superannuation fund" means a complying superannuation fund nominated in an award, industrial agreement,

certified agreement or enterprise flexibility agreement.

"award" means an award of the Industrial Commission made or continued in force under this Act and an award as varied for the time being by the Commission and includes any variation of an award.

"bonus payment" means a payment, by way of division of the profits of an industry or business, that is additional to payment of a just wage, being a wage that includes all proper allowances such as are ordinarily provided for by an award, industrial agreement, certified agreement or enterprise flexibility agreement.

"branch", in relation to an industrial organisation, means any section, division, chapter, or other group within the industrial organisation (however called) that has an executive or governing body, or officers.

"breach" includes any non-observance.

"calling" means any manufacture, trade, undertaking, vocation, craft or occupation and any section thereof.

"cause" means an industrial cause, and includes an industrial matter and industrial dispute.

"certified agreement" means an agreement certified under Part 11, Division 2 that is in force or a certified agreement as amended under the Division.

"Commission" means the Industrial Commission.

"Commissioner" means the Chief Industrial Commissioner or an Industrial Commissioner.

"committee of management", in relation to an industrial organisation or association of persons, or a branch thereof, means the body of persons (however called) that manages the affairs of the industrial organisation, association or branch.

"Commonwealth Act" means the *Industrial Relations Act 1988* (Cwlth).

"complying superannuation fund" has the meaning given under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

"Court" means the Industrial Court.

"decision" means a decision of the Industrial Court, Industrial Commission, an Industrial Magistrate, or the Industrial Registrar and

includes any award, declaration, determination, direction, judgment, order or ruling and also any agreement approved, approved for implementation, certified, or varied for the time being, by the Commission and includes any variation or extension of such an agreement.

"demarcation dispute" includes—

(a) a dispute arising between 2 or more industrial organisations, or within an industrial organisation, about the rights, status or functions of members of the industrial organisations or industrial organisation in relation to the employment of those members; or

(b) a dispute arising between employers and employees, or between members of different industrial organisations, about the demarcation of functions of employees or classes of employees; or

(c) a dispute about the representation under this Act of the industrial interests of employees by an industrial organisation of employees.

"department of government", in relation to the State, means an entity specified for the time being as a department by the *Public Service Management and Employment Act 1988*.

"Discrimination (Employment and Occupation) Convention" means the Discrimination (Employment and Occupation) Convention 1958 (the English text of which is set out in Schedule 4).

"Discrimination (Employment and Occupation) Recommendation" means the Discrimination (Employment and Occupation) Recommendation 1958 (the English text of which is set out in Schedule 7).

"discriminatory provision" means a provision about employment that discriminates against an employee on the basis of—

(a) an attribute for which discrimination is prohibited under the *Anti-Discrimination Act 1991*; or

(b) family responsibilities;

but does not include a provision that—

(c) discriminates on the basis of the inherent requirements of the

employment; or

(d) discriminates—

(i) for an institution conducted to conform with the doctrines, tenets, beliefs or teachings of a particular religion or creed—about staff membership on the basis of the doctrines, tenets, beliefs or teachings; and

(ii) in good faith to avoid injury to the religious susceptibilities of adherents of the religion or creed; or

(e) discriminates by remunerating a young employee according to the employee's age.

"Economic, Social and Cultural Rights Covenant" means the International Covenant on Economic, Social and Cultural Rights (the English text of the Preamble, and Parts II and III of which is set out in Schedule 5).

"electoral official" means the Electoral Commissioner, the Deputy Electoral Commissioner or a member of the staff of the Electoral Commission.

"eligibility rules", in relation to an industrial organisation or association of persons, means the rules of the industrial organisation or association that declare the conditions of eligibility for membership thereof.

"eligible employee" means an employee who, within the meaning of any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, is an eligible employee for the purposes of entitlement to occupational superannuation benefits.

"eligible rollover fund" has the meaning given under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

"employee" means a person employed in any calling, whether on wages or piecework rates, or as a member of a buttygang, and includes—

(a) a person whose usual occupation is that of an employee in a calling;

(b) a person employed in any calling notwithstanding that—

(i) the person is working under a contract for labour only, or substantially for labour only;

(ii) the person is lessee of any tools or other implements of production, or of any vehicle used in delivery of goods;

(iii) the person is the owner, wholly or partially, of any vehicle used in transport of goods or passengers;

if such factor is the only reason for holding the person not to be an employee;

(c) each person, being 1 of 4 or more persons who are, or claim to be, partners working in association in any calling or business;

(d) in relation to proceedings for payment or recovery of moneys, a former employee.

"employer" means—

(a) a person employing, or who usually employs, 1 or more employees, on behalf of that person or of any other person;

(b) the chief executive of a department of government in relation to employees employed in that department;

and includes—

(c) a person carrying on a calling in which employees are usually employed notwithstanding that for the time being employees are not employed therein;

(d) a person who is managing director, manager, secretary or member of the governing body (however called) of any body corporate, partnership, firm or association of persons;

(e) in relation to persons referred to in paragraph (c) of the definition "employee", the partnership firm constituted, or claimed to be constituted, by such persons;

(f) in relation to proceedings for payment or recovery of moneys, a former employer.

"enterprise flexibility agreement" means an agreement approved for implementation under Part 11, Division 3 that is in force or an enterprise flexibility agreement as amended under the Division.

"Equal Remuneration Convention" means the Equal Remuneration Convention 1951 (the English text of which is set out in Schedule 2).

"Equal Remuneration Recommendation" means the Equal Remuneration Recommendation 1951 (the English text of which is set out in Schedule 6).

"Family Responsibilities Convention" means the Workers with Family Responsibilities Convention 1981 (the English text of which is set out in Schedule 8).

"Family Responsibilities Recommendation" means the Workers with Family Responsibilities Recommendation 1981 (the English text of which is set out in Schedule 9).

"financial year", in relation to an industrial organisation, means—

(a) the period of 12 months commencing on 1 July in any year; or

(b) if the rules of the industrial organisation provide for another period of 12 months as its financial year, that other period.

"Full Bench" means the Full Bench of the Commission.

"guaranteed minimum wage" means the wage for adults declared as such for the time being by a Full Bench of the Industrial Commission.

"industrial action" means a lockout or strike.

"industrial agreement" means an agreement in writing relating to an industrial matter and approved by the Industrial Commission but does not include an agreement taken to be an award under section 12.4 (as in force immediately before the commencement of section 6 of the *Industrial Relations Amendment Act 1992*) or section 40(2) of the *Industrial Conciliation and Arbitration Act 1961*.

"industrial authority" means a commission, court, board, tribunal, committee or other entity having authority under the law of the Commonwealth or another State or a Territory to exercise powers of conciliation or arbitration in relation to industrial matters or industrial disputes.

"Industrial Commission" means the Queensland Industrial Relations Commission established under this Act.

"Industrial Commissioner" includes the Chief Industrial Commissioner.

"industrial dispute" means—

(a) a dispute, including a threatened, pending or probable dispute, as

to an industrial matter; or

(b) a situation which is likely to give rise to a dispute as to an industrial matter.

"Industrial Inspector" includes the Chief Industrial Inspector.

"industrial organisation" means an association of employers or employees registered under this Act, or the continuity of whose registration as an industrial union under any Act is preserved by this Act.

"joint session" means proceedings in which any Industrial Commissioners sit with any members of any industrial authority or authorities.

"lockout" means the action of an employer in closing a place of business, or suspending or discontinuing the business, of the employer, or any branch thereof, or a refusal or failure by an employer to continue to employ any number of employees, with intent—

(a) to compel or induce employees to agree to conditions of employment or to comply with any demands made upon them by that employer, or any other employer, contrary to the provisions of this Act; or

(b) to cause loss or inconvenience to employees; or

(c) to incite, instigate, aid, abet or procure any other lockout; or

(d) to assist any other employer to compel or induce employees to agree to terms of employment or comply with any demands made by that other employer.

"Minimum Wages Convention" means the Minimum Wage Fixing Convention 1970 (the English text of which is set out in Schedule 1).

"office", in relation to an industrial organisation, or branch of an industrial organisation, means—

(a) an office of president, vice-president, secretary or assistant secretary; or

(b) the office of a voting member of a collective body, being a collective body that has power in relation to any of the following functions—

(i) the management of the affairs of the industrial organisation

or branch;

(ii) the determination of policy for the industrial organisation or branch;

(iii) the making, alteration or rescission of rules of the industrial organisation or branch;

(iv) the enforcement of rules of the industrial organisation or branch, or the performance of functions in relation to the enforcement of such rules; or

(c) an office the holder of which is, under the rules of the industrial organisation or branch, entitled to participate directly in any of the functions referred to in paragraph (b)(i) and (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing—

(i) existing policy of the industrial organisation or branch; or

(ii) decisions concerning the industrial organisation or branch; or

(d) an office the holder of which is, under the rules of the industrial organisation or branch, entitled to participate directly in any of the functions referred to in paragraph (b)(ii) and (iii); or

(e) the office of a person holding (whether as trustee or otherwise) property—

(i) of the industrial organisation or branch; or

(ii) in which the industrial organisation or branch has a beneficial interest.

"officer", in relation to an industrial organisation, or branch of an industrial organisation, means a person who holds an office in the industrial organisation or branch.

"paid rates award" means an award that specifies actual entitlements, rather than minimum entitlements, for wages and employment conditions.

"party", in relation to any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit, includes any person bound by the award, agreement or permit.

"peak council", in relation to industrial organisations, means an association that is effectively representative of a significant number of industrial organisations representing employers or employees in a range of callings.

"permit" means a permit granted under this Act, and a permit or licence continued in force by this Act.

"place" means any land, building, structure, vehicle, vessel or aircraft and includes any part thereof.

"President" means the President of the Industrial Court.

"public office" means the office of member of a local government body, or of a local public body that is empowered to raise money by means of a rate.

"records" means any collection of data in whatever form it is held, including on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable of reproduction therefrom, with or without the aid of another process or instrument.

"registered company auditor" means a registered company auditor within the meaning of the Corporations Law.

"repealed Acts" means the Acts or parts of Acts that have been repealed by this Act.[1]

"rules of court" means the rules of court made, or continued in force, under this Act.

"strike" means the conduct of 2 or more employees who are, or have been, in the employment of the same employer, or of different employers, consisting in—

(a) a refusal or wilful failure to perform work required of them in accordance with their contracts of employment; or

(b) a performance of work in a manner other than that in which it is

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1 The Acts repealed by this Act included—
- Essential Services Act 1979
- Industrial Conciliation and Arbitration Act 1961
- Industrial (Commercial Practices) Act 1984
- Wages Act 1918.

customarily performed; or

(c) the adoption of a practice or stratagem the result of which is a restriction, limitation or delay in the performance of work or a restriction or limitation of the product of work; or

(d) a ban, restriction or limitation on the performance of work or on acceptance or offering for work; or

(e) a refusal or wilful failure that is not authorised by the employer, or employers, of the employees to attend for work; or

(f) a refusal or wilful failure that is not authorised by the employer, or employers, of the employees to perform any work at all by employees who attend for work;

which in any such case is due to, or in pursuance of, a combination, agreement or understanding, expressed or implied, entered into by the employees or any of them and which has a purpose—

(g) to compel or induce any such employer to agree to conditions of employment, or to employ, or cease to employ, any person or class of person, or to comply with any demands made by the employees or any of them or by any other employees; or

(h) to cause loss or inconvenience to any such employer in the conduct of business; or

(i) to incite, instigate, aid, abet or procure any other strike; or

(j) to assist employees in the employment of any other employer to compel or induce that employer to agree to conditions of employment or to employ, or cease to employ, any person or class of person or to comply with any demands made by any employees;

and includes conduct capable of constituting a strike notwithstanding that the conduct relates to part only of the duties that the employees are required to perform in the course of their employment.

"Termination of Employment Convention" means the Termination of Employment Convention 1982 (the English text of which is set out in Schedule 10).

"trainee" means a trainee within the meaning of section 4 of the *Vocational Education, Training and Employment Act 1991*.

"wages" means an amount payable to an employee in relation to—

(a) work performed, or to be performed, by the employee; or

(b) a public holiday; or

(c) leave to which the employee has an entitlement; or

(d) termination of employment;

and includes an amount payable from wages or salary, with the employee's written consent, on account of the employee.

"young employee" means any person under the age of 21 years engaged in a calling, other than an apprentice or a person subject to the *Vocational Education, Training and Employment Act 1991*, who receives a lower wage, price or rate than that fixed by an award, industrial agreement, certified agreement or enterprise flexibility agreement for adult employees in the calling.

References to offices in industrial organisations etc.

5A. A reference in this Act to an office in an industrial organisation or association of persons includes a reference to an office in a branch of the industrial organisation or association.

References to making false or misleading statements

5B. A reference in this Act to a person making a statement knowing that it is false or misleading in a material particular includes a reference to the person making the statement being reckless about whether the statement is false or misleading in a material particular.

References to engaging in conduct

5C. A reference in this Act to engaging in conduct includes a reference to being, directly or indirectly, a party to or concerned in the conduct.

Industrial matter

6.(1) Except as is prescribed by subsection (2), a matter is an industrial matter if it affects or relates to—

(a) work done or to be done;

(b) the privileges, rights or duties of employers or employees or of persons who have been, or propose to be, or who may become, employers or employees;

(c) any matter whatsoever, whether or not an industrial matter as defined in this section, that, in the opinion of the Industrial Court or Industrial Commission has been, is, or may be a cause or contributory cause of a strike, lockout, or industrial dispute.

(2) A matter is not an industrial matter if it is the subject of proceedings in respect of an indictable offence.

(3) Without limiting the generality of subsection (1) or affecting the operation of subsection (2), a matter is an industrial matter—

(a) if it relates to—

(i) wages, allowances or remuneration of persons employed, or to be employed, during ordinary working hours, on overtime, on special work or on public holidays;

(ii) whether piecework will be allowed;

(iii) whether employees are to be granted leave of any description on full pay;

(iv) whether and on what conditions employees may board and lodge with their employers;

(v) whether monetary allowances will be paid by employers to employees in respect of standing back or waiting time caused by the conditions of the employer's calling, or the intermittency of industrial operations, or otherwise;

(vi) what length of notice (if any) should be given by an employer or employee to the other of them before terminating service or employment, and what amount of wages (if any) should be paid or may be deducted in lieu of notice;

(vii) occupational superannuation;

(b) if it relates to—

(i) the hours of work, the time to be worked to entitle

employees to any particular wage, allowance, remuneration or price, or what time will be regarded as overtime;

(ii) claims to restrict work before or after particular hours;

(iii) the age, qualification or status of employees, or the mode and conditions of employment or non-employment including whether any person should be disqualified for employment;

(iv) claims to have protective clothing or appliances, hot or cold water, or sanitary or bathing accommodation provided for the use of employees;

(v) fixing of standards of normal temperatures or atmospheric purity in working places, above or below ground;

(vi) providing for shorter hours, higher wages, or other conditions for persons employed under abnormal conditions or in abnormal working places, and determining what are abnormal conditions or working places;

(c) if it relates to—

(i) employment of young employees or of any person or persons, or class of person, or the disqualification of any person for employment by reason of age or disease;

(ii) the number or proportion of aged or infirm persons or other employees that may be employed by an employer, or the lowest prices or rates payable to them;

(iii) a claim to dismiss or to refuse to employ any particular person or persons, or class of person, or whether any particular person or persons, or class of person, ought to be continued or reinstated in the employment of a particular employer, having regard to the public interest, notwithstanding common law rights of employers or employees;

(iv) the right to dismiss, or to refuse to employ or reinstate a particular person, or class of person, in a particular calling;

(v) custom or usage as to conditions of employment, either generally or in any particular calling or locality;

(d) if it relates to—

(i) the interpretation or enforcement of any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit, except where this Act otherwise prescribes;

(ii) the subject matter of an industrial dispute, and any matter that has caused or, in the opinion of the Industrial Court or Industrial Commission is likely to cause, disagreement or friction between employers and employees;

(iii) what is fair and just (having regard to the interests of the persons immediately concerned and the community as a whole) according to the standard of the average good employer and the average competent and honest employee in all matters pertaining to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed at or before the making of any relevant application to the Industrial Court or Industrial Commission or at the making or enforcement of any decision of the Court or Commission;

(iv) the regulation of relations between employer and employee, or between employees, and to that end the imposition of conditions on the conduct of any calling and on the provision of benefits to persons engaged therein;

(v) a demarcation dispute.

PART 3—INDUSTRIAL COURT

Preservation of Court

7.(1) The Industrial Court preserved, continued in existence and constituted under the *Industrial Conciliation and Arbitration Act 1961* is further preserved, continued in existence and constituted under this Act.

(2) The Industrial Court is a superior court of record having an official seal, which is to be judicially noticed.

Membership of Court

8.(1) The Industrial Court is constituted by a single judge called the President of the Industrial Court.

(2) The person who at any time holds the appointment, President of the Industrial Court, must be a Judge of the Supreme Court.

(3) Notwithstanding the provisions of any other Act, a person may hold and exercise the office of a Judge of the Supreme Court and the office of President of the Industrial Court at one and the same time.

(4) The President has and may exercise overall administrative control of the Industrial Commission and the Industrial Registrar's Office.

(5) The Judge of the Supreme Court holding for the time being the appointment, President of the Industrial Court, is not entitled to remuneration for performing the duties of that office beyond the remuneration payable to that person as a Judge of the Supreme Court.

Exercise of Court's jurisdiction

9.(1) Except where it is otherwise required by this or any other Act, or by the rules of court, the President sitting or acting alone has and may exercise all the jurisdiction and powers of the Industrial Court.

(2) When the President sits with 2 or more Industrial Commissioners to hear and determine any matter, the tribunal so constituted is the Full Industrial Court.

President's tenure of office

10.(1) The President is to be appointed by the Governor in Council, by notification published in the Industrial Gazette, for such term as the Governor in Council specifies in the notification.

(2) The President may be reappointed from time to time for a further term fixed by the Governor in Council.

(3) If the President's term of appointment expires during the hearing of a matter on which the President has entered, the Governor in Council may (from time to time, if necessary), without reappointing that person as President, continue the person in office for such time as is necessary to enable completion of the hearing and determination of the matter, and the person so continued in office is hereby authorised to exercise the jurisdiction and powers of the Industrial Court necessary or convenient for completion of the hearing and determination.

(4) The President is to retire from office upon attaining the age of 70 years, notwithstanding that the current term of appointment as President has not then expired.

Acting President

11.(1) If the President is temporarily unable to perform the duties of office under this Act, the Governor in Council, by notification published in the Industrial Gazette, may appoint a person who is, or is qualified to be appointed as, a Judge of the Supreme Court to act as President.

(2) Notwithstanding the provisions of any other Act, a person may hold and discharge the office of Judge of the Supreme Court and an appointment to act as President of the Industrial Court at one and the same time.

(3) A Judge of the Supreme Court appointed to act as President is not entitled to remuneration for so acting beyond the remuneration payable to that person as a Judge of the Supreme Court.

(4) A person, other than a Judge of the Supreme Court, who is duly appointed to act as President is entitled, while so acting, to be paid the salary applicable to a Judge of the Supreme Court.

(5) A person appointed for the time being to act as President may constitute the Industrial Court, and has and may exercise all the jurisdiction and powers of the Court and of the President—

(a) for as long as the President is unable to perform the duties of office under this Act, or until the term of the appointment to act as President expires, whichever is the shorter period; and

(b) if necessary, for an additional period to enable completion of the hearing and determination of matters on which the appointee has entered during the shorter period referred to in paragraph (a).

Jurisdiction of Court

12.(1) Subject to this section, jurisdiction is conferred on the Industrial Court—

(a) to exercise all powers and authorities and to discharge all functions and duties prescribed for the Court by this, or any other, Act;

(b) to hear and determine the following matters—

(i) appeals from decisions of the Industrial Commission duly made to the Court under this Act;

(ii) cases stated to it by the Industrial Commission under this Act;

(iii) appeals from decisions of Industrial Magistrates in proceedings for—

(A) offences against this Act;

(B) recovery of damages, or other moneys, under this Act or under any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit;

(iv) proceedings for offences against this Act for which the punishment prescribed is imprisonment or a penalty exceeding 40 penalty units, other than offences in respect of which jurisdiction is expressly conferred on Industrial Magistrates;

(v) proceedings for cancellation or suspension of registration of an industrial organisation;

(vi) proceedings for offences defined in any of the following sections—

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(vii) appeals from decisions of, and references by, the Industrial Registrar on matters of law or procedure;

(c) to punish contempts of the Court;

(d) to exercise the jurisdiction, powers and authorities of the Supreme Court so as to ensure, by way of prerogative order or other appropriate process, that the Industrial Commission and Industrial Magistrates exercise their respective jurisdictions according to law, and do not exceed their respective jurisdictions.

(2) The jurisdiction of the Industrial Court in respect of matters referred to in subsection (1)(b)(iv), (v) or (vi) can be exercised only by the Full Industrial Court.

(3) The Industrial Court may, in any proceedings, make such decisions as it thinks appropriate irrespective of specific relief claimed or applied for by any party, and may give directions as to the hearing and determination of any matter within the Court's jurisdiction.

(4) Exercise of the Industrial Court's jurisdiction in relation to persons under the age of 21 years is subject to the *Vocational Education, Training and Employment Act 1991*.

(5) No provision of this, or any other, Act limits, by implication, the Industrial Court's jurisdiction.

Court's jurisdiction exclusive

13.(1) Except as is prescribed by section 117, a decision of the Industrial Court is final and conclusive, and cannot be impeached for informality or want of form, or be appealed against, reviewed, quashed or called in question in any court on any account whatever.

(2) Jurisdiction conferred on the Industrial Court is exclusive of the jurisdiction of any other court, and—

(a) proceedings in the Court are not removable by certiorari;

(b) a prerogative order or injunction cannot be made or granted about a proceeding in the Court within its jurisdiction.

Binding nature of Court's decisions

14. An interpretation of any provision of this Act or of an award, industrial agreement, certified agreement, enterprise flexibility agreement or permit by the Industrial Court in exercise of its jurisdiction under this Act is final and conclusive and binding on—

(a) the Industrial Commission; and

(b) all Industrial Magistrates; and

(c) all industrial organisations and persons who are subject to this Act, or bound by the award, agreement or permit.

Court may refuse to proceed

15. The Industrial Court may refuse to proceed to hear and determine proceedings before it relating to an award, industrial agreement, certified agreement or enterprise flexibility agreement, which exists or is sought in the proceedings, at any time when any of the employees who are, or would be, bound by the award or agreement (whether or not employees whose employment will or may be affected by the determination of the proceedings) are involved in an industrial dispute, or are contravening or failing to comply with a provision of this Act or any decision.

Proceedings in Full Industrial Court

16. In proceedings in the Full Industrial Court, if its members are not of a unanimous opinion, the decision of the majority of its members is the decision of the Court except—

(a) on a question as to—

(i) the Court's jurisdiction;

(ii) the interpretation of any provision of this, or any other, Act, law, award, industrial agreement, certified agreement, enterprise flexibility agreement or permit; or

(b) in the event of its members being evenly divided on any question;

when the President's opinion prevails and is the decision of the Full Industrial Court.

President's annual report

17.(1) As soon as is practicable after 30 June in each year the President is to furnish to the Minister a report on the operation of this Act and, in particular, on the working of the Industrial Court, the Industrial

Commission and the Industrial Registrar's Office throughout the period of 12 months preceding that date.

(2) The Minister is to present such report to the Legislative Assembly within 14 sitting days after its receipt by the Minister.

PART 4—INDUSTRIAL RELATIONS COMMISSION

Division 1—Establishment of Commission

Preservation of Commission

18.(1) The Industrial Conciliation and Arbitration Commission is continued in existence and constituted under this Act under the name the Queensland Industrial Relations Commission.

(2) The Industrial Commission is a court of record having an official seal, which is to be judicially noticed.

Membership of Commission

19.(1) The Industrial Commission consists of no fewer than 6 Industrial Commissioners appointed from time to time by the Governor in Council by commission in Her Majesty's name.

(2) It is not competent to the Governor in Council to appoint as an Industrial Commissioner—

(a) a member of the Executive Council or Legislative Assembly;

(b) a person who acts as director or auditor, or participates in any capacity in the management of a body corporate engaged in a calling, or of a business.

(3) Subsection (2) does not apply in relation to an appointment of any person as an acting Industrial Commissioner.

(4) An Industrial Commissioner who becomes—

(a) a member of the Legislative Assembly; or

(b) a person such as is referred to in subsection (2)(b), otherwise than with the approval, in writing, of the Minister;

ceases to be a Commissioner.

(5) The existence of the Industrial Commission and the exercise of its jurisdiction and powers are not affected by any vacancy or vacancies that may exist in the membership of the Commission for the time being.

Exercise of Commission's jurisdiction

20.(1) An Industrial Commissioner sitting or acting alone constitutes the Industrial Commission and has and may exercise all the jurisdiction and powers of the Commission otherwise than as a Full Bench of the Commission.

(2) If 2 or more Industrial Commissioners sit at the same time in exercise of the Industrial Commission's jurisdiction, each tribunal so constituted is the Industrial Commission.

(3) When 3 or more Industrial Commissioners sit together in exercise of the Industrial Commission's jurisdiction, the tribunal so constituted is a Full Bench of the Industrial Commission.

(4) A Full Bench of the Industrial Commission may be, and always could be, constituted notwithstanding that a Full Bench of the Commission is, or was, already constituted at the time.

Decision of Full Bench

21. In proceedings before a Full Bench of the Industrial Commission, if the members thereof are not of a unanimous opinion, the decision of the Commission is that of the majority of such members.

Control of Commission's affairs

22.(1) The Governor in Council is to appoint, from time to time, a person as Chief Industrial Commissioner.

(2) The Chief Industrial Commissioner has and may exercise all the powers, and is to perform all the duties, of an Industrial Commissioner and in addition has and is to perform the functions of—

(a) administering the Industrial Commission;

(b) organising and allocating the work of the Industrial Commission;

subject to the President's overall administrative control of the Commission.

(3) Each Industrial Commissioner is to comply with every direction relating to—

(a) the administration of the Industrial Commission;

(b) the organisation and allocation of work of the Commission;

that is given to the Commissioner by the President or the Chief Industrial Commissioner.

(4) In organising and allocating the work of the Industrial Commission, the Chief Industrial Commissioner may re-allocate the matter of proceedings before an Industrial Commission constituted by any 1 or more of the Industrial Commissioners to a Commission constituted—

(a) by the same Commissioner or Commissioners together with another Commissioner or other Commissioners; or

(b) by a different Commissioner or different Commissioners;

and the Commission to which the matter is re-allocated may continue to hear and determine the matter on evidence already given (if any) and evidence subsequently given (if any), without re-hearing evidence given before the re-allocation.

Replacement for Chief Commissioner

23. If the Chief Industrial Commissioner is temporarily unable to discharge the functions of office under section 22, those functions are to be discharged by 1 of the other Industrial Commissioners nominated by the President.

Term of appointment of Commissioners

24.(1) The first appointment of a person as Industrial Commissioner is for a term of 7 years.

(2) Subsection (1) does not apply in relation to an appointment as acting Industrial Commissioner.

(3) An Industrial Commissioner is eligible for reappointment from time to time for a term not exceeding 7 years.

(4) An Industrial Commissioner is to retire from office upon attaining the age of 70 years notwithstanding that the term of appointment then current has not expired.

(5) An Industrial Commissioner cannot be removed from office unless an address praying for the Commissioner's removal on the ground of misbehaviour or incapacity is presented to the Governor by the Legislative Assembly.

(6) Subject to subsection (5), removal of an Industrial Commissioner from office may be effected by the Governor's withdrawal in writing of the commission by which the Commissioner was appointed.

Continuance in Commissioner's office for limited purpose

25.(1) If an Industrial Commissioner ceases to hold office (otherwise than by death, resignation or removal from office) before completion of an investigation, or the hearing and determination of a matter, on which the Commissioner had entered while in office, the Governor in Council may, without reappointing the person as a Commissioner, continue the person in the office of Commissioner for such time as is necessary to complete the investigation, or the hearing and determination.

(2) A person so continued in office may constitute the Industrial Commission and exercise all the jurisdiction and powers of the Commission constituted by a single Commissioner.

Acting Commissioners

26.(1) The Governor in Council may, at any time and for any reason, appoint a person to be an acting Industrial Commissioner, by notification published in the Industrial Gazette.

(2) The Governor in Council may, by notice in writing given to the acting Industrial Commissioner, terminate an appointment as acting Industrial Commissioner at any time.

(3) For as long as an appointment as acting Industrial Commissioner continues, the appointee may constitute the Industrial Commission and

exercise all the jurisdiction and powers of the Commission constituted by a single Commissioner.

Remuneration of Commissioners

27.(1) The rate of salary, and the allowances and rates of allowances, payable to the Chief Industrial Commissioner and other Industrial Commissioners are to be fixed by determinations of the Salaries and Allowances Tribunal under the *Judges (Salaries and Allowances) Act 1967*.

(2) The salaries and allowances are payable out of the Consolidated Fund, which is appropriated accordingly.

Pension benefits of Commissioners

28.(1) In this section—

"1958 Act" means the *Public Service Superannuation Act 1958*.

"1972 Act" means the *State Service Superannuation Act 1972*.

"Fund" means the State Service Superannuation Fund preserved, continued in existence and established under the *State Service Superannuation Act 1972*.

"scheme" means the scheme within the meaning of the *Superannuation (State Public Sector) Act 1990*.

(2) The *Judges (Pensions and Long Leave) Act 1957*, other than sections 2A and 15, (the **"applied Act"**) applies with all necessary changes to an Industrial Commissioner and an Industrial Commissioner's spouse or child in the same way as it applies to a Judge and a Judge's spouse or child.

(3) In applying the applied Act, it must be interpreted as if 'Judge' had been replaced with 'Industrial Commissioner within the meaning of the *Industrial Relations Act 1990*' wherever possible (other than in section 2(1), definition "Judge").

(4) In computing length of service of a person as a Commissioner for the purposes of subsection (2) every period during which the person has served as a Commissioner, whether pursuant to a first appointment as a Commissioner or pursuant to any renewal thereof, or subsequent appointment, and every period during which the person has served as an

acting Industrial Commissioner, or as a deputy of a Commissioner (pursuant to any of the repealed Acts) is taken into account.

(5) Subsection (2) does not confer entitlement to pension benefits on an Industrial Commissioner, or on a Commissioner's spouse or child if—

(a) being a Commissioner appointed before the commencement of this Act, the Commissioner was entitled to elect under section 10A(2) of the *Industrial Conciliation and Arbitration Act 1961* and has duly elected under that section 10A(2) to continue to contribute to the Fund; or

(b) being a Commissioner appointed after the commencement of this Act, the Commissioner is a contributor to the Fund or a member of the scheme at the date of appointment and duly elects under this subsection to continue to contribute to the Fund or continue as a member of the scheme, as the case may be; or

(c) being a Commissioner who is not a contributor to the Fund or a member of the scheme and who duly elects under this subsection to be a member of the scheme.

(6) Every election under subsection (4) must be made within 3 months after—

(a) the first appointment as a Commissioner of the person whose election it is; or

(b) in respect of a person who at the date of commencement of section 10.2 of the *Superannuation (Miscellaneous Acts) Amendment Act 1991* is a Commissioner—the date of commencement of that Act;

and must be in writing in duplicate, of which 1 copy is to be given to the Board referred to in the 1972 Act or, as the case may be, the *Superannuation (State Public Sector) Act 1990* and the other copy is to be given to the chief executive of the department.

(7) If an Industrial Commissioner duly elects to continue to contribute to the Fund—

(a) contributions are subject to and in accordance with such of the provisions of the 1958 Act and the 1972 Act as applied in respect of the Commissioner's contributions immediately before appointment as a Commissioner;

(b) benefits payable to the Commissioner or any spouse or child of the Commissioner by reason of contributing to the Fund are as prescribed by the provisions of the 1958 Act and the 1972 Act applicable to the Commissioner or any spouse or child of the Commissioner, as the case may be;

(c) for the purpose of the application of the 1958 Act the Commissioner is taken to be an officer within the meaning of that Act, and for the purpose of the application of the 1972 Act the Commissioner is taken to be an officer within the meaning of that Act.

(8) If an Industrial Commissioner does not duly elect under subsection (4) to continue contributing to the Fund, the Commissioner is taken to have ceased to be a contributor and an officer within the meaning of either the 1958 Act or the 1972 Act upon appointment as a Commissioner and is entitled—

(a) to such payments as are prescribed by the provisions of those Acts applicable to the Commissioner to be paid to a contributor upon resignation before attaining an age at which the contributor is permitted to retire; or

(b) to preserve such contribution in such manner as is prescribed by the provisions of those Acts applicable to the Commissioner.

Leave of absence to Commissioners

29.(1) Section 15 (the **"applied section"**) of the *Judges (Pensions and Long Leave) Act 1957* applies with all necessary changes to an Industrial Commissioner in the same way as it applies to a Judge.

(2) In applying the applied section, it must be interpreted as if 'Judge' had been replaced with 'Industrial Commissioner within the meaning of the *Industrial Relations Act 1990*' wherever possible.

(3) In computing length of service of a person as an Industrial Commissioner for the purposes of subsection (1) every period during which the person has served as a Commissioner, whether pursuant to a first appointment as a Commissioner or pursuant to any renewal thereof, or subsequent appointment, and every period during which the person has

served as an acting Industrial Commissioner, or as a deputy of a Commissioner (pursuant to any of the repealed Acts) is taken into account.

Performance of Commission's functions

30.(1) The Commission must perform its functions under any provision of this Act in a way that furthers the objects of this Act relevant to the provision.

(2) In performing the functions, the Commission must—

(a) ensure, so far as it can, that the system of awards provides for secure, relevant and consistent wages and employment conditions; and

(b) have proper regard to the interests of the parties immediately concerned and of the community as a whole; and

(c) take into account the principles embodied in the Family Responsibility Convention, particularly those about—

(i) preventing discrimination against workers who have family responsibilities; or

(ii) helping workers to reconcile their employment and family responsibilities.

(3) To avoid doubt, it is declared that changes necessary to maintain wages and employment conditions at a relevant level—

(a) may be implemented in stages to achieve consistency over a period; and

(b) may be made on condition that relevant parties comply with principles established by the Commission.

Commission decisions to be in plain English

31. The Commission must ensure that its written decisions are—

(a) written in plain English; and

(b) structured in a way that is as easy to understand as the subject matter allows.

Division 2—Jurisdiction of Commission

General jurisdiction of Commission

32.(1) Jurisdiction is conferred on the Industrial Commission to hear and determine—

(a) all questions of law or fact brought before it or that it considers expedient to hear and determine for the purpose of regulating any calling or callings;

(b) all questions arising out of an industrial matter or involving the determination of the rights and duties of any person in respect of an industrial matter;

(c) all questions that it considers expedient to hear and determine in respect of an industrial matter;

(d) any industrial dispute, as to which an Industrial Commissioner has held a conference under this Act at which no agreement has been reached, and which a Commissioner has thereupon referred to the Commission;

(e) all appeals duly made to it under any provision of this Act;

(f) all matters committed to the Commission by this, or any other, Act.

(2) Without limiting the generality of the jurisdiction conferred by subsection (1), the Industrial Commission has jurisdiction—

(a) on reference by an industrial organisation, an employer, or 20 employees (not being members of an industrial organisation of employees and not covered by an award) in any calling, or by the Minister, or of its own motion, to regulate the conditions of any calling or callings by an award;

(b) on application by any person interested, by direction of the Minister, or of its own motion, to hold an inquiry into or relating to an industrial matter and to report the result of the inquiry to the Minister;

(c) on application by an industrial organisation or an employer, or by direction of the Minister, to consolidate into 1 award—making

such amendments therein as it considers expedient to make—all awards binding or affecting any employer or class (or section of a class) of employer in any calling or callings, or the members of an industrial organisation employed by the same employer or class (or section of a class) of employer, where such employer or class (or section of a class) of employer, or such members is or are subject to more than 1 award;

(d) having regard to the interests of the persons immediately concerned and of the community as a whole, to define and declare the rights and duties of employers and employees according to what, in the Commission's opinion, should be the standard of fair dealing between an average good employer and a competent and honest employee.

(3) The Industrial Commission is empowered to make a decision irrespective of specific relief claimed or applied for by any party to proceedings, and to give directions as to the hearing and determination of any matter within the Commission's jurisdiction.

(4) In any proceedings before it the Industrial Commission may, by its order or direction do anything that it is authorised by this Act to do by an award.

(5) The Industrial Commission may in its discretion, by general order or for the purposes of a particular case, delegate either to Industrial Magistrates generally or to a particular Industrial Magistrate, or to the Chief Industrial Inspector the working out of any decision of the Commission, or the making of orders, the giving of directions, the preparation of rosters and schedules, or such like function as it thinks fit consequent on its decision.

(6) With a view to the proper determination of proceedings before it a Full Bench of the Industrial Commission may—

(a) refer the whole or part of any question or matter before it to an Industrial Commissioner for investigation and report to the Full Bench of the Commission, or for such other action as it determines;

(b) direct 1 or more of its members to carry out such investigation or inspection as it considers desirable and to report thereon to the Full Bench of the Commission.

(7) An Industrial Commissioner to whom a reference is made or to whom a direction is given by a Full Bench of the Commission is to comply in all respects with the reference or direction.

(8) No provision of this, or any other, Act limits, by implication, the Industrial Commission's jurisdiction.

(9) In exercising its jurisdiction, the Industrial Commission must take account of the provisions of the *Anti-Discrimination Act 1991* relating to discrimination in relation to employment.

Commission may refuse to proceed

33. The Industrial Commission may refuse to proceed to hear and determine proceedings before it relating to an award, industrial agreement, certified agreement or enterprise flexibility agreement, which exists, or is sought in the proceedings, at any time when any of the employees who are, or would be, bound by the award or agreement (whether or not employees whose employment will or may be affected by the determination of the proceedings) are involved in an industrial dispute, or are contravening or failing to comply with a provision of this Act or any decision.

Commission's jurisdiction re awards

34. Without limiting the powers of the Industrial Commission, the Commission may, in respect of any industrial matter or matters, make an award, which—

(a) fixes the lowest prices for work, or rates of wages, payable to employees other than employees who hold permits;

(b) fixes the time to be worked in order to entitle employees to the prices or wages fixed by the Commission;

(c) fixes the lowest rates for overtime, special work, or work on public holidays, as compensation (including allowances) for overtime, special work or work on public holidays;

(d) fixes the number or proportion of young employees to adult employees;

(e) fixes in respect of young employees the matters referred to in paragraph (a), (b) or (c);

(f) rescinds or varies a decision;

(g) abrogates or varies contracts for labour made before or after the commencement of this Act, subject to such conditions and exemptions as the Commission considers just;

(h) gives such retrospective effect as the Commission considers just and fair, or as is consented to by the parties, to the whole or any part of any award, but so that, except with the consent of the parties, the retrospective effect is not made to operate before the date when the Commission first took cognisance of the matter in relation to which retrospective effect is to be given;

(i) directs that a copy of any award be exhibited by the employer in a conspicuous and convenient place on the premises of any employer bound by the award;

(j) deals generally with the determination and regulation of any industrial matter.

Provisions affecting exercise of award jurisdiction

35.(1) In fixing prices for work or rates of wages payable to employees in any calling the Industrial Commission—

(a) is to fix the same price or wage as payable to persons of either sex for performing the same work, or work of a like nature and of equal value or productive of the same return of profit to their employer;

(b) is entitled to consider the value of labour of any classification of employee, but in doing so, it is not to award bonus payments.

(2) When the Industrial Commission makes an award for an industry that embraces more than 1 calling, and 1 or more of those callings is already governed by another award, then, unless in exceptional circumstances of a particular case the Commission thinks otherwise and expressly so declares, it is to prescribe in the award prices for work, or rates of wages, payable to employees whose calling is governed by another award that are at least equal to the prices or rates fixed by the other award as payable to those employees.

(3) The exercise of the Industrial Commission's jurisdiction in relation to

persons under the age of 21 years is subject to the *Vocational Education, Training and Employment Act 1991*.

(4) Notwithstanding any other provision of this Act, prices for work, or rates of wages, fixed by the Industrial Commission in exercise of its jurisdiction in relation to persons under the age of 21 years in any calling who are not within the application of the *Vocational Education, Training and Employment Act 1991*, may be fixed on a progressive scale based on the prices for work, or rates of wages, payable to employees who have attained the age of 21 years in the same calling.

(5) In making an award that fixes such first mentioned rates of wages, the Commission is to take into consideration the age and experience of such persons under the age of 21 years.

Bonus payments

36.(1) The payment of bonus payments is a matter for negotiation between employer and employee or an industrial organisation on behalf of either or both of them.

(2) If the parties to negotiations for a bonus payment so request, the Chief Industrial Commissioner is to make available an Industrial Commissioner as a mediator in the negotiations.

(3) A bonus payment negotiated may be registered with the Industrial Commission.

(4) A provision of an award or industrial agreement in force at the commencement of this Act that provides for a bonus payment continues in force until the circumstances in which it was awarded, or agreed to, have so altered as to require abrogation or reduction thereof by the Industrial Commission (jurisdiction being hereby conferred on the Commission to abrogate such a provision or reduce such bonus payment).

General rulings

37.(1) A Full Bench of the Industrial Commission may declare general rulings relating to any industrial matter with a view to avoiding a multiplication of inquiries into the same matter.

(2) Before entering upon the making of a general ruling the Industrial

Commission is to give reasonable notice, in such manner as it considers appropriate, of its intention to do so and is to give an opportunity to all persons interested in the subject of the proposed general ruling to be heard thereon.

(3) A declaration of a general ruling—

(a) must include specification of a date (the **"specified date"**) on and from which the general ruling is to have effect;

(b) has effect as a decision of the Industrial Commission on and from the specified date.

(4) A declaration of a general ruling—

(a) may provide that, notwithstanding any adjustment thereby made to the guaranteed minimum wage, the rate of wages prescribed in an award, or provided for in any industrial agreement, certified agreement or enterprise flexibility agreement remains unaltered;

(b) may exclude from the operation of any of its provisions any class of employer or employee, or any award, industrial agreement, certified agreement, enterprise flexibility agreement or part of an award, industrial agreement, certified agreement or enterprise flexibility agreement.

(5) As soon as is practicable after the making of a declaration of a general ruling (including a ruling as to the guaranteed minimum wage) the Industrial Registrar is to cause notification of the declaration and the specified date for its operation to be published in the Industrial Gazette.

(6) The notification so published, on and from the specified date for the operation of the general ruling thereby notified, supersedes and replaces any like notification of a general ruling on the same subject matter previously published, and the general ruling so notified continues in force until the date immediately before the specified date included in the next following declaration of a general ruling on the same subject matter.

(7) Except where the declaration is made in terms permitted by subsection (4), upon a declaration of a general ruling (including a ruling as to the guaranteed minimum wage) taking effect during the currency of an award, industrial agreement, certified agreement or enterprise flexibility agreement, the award or agreement is taken to be varied on and from the specified date to accord with the ruling, and on and from the specified date

such variation has effect as an award, industrial agreement, certified agreement or enterprise flexibility agreement.

(8) The Industrial Registrar, on application made in accordance with the rules of court, or of the registrar's own motion, may vary the terms of any award, industrial agreement, certified agreement or enterprise flexibility agreement taken to be varied pursuant to the preceding paragraph as the registrar considers necessary or desirable, to accord with a general ruling declared.

(9) The action of the registrar pursuant to subsection (8) is subject to appeal to the Industrial Commission.

Statement of policy

38.(1) A Full Bench of the Industrial Commission may make a statement of policy relating to any industrial matter, whether or not the matter is before the Commission.

(2) A stated policy of the Industrial Commission may be given effect by its being inserted into any award, industrial agreement, certified agreement or enterprise flexibility agreement on the application of any party to the award or agreement.

(3) The Industrial Registrar may give effect to a stated policy of the Industrial Commission by directions as to matters of procedure to the extent authorised by the Commission, which directions are binding on all persons concerned.

Jurisdiction of Commission exclusive

39. Except where it is otherwise prescribed, the jurisdiction of the Industrial Commission conferred by this Act, whether original or appellate, is exclusive of the jurisdiction of the Supreme Court or any other court or tribunal.

Division 3—Specific powers of Commission

Power to vary or void contracts

40.(1) If an individual who is party to a contract, arrangement, or a collateral arrangement relating to a contract or arrangement, is required thereby to perform work, the Industrial Commission may vary, ab initio or from some other time, the terms and conditions thereof relating to the manner of performance of the work or the remuneration for the work if—

(a) the work would, but for the contract, arrangement or collateral arrangement, have been performed by that party as an employee subject to an award, industrial agreement, certified agreement or enterprise flexibility agreement, and the Commission is of opinion that the contract, arrangement or collateral arrangement avoids or is designed to avoid the provisions of an award, industrial agreement, certified agreement or enterprise flexibility agreement; or

(b) the work, being work not subject to an award, industrial agreement, certified agreement or enterprise flexibility agreement or an award of the Australian Industrial Relations Commission or an agreement certified by that commission—

(i) is performed under the contract, arrangement or collateral arrangement by the individual as an employee on wages or piecework rates; or

(ii) in the Commission's opinion, taking into account the respective bargaining positions of the parties to the contract, arrangement or collateral arrangement, would, but for the contract or arrangement, have been more appropriately performed by a person as an employee;

on the ground that the contract, arrangement, collateral arrangement, or any term or condition thereof is—

(c) unfair; or

(d) harsh or unconscionable; or

(e) against the public interest; or

(f) provides, or has provided, a total remuneration less than that

which a person performing the work as an employee would have received.

(2) If the Industrial Commission is of opinion that the variation of the terms and conditions of a contract, arrangement or collateral arrangement under subsection (1) would substantially affect the whole contract, arrangement, or collateral arrangement, the Commission may declare the contract, arrangement, or collateral arrangement to be void (wholly or in part) and the declaration takes effect in law accordingly.

(3) In exercise of its powers under this section, the Industrial Commission may make such order as to payment of money in connection with any contract, arrangement or collateral arrangement varied or declared void (wholly or in part) as appears to the Commission to be just in the circumstances of the case.

(4) Proceedings for the exercise of the Industrial Commission's powers under this section may be instituted by the party required by the contract, arrangement or collateral arrangement to perform work, or by an Industrial Inspector on behalf of that party.

Power to order superannuation contribution to particular fund

41.(1) If an industrial matter relates to an allegation that an employer has been, or is, making contribution on behalf of eligible employees to an occupational superannuation scheme or fund at a level required by any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, but the scheme or fund is not that required by the relevant award or agreement to be used for that purpose, the Industrial Commission—

(a) of its own motion; or

(b) on the application of an Industrial Inspector, industrial organisation or employee concerned;

may determine to which occupational superannuation scheme or fund the employer should have been, or should be, making such contribution on behalf of eligible employees to comply with the relevant award or agreement and may order the employer to make such contribution accordingly.

(2) The Industrial Commission may make its order under subsection (1)

to operate from the date on which any particular employee or employees became eligible for payment by the employer of contribution to the scheme or fund determined by the Commission, if the Commission considers it just to do so.

(3) In exercise of its powers under subsection (1) the Industrial Commission may recognise all or any of the contribution made by an employer to an occupational superannuation scheme or fund on behalf of eligible employees up to and including the date of the Commission's determination under that subsection as having met the requirements, or any part thereof, of any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, relating to employers' contribution to an occupational superannuation scheme or fund on behalf of eligible employees.

Power to grant injunctions

42.(1) The Industrial Commission, on the application of a party to any award, industrial agreement, certified agreement or enterprise flexibility agreement or of the Industrial Registrar or an Industrial Inspector, may make such order as it considers just and necessary in the nature of a mandatory or restrictive injunction, or otherwise, to compel compliance with an award, agreement or this Act or to restrain a breach or continuance of a breach of an award, agreement or this Act.

(2) An application by an industrial organisation for the exercise of the Commission's jurisdiction under subsection (1) must be under the seal of the industrial organisation and signed by the president and secretary of the industrial organisation.

(3) The Industrial Commission may, in its discretion, direct an order made under subsection (1)—

(a) to the officers or members (or both) of an industrial organisation, or branch of an industrial organisation, generally and without further description; or

(b) to such of the officers or members of an industrial organisation, or branch of an industrial organisation, as it thinks fit; or

(c) to any particular employer or employers.

(4) The Industrial Commission's jurisdiction under subsection (1) may

be exercised in chambers, but any order so made by the Commission may be discharged by a Full Bench of the Commission, on the application of any party to the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement or of any person affected by the order.

(5) A person to whom an order made under subsection (1) is directed is not to contravene or fail to comply with the order after the person has received notice of it.

(6) The form of such notice and the mode of service thereof is in the discretion of the Industrial Commission, which is empowered to order substituted service by advertisement or otherwise, as it thinks fit.

(7) If the members of an industrial organisation, or branch of an industrial organisation, to whom an order made under subsection (1) is directed, or a substantial number of such members, contravene or fail to comply with the order, the industrial organisation or branch, and every officer thereof is taken to have so contravened or failed to comply and is liable to be punished therefor, unless it is proved that the industrial organisation or branch, or the officer took all reasonable steps to ensure that the members concerned complied with the order.

Direction or order of Commission in relation to strike or lockout

43. The Industrial Commission may at any time issue such directions or make such orders as it thinks fit in relation to a strike or lockout, whether actual, threatened, or apprehended.

Demarcation disputes

44. In exercising its powers in relation to a demarcation dispute, the Commission—

(a) must consider whether it should consult with appropriate peak councils and industrial organisations; and

(b) may consult with appropriate peak councils and industrial organisations and, if it does so, must inform the parties to the dispute of any views expressed by the peak councils and organisations.

Organisation coverage

45.(1) A Full Bench may, on the application of an industrial organisation, an employer or the Minister, make the following orders—

(a) an order that an industrial organisation of employees is to have the right, to the exclusion of another industrial organisation or other industrial organisations, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;

(b) an order that an industrial organisation of employees that does not have the right to represent under this Act the industrial interests of a particular class or group of employees is to have that right;

(c) an order that an industrial organisation of employees is not to have the right to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.

(2) In considering whether to make an order under subsection (1), the Full Bench—

(a) must consider whether it should consult with appropriate peak councils and industrial organisations; and

(b) may consult with appropriate peak councils and industrial organisations and, if it does so, must inform the parties to the dispute of any views expressed by the peak councils and organisations; and

(c) must have regard to any agreement or understanding of which the Full Bench becomes aware that deals with the right of an industrial organisation of employees to represent under this Act the industrial interests of a particular class or group of employees.

(3) An order under subsection (1) may be subject to conditions or limitations.

(4) If the Full Bench makes an order under subsection (1), the Full Bench must refer the matter to a nominated Commissioner unless the Full Bench is satisfied that the rules of the industrial organisations concerned do not need to be altered.

(5) If a matter is referred to a nominated Commissioner under

subsection (4), the nominated Commissioner must, after giving each industrial organisation concerned an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of any industrial organisation concerned as are, in the nominated Commissioner's opinion, necessary to reflect the order of the Full Bench.

(6) An alteration of the rules of an industrial organisation determined under subsection (5) takes effect on the day on which the determination is made.

(7) In this section—

"nominated Commissioner" means the Chief Industrial Commissioner or another Industrial Commissioner nominated by the Chief Industrial Commissioner.

Procedures for reopening

46.(1) The Industrial Commission, on application made as prescribed by subsection (4), may reopen any proceedings.

(2) Proceedings taken before a Full Bench of the Commission may be reopened only by a Full Bench of the Commission.

(3) If the Industrial Commission reopens any proceedings, it may rescind or vary any decision, recommendation, appointment, reference or other action made or taken by it, and in the reopened proceedings may make such decision or recommendation therein as the Commission considers just.

(4) Application to the Industrial Commission for reopening of proceedings may be made by—

(a) the Minister;

(b) a party to the proceedings to which the application relates;

(c) an industrial organisation whose members are bound by, or claim to be affected or aggrieved by, the proceedings to which the application relates;

(d) a person who is bound by or claims to be affected or aggrieved by, the proceedings to which the application relates, and who satisfies the Commission—

(i) that the person is not an officer of an association that is eligible to be, but is not, registered under this Act; and

(ii) that in making the application, the person is not acting on behalf of an association that is eligible to be, but is not, registered under this Act;

as an industrial organisation.

(5) If a recommendation of the Industrial Commission has been acted on by the Governor in Council and the Commission later rescinds or varies the recommendation, it lies in the discretion of the Governor in Council whether or not—

(a) to cancel the action taken on the recommendation;

(b) to vary such action;

to accord with the Commission's rescission or variation.

(6) Failure to give notice to a person of all or any of the proceedings leading to the making, or taking, by the Industrial Commission of any decision, appointment, reference or other action, binding on the person does not invalidate or otherwise prejudice the decision, appointment, reference or action but, if the person is one on whose application the Commission may exercise its powers under this section, the person's failure to participate in any such proceedings because of the absence of such notice does not prejudice an application by the person for reopening of proceedings.

(7) If the Commission grants such an application for reopening, it may give such retrospective operation to its decision made in the reopened proceedings as it considers just and fair, to the extent prescribed.

References to Full Bench

47.(1) An Industrial Commissioner may, at any stage of proceedings, and on such terms as the Commissioner thinks fit, and, if the Commissioner is not the Chief Industrial Commissioner, with the approval of the Chief Industrial Commissioner, refer the matter to which the proceedings relate to a Full Bench of the Industrial Commission.

(2) At any time before the commencement of a hearing of a matter by the Industrial Commission, a party to the proceedings may apply to the Chief Industrial Commissioner for the matter to which the proceedings relate to

be referred to a Full Bench of the Industrial Commission.

(3) On an application made under subsection (2), the Chief Industrial Commissioner, upon hearing the parties to the proceedings in chambers, and upon being satisfied that the matter to which the proceedings relate is of such substantial industrial significance that it should be so referred, is to refer the matter to a Full Bench of the Industrial Commission.

(4) Upon reference of any matter to it, a Full Bench of the Industrial Commission may hear and determine the matter and make such decision therein as it considers just.

Case stated to Court

48.(1) The Industrial Commission, at any stage of proceedings and on such terms as it considers proper, may state a case in writing for the opinion of the Industrial Court on any question of law relevant to the proceedings.

(2) The Industrial Court may hear and determine the matter raised by a case stated and remit the case, with its opinion thereon, to the Industrial Commission by which the case was stated, and may make such order as to costs as it thinks fit.

(3) The Commission is to give effect to the Court's opinion.

Remission to Industrial Magistrate

49. The Industrial Commission may, by its order, remit to an Industrial Magistrate for—

(a) investigation and report to the Commission; or

(b) taking of evidence; or

(c) hearing and determination;

as it thinks fit, any industrial matter or any aspect thereof, or any matter or question that arises in connection therewith.

Power to enter and inspect

50.(1) An Industrial Commissioner, or any officer of the Industrial Commission or other person authorised in writing in either case by a

Commissioner, is authorised—

(a) to enter any place in which, or in respect of which—

(i) a calling is carried on; or

(ii) work has been, or is being, performed; or

(iii) any other activity has occurred, or is occurring;

and in relation to which—

(iv) an industrial dispute exists, is impending or threatened, or will probably arise; or

(v) an industrial matter exists; or

(vi) any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit exists; or

(vii) it is reasonably suspected an offence against this Act has been, or is being committed;

(b) to view and inspect any work, machinery, appliance, materials, article or thing therein or thereon;

(c) to question any person therein or thereon about any matter relevant to the Commission's concern with the place.

(2) Authority conferred by subsection (1) is to be exercised during working hours at the place in question.

Division 4—Minimum wages

Object of Division

51. The object of this Division is to give effect to the Minimum Wages Convention.

Meaning of expressions

52. If an expression used in this Division is also used in the Minimum Wages Convention, it has the same meaning as in the Convention.

Orders setting minimum wages

53. The Commission may make an order setting—

(a) the same minimum wage for all employees in a specified group; or

(b) different minimum wages for different categories of employees in a specified group.

Orders only on application

54. The Commission may make an order under this Division only if it has received an application from—

(a) an employee to be covered by the order; or

(b) an industrial organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order.

When Commission may make order

55.(1) The Commission must, and may only, make an order if satisfied—

(a) coverage by a system of minimum wages is appropriate, given the employment conditions of the group of employees to be covered by the order; and

(b) the order will operate for at least some of the employees in the specified group having regard to employees ineligible under subsection (3).

(2) An order must specify which of the group's employees are excluded from its operation because they are ineligible.

(3) An employee is ineligible only if—

(a) minimum wages for the employee are set by an award, industrial agreement, certified agreement or enterprise flexibility agreement; or

(b) proceedings have been commenced under Part 10 or Part 11 for the setting or adjustment of minimum wages for the employee.

(4) Before deciding which group an order should cover, and whether it is satisfied under subsection (1)(a), the Commission must—

(a) give the following organisations an opportunity to express their views—

(i) an industrial organisation whose rules entitle it to represent the industrial interests of any of the employees concerned;

(ii) an industrial organisation whose rules entitle it to represent the industrial interests of employers of the employees;

(iii) another organisation representing employers of the employees; and

(b) take the views into account.

(5) Before making an order, the Commission must give each employer of employees in the group to be covered by the order an opportunity, as prescribed by regulation, to be heard about the making of the order.

Matters to be considered when setting minimum wages

56. When setting minimum wages under this Division, the Commission must consider—

(a) the principles it would apply when setting minimum wages under Part 10; and

(b) the needs of workers and their families, taking into account the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups; and

(c) economic factors, including the requirements of economic development, levels of productivity and the desirability of reaching and keeping a high level of employment.

Division does not limit other rights

57. This Division does not limit any right a person or industrial organisation may otherwise have to establish minimum wages.

Division 5—Equal remuneration for work of equal value

Object of Division

58. The object of this Division is to give effect to—

(a) the Anti-Discrimination Conventions; and

(b) the Equal Remuneration Recommendation; and

(c) the Discrimination (Employment and Occupation) Recommendation.

Meaning of expressions

59.(1) In this Division—

"equal remuneration for work of equal value" means equal remuneration for men and women workers for work of equal value.

(2) If an expression used in this Division is also used in the Equal Remuneration Convention, it has the same meaning as in the Convention.

Orders requiring equal remuneration

60.(1) The Commission may make any order it considers appropriate to ensure employees covered by the order will receive equal remuneration for work of equal value.

(2) An order may provide for an increase in remuneration rates, including minimum rates.

Orders only on application

61. The Commission may make an order under this Division only if it has received an application from—

(a) an employee to be covered by the order; or

(b) an industrial organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order; or

(c) the Anti-Discrimination Commissioner.

When Commission must and may only make order

62. The Commission must, and may only, make an order if—

(a) it is satisfied the employees to be covered by the order do not receive equal remuneration for work of equal value; and

(b) the order can reasonably be regarded as appropriate and as giving effect to—

(i) 1 or more of the Anti-Discrimination Conventions; or

(ii) the Equal Remuneration Recommendation; or

(iii) the Discrimination (Employment and Occupation) Recommendation.

Immediate or progressive introduction of equal remuneration

63. The order may introduce equal remuneration for work of equal value—

(a) immediately; or

(b) progressively, in specified stages.

Employer not to reduce remuneration

64.(1) An employer must not reduce an employee's remuneration because an application or order has been made under this Division.

(2) If an employer purports to do so, the reduction is of no effect.

Division does not limit other rights

65. This Division does not limit any right a person or industrial organisation may otherwise have to secure equal remuneration for work of equal value.

Division 6—Further provisions about orders under Division 4 or 5

Orders to be written

66. An order of the Commission under Division 4 or 5 must be written.

When orders take effect

67. An order of the Commission under Division 4 or 5 takes effect from the date of the order or a later specified date.

Compliance with orders

68. An order of the Commission under Division 4 or 5 is enforceable in the same way as an award.

Amendment and revocation of orders

69. The Commission may amend or revoke an order under Division 4 or 5 only if it has received an application from any of the following persons (whether or not named or described in the order)—

(a) an employer, or representative of an employer, covered by the order;

(b) an employee, or representative of any employee, covered by the order.

Inconsistent awards or orders

70. An award, industrial agreement, certified agreement, enterprise flexibility agreement or order of the Commission that is inconsistent with an order under Division 4 or 5 does not apply to the extent the inconsistency detrimentally affects the rights of the employees concerned.

Division 7—Industry consultative councils

Industry consultative councils

71.(1) In this section—

"industry" includes—

(a) a business, trade, manufacture, undertaking or calling of employers; and

(b) a calling, service, employment, handicraft, industrial occupation or vocation of employees; and

(c) a branch of an industry and a group of industries.

(2) The Commission must encourage and assist the establishment and effective operation of consultative councils for particular industries.

(3) The Commission must encourage the participants in an industry to use the relevant consultative council—

(a) to develop measures to improve efficiency and competitiveness in the industry; and

(b) to address barriers to workplace reform in the industry.

(4) To promote the effective operation of a consultative council for an industry, a Commissioner may, if the Chief Industrial Commissioner agrees—

(a) chair the council's meetings; or

(b) take part in the council's discussions; or

(c) nominate another Commission member to chair the council's meetings or take part in its discussions.

(5) The Chief Industrial Commissioner may agree only if the Chief Industrial Commissioner is satisfied the council properly represents—

(a) industrial organisations, and associations, of employers in the industry; and

(b) industrial organisations of employees in the industry.

PART 5—INDUSTRIAL MAGISTRATES

Office of Industrial Magistrate

72. Each of the following persons is an Industrial Magistrate—

(a) a Stipendiary Magistrate;

(b) a person holding an appointment to temporarily act as Stipendiary Magistrate.

Industrial Magistrates Court

73.(1) An Industrial Magistrates Court is a court of record, and is constituted by an Industrial Magistrate sitting or acting alone.

(2) Every Industrial Magistrate—

(a) may hear and determine judicially, according to law, all matters within the jurisdiction of an Industrial Magistrate that are brought before, or referred to, that magistrate;

(b) for the purpose of every such hearing and determination, constitutes an Industrial Magistrates Court;

(c) has and may exercise jurisdiction throughout the State.

Jurisdiction of Industrial Magistrate

74. Jurisdiction is hereby conferred on every Industrial Magistrate—

(a) to hear and determine proceedings relating to—

(i) offences against this Act in respect of which—

(A) a maximum penalty not exceeding 40 penalty units is prescribed, except any such offence in respect of which this Act prescribes otherwise;

(B) jurisdiction is conferred by this, or any other, Act on Industrial Magistrates;

(ii) claims for wages due and payable to an employee under any award, industrial agreement, certified agreement, enterprise

flexibility agreement or permit or in respect of moneys payable, with an employee's consent in writing, from such wages;

(iii) claims for wages due and payable to an employee pursuant to an agreement whereby—

(A) wages are payable at a price or rate that is not fixed by any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit; or

(B) wages are payable at a price or rate that exceeds the price or rate fixed by any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit;

or in respect of moneys payable, with an employee's consent in writing, from such wages;

(iv) claims for exercise of jurisdiction of Industrial Magistrates under Part 18, Division 1;

(v) claims for damages for breach of an agreement made under an award, industrial agreement, certified agreement or enterprise flexibility agreement;

(vi) claims for damages sustained by an employee because of the employer's neglect to pay the employee's wages;

(vii) recovery of moneys due to an industrial organisation under its rules by a member thereof;

(b) to exercise powers conferred on, or jurisdiction committed to, Industrial Magistrates by this Act;

(c) to exercise powers conferred on, or jurisdiction committed to, Industrial Magistrates by an Act other than this Act;

(d) to—

(i) investigate and report on;

(ii) take evidence concerning;

(iii) hear and determine;

any industrial matter, or any aspect thereof, or any matter or

question that arises in connection therewith, remitted to an Industrial Magistrate by the Industrial Commission, as required by the relevant order of the Commission.

Power of Industrial Magistrate concerning unpaid superannuation contribution

75.(1) An Industrial Magistrate, on application made by—

(a) an Industrial Inspector; or

(b) an employee who is an eligible employee on whose behalf contribution to an approved occupational superannuation scheme or fund is required by any award, industrial agreement, certified agreement or enterprise flexibility agreement to be paid by an employer; or

(c) an industrial organisation of employees of which such an employee is a member;

may order an employer who has failed to pay contribution to an approved superannuation scheme or fund on behalf of any eligible employee or employees, as required by a relevant award, industrial agreement, certified agreement or enterprise flexibility agreement to pay—

(d) the amount of contribution that is unpaid; and

(e) an amount that, in the opinion of the Industrial Magistrate, is just and fair, based on the return that would have accrued in respect of such contribution had it been duly paid to such scheme or fund.

(2) The order must require the amount to be paid to—

(a) if the employee is employed by the employer—an approved occupational superannuation fund relevant to the employee's employment; or

(b) if the employee is no longer employed by the employer—

(i) an approved occupational superannuation fund relevant to the employee's employment with that employer; or

(ii) a complying superannuation fund; or

(iii) a superannuation fund nominated by the employee; or

(iv) an eligible rollover fund; or

(v) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee.

(3) If the former employee in relation to whom an order is made—

(a) cannot be located after all reasonable inquiries; or

(b) fails to nominate a superannuation scheme or fund for the purpose of the order;

the sum ordered to be paid must be paid into the Unclaimed Moneys Fund in the Treasury.

(4) On application for an order under subsection (1) an Industrial Magistrate—

(a) may order payment on such terms as the Industrial Magistrate thinks fit;

(b) may make an order for costs in an amount assessed by the Industrial Magistrate, or make no order for costs, as the Industrial Magistrate considers just.

Industrial Magistrate's powers on remission

76. An Industrial Magistrate to whom the Industrial Commission remits a matter is to comply promptly with the order of remission, and for that purpose has and may exercise all the jurisdiction and powers of an Industrial Commissioner necessary or convenient for compliance with the order.

Exclusive nature of Industrial Magistrates' jurisdiction

77.(1) The jurisdiction conferred on Industrial Magistrates by this, or any other, Act is exclusive of the jurisdiction of any other court or tribunal, except where this Act or, as the case may be, such other Act prescribes otherwise.

(2) Jurisdiction conferred on Industrial Magistrates by section 74(a)(iii) is not exclusive of jurisdiction had by any other court.

PART 6—INDUSTRIAL REGISTRAR'S OFFICE

Establishment and role of office

78.(1) There is hereby established an office called the Industrial Registrar's Office.

(2) The Industrial Registrar's Office—

(a) is the registry of the Industrial Court and Industrial Commission;

(b) provides administrative support to the Court and Commission;

(c) discharges such functions as are prescribed for the office.

Industrial Registrar and staff

79.(1) From time to time there is to be appointed by the Governor in Council, by notification published in the Industrial Gazette, an Industrial Registrar, who holds the appointment subject to the *Public Service Management and Employment Act 1988*.

(2) From time to time there is to be appointed, under and subject to the *Public Service Management and Employment Act 1988*—

(a) such number of Assistant Industrial Registrars as is necessary for the effectual administration of this Act;

(b) such number of other officers as is necessary for the proper performance of the Industrial Registrar's functions.

(3) The Industrial Registrar, each Assistant Industrial Registrar and each person for the time being appointed to the Industrial Registrar's Office is an officer of the Industrial Court and the Industrial Commission.

Functions etc. of Industrial Registrar

80.(1) The Industrial Registrar—

(a) administers the Industrial Registrar's Office;

(b) is to maintain a register of industrial organisations;

(c) in respect of the Industrial Court and Industrial Commission, has

and may exercise such powers, and is to perform such duties, as are prescribed or are provided for by the rules of court.

(2) In the exercise of such powers and the performance of such duties the Industrial Registrar is to comply with any directions given in relation thereto by the President, the Chief Industrial Commissioner or any other Industrial Commissioner.

Functions etc. of Assistant Industrial Registrar

81.(1) An Assistant Industrial Registrar—

(a) is to assist the Industrial Registrar in the performance of the registrar's functions;

(b) is to perform such other duties as the President, the Chief Industrial Commissioner or the Industrial Registrar directs.

(2) If the Industrial Registrar is temporarily unable to discharge the functions of office, an Assistant Industrial Registrar has and may exercise the powers, and is to perform the duties of the Industrial Registrar.

(3) If at any time when subsection (2) applies, there is more than 1 Assistant Industrial Registrar, reference therein to an Assistant Industrial Registrar is a reference to that 1 who is approved for the purpose, and on the occasion in question, by the Industrial Registrar or, if the Industrial Registrar is unavailable to so approve, approved by the President.

(4) If at any time when subsection (2) becomes relevant, there is no Assistant Industrial Registrar available to exercise the powers and perform the duties of the Industrial Registrar in accordance with subsection (2) or (3), the President may nominate a person to exercise those powers and perform those duties for the time being, and the person so nominated, while the nomination subsists, is authorised to exercise those powers, and to perform those duties.

PART 7—ARRANGEMENTS WITH OTHER INDUSTRIAL AUTHORITIES

Commissioner may hold other appointment

82. An Industrial Commissioner who is appointed as a member of the Australian Industrial Relations Commission may hold that appointment and the appointment as Industrial Commissioner at one and the same time.

Appointment of Commonwealth official as Commissioner

83.(1) The Governor in Council may appoint a member of the Australian Industrial Relations Commission to be an Industrial Commissioner.

(2) Sections 24 and 27 do not apply in relation to an appointment under subsection (1) or to an Industrial Commissioner so appointed.

(3) An appointment under subsection (1)—

(a) is for such term as the Governor in Council thinks fit and specifies in the instrument of appointment;

(b) may be terminated at any time, with the approval of the Governor in Council, by notification in writing of the Minister given to the holder of the appointment.

(4) An Industrial Commissioner appointed under subsection (1), by virtue of that appointment—

(a) is not entitled to remuneration for performing the duties of a Commissioner;

(b) is entitled to be paid expenses reasonably incurred by the Commissioner in exercising powers and performing duties as a Commissioner.

(5) If a person appointed under subsection (1)—

(a) becomes—

(i) a member of the Executive Council or Legislative Assembly; or

(ii) a person such as is referred to in section 19(2)(b); or

(b) ceases to be a member of the Australian Industrial Relations Commission;

the person ceases to be an Industrial Commissioner.

Role of appointee under s 83

84.(1) As agreed from time to time by the Chief Industrial Commissioner and the President of the Australian Industrial Relations Commission, a person who is an Industrial Commissioner appointed under section 83 and who is also a member of the Australian Industrial Relations Commission—

(a) is to perform the duties of an Industrial Commissioner; and

(b) has and may exercise, in relation to a particular matter—

(i) powers that the person has in relation to the matter as a Commissioner; and

(ii) powers that the person has in relation to the matter as a member of the Australian Industrial Relations Commission.

(2) A provision of this Act that prescribes powers or duties of an Industrial Commissioner is to be construed as subject to subsection (1) in its application to a Commissioner appointed under section 83.

Reference of matter to Commonwealth official

85.(1) The Chief Industrial Commissioner may request the President of the Australian Industrial Relations Commission to nominate a member of that Commission to deal with the whole or any part of an industrial matter before the Industrial Commission.

(2) If a nomination is made pursuant to a request under subsection (1), the Chief Industrial Commissioner may refer the whole, or part, of the industrial matter in question to the nominated member, to be dealt with by the nominated member in accordance with this Act.

(3) For the purpose of dealing with an industrial matter, or part, referred under subsection (2) the nominated member has and may exercise all or any of the powers of an Industrial Commissioner and for the purpose of such exercise is to be taken to constitute the Industrial Commission

constituted by a single Commissioner.

(4) A decision of a member of the Australian Industrial Relations Commission pursuant to a reference made under subsection (2) is taken to be a decision of the Industrial Commission.

(5) A reference made under subsection (2)—

(a) does not derogate from the authority of the Industrial Commission to exercise jurisdiction in relation to the industrial matter, or part, referred;

(b) may be revoked at any time by the Chief Industrial Commissioner by notification in writing given to the nominated member.

Coordination and joint sessions of authorities

86.(1) If—

(a) it appears to the Chief Industrial Commissioner to be desirable that a conference be held with any industrial authority in relation to an industrial matter; and

(b) the industrial authority agrees to a conference;

the Chief Industrial Commissioner may confer, or direct another Industrial Commissioner to confer, with the industrial authority with a view to coordinating decisions made, or to be made, under this Act in relation to the industrial matter and decisions made, or to be made by the industrial authority.

(2) If—

(a) it appears to the Chief Industrial Commissioner that proceedings relating to any industrial matter before the Industrial Commission constituted by a single Industrial Commissioner should be heard in joint session with any industrial authority; and

(b) the industrial authority agrees to a joint session;

the Chief Industrial Commissioner—

(c) may hear, or direct another Commissioner to hear, the proceedings in joint session with the industrial authority;

(d) may confer, or direct the other Commissioner to confer, with the industrial authority in relation to the proceedings and the decision to be made therein;

(e) may join, or direct the other Commissioner to join, with the industrial authority in the decision made therein.

(3) If—

(a) it appears to the Chief Industrial Commissioner that any industrial authority has before it an industrial matter identical or similar to an industrial matter before a Full Bench of the Industrial Commission; and

(b) the industrial authority agrees to participation in joint session;

the Chief Industrial Commissioner—

(c) if the Chief Industrial Commissioner is a member of the Full Bench of the Commission, may participate in joint session with the industrial authority in relation to the industrial matter and thereupon is to report the result of the joint session to the Full Bench of the Commission;

(d) in any case, may direct a member of the Full Bench of the Commission to participate in joint session with the industrial authority in relation to the industrial matter and to report the result of the joint session to the Full Bench of the Commission.

(4) While an Industrial Commissioner sits in joint session with an industrial authority the Commissioner has and may exercise the powers, and is to perform the duties of an Industrial Commission constituted by a single Commissioner in relation to the industrial matter dealt with in joint session.

(5) The Chief Industrial Commissioner may at any time determine that an industrial matter should not be dealt with in joint session and, if such determination is made after commencement of a joint session in respect of that matter—

(a) the Commissioner participating in the joint session is to forthwith cease to so participate; and

(b) the industrial matter may proceed before the Industrial Commission, or a Full Bench thereof, whichever was seised of

the matter before commencement of participation in the joint session.

Restriction on Chief Commissioner's authority

87. In exercising authority conferred by section 85 or 86 the Chief Industrial Commissioner is to act in consultation with the President.

Powers etc. vested in Commission by other jurisdictions

88.(1) Subject to this Act, the Industrial Commission is authorised to exercise and perform such powers and duties as are conferred on it by or under the *Industrial Relations Act 1988* (Cwlth) or any other enactment of a jurisdiction other than Queensland declared for the purposes of this section by order in council.

(2) A decision of the Industrial Commission pursuant to authority conferred on it by subsection (1) is not a decision made by it under this Act.

PART 8—PROCEEDINGS OF INDUSTRIAL COURT, INDUSTRIAL COMMISSION, INDUSTRIAL MAGISTRATES AND INDUSTRIAL REGISTRAR

Initiation of proceedings—exercise of powers

89.(1) Except as is otherwise prescribed—

(a) proceedings may be commenced in the Industrial Court or the Industrial Commission or before the Industrial Registrar on the application of—

(i) an industrial organisation or an officer or member of an industrial organisation;

(ii) the Minister;

(iii) an Industrial Inspector;

(iv) an employer;

(v) any person who has an interest in the cause or matter to which the application relates;

(b) the Industrial Commission may, of its own motion, initiate proceedings in the Commission and, for the purpose of such proceedings, may summon before it such persons as it considers necessary.

(2) Except as is otherwise prescribed, the Industrial Commission may exercise any of its powers—

(a) of its own motion;

(b) on the application of—

(i) a party to the proceedings in which the power is to be exercised;

(ii) an industrial organisation

(3) The Industrial Commission may of its own motion join any 2 or more matters to be heard and determined by the Commission, whether the matters or any of them arise under this, or any other, Act, and may hear and determine all such matters in 1 proceedings.

General powers

90.(1) Subject to this Act, in any industrial cause the Industrial Court or Industrial Commission—

(a) may make any decision that appears to it to be just, and may include therein any requirement or provision that it thinks necessary or expedient for preventing or settling the industrial dispute, or dealing with the industrial matter, to which the cause relates, without being restricted to any specific relief claimed by the parties to the cause;

(b) may dismiss the cause, or refrain from hearing, further hearing, or determining the cause, if it appears to the Court or Commission that the cause is trivial or that, in the public interest, further proceedings by the Court or Commission are not necessary or desirable;

(c) may order any party to the cause to pay to any other party thereto

such expenses (including expenses of witnesses) as it considers just, and specifies in its order.

(2) In any industrial cause, the President, an Industrial Commissioner or the Industrial Registrar may make orders, or give directions, considered just and necessary in relation to—

(a) any interlocutory proceedings to be taken before the hearing of the cause, including with respect to—

(i) naming and joinder of parties;

(ii) persons to be served with notice of proceedings;

(iii) summoning of persons to attend in proceedings;

(iv) particulars of the claims of the parties;

(v) the issues to be submitted to the Court or Commission;

(vi) admissions, discovery, interrogatories or inspection of documents or of property;

(vii) examination of witnesses;

(viii) costs of the interlocutory proceedings;

(ix) place, time and mode of hearing of the cause;

(b) any matter that, pursuant to the rules of court, the President, an Industrial Commissioner, or the Industrial Registrar as the case may be, is authorised to hear or deal with in chambers.

(3) The Industrial Commission, by its order, may—

(a) direct the Industrial Registrar to conduct an inquiry into any matter as to which the Commission requires information for the purpose of exercising the Commission's jurisdiction;

(b) direct any person to take evidence on behalf of the Commission in relation to any industrial cause.

(4) The registrar or other person, so directed, is to comply promptly with the direction and report, or, as the case may be, furnish a record of evidence taken, to the Commission.

(5) For the purpose of—

(a) conducting an inquiry referred to in subsection (3);

(b) disposing of any other matter referred to the Industrial Registrar by or under this Act;

the registrar may—

(c) summon persons to attend before the registrar;

(d) examine parties and witnesses.

(6) A person directed to take evidence as referred to in subsection (3) has all the powers of the Industrial Commission for—

(a) summoning witnesses;

(b) requiring production of records.

(7) For the purpose of exercising jurisdiction or powers a person constituting—

(a) the Industrial Court;

(b) the Industrial Commission;

(c) an Industrial Magistrates Court;

the Industrial Registrar, and any person directed by the Commission to take evidence on behalf of the Commission may take evidence on oath, affirmation or statutory declaration, and with a view to doing so may administer, or authorise the administering of, any oath, or may take, or authorise the taking of, an affirmation or statutory declaration.

Protection of proceedings

91.(1) The President, an Industrial Commissioner and an Industrial Magistrate, in the exercise of jurisdiction or powers, or performance of duties, for the purposes of this, or any other, Act has the protections and immunities of a Judge of the Supreme Court in exercise of that court's jurisdiction.

(2) In proceedings for defamation in relation to a publication made in connection with the exercise of jurisdiction or powers, or performance of duties for the purposes of this, or any other, Act there is a defence of absolute privilege in respect of a publication in good faith to or by the President, an Industrial Commissioner, an Industrial Magistrate or the Industrial Registrar in the official capacity of any of those officials.

(3) The burden of proof of absence of good faith is on a person who alleges such absence.

Basis of procedures and decisions of the Commission and Industrial Magistrates

92.(1) Except in proceedings for the recovery of moneys or in respect of offences against this Act, neither the Industrial Commission nor any Industrial Magistrates Court is bound by the rules or practice of courts as to evidence or procedure, but may inform itself on any matter as it considers proper in the exercise of jurisdiction or powers and the performance of duties.

(2) Except in proceedings for the recovery of moneys or in respect of offences against this Act, the Industrial Commission and Industrial Magistrates Courts are governed in their decisions by equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and having regard to both the interests of the persons immediately concerned and of the community as a whole.

(3) In making any decision the Industrial Commission is to take into consideration the public interest, and to that end is to have regard to—

(a) the objects of this Act; and

(b) the state of the economy;

(c) the likely effects of the Commission's decision on the economy, industry generally and the particular industry concerned.

(4) In exercise of its jurisdiction and powers the Industrial Commission is to have proper regard to the rules of court.

Proceedings of Commission or Industrial Magistrate not to be questioned

93.(1) A decision of the Industrial Commission or an Industrial Magistrates Court—

(a) cannot be impeached for informality or want of form;

(b) except as is prescribed, cannot be appealed against, reviewed, quashed or called in question;

in any court on any account whatever.

(2) Proceedings in the Industrial Commission or before an Industrial Magistrates Court are not removable by certiorari.

(3) A prohibition order cannot be issued, and an injunction or mandamus cannot be granted, in respect of, or to restrain, proceedings in the Industrial Commission or before an Industrial Magistrates Court that relate to matters within the jurisdiction of the Commission or, as the case may be, Industrial Magistrates.

Powers incidental to exercise of jurisdiction

94. Except as is otherwise prescribed, the Industrial Court, Industrial Commission and, to the extent that the Industrial Registrar's jurisdiction requires or allows, the registrar may—

(a) at or before a hearing, take steps to ascertain whether all persons who ought to be bound by any decision to be made in proceedings have been summoned to attend or given notice of, the proceedings;

(b) direct—

(i) who are the parties to the proceedings; and

(ii) by whom the parties may be represented; and

(iii) persons to be summoned to attend the proceedings, if they have not been summoned and it appears that they should attend the proceedings; and

(iv) parties to be joined or struck out; and

(v) who may be heard and on what conditions; and

(c) hear and determine the cause in such manner as appears best suited for the purpose;

(d) allow any amendment of the proceedings on such terms as appear just and fair, and correct, amend or waive any error, defect or irregularity therein, whether in substance or in form;

(e) give directions consequent upon a decision, which directions in the opinion of the Court, Commission or registrar are necessary for, or conducive and appropriate to the effectual implementation

of the decision;

(f) hear and determine a cause in the absence of any party, or of a person who has been summoned to attend, or served with a notice to appear at, the proceedings;

(g) sit at any time and in any place for hearing and determining a cause, and adjourn a sitting to any time and place;

(h) refer technical matters, matters of accounting, or matters involving expert knowledge to an expert, and admit the expert's report in evidence;

(i) extend any prescribed, or specified, time, before or after expiry of the time;

(j) waive compliance with any rule of court.

Power to obtain data and expert evidence

95.(1) If the Industrial Commission wants expert evidence based on facts or figures, for the purpose of determining any cause it may—

(a) order—

(i) any industrial organisation that is, or any of whose members are, party to the proceedings;

(ii) any employer, or group of employers, who is or are party to the proceedings;

to lodge with the Commission returns of facts or figures of the description wanted;

(b) authorise any person or persons selected by it as being expert in a relevant respect to prepare from such returns lodged, schedules directed to matters on which the Commission seeks to be informed.

(2) It is lawful for a person preparing any such schedule to show therein such particulars as are—

(a) relevant to the cause; or

(b) of a description indicated by the Industrial Commission as sought for the Commission's information;

but otherwise such person is not to divulge the name of the industrial organisation that lodged the return, or business information of a private or confidential nature extracted from the return, to any person, other than the Commission, without the Commission's leave first obtained.

(3) A schedule, such as referred to in subsection (2), as far as possible is to extend beyond 1 year's operations of any industry or business.

Competence and compellability of witnesses

96. Any party to proceedings in the Industrial Court or Industrial Commission is competent, and may be compelled, to give evidence in the proceedings as a witness to the same extent as in civil proceedings in the Supreme Court.

Service of process

97.(1) If it is made to appear to—

(a) the President or the Industrial Registrar, in the case of proceedings in, or to be commenced in, the Industrial Court;

(b) an Industrial Commissioner or the Industrial Registrar, in the case of proceedings in, or to be commenced in, the Industrial Commission;

that service of any summons, notice, order or other document cannot be effected promptly in a manner prescribed, or cannot be effected by personal service, the President or, as the case may be, the Commissioner, or the registrar in either case, may make—

(c) an order for substituted service, including by advertisement in an appropriate newspaper;

(d) an order for notification by letter, telex, facsimile transmission, electronic mail, advertisement in an appropriate newspaper, or otherwise, in lieu of service of notice.

(2) Service or notification in accordance with an order made under subsection (1) is sufficient service of the person required to be served.

(3) Except as otherwise ordered by the Industrial Court or Industrial Commission, service of any summons, notice, order or other document on

an industrial organisation of employers, or substituted service or notification in accordance with an order made under subsection (1), is taken to be service on all employers who have employees engaged in the calling that is relevant to the purpose of the summons, notice, order or document, or in related callings.

Evidentiary provisions affecting proceedings under Act

98.(1) In proceedings relating to anything done, or proposed to be done, because of a request made, or purporting to have been made, under section 376 in relation to—

(a) an industrial organisation, or branch of an industrial organisation to which section 383 applies;

(b) an industrial organisation, or branch of an industrial organisation, in respect of which a certificate of exemption under section 384 is in force;

the copy of the register of members of the industrial organisation to which section 383 applies, or of the branch thereof, (as at 31 December last preceding the date on which the request is made) as varied (before the date on which the request is made) in accordance with any yearly returns referred to in section 383, or, as the case may be, the register of members maintained by the industrial organisation or branch exempted under section 384 showing the members of the industrial organisation or branch as at the date on which the request is made, is prima facie evidence that each person shown in—

(c) the copy register as so varied, in the case of an industrial organisation, or branch, referred to in paragraph (a); or

(d) the register, in the case of an industrial organisation, or branch, referred to in paragraph (b);

as a member of the industrial organisation or branch was, at the making of the request, a member of the industrial organisation or branch.

(2) In proceedings taken under or for the purposes of this Act—

(a) the due appointment as Industrial Inspector of any person claiming to be, or stated to be, an Industrial Inspector, and the authority of an Industrial Inspector to take a proceeding or do any

action, is to be presumed in the absence of evidence to the contrary;

(b) a signature purporting to be that of an Industrial Inspector is to be taken as the signature it purports to be, until the contrary is proved;

(c) a document purporting to be a duplicate or copy of any notice or order issued under this Act by an Industrial Inspector is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the issue of the notice or order and of the matters contained therein;

(d) the limits of any district or part of the State, or of any road, as alleged, averred or stated in any complaint or other document made for the purposes of the proceedings are to be presumed in the absence of evidence to the contrary;

(e) judicial notice of the existence of a strike or lockout, or of a proposed strike or lockout, may be taken, if the tribunal concerned is of the opinion that the existence of the strike or lockout, or the proposal therefor, is so well known as to require no proof of the fact;

(f) a list of officers of an industrial organisation last lodged in the Industrial Registrar's Office, on behalf of the industrial organisation, or a copy of such a list, bearing a certificate purporting to be that of the Industrial Registrar, that it is a true copy, is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence that on the day on which the list was lodged in the Industrial Registrar's Office each person named in the list was an officer (as specified in the list) of the industrial organisation and has continued to be that officer;

(g) a copy of the rules of an industrial organisation, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the rules.

Confidential material tendered in evidence

99.(1) If there be tendered to the Industrial Court or Industrial

Commission records, relating to—

(a) trade secrets of any person; or

(b) the financial position of any party or witness;

the records are not, without the consent of such person, party or witness, open to inspection by any person other than the President, an Industrial Commissioner or a person appointed by the Court or the Commission to examine the records and to report thereon as an expert witness.

(2) Subsection (1) does not apply in relation to records relating to the financial position of a party or witness if the party or witness claims that the financial position of an industry or business is such as not to permit the payment of wages, or the granting of conditions, claimed in the proceedings in which the records are tendered, or that would be payable under, or be granted by, a proposed award or order in the proceedings or any industrial agreement, certified agreement or enterprise flexibility agreement to which the proceedings relate.

(3) If the Industrial Court or Industrial Commission directs that information relating to trade secrets or the financial position of any person be given in evidence, the evidence must be taken in private, if that person so requests.

(4) The Industrial Court, Industrial Commission or Industrial Registrar may direct that a report of proceedings, or any part thereof, in an industrial cause be not published or that—

(a) evidence given;

(b) records tendered;

(c) things exhibited;

in an industrial cause be withheld from release or search, absolutely, or except on conditions ordered by the Court, Commission or registrar, and every such direction is to be complied with by all persons concerned.

(5) Such a direction may be given if the Court, Commission or registrar is of opinion that—

(a) disclosure of the matter to which the direction would relate would not be in the public interest; or

(b) persons other than parties to the cause do not have a sufficient

legitimate interest in being informed of the matter to which the direction would relate.

Evidentiary value at large of official records

100.(1) A copy of a decision, or of a record of any other action of the Industrial Court or Industrial Commission, purporting to bear the seal of the Court or, as the case may be, Commission, or a copy of, or a document purporting to be an extract from the Industrial Gazette purporting to contain a notification of a decision or other action of the Court or Commission is admissible in all proceedings as evidence of the decision or, as the case may be, the action.

(2) In all proceedings—

(a) a copy of, or a document purporting to be an extract from, the Industrial Gazette purporting to contain notification of—

(i) a declaration of a general ruling published pursuant to section 37;

(ii) a variation of any award, industrial agreement, certified agreement or enterprise flexibility agreement;

is admissible as evidence of the making of the declaration of the general ruling or, as the case may be, of the variation, and, in respect of the period for which the declaration or variation remains in force, as conclusive evidence of the matters contained in the notification; and

(b) a copy of any industrial agreement, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence of the agreement, its execution as shown in the copy, and its registration in the Industrial Registrar's Office; and

(c) a copy of a certified agreement, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence of the agreement, its execution as shown in the copy, and its certification by the Commission; and

(d) a copy of an enterprise flexibility agreement, bearing a certificate purporting to be that of the Industrial Registrar that is a true copy,

is admissible as evidence of the agreement, its execution as shown in the copy and its approval by the Commission; and

(e) a copy of, or a document purporting to be an extract from the Industrial Gazette purporting to contain notification of the registration of any industrial agreement, or purporting to record the agreement is evidence of the agreement, its execution as recorded therein and its registration in the Industrial Registrar's Office; and

(f) a copy of a permit issued by an Industrial Magistrate or the Industrial Registrar bearing a certificate purporting to be that of the appropriate Clerk of Magistrates Courts, or, as the case may be, the registrar, that it is a true copy is admissible as evidence of the permit; and

(g) a certificate purporting to be that of the Industrial Registrar relating to the registration of an industrial organisation is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein; and

(h) a certificate purporting to be that of the Industrial Registrar that a person named therein was, at a time specified therein an officer (as named therein), or a member, of an industrial organisation specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

Proof of certain facts by averment

101. In proceedings under or for the purposes of this Act, the allegation or averment made in a complaint or other process by which the proceedings are commenced—

(a) that a calling was, at or about a time specified therein, transmitted from one person to another, by operation of law or by agreement;

(b) that a person named therein is or is not or was or was not, at a time specified therein, an officer or a member of an industrial organisation;

(c) that a person named therein is liable to pay, but has not paid, contribution to an occupational superannuation scheme or fund as required by any award, industrial agreement, certified agreement

or enterprise flexibility agreement;

is to be taken as sufficient proof of the matter or matters alleged or averred until the contrary is proved.

Evidentiary value of certificate of trustee of occupational superannuation scheme

102. In proceedings under or for the purposes of this Act a certificate, purporting to be that of a trustee of an occupational superannuation scheme or fund, in respect of a period of relevant service of an eligible employee concerned in the proceedings as to—

(a) an amount paid as contribution to the scheme or fund;

(b) an amount calculated on the rate of return that contributions specified therein would have attracted to the scheme or fund;

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

Certificate evidence in proceedings concerning holding of office in industrial organisation

103.(1) In proceedings on an application under section 362, 363 or 364 a certificate purporting to be that of a registrar or other proper officer of a court of the State, the Commonwealth, another State or a Territory or another country, that—

(a) a person specified therein was convicted by the court of an offence specified therein on a day specified therein;

(b) a person specified therein was acquitted by the court of an offence specified therein, or that a charge specified therein against the person was dismissed by the court, on a day specified therein;

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(2) In proceedings on an application under section 362, 363 or 364 a certificate purporting to be that of an officer in charge of a prison that a person specified therein was released from the prison on a day specified

therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

Crown employee to furnish information

104.(1) A person in the employment of the Crown, on being required by the Industrial Court or Industrial Commission to do so, is to furnish to the Court or the Commission information of which the person has knowledge in an official capacity.

(2) A person is not required by subsection (1) to furnish information such that, notwithstanding its relevance, an Act or law authorises, justifies or excuses a refusal to give it in evidence in legal proceedings but otherwise a person is to comply with subsection (1) notwithstanding an obligation under any Act or law not to disclose information.

Representation of parties

105.(1) Subject to subsection (3), in proceedings under or for the purposes of this Act a party to the proceedings, or a person ordered or permitted to appear or to be represented in the proceedings cannot be represented by counsel or solicitor (enrolled in Queensland or elsewhere), engaged as counsel or solicitor for those proceedings, except—

(a) in relation to proceedings in the Industrial Court—

(i) if the proceedings are for the prosecution of an offence under any Act; or

(ii) if all parties to the proceedings consent; or

(iii) if the Court grants leave; or

(b) if the proceedings are for leave of the President under section 120(1), with the consent of all parties to the application and of all persons ordered or permitted to be heard on the application, or with the leave of the President; or

(c) if the proceedings are interlocutory proceedings before the Industrial Registrar in relation to proceedings before, or to be brought before, the Industrial Court, with the consent of all parties to the interlocutory proceedings, or with the leave of the registrar; or

(d) if the proceedings are in the Industrial Commission—

(i) with the consent of all parties to the proceedings; or

(ii) with the Commission's leave if the Commission considers representation by counsel or solicitor is desirable for the effective conduct of the proceedings and the proceedings are—

(A) for the exercise of the Commission's powers under section 40; or

(B) about the rules of an industrial organisation, or an association seeking registration as an industrial organisation; or

(e) if the proceedings are—

(i) in an Industrial Magistrates Court; or

(ii) before the Industrial Registrar, other than as referred to in paragraph (c);

with the consent of all parties to the proceedings.

(2) Subject to subsection (1), in any such proceedings—

(a) a party to the proceedings, or a person ordered or permitted to appear or to be represented may be represented by an agent duly appointed in writing in that behalf;

(b) an industrial organisation may be represented by any officer or member of the industrial organisation.

(3) All parties to proceedings in an Industrial Magistrates Court are entitled to be represented therein by counsel or solicitor if—

(a) the proceedings are brought personally by an employee and relate to any matter that could have been brought before a court of competent jurisdiction (other than an Industrial Magistrates Court); or

(b) the proceedings are by way of prosecution in respect of an offence;

but in a case such as is referred to in paragraph (b) a person so represented is not to be awarded costs of such representation.

Costs

106. Each of them, the Industrial Court and Industrial Commission, has jurisdiction to award costs in all proceedings before it, including matters dismissed or not proceeded with for want of jurisdiction, but, except where this Act otherwise permits, no costs are to be allowed for any counsel, solicitor or agent in proceedings before the Commission unless the Commission certifies that it is, or was, in the interests of justice that counsel, solicitor or agent, as the case may be, should be, or was, heard.

Intervention as of right

107.(1) The Crown may intervene at any stage—

(a) in any proceedings in the Industrial Court, the Industrial Commission, an Industrial Magistrates Court, or before the Industrial Registrar;

(b) in any proceedings in any court or tribunal that touch upon—

(i) the jurisdiction or powers of the Industrial Court, Industrial Commission, an Industrial Magistrate or the Industrial Registrar; or

(ii) any matter in relation to which such jurisdiction or powers may be exercised; or

(iii) the interpretation of this Act.

(2) Upon intervention, the Crown becomes a party to the proceedings.

(3) The Minister may intervene, in the public interest, at any stage in any proceedings before the Industrial Court, the Industrial Commission, an Industrial Magistrates Court, or the Industrial Registrar.

(4) Upon intervention, the Minister becomes a party to the proceedings.

Adjournment by Industrial Registrar

108. If the President or an Industrial Commissioner is unable to attend at the time appointed for hearing any proceedings, the Industrial Registrar may adjourn the Industrial Court or, as the case may be, Industrial Commission and any business set down for the day to a day and time that the registrar considers convenient.

Reserved decisions

109.(1) The Industrial Court or Industrial Commission may reserve its decision in any proceedings.

(2) If a decision is reserved, it may be pronounced at any continuation or resumption of the Industrial Court or Industrial Commission, or at any subsequent sitting thereof, or the person or each of the persons constituting the Court or Commission may draw up a decision in writing and, after signing it, give it to the Industrial Registrar.

(3) On receiving a written decision the registrar is to file it in the Industrial Registrar's Office and give a copy thereof to each of the immediate parties to the cause.

(4) Upon its filing, a decision has the same force and effect as if it had been pronounced by the Court or Commission.

Extent of decisions and their execution

110.(1) In the exercise of its jurisdiction the Industrial Court or Industrial Commission—

(a) may make and pronounce all such decisions as are necessary, in its opinion, for doing complete justice in any proceedings before it, and for the execution of any such decision;

(b) may enforce its own decisions, and may direct the issue of any writ or process or impose and enforce any penalty authorised or prescribed by this, or any other, Act in the same manner as a judgment of the Supreme Court is enforced.

(2) Every decision of the Industrial Court or Industrial Commission—

(a) is to be drawn up and verified;

(b) without prejudice to any other manner of execution and recovery prescribed, may be executed, recovered on, and otherwise enforced;

as a judgment or order of a Judge of the Supreme Court is drawn up, verified, executed, recovered and otherwise enforced against the person, lands and goods of the party affected, according to the circumstances of the case.

(3) For the effectual operation of subsection (2) the Rules of the Supreme Court and all forms thereunder, so far as they may reasonably be applied, are to be applied and observed, with such modifications and variations as the Industrial Court or, as the case may be, Industrial Commission approves, either generally or in a particular case.

(4) The registrar, deputy registrars, sheriff, bailiffs and officers of the Supreme Court, or of Magistrates Courts, are taken to be officers of the Industrial Court and Industrial Commission for the purpose of—

(a) executing, recovering on, and otherwise enforcing decisions of the Industrial Court or Industrial Commission;

(b) conferring powers and authorities or imposing duties by the rules of court and of exercising or performing such powers, authorities and duties.

Enforcement of Commission's orders

111.(1) The Commission may make an order about an industrial dispute directed to—

(a) an industrial organisation; or

(b) a person in a capacity as an officer or agent of an industrial organisation; or

(c) another person.

(2) If an order may be directed either to an industrial organisation or a person, the Commission may make an order directed to the person only after considering whether it would be more appropriate to direct the order against the industrial organisation.

(3) An order must specify—

(a) a time for complying with the order; and

(b) if the order is made against a person—the person's name.

(4) The Commission may extend the specified time.

(5) If a party to the industrial dispute considers the industrial organisation or person has not substantially complied with the order, the party may cause a notice to be issued under the rules of court calling on the industrial organisation or person to show cause to the Full Industrial Court at a

specified time why the industrial organisation or person should not be dealt with under section 112.

Remedies on show cause

112.(1) If, on the day and at the time specified in the notice to show cause under section 111(5), or on a day and at a time to which the proceedings are adjourned, the industrial organisation to which the notice was issued does not show cause, which in the opinion of the Full Industrial Court is sufficient cause, the Court may exercise all or any of the following powers—

(a) impose on the industrial organisation a fine not exceeding 1 000 penalty units;

(b) vary an award, industrial agreement, certified agreement or enterprise flexibility agreement to which the industrial organisation is a party;

(c) suspend the date of operation of any wage increase that would otherwise be payable to members of the industrial organisation or to any class of such members;

(d) alter the rules of the industrial organisation so as to exclude from eligibility for membership thereof persons belonging to a particular class of member or section of such membership;

(e) make such orders as it thinks fit—

(i) restricting the use of property of the industrial organisation, or any branch thereof;

(ii) controlling the property of the industrial organisation, or any branch thereof, with a view to ensuring observance of such restrictions;

(f) suspend the registration of the industrial organisation for a specified period;

(g) cancel the registration of the industrial organisation;

(h) make such other order as it thinks fit with a view to securing the industrial organisation's compliance with the Industrial Commission's order or punishing the industrial organisation for

its failure to comply with the Commission's order;

(i) order the industrial organisation to pay the costs of the show cause proceedings.

(2) If, on the day and at the time specified in the notice to show cause under section 111(5), or on a day and at a time to which the proceedings are adjourned, the person to whom the notice was issued does not show cause, which in the opinion of the Full Industrial Court is sufficient cause, the Court may exercise all or any of the following powers—

(a) impose on the person a fine not exceeding—

(i) in the case of a corporation—200 penalty units;

(ii) in the case of an individual—40 penalty units;

(b) make such other order as it thinks fit with a view to securing the person's compliance with the Industrial Commission's order or punishing the person for failure to comply with the Commission's order;

(c) order the person to pay the costs of the show cause proceedings.

(3) All persons concerned are to comply with and give full effect to every order or direction made or given by the Full Industrial Court under subsection (1) or (2).

Filing Industrial Magistrate's decision

113. Every decision of an Industrial Magistrate made upon a remission by the Industrial Commission under this Act must be filed in the Industrial Registrar's Office, and thereupon is taken to be a decision of the Commission and to have operation and effect and to be enforceable accordingly, subject to any appeal therefrom.

Recovery of moneys under orders

114.(1) If in any proceedings the Industrial Court or Industrial Commission orders payment of a sum (as a penalty or otherwise), the Industrial Registrar may issue a certificate in accordance with the rules of court, under the seal of the Court or, as the case may be, the Commission, specifying—

(a) the amount payable;

(b) the persons by whom and to whom the amount is payable;

and upon filing of the certificate in a court of competent jurisdiction in an action for a debt of that amount the order evidenced by the certificate is enforceable as an order made in such an action by the court in which the certificate is filed.

(2) The remedy prescribed by subsection (1) is without prejudice to any other manner prescribed in which moneys may be recovered on an order of the Industrial Court or Industrial Commission.

Rules of court

115.(1) The President, with the concurrence of any 2 Industrial Commissioners may make rules not inconsistent with this Act—

(a) regulating the practice and procedure and forms to be followed and used in or in connection with or for the purposes of proceedings in the Industrial Court or Industrial Commission and before the Industrial Registrar, and in or in connection with or for the purposes of drawing up, settling and enforcing decisions, convictions and actions made, recorded or done by the Court, Commission or registrar and for regulating proceedings in chambers;

(b) as to the publication of decisions and other actions of the Court, Commission or registrar and the effect of such publication;

(c) for recovering fines and penalties imposed, and enforcing orders for attachment or imprisonment and orders for the payment of any moneys made by the Court or Commission;

(d) prescribing the fees and expenses to be paid to witnesses;

(e) prescribing fees to be paid in respect of any proceedings in the Court or Commission, or before the registrar and the party by whom such fees are to be paid;

(f) prescribing the mode of service of process, notices, orders or other proceedings on parties and other persons;

(g) prescribing the powers, authorities and duties of officers of the

Court or the Commission;

(h) relating to industrial agreements;

(i) delegating the jurisdiction of the Commission as permitted by this Act;

(j) requiring the furnishing of returns, lists of officers or members and other statistical information by industrial organisations and other organisations to the registrar;

(k) providing for all matters required or permitted by this Act to be provided for by the rules of court;

(l) providing for all matters necessary or expedient to be provided for, to allow for—

(i) the full and effectual exercise of jurisdiction and powers of the Court, Commission and registrar;

(ii) the giving of effect to the decisions, convictions and actions made, recorded, or done by the Court, Commission, any Industrial Magistrate, registrar, or officer of the Court or Commission.

(2) A rule made under subsection (1) is subordinate legislation.

Directions as to practice

116.(1) Subject to this Act and the rules of court, the practice and procedure of the Industrial Court, Industrial Commission or Industrial Registrar is as directed by the President, a Commissioner or the registrar respectively.

(2) If a person wishes to take any step in a cause or a proposed cause and this Act or the rules of court do not make provision, or sufficient provision, therefor application for directions may be made in chambers to the appropriate person referred to in subsection (1).

PART 9—APPEALS

Appeal to Supreme Court from Industrial Court

117.(1) A person aggrieved as defendant by—

(a) a decision of the Full Industrial Court, in proceedings referred to in section 12(1)(b)(iv), (v) or (vi);

(b) a decision of the Industrial Court in proceedings referred to in section 12(1)(c);

may appeal against the decision to the Court of Appeal.

(2) In proceedings instituted under subsection (1) the validity of proceedings in or before, or of a decision of, the Industrial Commission, or an Industrial Magistrate, must not be called in question.

Appeal to Industrial Court

118.(1) A person aggrieved by a decision of the Industrial Commission on—

(a) an application for registration of an industrial organisation;

(b) an objection to such an application;

may appeal against the decision to the Full Industrial Court.

(2) Apart from the right of appeal under subsection (1), the Crown or a person aggrieved by a decision of the Industrial Commission or the Industrial Registrar, other than a decision of a Full Bench of the Commission made on appeal from a decision of a single Commissioner or a decision of the Industrial Registrar under section 344 or 346, may appeal against the decision to the Industrial Court on the ground of—

(a) error of law;

(b) excess, or want, of jurisdiction;

and on no other ground.

(3) A person aggrieved by a decision of an Industrial Magistrate made in exercise of jurisdiction conferred by section 74 in relation to—

(a) the matters specified in section 74(a) or (c);

(b) the powers provided for in section 75;

may appeal against the decision to the Industrial Court.

(4) On appeal duly instituted under this section the Industrial Court may, by its order—

(a) dismiss the appeal; or

(b) allow the appeal and—

(i) set aside the decision appealed against and substitute the decision that, in its opinion, should have been made;

(ii) vary, as it considers appropriate, the decision appealed against;

(iii) suspend the operation of the decision appealed against and remit the cause, with or without directions, to the Industrial Commission, Industrial Magistrates Court, or Industrial Registrar, to proceed according to law;

as the Court considers appropriate.

Court's discretion on penalty on appeal

119. If the Industrial Court, on appeal, affirms a conviction of a person for an offence it may—

(a) increase the penalty, but so as not to exceed the maximum penalty prescribed for the offence; or

(b) reduce the penalty;

as the Court considers just.

Appeals to Industrial Commission

120.(1) A person aggrieved by a decision of the Industrial Commission constituted by a single Industrial Commissioner, with the leave of the President, may appeal against the decision to a Full Bench of the Commission on a ground other than—

(a) error of law;

(b) excess, or want, of jurisdiction.

(2) Leave for an appeal is not to be granted unless the President is of the opinion that the matter is of such importance that an appeal should be brought in the public interest.

(3) Except if an appeal may be brought under subsection (4) or under section 118(3), a person aggrieved by a decision of an Industrial Magistrate made in exercise of jurisdiction conferred by section 74 may appeal against the decision to a Full Bench of the Industrial Commission.

(4) A person aggrieved by a decision of an Industrial Magistrate made on an application under section 227 for a permit may, subject to subsection (5), appeal against the decision to the Industrial Commission.

(5) If the decision to be appealed against is that a permit be granted, an appeal may be brought on the ground that the calling to which the permit relates, or would relate, is one in relation to which such a permit should not be granted, and on no other ground.

(6) A person aggrieved by a decision of the Industrial Registrar—

(a) under section 37(7)—varying terms of an award, industrial agreement, certified agreement or enterprise flexibility agreement;

(b) under section 226—on application for a permit;

may appeal against the decision to the Industrial Commission.

(7) A person aggrieved by a decision of the Industrial Registrar under section 344 or 346 may appeal against the decision to a Full Bench of the Industrial Commission on a ground other than error of law or excess, or want, of jurisdiction.

(8) On an appeal duly instituted under this section the Industrial Commission may, by its order—

(a) dismiss the appeal; or

(b) allow the appeal and—

(i) set aside the decision appealed against and substitute the decision that, in its opinion, should have been made;

(ii) vary as it considers appropriate the decision appealed against;

(iii) suspend the operation of the decision appealed against if, being a decision such as is referred in subsection (1), it has

not already been stayed under section 121, and remit the cause, with or without directions, to the Industrial Commissioner, the Industrial Magistrate or, as the case may be, the Industrial Registrar—

(A) for report to the Commission as constituted for the purposes of the appeal; or

(B) to proceed according to law;

as the Commission considers appropriate.

President may stay decisions when leave sought

121.(1) At any time after application is made for the President's leave to appeal to a Full Bench of the Industrial Commission pursuant to section 120(1), a person having a sufficient interest in the cause may make application to the President for an order staying the operation of the decision against which it is sought to appeal.

(2) The President may order that the operation of such decision be stayed, wholly or partly, for such period as is specified in the order, if the President considers it appropriate to do so, and such order takes effect according to its terms.

Decisions on appeal that are final

122. A decision of a Full Bench of the Industrial Commission on the following appeals is final—

(a) an appeal against a decision of a single Industrial Commissioner;

(b) an appeal against a decision of the Industrial Registrar under section 344 or 346.

Appeals to both Court and Commission

123.(1) A person who wants to appeal against a decision of the Industrial Commission constituted by a single Commissioner, or a decision of the Industrial Registrar under section 344 or 346, may appeal both to—

(a) the Industrial Court; and

(b) a Full Bench of the Commission.

(2) The person must file 2 separate appeals setting out—

(a) for the appeal to the Industrial Court—only the grounds mentioned in section 118(2); and

(b) for the appeal to a Full Bench—

(i) if the appeal is against a decision of a single Commissioner—only the grounds mentioned in section 120(1); or

(ii) if the appeal is against a decision of the Industrial Registrar—only the grounds mentioned in section 120(7).

(3) The President must decide the order in which the appeals are to be heard.

(4) In this section—

"appeal against decision" includes application for a prerogative order in relation to a decision.

Appeal to Commission against stand downs

124.(1) An employee stood down by an employer under authority conferred by section 224, may appeal against the stand down to the Industrial Commission.

(2) If the employee is a member of an industrial organisation of employees, the organisation in its registered name may institute and conduct the appeal on the employee's behalf.

(3) On an appeal under subsection (1), the Industrial Commission may, by its order—

(a) dismiss the appeal; or

(b) allow the appeal and—

(i) order that wages lost by the employee because of the stand down be paid to the employee by the employer within a period specified in the order;

(ii) if the employee remains stood down at the time of the Commission's decision, order the employer to provide for

the resumption of work by the employee, immediately or on a day specified in the order.

(4) If the Industrial Commission makes an order under subsection (3)(b)(i) the Commission may include therein default provisions with a view to its enforcement, otherwise than by imprisonment, as if—

(a) the Commission were an Industrial Magistrates Court;

(b) the Industrial Commissioner who makes the order were an Industrial Magistrate.

(5) The order may be filed in the office of a clerk of the Magistrates Court and thereupon may be enforced as an order made by an Industrial Magistrates Court.

Nature of appeal

125. An appeal to the Industrial Court or Industrial Commission is by way of re-hearing on the record, but the Court may hear evidence afresh, or hear additional evidence, if in its opinion it is necessary or desirable to do so to effectually dispose of the appeal.

Time limited for appeal

126. An appeal against any decision must be commenced in accordance with the rules of court within 21 days following—

(a) the announcement of the decision at a hearing, if the decision is so delivered;

(b) the release of the decision, if the decision is delivered through the Industrial Registrar.

Transitional appeals

126A.(1) Part 9, as it existed immediately before the commencement of the *Industrial Relations Amendment Act 1994*, applies to appeals filed under section 118 or 120 before the commencement.

(2) This section expires 6 months after it commences.

PART 10—AWARDS AND INDUSTRIAL AGREEMENTS

Division 1—The award system

Subdivision 1—Objects of Division

Objects of Division

127. The objects of this Division are to ensure—

(a) employees are protected by—

(i) awards setting fair and enforceable minimum wages and employment conditions that are kept at a relevant level; and

(ii) in appropriate cases, by paid rates awards setting fair and enforceable wages and employment conditions that are kept at a relevant level; and

(b) awards (other than paid rates awards) act as a safety net of minimum wages and employment conditions underpinning direct bargaining; and

(c) awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees' interests are properly taken into account; and

(d) when making, reviewing and amending awards, regard is had to stable and appropriate relativities based on skill, responsibility, the conditions under which work is performed, and the need for skill-based career paths; and

(e) the Commission's functions and powers in relation to making and amending awards are performed and exercised in a way that gives employees prompt access to fair and enforceable minimum wages and employment conditions, so far as they do not already have them.

Subdivision 2—Awards

Form, effect and term of award

128.(1) Every award is to be made by the Industrial Commission and—

(a) is to be in a form determined by the Commission in the particular case;

(b) takes effect and has the force of law throughout the State and without limit of time, except as otherwise prescribed by this section.

(2) An award may provide that it is in force—

(a) in a specified locality;

(b) for a specified period;

(c) in relation to 1 or more specified employers;

(d) in relation to 1 or more named establishments or operations of 1 or more specified employers;

in which event the award takes effect and has the force of law to the extent that it so provides and no further.

Persons bound by award

129. Subject to—

(a) all exemptions ordered by the Industrial Commission under section 130; and

(b) sections 112 and 448;

an award is binding on—

(c) all parties to the industrial cause in which the award is made who appear or are represented therein before the Commission;

(d) all parties who have been summoned to appear before the Commission as parties to the industrial cause in which the award is made, whether or not they appear or are represented therein, unless the Commission is of the opinion that they were improperly summoned as parties;

(e) all industrial organisations concerned with the calling or callings to which the award applies;

(f) all members of industrial organisations bound by the award;

(g) all employers and employees in a locality in which the award applies, who are engaged in the calling or callings to which the award applies;

(h) if the award purports to apply to any particular employer or employers only, or named establishments or operations of any particular employer or employers only, all employees of that employer or those employers or, as the case may be, all employees of that employer or those employers in the named establishments or operations.

Exemptions

130.(1) The Industrial Commission, of its own motion or on the application of an industrial organisation or an employer, may, by its order by which it makes an award, or by its order made subsequently, exempt from the application of the award—

(a) any employer or class of employer, or employee or class of employee, in a locality and in the calling or callings to which the award applies; and

(b) any person who is engaged, whether as employer or employee, in such a locality and calling or callings, at any time while the award remains in force;

and may, by its order, revoke any such exemption.

(2) For as long as an exemption subsists the award is not binding on the employer or employee or class thereof, or person, according to the terms of exemption.

Subdivision 3—Paid rates awards

Objects of Subdivision

131. The objects of this Subdivision are to ensure that—

(a) in appropriate cases, employees are protected by paid rates awards setting fair and enforceable wages and employment conditions that are kept at a relevant level; and

(b) paid rates awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees' interests are also properly taken into account.

Making or amending paid rates awards

132.(1) This section applies if—

(a) the Commission proposes—

(i) to make a new award covering employees of a particular kind in an industry; or

(ii) to amend an existing award to cover employees of a particular kind in an industry; and

(b) the employees' wages and employment conditions, so far as they have customarily been decided by an award, have been decided by a paid rates award.

(2) The Commission must—

(a) make the new award as a paid rates award; or

(b) amend the existing award to be a paid rates award;

so far as the award decides the employees' wages and employment conditions that have customarily been decided by a paid rates award.

(3) However, the Commission need not do so if—

(a) it considers the matters that would be dealt with by the proposed award would be more appropriately dealt with by a certified agreement or an enterprise flexibility agreement; or

(b) there is a reasonable prospect of the matters, that would be dealt

with by the proposed award, being dealt with by a certified agreement or an enterprise flexibility agreement; or

(c) it is satisfied that it would be against the public interest; or

(d) the parties to the proposed award, or the award as proposed to be amended, have agreed to the award not being a paid rates award.

Commission to maintain existing paid rates awards

133.(1) The Commission must maintain and amend existing paid rates awards, having regard to the objects of this Division and the Commission's functions under section 30(2).

(2) However, the Commission need not act under subsection (1) so far as the Commission is satisfied it is against the public interest.

(3) Section 30(2)(a) does not require the Commission to ensure paid rates awards are consistent with awards that are not paid rates awards.

Party acting inconsistently with award's status as a paid rates award

134. The Commission may—

(a) cancel a paid rates award and replace it with an award that is not a paid rates award; or

(b) amend a paid rates award to stop it being a paid rates award;

if the Commission is satisfied, after giving the parties to the award an opportunity to be heard, that the party has acted in a way so inconsistent with the award as to make it inappropriate for the award to continue as a paid rates award.

Statement identifying paid rates award

135.(1) The Commission must include in a new paid rates award a statement that the award is a paid rates award.

(2) If the Commission amends—

(a) an existing paid rates award; or

(b) an existing award so that it becomes a paid rates award;

the Commission must include in the amended award a statement that the award is a paid rates award, unless the award already contains the statement.

(3) If the Commission amends an award to stop it being a paid rates award, it must remove the statement from the award.

(4) This section does not affect the validity of an award or amendment.

Division 2—Industrial agreements

Procedure for making agreement

136.(1) An industrial organisation of employees may make an agreement in writing with an industrial organisation, or association, of employers, or with any particular employer or employers in relation to any industrial matter.

(2) Such an agreement, when made, is to be forthwith filed in the Industrial Registrar's Office.

(3) The Industrial Registrar is to refer every such agreement so filed to the Chief Industrial Commissioner.

(4) If the Chief Industrial Commissioner considers that an agreement contains terms inconsistent with general Full Bench Principles, the Commissioner is to allocate the agreement to a Full Bench of the Industrial Commission.

(5) In any other case the Chief Industrial Commissioner is to allocate the agreement to the Industrial Commission.

(6) Subject to subsection (8), the Industrial Commission or a Full Bench of the Commission may—

(a) approve an agreement referred to it under subsection (4) or (5);

(b) after hearing the parties to the agreement, approve an agreement referred to it under subsection (4) or (5) with such exclusions therefrom or variations therein as it considers necessary;

(c) refuse to approve an agreement referred to it under subsection (4) or (5) if the Commission is of opinion that—

(i) the agreement contains any term or terms that the

Commission is not authorised to include in an award; or

(ii) it is not in the public interest that the agreement be approved.

(7) Approval of an agreement is not to be taken to be contrary to the public interest merely because the agreement contains terms inconsistent with general Full Bench Principles.

(8) The powers conferred on the Industrial Commission by subsection (6) do not extend to approving an agreement that contains terms based on terms of another agreement already approved, which latter terms are considered to be inconsistent with general Full Bench Principles, unless the Commission is satisfied that the inclusion of the terms in the agreement before it is justified in the particular circumstances of the case.

(9) The Industrial Commission may approve an agreement referred to it under subsection (5)—

(a) of its own motion;

(b) without a hearing;

if—

(c) the agreement does not contain terms considered to be inconsistent with general Full Bench Principles; and

(d) the Commission thinks fit to do so;

except as is otherwise prescribed by subsection (8).

(10) A reference in this section to **"general Full Bench Principles"** is a reference to principles established by a Full Bench of the Industrial Commission that apply in relation to the determination of wages and conditions of employment, other than principles that apply in relation to the approval of agreements under this section.

Agreement subjected to conditions

137. If the Industrial Commission, of its own motion or on the application of—

(a) the Crown; or

(b) the Industrial Registrar; or

(c) a person bound by an award; or

(d) a person aggrieved by the industrial agreement in question;

considers it advisable (in the public interest, or for other reason) to do so—

(e) it may impose such conditions in relation to an industrial agreement as it considers just and equitable;

(f) it may prohibit an industrial organisation of employees, or an employer or industrial organisation, or association, of employers, from enforcing an industrial agreement, to the extent that it is, or has become, inconsistent with an award or a general ruling.

Registration of agreement

138. The Industrial Registrar is to register in the Industrial Registrar's Office every industrial agreement approved by the Industrial Commission.

Requirements of agreement

139.(1) An industrial agreement—

(a) is in force for the term specified therein, not exceeding 3 years from the date of its making;

(b) is limited in its effect to the particular locality specified therein;

(c) must truly state therein the date of its making and the names of all the original parties thereto.

(2) The date of making of an industrial agreement is the date on which it is executed by the party thereto who is first to execute it.

Continuance of agreement

140. At the end of its term, an industrial agreement continues in force, and to be binding on—

(a) all parties thereto, except any party who has retired from the agreement as permitted by section 142;

(b) all other persons on whom the agreement is binding pursuant to section 141, subject to any relevant award.

Persons bound by agreement

141.(1) Upon its registration, an industrial agreement extends to and is binding on—

(a) all parties to the agreement;

(b) all members of an industrial organisation that is a party to the agreement engaged in the calling or callings to which the agreement relates;

(c) all employees of an employer on whom the agreement is binding;

(d) all members of an association of employers that is a party to the agreement;

subject to sections 112 and 448.

(2) In this section—

"party" to an industrial agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the party's business, including a corporation that has acquired or taken over the whole or part of the party's business.

Retirement of parties from agreement

142.(1) A party to an industrial agreement, at any time after the expiry of the agreement, or within 30 days immediately preceding the day on which the agreement is to expire, may file in the Industrial Registrar's Office a notice in accordance with the rules of court signifying an intention to retire from the agreement at the end of a specified period of at least 30 days from the date of such filing.

(2) Upon the termination of such specified period, the party that has filed the notice ceases to be a party to the industrial agreement.

Addition of parties to agreement

143. At any time when an industrial agreement is in force, any industrial organisation or employer, subject to the consent thereto of—

(a) the Industrial Commission; and

(b) such of the original parties to the agreement as are still parties

thereto, or their representatives;

may become a party to the agreement by filing in the Industrial Registrar's Office a notice in accordance with the rules of court signifying a concurrence with the industrial agreement.

Division 3—Powers relevant to awards and industrial agreements

Powers of Commission re awards

144.(1) The Industrial Commission may, of its own motion, or on application made as prescribed by subsection (2)—

(a) vary any award;

(b) otherwise deal with any award as the Commission considers just;

(c) rescind any award;

(d) substitute a fresh award for any award.

(2) Application to the Industrial Commission for exercise of powers under subsection (1) may be made by—

(a) the Minister;

(b) an industrial organisation;

(c) an employer;

(d) a person who satisfies the Commission—

(i) that the person is not an officer of an association that is eligible to be, but is not, registered under this Act; and

(ii) that in making the application, the person is not acting on behalf of an association that is eligible to be, but is not, registered under this Act;

as an industrial organisation.

(3) An award as varied becomes and is the award in place of the award as it existed before the variation.

(4) The Commission may refrain from hearing, further hearing, or deciding an application to amend an award while—

(a) it considers that, in all the circumstances, the parties concerned should try to negotiate a certified agreement or enterprise flexibility agreement to deal with the subject matter of the proposed amendment; and

(b) it is satisfied that there is a reasonable prospect of the parties making the agreement.

Commission to include enterprise flexibility provisions in awards

145.(1) This section applies when the Commission makes or amends an award.

(2) If it considers it appropriate, the Commission must include in the award a provision establishing a process for negotiating agreements at the enterprise or workplace level about how the award should be amended to make the enterprise or workplace operate more efficiently according to its particular needs.

Amendment of award to give effect to agreement negotiated under enterprise flexibility provision

146.(1) This section applies if an application is made for the amendment of an award, as it applies to an enterprise or workplace, to give effect to an agreement made under a provision included in the award under section 145.

(2) The Commission may amend the award only if it is satisfied the amendment would not disadvantage the employees who would be affected by the amendment in relation to their employment conditions.

(3) An amendment disadvantages employees in relation to their employment conditions only if—

(a) it would result in the reduction of the employees' entitlements or protection under the award, another award or an industrial agreement; and

(b) in the context of their employment conditions considered as a whole, the Commission considers the reduction is against the public interest.

(4) Each industrial organisation of employees that is a party to the award may be heard on the application.

(5) The Commission must not refuse to amend the award merely because an industrial organisation refuses to agree or consent to the amendment, if the Commission is satisfied the refusal is unreasonable.

Powers of Commission re agreements

147.(1) The Industrial Commission may, of its own motion, or on application made as prescribed by subsection (2)—

(a) vary an industrial agreement;

(b) rescind an industrial agreement.

(2) Application to the Industrial Commission for exercise of a power under subsection (1) may be made by—

(a) the Minister;

(b) a party to the industrial agreement;

(c) an industrial organisation whose members are bound or claim to be affected or aggrieved by the industrial agreement;

(d) a person who is bound or claims to be affected or aggrieved by the industrial agreement and who satisfies the Commission—

(i) that the person is not an officer of an association that is eligible to be, but is not, registered under this Act; and

(ii) that in making the application, the person is not acting on behalf of an association that is eligible to be, but is not, registered under this Act;

as an industrial organisation.

(3) An industrial agreement as varied becomes and is the agreement in place of the agreement as it existed before the variation.

Agreement may be declared a common rule

148.(1) The Industrial Commission may, in accordance with this section, declare that an industrial agreement other than one that contains terms considered to be inconsistent with general Full Bench Principles has the effect of an award and is a common rule for any calling or callings to which the agreement relates.

(2) Before making a declaration under subsection (1), the Industrial Commission is to give to all parties who, in its opinion, are likely to be affected by the declaration notice (by advertisement or otherwise) of its proposal to make the declaration, and is to hear any of the parties desiring to be heard in opposition to the proposal.

(3) Upon the Industrial Commission duly making a declaration under subsection (1), the industrial agreement so declared becomes binding on all employers and employees (whether or not members of an industrial organisation) engaged, at any time while the agreement is in force, in any calling to which the agreement relates within the locality specified in the agreement.

Agreement may be renewed, varied etc.

149.(1) Subject to subsection (2), an industrial agreement may be renewed, varied, amended, modified or cancelled by an industrial agreement subsequently made by all the parties to the first mentioned agreement but so that while an industrial agreement is in force, a party thereto cannot be deprived of a benefit thereunder by a subsequent industrial agreement to which that party is not a party.

(2) If the industrial agreement is one to which a declaration made under section 148(1) relates, a subsequent agreement that purports to vary, amend, modify or cancel that agreement has, to that extent, no effect except by leave of the Industrial Commission.

Division 4—Provisions common to awards and industrial agreements

Commission must review awards and industrial agreements

150.(1) Each award or industrial agreement in force must be reviewed by the Commission—

(a) within 3 years after—

(i) it was made; or

(ii) if it was made before the commencement of this section—the commencement; and

(b) within 3 years after it was last reviewed under this section.

(2) After reviewing an award or industrial agreement, the Commission must take the steps that may be prescribed by regulation to remedy any of the following deficiencies found by it—

(a) for an award or industrial agreement—

(i) the award or industrial agreement contains a discriminatory provision;

(ii) the award or industrial agreement contains obsolete or dated provisions;

(iii) the award or industrial agreement is not structured in a way that is as easy to understand as the subject matter allows;

(iv) the award or industrial agreement prescribes matters in unnecessary detail;

(b) for an award—

(i) the award's terms are no longer appropriate having regard to the Commission's function under section 30(2)(a) to ensure the system of awards provides for secure, relevant and consistent wages and employment conditions;

(ii) the award is not written in plain English;

(c) for an industrial agreement—the agreement's terms no longer provide for secure, relevant and consistent wages and employment conditions.

(3) The steps prescribed may include amending the award or industrial agreement after giving a party to the award or industrial agreement who has a genuine interest in the matter an opportunity to be heard.

Components of wage rates

151.(1) Each rate of wages provided for by an award or industrial agreement (whether existing at the commencement of this Act or made thereafter) as payable to adult employees, or employees who are seniors, is taken to consist of, and to be expressed by reference to, the guaranteed minimum wage declared at the time the award or agreement is or was made and a margin, or, where subsequently to the making of the award or

agreement there has been made a declaration of a general ruling that varies the guaranteed minimum wage, the guaranteed minimum wage as varied by the declaration last made and a margin.

(2) Subsection (1) does not apply to a rate of wages provided for by an award or agreement that immediately before the commencement of this Act provides for a rate of wages equal to or less than the guaranteed minimum wage contained in the declaration of a general ruling last made before such commencement, until the rate of wages provided for by that award or agreement becomes greater than the guaranteed minimum wage last declared before such greater rate is provided for.

Preservation of percentage rate values

152. If an award or industrial agreement (whether existing at the commencement of this Act or made thereafter) provides for a rate of wages as a percentage or fraction of a rate of wages and in addition contains a quantitative statement in terms of money of that rate purporting to be calculated as such percentage or fraction, the award or agreement is to be construed as if the quantitative statement in terms of money of the rate did not appear therein.

Enforceability of awards and agreements

153. Action cannot be commenced to enforce an award or industrial agreement until the expiry of 21 days following the date of its publication in the Industrial Gazette.

Effect of appeal decisions on awards or agreements

154. If a decision of the Industrial Court—

(a) on appeal from a decision of the Industrial Commission; or

(b) on a case stated by the Industrial Commission;

or a decision of a Full Bench of the Commission on appeal from a single Commissioner affects any award or industrial agreement, the Commission is to forthwith vary the award or agreement to give effect to the Court's or Commission's decision.

Inconsistency between awards, agreements and contracts

155.(1) Any award or industrial agreement prevails over any contract of service that is in force when the award or agreement becomes enforceable, or that is made at any time while the award or agreement continues in force, to the extent of any inconsistency between the award, or agreement, and the contract.

(2) The contract is to be construed, and takes effect, as if it were varied so far as is necessary to make it conform to the award or agreement.

(3) For the purposes of this section, there is not an inconsistency between an award or agreement and a contract by reason that the contract provides for conditions of employment more favourable to the employee than does the award or agreement.

PART 11—PROMOTING BARGAINING AND FACILITATING AGREEMENTS

Division 1—Objects and interpretation

Objects of Part

156.(1) The objects of this Part are—

(a) to promote bargaining and assist agreements that will assist labour market reform by encouraging—

(i) single bargaining units; and

(ii) workplace bargaining directed at increased productivity; and

(iii) continuous improvement in the workplace; and

(iv) the achievement in the workplace of best practice, increased work satisfaction and career opportunities; and

(b) to encourage the use of agreements, particularly at the enterprise or workplace level.

(2) The Commission must, as far as practicable, perform its functions

under this Part in a way that furthers the objects of this Act and, in particular, the objects of this Part.

(3) Section 92(3) does not apply to the performance of the Commission's functions under this Part.

(4) The Commission's functions under this Part may be performed by an Industrial Commissioner.

Definitions

157. In this Part—

"eligible union", for an agreement that applies to an enterprise carried on by an employer, means an industrial organisation of employees—

(a) that is a party to an award or industrial agreement binding the employer for work performed in the enterprise; and

(b) of which 1 or more employees whom the employer employs to perform work in the enterprise are members.

"employer" in Division 3 includes 2 or more employers carrying on a business as a joint venture or common enterprise.

"enterprise" means—

(a) a business carried on by a single employer; or

(b) a geographically distinct part of the business; or

(c) 2 or more geographically distinct parts of the same business carried on by a single employer.

"negotiating party" in Division 3 means the initiating party and the other proposed party mentioned in section 200.

"part" of a single business includes—

(a) a geographically distinct part of the single business; or

(b) a distinct operational or organisational unit within the single business.

"party" to an agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of a party's business, including a corporation that has acquired or taken

over the whole or part of the party's business.

"period of the agreement" means the period of operation of the agreement specified in the agreement or the period as extended under either of the following sections—

- section 168 (Extension of certified agreements)
- section 189 (Extension of enterprise flexibility agreements).

"relevant industrial matter" in Division 5 means an industrial matter that is the subject of negotiations.

"single business" means—

(a) a business carried on by a single employer; or

(b) a business carried on by 2 or more employers as a joint venture or common enterprise; or

(c) a single project or undertaking; or

(d) activities carried on by—

(i) the State; or

(ii) a body, association, office or other entity established for a public purpose under a State law; or

(iii) another body in which the State has a controlling interest.

"single enterprise" means—

(a) a single business; or

(b) part of a single business; or

(c) a single workplace.

Division 2—Certified agreements

Certified agreements

158.(1) An employer or an industrial organisation of employers and an industrial organisation of employees may make a memorandum of agreement between them about an industrial matter.

(2) The parties to the agreement must apply to the Commission to certify the agreement.

Organisations entitled to be heard

159.(1) An industrial organisation of employees is entitled to be heard on an application to the Commission to certify an agreement, or to approve an extension or amendment of a certified agreement, applying to a single enterprise if—

(a) the organisation is entitled to represent the industrial interests of the organisation's members who are employed by an employer who is a party to the agreement to perform work in the single enterprise; or

(b) the organisation—

(i) is bound by an award that binds the employer for work performed in the single enterprise; and

(ii) can show it has a genuine interest in the application.

(2) As soon as practicable after the application is made, the Commission must notify, as prescribed by regulation, each industrial organisation entitled to be heard that—

(a) the application has been made; and

(b) the industrial organisation is entitled to be heard on the application.

(3) This section does not affect another right of an industrial organisation of employees or of another entity to intervene or be heard, or apply to intervene or be heard, on an application.

Certification of agreements

160.(1) The Commission must, and may only, certify an agreement if satisfied—

(a) the agreement does not disadvantage the employees covered by the agreement in relation to their employment conditions; and

(b) the agreement includes procedures for preventing and settling

disputes between the employers and employees covered by the agreement about matters arising under the agreement; and

(c) the agreement either—

(i) establishes a process for the parties to the agreement to consult each other about changes to the organisation or performance of work in any workplace to which the agreement relates; or

(ii) states that it is not appropriate for the agreement to provide for the consultation; and

(d) during the negotiations for the agreement, reasonable steps were taken to consult the employees covered by the agreement about the agreement; and

(e) before the application for certification was made, reasonable steps were taken to inform the employees covered by the agreement of—

(i) the agreement's terms; and

(ii) the effect of the terms; and

(iii) in particular, the procedures mentioned in paragraph (b); and

(iv) the intention to apply to the Commission to certify the agreement, and about the consequences of certification; and

(f) if the agreement applies only to a single enterprise—

(i) subject to subsections (4) and (5), the parties to the agreement include each industrial organisation of employees that—

(A) is a party to the award or industrial agreement binding the employer; or

(B) if no award or industrial agreement binds the employer—is entitled to represent the industrial interests of the employees who are covered by the agreement; and

(ii) the agreement has been negotiated—

(A) on the one hand, by each employer concerned or the

employer's representative; and

(B) on the other hand, by a person representing all the other parties to the agreement; and

(g) the agreement specifies its period of operation.

(2) Under subsection (1)(a), an agreement disadvantages employees in relation to their employment conditions only if—

(a) certification of the agreement—

(i) would result in the reduction of the employees' entitlements or protection under an award or industrial agreement that binds the employer; or

(ii) if no award or industrial agreement binds the employer—would not provide employee entitlements or protection at least equal to the employees' entitlements or protection under an appropriate award or industrial agreement nominated in the agreement; and

(b) in the context of the employment conditions considered as a whole, the Commission considers the reduction is against the public interest.

(3) Subsection (1)(d) and (e) does not apply if the Commission is satisfied—

(a) the agreement applies only to a new business, project or undertaking; and

(b) when the application for certification was made, no-one had been employed for the business, project or undertaking.

(4) Subsection (1)(f)(i) does not apply if the Commission is satisfied—

(a) each industrial organisation of employees mentioned in the subsection has been given the opportunity to be a party to the agreement; and

(b) at least 1 of the industrial organisations is a party to the agreement; and

(c) the agreement is in the interests of the employees whose employment is covered by the agreement.

(5) Subsection (1)(f)(i) does not apply to an industrial organisation of employees if none of its members is employed in the single enterprise concerned.

When Commission must refuse to certify agreements

161.(1) The Commission may refuse to certify an agreement other than an agreement applying only to a single enterprise if it considers certifying the agreement would be against the public interest.

(2) The Commission must not certify an agreement if it considers a provision of the agreement is inconsistent with—

(a) a provision of Part 4, Divisions 4 or 5 or Part 12, Division 5; or

(b) a Commission order under those Divisions.

(3) The Commission must not certify an agreement if satisfied—

(a) an employer has, in connection with negotiating the agreement, contravened 1 or more of the following sections—

- section 217 (Employer not to discriminate between union members and non-union members when negotiating agreements)
- section 476 (Prejudice of employee by reason of membership of industrial organisation)
- section 477 (Prejudice of employee by reason of non-membership of industrial organisation)
- section 478 (Conduct in relation to holder of conscientious objector's certificate); or

(b) the employer has caused an entity, in connection with negotiations for the agreement, to engage in conduct that, had the employer engaged in it, would be a contravention by the employer of any of the sections mentioned in paragraph (a); or

(c) an entity has, for the employer—

(i) engaged in the conduct mentioned in paragraph (b); or

(ii) caused another entity to engage in the conduct.

(4) Subsection (3) does not apply if the Commission is satisfied the

contravention or conduct, and its effects, have been fully remedied.

(5) The Commission must not certify an agreement if it considers the agreement contains a discriminatory provision.

(6) The Commission may refuse to certify an agreement if it considers the agreement applies only to a part of a single business that—

(a) is neither a geographically distinct part of the single business nor a distinct operational or organisational unit within the single business; and

(b) is defined by the agreement so that the agreement will not cover employees it could reasonably cover, having regard to—

(i) the nature of the work performed by the employees covered by the agreement; and

(ii) the organisational and operational relationships between the part and the rest of the single business; and

(c) it is unfair for the agreement not to cover the employees.

(7) This section applies despite section 160.

How agreement may provide for amendment

162.(1) If an agreement provides for any of its terms to be amended by a later agreement, the Commission may certify the agreement only if satisfied the agreement—

(a) specifies the amendable terms and when and how they can be amended; and

(b) provides that an amendment has effect only if—

(i) it is agreed to by all the parties who are bound by the agreement when the amendment is made; and

(ii) it is approved by the Commission under section 170.

(2) To avoid doubt, it is declared that subsection (1) does not apply to an agreement so far as the obligations under the agreement can change, because of the agreement's terms, without the need for a later agreement between the parties.

Other options open to Commission instead of refusing to certify agreement

163.(1) This section applies if the Commission has grounds not to certify an agreement under any of the following sections—

- section 160 (Certification of agreements)
- section 161 (When Commission to refuse to certify agreements)
- section 162 (How agreement may provide for amendment).

(2) The Commission may accept an undertaking about the agreement's operation from 1 or more of the parties.

(3) The Commission may certify the agreement if satisfied the undertaking meets its concerns.

(4) If the undertaking is not complied with, the Commission may terminate the agreement after giving the parties an opportunity to be heard.

(5) In any case, before refusing to certify the agreement, the Commission must give the parties an opportunity—

(a) to amend the agreement; or

(b) to do what is necessary for the Commission to be able to certify the agreement.

Commission to protect interests of certain employees

164.(1) The Commission must comply with this section in performing its functions and exercising its powers about an application to certify an agreement.

(2) The Commission must identify the employees who may be covered by the agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement.

(3) Examples of employees whose interest may not have been taken into account are—

(a) women; and

(b) persons whose first language is not English; and

(c) young persons.

(4) When deciding whether it is satisfied under section 160(1)(d) and (e), the Commission must do whatever is necessary to find out—

(a) whether the employees were consulted about the agreement and informed of the matters mentioned in section 160(1)(e) in ways appropriate to their particular circumstances and needs; and

(b) in particular, whether the effects on the relevant employees of the agreement's terms were properly explained to the employees.

(5) If it considers there has been a failure to consult or explain as mentioned in subsection (4), the Commission must make the orders it considers necessary to remedy the failure and its effects.

Procedures for preventing and settling disputes

165. Dispute prevention and settling provisions in a certified agreement may empower the Commission to settle disputes, if the Commission approves of the provisions.

Operation of certified agreements

166.(1) A certified agreement comes into force when it is certified.

(2) A certified agreement remains in force unless—

(a) it is terminated by the Commission under section 163(4); or

(b) because of 1 or more orders or declarations under the relevant sections—

(i) it is terminated; or

(ii) all the remaining parties to the agreement are industrial organisations of employees; or

(iii) all the remaining parties to the agreement are employers or industrial organisations of employers; or

(c) it is amended by the parties, other than under section 172(4)(c); or

(d) it is replaced by a new certified agreement or by an enterprise flexibility agreement.

(3) In this section—

"relevant sections" means—

- section 172 (Certified agreements may be amended or terminated by Full Bench)
- section 175 (Certified agreements may be terminated by parties)
- section 176 (Party affected by industrial action may withdraw).

Party may retire from a certified agreement

167.(1) A party to a certified agreement may file in the Industrial Registrar's office a notice of intention to retire from the agreement at the end of a specified period of at least 30 days from the day of filing.

(2) The notice must be filed—

(a) within 30 days before the end of the period of the agreement; or

(b) if the agreement remains in force after the end of the period of the agreement because of section 166(2)—while the agreement remains in force because of section 166(2).

(3) At the end of the specified period, the party who filed the notice ceases to be a party to the certified agreement.

Extension of certified agreements

168.(1) The period of a certified agreement may be extended if—

(a) the parties agree to the extension; and

(b) before the end of the period of operation of the agreement or the period as last extended under this section—

(i) if the agreement applies only to a single enterprise—1 or more of the parties apply to the Commission to approve the extension; or

(ii) otherwise—1 or more of the parties notify the Commission of the extension.

(2) If an application is made under subsection (1)(b)(i), the extension has effect at least until the application is decided, even if that happens after the period mentioned in subsection (1)(b).

(3) The Commission must approve the extension unless an industrial organisation of employees, entitled under section 159 to be heard, satisfies the Commission the extension would not be in the interests of the employees covered by the agreement.

(4) If that happens, the Commission must not approve the extension.

Effect of certified agreements

169. While a certified agreement is in force—

(a) subject to paragraph (b), the agreement's terms prevail over the terms of an award or industrial agreement to the extent of the inconsistency; and

(b) the agreement has no effect so far as it is inconsistent with an enterprise flexibility agreement approved for implementation before the agreement was certified; and

(c) a term of the agreement can be amended by the parties, but only as provided in either of the following sections—

- section 170 (Amendment of certified agreement as provided in the agreement)
- section 172 (Certified agreements may be amended or terminated by Full Bench); and

(d) the agreement may only be amended to remove ambiguity or uncertainty; and

(e) the Commission may not exercise powers to amend the agreement other than under this Division.

Amendment of certified agreement as provided in the agreement

170.(1) If a certified agreement provides for any of its terms to be amended by a later agreement, the amendment takes effect only if approved by the Commission on application by the parties bound by the agreement when the amendment was made.

(2) The Commission must, and may only, approve the amendment if satisfied—

(a) the amendment was made as required by the agreement; and

(b) the amendment has been agreed to by all parties bound by the agreement when the amendment was made; and

(c) the Commission would have no grounds under a relevant section to refuse to certify the agreement as amended if—

(i) the application for approval were an application to the Commission to certify the agreement as amended; and

(ii) the agreement as in force before the amendment takes effect were not in force.

(3) In this section—

"relevant section" means 1 of the following—

- section 160 (Certification of agreements)
- section 161 (When Commission must refuse to certify agreements).

Procedure if grounds to refuse amendments exist

171.(1) This section applies if the Commission has grounds to refuse to approve the amendment of a certified agreement under section 170 (Amendment of certified agreement as provided in the agreement).

(2) The Commission may accept an undertaking from 1 or more of the parties about the agreement's operation as amended and, if it is satisfied the undertaking meets the Commission's concerns, may approve the amendment.

(3) If an undertaking is not observed, the Commission may set aside the amendment after giving the parties an opportunity to be heard.

(4) In any case, before refusing to approve the amendment, the Commission must give the parties an opportunity to do what is necessary for the Commission to be able to approve the amendment.

Certified agreements may be amended or terminated by Full Bench

172.(1) While a certified agreement is in force, the Full Bench may review the agreement's operation after giving the parties to the agreement an

opportunity to be heard.

(2) The Full Bench may do so only—

(a) on its own initiative; or

(b) on application by a party to the agreement.

(3) The remainder of this section applies if the Full Bench finds—

(a) for any agreement—that the continued operation of the agreement would be unfair to the employees covered by the agreement; or

(b) for an agreement that does not apply only to a single enterprise—that the continued operation of the agreement would be against the public interest.

(4) The Full Bench may—

(a) terminate the agreement; or

(b) accept an undertaking about the agreement's operation; or

(c) permit the parties to amend the agreement.

(5) If an undertaking is not complied with, the Full Bench may terminate the agreement after giving the parties an opportunity to be heard.

Review of certified agreements

173. The Full Bench must review the operation of each certified agreement—

(a) within 3 years after—

(i) it was made; or

(ii) if it was made before the commencement of this section and was not reviewed by the Full Bench before the commencement—the commencement; and

(b) within 3 years after it was last reviewed by the Full Bench.

Party may withdraw by consent

174.(1) In this section—

"relevant party" to an agreement means—

(a) for a party to the agreement who is an employer or an industrial organisation of employers—a party who is an industrial organisation of employees; or

(b) for a party to the agreement who is an industrial organisation of employees—a party who is an employer or an industrial organisation of employers.

(2) A party to a certified agreement may, with the consent of all the relevant parties, notify the Commission that the party does not want to remain bound by the agreement.

(3) The Commission may declare that the notifier is no longer bound if satisfied that it is in the public interest to make the declaration.

Certified agreements may be terminated by parties

175.(1) All the parties to a certified agreement may jointly notify the Commission that they want the agreement to be terminated.

(2) The Commission may declare that the agreement is terminated if satisfied that it is in the public interest to make the declaration.

Party affected by industrial action may withdraw

176.(1) If a party to a certified agreement engages in industrial action about a matter dealt with in the agreement, another party affected by the industrial action may apply to the Commission for a declaration that the applicant is no longer bound by the agreement.

(2) The Commission may declare that the applicant is no longer bound if satisfied it is in the public interest to make the declaration.

Enforcement of certified agreements

177. An agreement certified under this Division is enforceable in the same way as an award.

Division 3—Enterprise flexibility agreements

Employer may apply for approval of implementation of enterprise flexibility agreement

178.(1) An employer carrying on an enterprise may prepare an agreement about an industrial matter relating to the enterprise.

(2) The employer may apply to the Commission to approve implementation of the agreement.

Organisations entitled to be heard

179.(1) On an application to the Commission—

(a) to approve implementation of an agreement; or

(b) to extend an enterprise flexibility agreement's period of operation;

an industrial organisation of employees is entitled to be heard if it is bound by an award or industrial agreement that binds the employer for work performed in the enterprise.

(2) As soon as practicable after the application is made, the Commission must notify (as prescribed by regulation) each industrial organisation of employees entitled to be heard that—

(a) the application has been made; and

(b) the industrial organisation is entitled to be heard on the application.

(3) This section does not affect any other right of an industrial organisation of employees or another entity to intervene or be heard, or to apply to intervene or be heard, on an application.

Approval of implementation of agreement

180.(1) In this section—

"majority of employees" means a majority of the persons who were employees covered by the agreement as at the end of a day specified in the application that is not earlier than 7 days before the application was made.

(2) The Commission must, and may only, approve implementation of an agreement if satisfied—

(a) the agreement applies only to the enterprise mentioned in section 178 and is only about an industrial matter; and

(b) the wages and employment conditions of the employees covered by the agreement are regulated by 1 or more awards or industrial agreements that bind the employer; and

(c) the agreement covers all of the employees—

(i) whose wages and employment conditions are regulated by 1 or more awards or industrial agreements that bind the employer; and

(ii) who the employer employs to perform work in the enterprise; and

(d) the agreement does not disadvantage the employees covered by the agreement about their employment conditions; and

(e) the agreement includes procedures for preventing and settling disputes between the persons bound by the agreement about matters arising under the agreement; and

(f) the agreement either—

(i) establishes a process for the persons bound by the agreement to consult each other about changes to the organisation or performance of work in the enterprise; or

(ii) states that it is not appropriate for the agreement to provide for the consultation; and

(g) during the negotiations for the agreement, reasonable steps were taken to consult the employees covered by the agreement about the agreement; and

(h) before the application for approval was made, reasonable steps were taken to inform the employees covered by the agreement of—

(i) the agreement's terms; and

(ii) the effect of the terms; and

(iii) in particular, the procedures mentioned in paragraph (e); and

(iv) the intention to apply to the Commission to approve implementation, and the consequences of approval; and

(i) a majority of employees have (on or before the day specified in the application) genuinely agreed to be bound by the agreement, even if they agreed at different times; and

(j) the agreement specifies its period of operation.

(3) Under subsection (2)(d), an agreement disadvantages employees in relation to their employment conditions only if—

(a) approval of implementation would result in the reduction of the employees' entitlements or protection under an award or industrial agreement; and

(b) in the context of the employment conditions considered as a whole, the Commission considers the reduction is against the public interest.

When Commission must refuse to approve implementation of agreements

181.(1) The Commission must not approve implementation if it considers a provision of the agreement is inconsistent with—

(a) a provision of Part 4, Division 4 or 5 or Part 12, Division 5; or

(b) an order of the Commission under the Divisions.

(2) The Commission may refuse to approve implementation if satisfied that approving implementation would be against the public interest because of exceptional circumstances.

(3) Approving implementation is not against the public interest merely because the agreement is inconsistent with principles established by the Full Bench that apply when determining wages and employment conditions by awards.

(4) The Commission must not approve implementation if satisfied—

(a) the employer has, in connection with negotiating the agreement, contravened 1 or more of the following provisions—

- section 217 (Employer not to discriminate between union members and non-union members when negotiating agreements)
- section 216(3) (Representation of employees in negotiations for enterprise flexibility agreements)
- section 476 (Prejudice of employees by reason of membership of industrial organisation)
- section 477 (Prejudice of employee by reason of non-membership of industrial organisation)
- section 478 (Conduct in relation to holder of conscientious objector's certificate); or

(b) the employer has caused an entity, in connection with negotiations for the agreement, to engage in conduct that, had the employer engaged in it, would be a contravention by the employer of any of the provisions mentioned in paragraph (a); or

(c) an entity has, for the employer—

(i) engaged in the conduct mentioned in paragraph (b); or

(ii) caused another entity to engage in the conduct.

(5) Subsection (4) does not apply if the Commission is satisfied the contravention or conduct, and its effects, have been fully remedied.

(6) The Commission may refuse to approve implementation, or may adjourn an application to approve the implementation, if it is satisfied the employer did not—

(a) before or as soon as practicable after negotiations for the agreement began, notify each industrial organisation that was at the time an eligible union about the negotiations; or

(b) give the industrial organisation a reasonable opportunity to take part in the negotiations and to agree, before the application for approval was made, to be bound by the agreement.

(7) Subsection (6) does not apply to an industrial organisation if the employer could not reasonably have known when, or within a reasonable period after, the negotiations for the agreement began that the organisation was an eligible union.

(8) When deciding what action to take under subsection (6), the Commission must consider whether it considers the failure was intentional and other relevant circumstances.

(9) The Commission must not approve implementation if it considers the agreement contains a discriminatory provision.

(10) This section applies despite section 180 (Approval of implementation of agreement).

How agreement may provide for its amendment

182.(1) If an agreement provides for any of its terms to be amended by a later agreement applying to the enterprise, the Commission must not approve implementation of the agreement unless satisfied the agreement specifies—

(a) the amendable terms; and

(b) when and how the terms can be amended.

(2) To avoid doubt, it is declared that subsection (1) does not apply to an agreement so far as the obligations under the agreement can change because of the terms of the agreement itself.

Other options open to Commission instead of refusing to approve implementation

183.(1) This section applies if the Commission has grounds not to approve the implementation of an agreement under any of the following sections—

- section 180 (Approval of implementation of agreement)
- section 181 (When Commission must refuse to approve implementation of agreements)
- section 182 (How agreement may provide for its amendment).

(2) The Commission may accept an undertaking about the agreement's operation from a person who—

(a) would be bound by the agreement; and

(b) the Commission considers to be the appropriate person to give

the undertaking.

(3) The Commission may approve the implementation if satisfied the undertaking meets its concerns.

(4) If the undertaking is not complied with, the Commission may terminate the agreement after giving the persons bound by it an opportunity to be heard.

(5) Before refusing to approve the implementation, the Commission in any case must give—

(a) the employer an opportunity to amend the agreement by an instrument made with the approval (obtained as directed by the Commission) of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement; or

(b) the persons who would be bound by the agreement an opportunity to do what is necessary for the Commission to be able to approve implementation.

Commission to protect interests of certain employees

184.(1) The Commission must comply with this section in performing its functions and exercising its powers in relation to an application to approve the implementation of an agreement.

(2) The Commission must identify any employees who may be covered by the agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement.

(3) Examples of employees whose interest may not have been taken into account are—

(a) women; and

(b) persons whose first language is not English; and

(c) young persons.

(4) When deciding whether it is satisfied under section 180(2)(g) and (h), the Commission must do what is necessary to find out—

(a) whether the employees were consulted about the agreement and informed of the matters mentioned in section 180(2)(g) and (h) in

ways appropriate to their particular circumstances and needs; and

(b) whether the effects on the relevant employees of the agreement's terms were properly explained to the employees.

(5) If it considers there has been a failure to consult, inform or explain as mentioned in subsection (4), the Commission must make the orders it considers necessary to remedy the failure and its effects.

Procedures for preventing and settling disputes

185. Dispute prevention and settling provisions in an enterprise flexibility agreement may empower the Commission to settle disputes, if the Commission approves of the provisions.

Provisions relevant when business has distinct parts

186.(1) If, on an application to approve implementation of an agreement, the Commission is satisfied—

(a) the agreement applies only to a part of a business, or to 2 or more parts of the same business, carried on by a single employer; and

(b) it is appropriate to regard the part, or each of the parts, as a geographically distinct part of the business;

the part is taken to be, and to have been when the agreement was made, a geographically distinct part of the business.

(2) If a business is made up of 2 or more geographically distinct parts, the Commission may approve implementation of—

(a) an agreement that applies to an enterprise formed by the entire business; or

(b) 1 or more agreements each relating to an enterprise formed by 1 or more of the distinct parts.

(3) However, an enterprise flexibility agreement that applies to an entire business cannot be in force at the same time as an enterprise flexibility agreement that applies to 1 or more parts of the business.

Operation of enterprise flexibility agreements

187.(1) An enterprise flexibility agreement comes into force when its implementation is approved.

(2) An enterprise flexibility agreement remains in force unless—

(a) it is terminated by the Commission under section 183(4); or

(b) because of 1 or more orders or declarations under the relevant sections—

(i) it is terminated; or

(ii) no employer is bound by the agreement; or

(iii) no employee or industrial organisation of employees is bound by the agreement; or

(c) it is replaced by a new enterprise flexibility agreement or by a certified agreement.

(3) In this section—

"relevant sections" means—

- section 192 (Enterprise flexibility agreements may be amended or terminated by Full Bench)
- section 194 (Person bound may withdraw by consent)
- section 195 (Enterprise flexibility agreements may be terminated by persons bound)
- section 196 (Persons affected by industrial action may withdraw).

Person may retire from enterprise flexibility agreement

188.(1) A person bound by an enterprise flexibility agreement may file in the Industrial Registrar's office a notice of intention to retire from the agreement at the end of a specified period of at least 30 days from the day of filing.

(2) The notice must be filed—

(a) within 30 days before the end of the period of the agreement; or

(b) if the agreement remains in force after the end of the period of the

agreement because of section 187(2)—while the agreement remains in force because of section 187(2).

(3) At the end of the specified period, the person who filed the notice is no longer bound by the enterprise flexibility agreement.

Extension of enterprise flexibility agreements

189.(1) In this section—

"majority of employees" means a majority of the persons who were employees covered by the agreement as at the end of a day specified in the application not earlier than 7 days before the application was made.

(2) The Commission must extend the period of operation of an enterprise flexibility agreement, as required by the employer's application, if it is satisfied a majority of employees have genuinely agreed to the proposed extension on or before the day specified in the application, even if they agreed at different times.

(3) However, the Commission must not extend the period of operation if—

(a) the period, or the period as last extended, has ended; or

(b) an industrial organisation of employees, that is entitled under section 179 to be heard on the application, satisfies the Commission that the extension would not be in the interests of the employees covered by the agreement.

(4) If the Commission considers the period of operation, or the period as last extended, will end before the application is decided, it may extend the period until the application is determined.

Effect of enterprise flexibility agreements

190. While an enterprise flexibility agreement is in force—

(a) subject to paragraph (b), the agreement's terms prevail over the terms of an award or industrial agreement to the extent of the inconsistency; and

(b) the agreement has no effect so far as it is inconsistent with a certified agreement certified before implementation of the

agreement was approved; and

(c) a term of the agreement can be amended by the employer, but only as provided in either of the following sections—

- section 191 (Amendment of enterprise flexibility agreement as provided in the agreement)
- section 192 (Enterprise flexibility agreements may be amended or terminated by Full Bench); and

(d) the agreement may only be amended to remove ambiguity or uncertainty; and

(e) the Commission must not exercise any powers to amend the agreement other than under this Division.

Amendment of enterprise flexibility agreement as provided in the agreement

191.(1) This section applies to an application to the Commission to approve implementation of an agreement (the **"amendment"**) amending an enterprise flexibility agreement (the **"main agreement"**) that provides for any of its terms to be amended by a later enterprise flexibility agreement.

(2) The Commission must deal with the application as if—

(a) it were an application to the Commission to approve implementation of the main agreement as amended; and

(b) the main agreement as in force before the amendment takes effect were not in force.

(3) The Commission may approve implementation of the amendment only if it is satisfied—

(a) the amendment was made as required by the main agreement; and

(b) the enterprise to which the amendment applies is the same as the enterprise to which the main agreement applies; and

(c) the amendment provides only for amending the main agreement and for matters incidental to amending it.

Enterprise flexibility agreements may be amended or terminated by Full Bench

192.(1) While an enterprise flexibility agreement is in force, the Full Bench may review the agreement's operation after giving the persons bound by the agreement an opportunity to be heard.

(2) The Full Bench may do so only—

(a) on its own initiative; or

(b) on application by a person bound by the agreement.

(3) If the Full Bench finds the continued operation of the agreement would be unfair to the employees covered by the agreement, it may—

(a) terminate the agreement; or

(b) accept an undertaking about the agreement's operation; or

(c) permit the employer to amend the agreement by an instrument made with the approval (obtained as directed by the Commission) of a majority of the persons who, as at the end of a specified day, were employees covered by the agreement.

(4) If an undertaking is not complied with, the Full Bench may terminate the agreement after giving the persons bound by it an opportunity to be heard.

Review of enterprise flexibility agreements

193. The Full Bench must review the operation of each enterprise flexibility agreement—

(a) within 3 years after it was made; and

(b) within 3 years after it was last reviewed by the Full Bench.

Person bound may withdraw by consent

194.(1) A person bound by an enterprise flexibility agreement may, with the consent of all other persons bound, notify the Commission that the person does not want to remain bound by the agreement.

(2) The Commission may declare that the person is no longer bound if satisfied it is in the public interest to make the declaration.

Enterprise flexibility agreements may be terminated by persons bound

195.(1) All the persons bound by an enterprise flexibility agreement may jointly notify the Commission that they want the agreement to be terminated.

(2) The Commission may declare that the agreement is terminated if satisfied it is in the public interest to make the declaration.

Persons affected by industrial action may withdraw

196.(1) If a person bound by an enterprise flexibility agreement engages in industrial action about a matter dealt with in the agreement, another person bound by the agreement who is affected by the industrial action may apply to the Commission for a declaration that the applicant is no longer bound by the agreement.

(2) The Commission may declare that the applicant is no longer bound if satisfied it is in the public interest to make the declaration.

Eligible union may agree to be bound by enterprise flexibility agreement

197.(1) If—

(a) an employer has prepared an agreement under this Division; and

(b) the Commission has not yet approved implementation of the agreement (whether or not an application for approval has been made);

an eligible union may notify the employer that it agrees to be bound by the agreement if and when the Commission approves its implementation.

(2) If an amendment made under this Division is proposed, or made but not yet effective, an eligible union may notify the employer that it agrees to be bound—

(a) if the union is already bound by the agreement—by the amendment if and when it takes effect; or

(b) if it is not already bound by the agreement—by the agreement as amended if and when the amendment takes effect.

(3) Subsection (2) applies even if a previous amendment of the agreement has taken effect.

(4) While an enterprise flexibility agreement is in force because of section 187, an eligible union may notify the employer that it agrees to be bound by the agreement on and after a specified day.

(5) Subsection (4) applies whether or not an amendment of the agreement has taken effect.

(6) A notice under subsection (1), (2) or (4) cannot be revoked.

(7) An eligible union that has agreed under subsection (1), (2) or (4) is bound by the agreement concerned.

(8) However, after an amendment (however made) of the agreement takes effect, or a further amendment takes effect, the union—

(a) is no longer bound by the agreement as in force before the amendment or further amendment took effect; and

(b) is not bound by the agreement as amended;

unless, before the amendment or further amendment took effect, the union agreed under subsection (2) to be bound by the amendment or further amendment.

(9) Subsection (8) does not apply to an amendment made under section 190(d).

(10) If, immediately before an amendment made under section 190(d) takes effect, the union is still bound by the agreement, the union is bound by the agreement as amended.

Division 4—Immunity from civil liability for protected action during bargaining period

Object of Division

198.(1) The object of this Division is to give effect, in particular situations, to Australia's international obligation to provide for a right to strike.

(2) This obligation arises under—

(a) Article 8 of the Economic, Social and Cultural Rights Covenant; and

(b) the Freedom of Association and Protection of the Right to Organise Convention 1948 (the English text of the Preamble, and Parts I and II, of which is set out in Schedule 11); and

(c) the Right to Organise and Collective Bargaining Convention 1949 (the English text of the Preamble, and Articles 1 to 6, of which is set out in Schedule 12); and

(d) the Constitution of the International Labour Organisation; and

(e) customary international law about freedom of association and the right to strike.

(3) The Parliament considers it necessary to provide specific legislative protection for the right to strike, subject to limitations compatible with the existence of the right, when—

(a) an industrial dispute exists involving an employer and 1 or more industrial organisations whose members are—

(i) employed by the employer to perform work in a single enterprise; and

(ii) covered by an award or industrial agreement; and

(b) the employer and 1 or more of the organisations are negotiating an agreement under Division 2.

Division's purpose

199. This Division provides legal immunity for certain industrial action (defined as protected action) happening during a particular period (defined as the bargaining period).

Initiation of bargaining period

200.(1) This section applies if, for an industrial matter—

(a) an employer; or

(b) an industrial organisation of employees;

wants to negotiate a certified agreement about the employees who are employed in a single enterprise.

(2) Subject to section 212(5)(b), the employer or organisation (the **"initiating party"**) may initiate a period (the **"bargaining period"**) for negotiating the proposed agreement.

(3) The bargaining period is initiated by the initiating party notifying—

(a) the other proposed party to the agreement; and

(b) the Commission;

that the initiating party intends to try, or to continue to try to reach a certified agreement with the party about an industrial matter.

Particulars to accompany notice

201. The notice must state the following particulars—

(a) the single enterprise to be covered by the proposed agreement;

(b) the proposed parties to the agreement;

(c) the matters the initiating party proposes the agreement should deal with;

(d) the industrial matter to which the proposed agreement relates;

(e) the proposed period of the agreement;

(f) other matters that may be prescribed by regulation.

When bargaining period begins

202. The bargaining period begins at the end of 7 days after—

(a) the day the notice was given; or

(b) if the notice was given to different parties on different days—the later or latest of the days the notice was given.

Protected action for which immunity is provided

203.(1) This section identifies action (**"protected action"**) to which section 209 (Immunity for protected action) applies.

(2) During the bargaining period—

(a) an industrial organisation of employees that is a negotiating party; or

(b) a member of the organisation who is employed by the employer; or

(c) an officer or employee of the organisation acting in that capacity;

is entitled to organise or engage in industrial action directly against the employer to support or advance claims made by the organisation that are the subject of the relevant industrial matter.

(3) The organising of, or engaging in, the industrial action is protected action.

(4) During the bargaining period, the employer is entitled to lock out all or any of the employees to be covered by the agreement from their employment—

(a) to support or advance claims made by the employer that are the subject of the relevant industrial matter; or

(b) to respond to industrial action by any of the employees.

(5) The lockout is protected action.

(6) An employer locks out employees from their employment if the employer prevents the employees from performing work under their employment contracts without terminating the contracts.

(7) If the employer locks out employees, the employer may refuse to pay

any remuneration to the employees for the period of the lockout.

(8) An employee's employment is not affected by the lockout, other than for the purposes prescribed by regulation.

(9) However, this section applies subject to sections 204 to 207.

72 hours notice of action must be given

204.(1) Action taken under section 203(2) by an organisation, member, officer, or employee is protected action only if the organisation has given the other negotiating party at least 72 hours notice of the intention to take the action.

(2) Action taken under section 203(4) by the employer is protected action—

(a) only if the employer has given the other negotiating party at least 72 hours notice of the intention to take the action; and

(b) so far as it relates to a particular employee, only if, at least 72 hours before the action is taken, the employer has—

(i) notified the employee of the intended action; or

(ii) taken other reasonable steps to notify (whether or not by written notice) the employee of the intended action.

(3) A notice under subsection (2)(a) or (b)(i) must state the nature of the intended action and the day when it will begin.

Negotiation must precede industrial action

205.(1) Industrial action engaged in by a member of an industrial organisation of employees is protected action only if the organisation has, before the member begins to engage in the industrial action—

(a) tried to reach agreement with the employer; and

(b) if the Commission has made an order under section 215 about the negotiations—complied with the order so far as it applies to the organisation.

(2) Industrial action engaged in by an employer is protected action only if the employer has, before the employer begins to engage in the industrial

action—

(a) tried to reach agreement with the industrial organisations of which the employees are members; and

(b) if the Commission has made an order under section 215 about the negotiations—complied with the order so far as it applies to the employer.

What happens if Commission orders a ballot under s 322

206. If the Commission has ordered a vote of an industrial organisation's members be taken by secret ballot about the subject matter of the industrial dispute, the organising of, or engaging in, industrial action after the making of the order by—

(a) the organisation; or

(b) a member of the organisation; or

(c) an officer or employee of the organisation acting in that capacity;

is protected action only if the ballot has been taken and the industrial action has been approved by a majority of the valid votes cast in the ballot.

Industrial action must be properly authorised

207.(1) Industrial action engaged in by a member of an industrial organisation of employees is protected action only if, before the industrial action begins—

(a) the industrial action is authorised by—

(i) the organisation's committee of management; or

(ii) someone authorised by the committee to authorise the industrial action; and

(b) if the rules of the organisation provide for how the industrial action must be authorised—the industrial action is authorised under the rules; and

(c) notice of the giving of the authorisation is given to the Industrial Registrar.

(2) Industrial action is taken to be authorised under the rules even though a technical breach happened in authorising the industrial action, if the person who committed the breach acted in good faith.

(3) Examples of a technical breach are—

(a) a contravention of the organisation's rules; and

(b) an error or omission in complying with this Act; and

(c) the taking part in the making of a decision by a committee of management, or in the making of the decision by members, of the organisation by a person who was not eligible to take part in the making of the decision.

(4) Industrial action is taken to have been authorised under the rules, and to have been authorised before the industrial action began, unless the Commission declares that the industrial action was not authorised under the rules.

(5) An application for the Commission's declaration must be made within 6 months after a notice is given to the Industrial Registrar under subsection (1)(c).

(6) So far as the rules of an industrial organisation of employees provide for how industrial action (that the organisation is entitled to organise or engage in under section 203) is to be authorised, the rules do not contravene section 337 unless the way provided for contravenes the section.

What happens if application to certify agreement is not made within 21 days

208. Unless an application to the Commission to certify an agreement is made within 21 days after the day when a memorandum of agreement is made, nothing done by a party to the agreement during the bargaining period is protected action.

Immunity for protected action

209.(1) An action does not lie under any law for industrial action that is protected action unless the industrial action has involved or is likely to involve unlawful—

(a) personal injury; or

(b) wilful destruction of, or damage to, property; or

(c) taking, keeping or use of property.

(2) Subsection (1) does not prevent an action for defamation being brought for anything that happened during the industrial action.

When bargaining period ends

210. The bargaining period ends when—

(a) an agreement under Division 2 is entered into between the employer and any 1 or more of the other negotiating parties; or

(b) the initiating party notifies the other negotiating party that the initiating party no longer wants to reach an agreement under Division 2 with the other party; or

(c) the Commission terminates the bargaining period.

Power of Commission to suspend or terminate bargaining period

211.(1) The Commission may suspend or terminate the bargaining period, after giving the negotiating parties an opportunity to be heard, if it is satisfied—

(a) a negotiating party who has organised, is organising or has taken industrial action to support or advance claims the subject of the relevant industrial matter—

(i) is not genuinely trying to reach an agreement with the other negotiating parties; or

(ii) has not complied with a Commission order about negotiating in good faith; or

(b) industrial action being taken to support or advance claims the subject of the relevant industrial matter is threatening—

(i) to endanger the life, personal safety, health or welfare of the population or of part of it; or

(ii) to cause significant damage to the economy or an important

part of it; or

(c) if the bargaining period relates to employees employed in a part of a single enterprise—the initiating party is not complying with an award, industrial agreement, order or direction of the Commission about another part of the single business or another workplace in the single business.

(2) The Commission may only act under subsection (1) on a ground stated in subsection (1)(b)—

(a) on its own initiative; or

(b) on an application by the negotiating party or the Minister.

(3) The Commission may only act under subsection (1) on a ground stated in subsection (1)(a) and (c) on an application by the negotiating party.

(4) The Commission's power to suspend or terminate the bargaining period because of particular circumstances may be exercised whether the circumstances happened before or during the bargaining period.

(5) Section 209 (Immunity for protected action) does not apply to anything done by—

(a) a negotiating party; or

(b) a member, officer or employee of an organisation of employees that is a negotiating party;

in connection with the relevant industrial matter when the bargaining period is suspended.

What happens if Commission terminates a bargaining period under s 211(1)(b)

212.(1) If a bargaining period initiated by an industrial organisation of employees is terminated on the ground set out in section 211(1)(b), the Commission must immediately begin to take action to settle the industrial dispute.

(2) If, to settle the industrial dispute, the Commission proposes to make a new award, or to amend an existing award, to cover employees whose employment conditions are the subject of the matter, it must—

(a) for a new award—make the new award as a paid rates award; or

(b) for the amendment of an existing award—amend the award to be a paid rates award;

for the employees employed in the single enterprise to which the bargaining period relates.

(3) When deciding the terms to be included in an award that it proposes to make or amend, the Commission—

(a) must base its decision on the merits of the matters under consideration; and

(b) need not follow principles that generally apply in deciding wages and employment conditions when making awards under this Act.

(4) Despite subsection (2), the new award or amended award need not be a paid rates award if the parties to the industrial dispute have agreed to the award not being a paid rates award.

(5) An award made or amended under subsection (2) must specify a period during which—

(a) the award may only be amended to remove ambiguity or uncertainty; and

(b) the parties to the award may not initiate a bargaining period under section 200 for negotiating an agreement about matters dealt with in the award.

Division 5—Conciliation in relation to proposed agreements

Commission may conciliate proposed agreements under this Part

213.(1) This section applies if the Commission becomes aware that a party wants to negotiate, or is negotiating, a certified agreement or enterprise flexibility agreement with another party.

(2) The Commission may try, by conciliation, to assist the making of the agreement if it considers conciliation would assist.

(3) If a party asks the Commission to exercise powers under subsection (2), the Commission must decide as quickly as possible whether or not to do so.

Directions and orders to assist the making of agreements

214.(1) The Full Bench may give directions and make orders to assist the making of agreements under this Part.

(2) A direction or order has effect subject to an order of the Court.

Commission orders about negotiations for agreements under this Part

215.(1) The Commission may make orders to—

(a) ensure the parties negotiating an agreement under this Part negotiate in good faith; or

(b) promote the efficient conduct of negotiations for the agreement; or

(c) otherwise assist the making of the agreement.

(2) In particular, the Commission may order a party to take, or not to take, specified action.

(3) In deciding what orders to make, the Commission—

(a) must consider the conduct of each of the parties to the negotiations and, in particular, whether the party concerned has—

(i) agreed to meet at reasonable times proposed by another party; or

(ii) attended meetings that the party had agreed to attend; or

(iii) complied with negotiating procedures agreed to by the parties; or

(iv) capriciously added or withdrawn items for negotiation; or

(v) disclosed relevant information as appropriate for the negotiations; or

(vi) failed to negotiate with 1 or more of the parties; or

(vii) in or in connection with the negotiations, contravened section 216(3) by failing to negotiate with a person who is entitled under the section to represent an employee; and

(b) may consider—

(i) proposed conduct of any of the parties, including proposed conduct of a type mentioned in paragraph (a); and

(ii) other relevant matters.

Representation of employees in negotiations for enterprise flexibility agreements

216.(1) This section applies to negotiations between employer and employees for the making of an enterprise flexibility agreement.

(2) An officer or employee of an industrial organisation of employees (the **"official"**) may represent an employee if—

(a) the employee is a member of the organisation; and

(b) the organisation is entitled to represent the employee's industrial interests; and

(c) the official is authorised under the organisation's rules, or by its committee of management, to represent the employee's interests; and

(d) the employee has informed the employer that the employee wants to be represented by the official for the negotiations.

(3) An employer must not fail to negotiate with a person who is entitled under subsection (2) to represent an employee.

Maximum penalty for subsection (3)—80 penalty units.

Division 6—Provisions common to certified agreements and enterprise flexibility agreements

Employer not to discriminate between union members and non-union members when negotiating agreements

217. When negotiating the terms of an agreement under this Part, an employer must not discriminate between the employer's employees—

(a) because some of the employees are members of an industrial organisation of employees while others are not members; or

(b) because some of the employees are members of a particular

industrial organisation of employees, while others are not members or are members of a different industrial organisation.

(2) However, subsection (1) does not prevent the inclusion in an agreement of a provision allowing an employer to give preference of a type mentioned in section 228.

Components of wage rates

218.(1) Each rate of wages provided for by a certified agreement or enterprise flexibility agreement (whether before or after the commencement of this section) as payable to adult employees, or employees who are seniors, is taken to consist of, and to be expressed by reference to—

(a) the guaranteed minimum wage declared at the time the agreement is or was made and a margin; or

(b) if after the making of the agreement there has been made a declaration of a general ruling that amends the guaranteed minimum wage—the guaranteed minimum wage as amended by the declaration last made and a margin.

(2) Subsection (1) does not apply to a rate of wages provided for by an agreement that immediately before the commencement of this section provides for a rate of wages equal to or less than the guaranteed minimum wage contained in the declaration of a general ruling last made before the commencement, until the rate of wages provided for by the agreement becomes greater than the guaranteed minimum wage last declared before the greater rate is provided for.

Effect of appeal decisions on agreements

219. If—

(a) a decision of the Industrial Court—

(i) on appeal from a decision of the Industrial Commission; or

(ii) on a case stated by the Industrial Commission; or

(b) a decision of the Full Bench on appeal from a Commissioner;

affects a certified agreement or enterprise flexibility agreement, the

Commission must immediately amend the agreement to give effect to the Court's or Commission's decision.

Inconsistency between agreements and contracts

220.(1) A certified agreement or enterprise flexibility agreement prevails over any contract of service that is—

(a) in force when the agreement becomes enforceable; or

(b) made while the agreement remains in force;

to the extent of any inconsistency between the agreement and the contract.

(2) The contract only has effect as if it were amended so far as is necessary to make it conform to the agreement.

(3) Under this section, there is no inconsistency between an agreement and a contract only because the contract provides for employment conditions more favourable to the employee than the agreement.

PART 12—GENERAL CONDITIONS OF EMPLOYMENT

Division 1—Conditions other than leave conditions

Hours of work

221.(1) Except if an industrial organisation, or association, of employers, or an employer, and an employee or industrial organisation of employees otherwise agree in respect of a particular award, industrial agreement, certified agreement or enterprise flexibility agreement, or the Industrial Commission otherwise determines, every award, industrial agreement, certified agreement or enterprise flexibility agreement is taken to make provision to the effect of each of the subsections of this section, to the extent that the subsection is relevant to a calling to which the award or agreement relates.

(2) The periods for which an employee is required to work must not exceed the following periods—

(a) 6 days in any period of 7 consecutive days;

(b) 40 hours in any period of 6 consecutive days;

(c) 8 hours in any day.

(3) The rate at which an employee is to be paid for overtime—being time worked in excess of the times or hours prescribed by subsection (2) or before or after the fixed or recognised times for starting or finishing work on any day in a calling is—

(a) not less than double time in a calling in or in connection with which more than 1 shift per day is worked;

(b) not less than time and a half in any other calling.

(4) If the employee is paid a rate of wages in excess of the minimum rate thereof provided for by any award, industrial agreement, certified agreement or enterprise flexibility agreement binding on the employee, the rate referred to in subsection (3) is to be calculated on the actual weekly rate of wages payable to the employee at the relevant time and not on such minimum rate.

(5) Subsections (3) and (4) do not apply in relation to employees in any department of government whose rates of salary exceed an annual rate of wages for the time being declared for the purposes of this subsection by the Governor in Council.

(6) Compensation, in respect of overtime worked, for an employee to whom subsection (5) does not apply is in the discretion of the chief executive of the department of government in which the employee is employed.

(7) Where practicable, an employee is entitled to a rest pause of not less than 10 minutes duration during each period of 4 hours working time on any day.

(8) Such rest pause (or pauses, if more than 1)—

(a) is taken to be part of the employee's working time; and

(b) is to be taken at such time (or times, if more than 1) as does not interfere with continuity of work, if continuity is necessary.

(9) Where an employee is engaged in an underground occupation or an

occupation in which the conditions as to temperature, ventilation, lighting, and limitation of approaches are similar to those obtaining in an underground occupation—

(a) the working time of the employee—

(i) is to include permitted intervals for rest and meals; and

(ii) is to be reckoned from bank to bank; and

(iii) without prejudice to the provisions of the *Coal Mining Act 1925*, is not to exceed 6 hours per day unless—

(A) a temperature less than 28.3°C, using a wet bulb, is maintained for at least 3/4 of the period of the working shift in the working place where the employee is occupied; or

(B) the working place where the employee is occupied is thoroughly ventilated during the whole of the period of the working shift (or half-shift, as the case may be) by a current of air moving at a rate not less than that which can be measured with the instruments ordinarily used for that purpose; and

(b) the employee is to be paid as for a full shift (or half-shift, as the case may be).

Public holidays

222.(1) Except if an industrial organisation, or association, of employers, or an employer, and an industrial organisation of employees otherwise agree in respect of a particular award, industrial agreement, certified agreement or enterprise flexibility agreement, or the Industrial Commission otherwise determines, every award, industrial agreement, certified agreement or enterprise flexibility agreement is taken to make provision to the effect of each of the subsections of this section.

(2) The exceptions provided for by subsection (1) do not apply in respect of Labour Day (the first Monday in May) or any day appointed under the *Holidays Act 1983* to be a holiday in substitution for that day.

(3) All work performed on any of the following days—

- New Year's Day (1 January)
- Australia Day (26 January)
- Good Friday
- Easter Saturday (the day following Good Friday)
- Easter Monday (the Monday following Good Friday)
- Anzac Day (25 April)
- Labour Day (the first Monday in May)
- Sovereign's birthday (the second Monday in June)
- Christmas Day (25 December)
- Boxing Day (26 December);

or any day appointed under the *Holidays Act 1983* to be a holiday in substitution for any of those days is to be paid for at the rate of double time and a half with a minimum of 4 hours.

(4) All work performed in a district for the time being specified by the Minister, by notification published in the Industrial Gazette, on the day appointed under the *Holidays Act 1983* as a holiday in relation to an annual agricultural, horticultural or industrial show held in that district is to be paid for at a rate of double time and a half, with a minimum of 4 hours.

(5) Subsection (4) is not to be construed to confer on an employee, while continued in employment by the same employer, or taken to be continued in such employment pursuant to this Part, an entitlement to be paid at a rate therein prescribed for work performed on a day, such as is referred to in that subsection, on more than 1 occasion in each calendar year.

(6) For the purposes of subsection (3) or (4), if a rate of wages is a weekly rate, the expression **"double time and a half"** means 1.5 days wages in addition to the weekly rate provided for by the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, and pro rata if there be more or less than a day.

(7) All time worked on a holiday for which the employee is entitled to be paid at a rate prescribed by subsection (3) or (4) outside the period between the ordinary starting and ordinary finishing times provided for by the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement for the day of the week on which the holiday falls is to

be paid for at double the rate provided for by the award or agreement for such time when worked outside such period on an ordinary working day.

(8) The Industrial Commission may, by its order, confer on an employee an entitlement to additional annual leave on full pay, in lieu of an entitlement to extra payment for work performed as prescribed by subsection (3) or (4).

(9) An employee, other than a casual employee, in a calling governed by the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement who would ordinarily be required to perform work as an employee in the calling on the day on which Labour Day (the first Monday in May), or other day appointed under the *Holidays Act 1983* to be a holiday in substitution for that day, falls is entitled to be paid a wage at ordinary rates for the time for which the employee would ordinarily have been required to perform work on that day between the ordinary starting and ordinary finishing times provided for by the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, notwithstanding that work is not performed on that day.

Employee stood down in December, re-employed in January

223. An employee, other than a casual employee within the meaning of the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, who is dismissed or stood down by the employer during December and is re-employed by that employer before the end of January next following, if the employee was employed by that employer for a continuous period of 2 weeks at least immediately before being so dismissed or stood down, is entitled to receive, and the employer is bound to pay, payment at the ordinary rate of wages payable to the employee immediately before the dismissal or stand down for such of the holidays—Christmas Day, Boxing Day, and New Year's Day—as occur during the period between the dismissal or stand down and the re-employment as aforesaid.

Stand down of employee

224. Notwithstanding any provision of this Act or of any award, industrial agreement, certified agreement or enterprise flexibility agreement, an employer may stand down any employee without pay on any day, or for part of any day, on which the employee cannot be usefully employed

because of the occurrence of anything for which the employer is not responsible or over which the employer has no control.

Employees working both in and outside State

225. If an employer has a place of employment in Queensland, or is for the time being present in Queensland, and engages there an employee whose employment is not wholly performed in Queensland but, with the knowledge and consent of the employer, is in part performed in any other State or a Territory, any award, industrial agreement, certified agreement or enterprise flexibility agreement that is binding on the employer and employee in respect of the part of the employment performed by the employee in Queensland is equally binding on them in respect of the part of the employment performed by the employee outside Queensland.

Student's work permit

226.(1) On application, the Industrial Registrar and, on appeal from the registrar, the Commission, may grant to a student participating in a tertiary study course a permit to work for a period in a calling.

(2) The student must provide satisfactory proof on the application that the period of work in the calling is necessary to complete the course.

(3) The registrar or Commission granting the permit must determine and specify in the permit—

(a) the period of work; and

(b) the rate of the student's wage.

(4) When a permit is granted, the Industrial Registrar is to notify immediately the secretary of the industrial organisation of employees in the calling of the grant of the permit and the permit's conditions.

(5) This section applies despite any award, industrial agreement, certified agreement or enterprise flexibility agreement.

Aged or infirm persons

227.(1) An aged or infirm person alleged to be unable to earn the minimum wage provided for by any award, industrial agreement, certified

agreement or enterprise flexibility agreement applicable to the calling in which the person wants to be employed, or an Industrial Inspector on behalf of the person, may apply to an Industrial Magistrate for a permit to work in the relevant calling for less than such minimum wage.

(2) Subject to this Act, an Industrial Magistrate has jurisdiction to determine whether, and on what conditions, such a permit should be granted.

(3) Upon receipt of an application made under subsection (1) an Industrial Magistrate is to forthwith give written notice of the application to the secretary of the industrial organisation of employees in the calling in which the person to whom the application relates wants to be employed, and by such notice appoint a time, being not less than 3 days or more than 7 days from the date of the notice, at which the Industrial Magistrate will hear any objection to the grant of the permit applied for.

(4) At the time so appointed, or at any time to which the matter is adjourned, the Industrial Magistrate is to hear objections from any authorised representative of such industrial organisation of employees.

(5) At any time after the grant of a permit on an application made under subsection (1) the industrial organisation of employees to which notice of the application was given may apply in the manner provided for by the rules of court to an Industrial Magistrate to revoke or cancel the permit.

(6) An Industrial Magistrate has jurisdiction to revoke or cancel any such permit.

Preference

228.(1) If in proceedings in the Industrial Commission, it is agreed by the parties or is considered by the Commission to be advisable, that preference should be granted, either generally or to a particular industrial organisation of employees, a member of a particular industrial organisation of employees or a person who has applied to become a member of a particular industrial organisation of employees, the preference is to be granted.

(2) Preference is granted subject to—

(a) the condition that an employer is not required to give preference to a member, or a person who has applied to become a member,

of an industrial organisation of employees over a person for whom there is in force a certificate under section 388 (Conscientious objection to membership of industrial organisation); and

(b) any other conditions the Commission considers appropriate.

(3) Preference may be granted for particular matters, including the following matters—

(a) engagement in employment;

(b) promotion;

(c) regrading;

(d) transfer;

(e) retention in employment;

(f) taking annual leave;

(g) overtime;

(h) vocational training.

(4) Preference may be granted in the way the Commission considers appropriate.

Grievance or dispute settling procedures

229.(1) Every award or industrial agreement, whether made before or after the commencement of this Act, must make provision for a grievance or dispute settling procedure.

(2) Subject to subsection (6), the form of such procedure is a matter to be agreed on by the parties to the award or industrial agreement, except that, if the parties cannot so agree, the Industrial Commission is to insert into the award or agreement provision for an appropriate such procedure.

(3) As soon as is practicable after the commencement of this Act, the Industrial Commission is to nominate a period within which the parties bound by an award or industrial agreement, which, at the commencement of this Act, does not make provision as required by subsection (1), are to have taken all steps necessary to ensure that the award or agreement does make such provision.

(4) Notification of the period so nominated must be published in the Industrial Gazette.

(5) If at the end of the period so nominated an award or agreement does not make provision as required by subsection (1), it is to be presumed conclusively that the parties bound by the award or agreement cannot agree on the form of procedure to be provided for, and the Commission is entitled to insert into the award or agreement suitable provision for an appropriate procedure.

(6) Without limiting the nature or scope of a grievance or dispute settling procedure, provisions for such a procedure must express the following requirements—

(a) matters to be dealt with under the procedure must include all industrial matters within the meaning of this Act and all other matters that the parties agree on, and are to be specified in the provisions;

(b) a grievance or dispute is to be dealt with initially as close to its source as possible, with graduated steps provided for further discussions and resolution at higher levels of authority;

(c) reasonable limits of time are to be allowed for discussion at each level of authority;

(d) while a procedure is being followed, normal work is to continue, except in a case of a genuine safety issue;

(e) the status quo existing before the emergence of a grievance or dispute is to continue while a procedure is being followed;

(f) matters that cannot be resolved by the parties to a grievance or dispute are to be referred to the Industrial Commission or an Industrial Magistrate in accordance with section 319.

Division 2—Conditions for sick and annual leave

Sick leave

230.(1) Except if an industrial organisation, or association, of employers, or an employer, and an employee or industrial organisation of employees otherwise agree in respect of a particular award, industrial agreement,

certified agreement or enterprise flexibility agreement, or the Industrial Commission otherwise determines, every award, industrial agreement, certified agreement or enterprise flexibility agreement is taken to make provision to the effect that every employee bound by the award or agreement (other than a casual employee within the meaning of the award or agreement) is entitled to sick leave in accordance with this Division.

(2) Every employee is entitled to at least 1 weeks sick leave for each completed year of the employee's employment with an employer.

(3) For each completed period of employment with an employer less than 1 year every employee is entitled to 1 days sick leave for each completed 2 months of the period.

(4) Every employee absent from work through illness is entitled, subject to this section, to payment in full for all time the employee is so absent from work (not exceeding the accumulated sick leave to which the employee is entitled) if—

(a) the employee has produced to the employer a certificate of a legally qualified medical practitioner as to the nature of the employee's illness and the period, or approximate period, during which the employee will be unable to work, or other evidence of illness to the employer's satisfaction; and

(b) the employee has promptly notified the employer of the illness and of the approximate period during which the employee will be unable to work.

(5) A failure to comply with subsection (4)(a) does not affect an employee's entitlement to payment as prescribed if the absence from work on account of illness does not exceed 2 days.

(6) An employee is not entitled to receive, and an employer is not bound to make, payment for more than 7 weeks absence from work through illness in any year.

Sick leave accumulated during apprenticeship or traineeship

231.(1) If an employer to whom an employee has been apprenticed, or with whom an employee has been a trainee, continues to employ that employee on the completion of the apprenticeship or traineeship, accumulated sick leave is to be taken into account for the purpose of

calculating the employee's entitlement to be paid by that employer pursuant to section 230 for time absent from work through illness during the continued employment.

(2) Subsection (1) does not prejudice the operation of section 230(6).

(3) For the purposes of subsection (1)—

(a) the expression **"accumulated sick leave"** means the aggregate of the apprentice's or trainee's entitlement to sick leave over the term of the apprenticeship or traineeship (accrued before or after the commencement of this Act), being in respect of each year of the apprenticeship or traineeship the period of sick leave entitlement prescribed by or under the *Vocational Education, Training and Employment Act 1991*, the *Employment, Vocational Education and Training Act 1988* (the **"1988 Act"**) or any Act repealed by the 1988 Act, less the aggregate of all sick leave for which the apprentice or trainee was paid by the employer during the apprenticeship or traineeship;

(b) an employer who re-employs an employee at any time within 3 months following the completion of the employee's apprenticeship to, or traineeship with, that employer is taken to have continued to employ that employee on the completion of the apprenticeship or traineeship.

Calculation of sick leave

232.(1) For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 230 or pursuant to any award, industrial agreement, certified agreement or enterprise flexibility agreement—

(a) if the calling in which the employee is engaged is transmitted, or before the commencement of this Act has been transmitted, from the employer to another person (either by operation of law or by agreement) that transmission is taken not to break or otherwise affect the continuity of employment of the employee, whose service is, or has been, transmitted from the one employer to the other employer;

(b) the periods of employment of the employee with each of the employers from or to whom the calling is, or has been, so

transmitted are to be taken into account in calculating the length of continuous employment had by the employee with the person to whom the employee's service is, or has been, transmitted.

(2) For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 230 or pursuant to any award, industrial agreement, certified agreement or enterprise flexibility agreement—

(a) employment of the employee by an employer who becomes a member of a partnership and employment of the employee with the partnership is employment with the same employer;

(b) employment of the employee with a partnership and—

(i) employment of the employee by 1 or more of the former partners, on dissolution of the partnership; or

(ii) employment of the employee with the partnership as reconstituted, on dissolution of the partnership;

is employment with the same employer;

(c) the continuity of employment of the employee in a calling transmitted from one employer to another employer is taken not to have been broken by reason that—

(i) within 1 month immediately preceding the date on which the calling is so transmitted, the employee was dismissed, or stood down, by the employer from whom the calling is transmitted; or

(ii) on the date on which the calling is so transmitted, the employee is dismissed, or stood down, by either employer;

if, within 3 months following the dismissal or stand down, the employee is re-employed by the employer to whom the calling is so transmitted.

(3) For the purposes of subsections (1) and (2)—

"transmission" includes, without limiting the generality of its meaning, transfer, assurance, conveyance, assignment and succession.

(4) For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 230 or pursuant to any award, industrial agreement, certified agreement or enterprise flexibility agreement, where a

body corporate is a subsidiary of another, or is a subsidiary of a body corporate that is a subsidiary of that other, periods of employment had by the employee with each of those bodies corporate, which periods would constitute unbroken continuous employment with an employer if those bodies corporate were the same employer, are to be taken into account in calculating the length of continuous employment of the employee by that 1 of those bodies corporate by which the employee is employed for the time being and is taken to be employment had by the employee with that last mentioned body corporate.

(5) For the purposes of subsection (4) a body corporate is to be taken to be a subsidiary of another if, according to the Companies (Queensland) Code, it would be taken to be such a subsidiary, whether or not in a particular case that Code is relevant.

Annual leave

233.(1) Except as is otherwise determined by the Industrial Commission, every award, industrial agreement, certified agreement or enterprise flexibility agreement must make provision to the effect of the provisions of this section.

(2) Every employee bound by an award, industrial agreement, certified agreement or enterprise flexibility agreement, other than an employee engaged at piecework rates or a casual employee within the meaning of the award or agreement, becomes entitled, at the end of each year of employment by the same employer, to annual leave on full pay for a period determined or approved by the Industrial Commission.

(3) Annual leave is exclusive of any public holiday that occurs during the period of the leave.

(4) In calculating a year of employment for the purposes of subsection (2)—

(a) a period exceeding 3 months during which an employee has been absent on leave without pay granted by the employer is not to be taken into account;

(b) a period during which an employee has been absent without pay and without the employer's authority, other than a period of absence not exceeding 3 months on account of illness or injury

certified to by a legally qualified medical practitioner, is not to be taken into account.

(5) If an employee and employer so agree, annual leave may be taken wholly or partly in advance before the employee has become entitled to annual leave.

(6) An employee who has taken in advance the whole of the annual leave that would be due at the end of a year of employment, is not entitled to any further annual leave at the end of that year of employment.

(7) An employee who has taken in advance part of the annual leave that would be due at the end of a year of employment, becomes entitled at the end of that year of employment to the part of the annual leave not already taken.

(8) If in respect of any award, industrial agreement, certified agreement or enterprise flexibility agreement the Industrial Commission has not determined or approved the period of annual leave to which an employee is to become entitled, an employee bound by that award or agreement is to become entitled to annual leave as prescribed by this section for a period of leave to which the employee would have become entitled under a declaration of a general ruling of 9 November 1973 made by the Industrial Commission under the *Industrial Conciliation and Arbitration Act 1961*.

(9) An employer and employee may agree as to the time when and the manner in which the employee's annual leave is to be given and taken.

(10) Unless an employer and employee otherwise agree, an employer may give to an employee notice, which must be of at least 14 days, of the date on and from which the employee's annual leave is to be taken, and the employee is to comply with such notice.

Leave accumulated during apprenticeship or traineeship

234.(1) If an employer to whom an employee has been apprenticed or with whom an employee has been a trainee continues to employ the employee on completion of the apprenticeship or traineeship, leave accumulated on account of annual leave during the period of apprenticeship or traineeship and taken during, or paid for on termination of, the continued employment is taken to be accumulated annual leave.

(2) Except as otherwise directed by the Industrial Commission, in

calculating for the purposes of this section, the amount of leave accumulated on account of annual leave during an apprenticeship or traineeship—

(a) any limitation of that amount imposed by or under the *Vocational Education, Training and Employment Act 1991* is to be taken into account; and

(b) any limitation imposed by the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement of the amount of leave that may be accumulated on account of annual leave during the employment continued on completion of the apprenticeship or traineeship is not to be taken into account.

(3) Subsections (1) and (2) are not to be construed to prejudice or affect the entitlement of an employee to annual leave in addition to the employee's entitlement (if any) to leave as prescribed by those subsections.

Payment for annual leave

235.(1) Annual leave is to be paid for by the employer—

(a) in the case of an employee who immediately before taking such leave is in receipt of ordinary pay at a rate in excess of the ordinary rate payable under the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement—at the rate of such ordinary pay;

(b) in the case of any other employee—at the ordinary rate payable to the employee under the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement immediately before such leave is taken.

(2) The leave must be paid in advance.

Payment in lieu of annual leave

236. If the employment of an employee who has become entitled to annual leave provided for by sections 233 and 234 is terminated by the employer or the employee, and the employee has not taken the whole of that leave, the employee is presumed to have taken the leave or, as the case may be, the remainder of the leave on and from the date of the termination of the employment and the employer is to forthwith pay to the employee (in

addition to all other sums due to the employee) the employee's ordinary pay for the period of the leave or, as the case may be, the remainder of the leave and for all public holidays that would occur during that period.

Pro rata annual leave

237.(1) Every award, industrial agreement, certified agreement or enterprise flexibility agreement, other than an award or agreement to which this section does not apply pursuant to a determination of the Industrial Commission, must make provision, as determined or approved by the Commission, for payment for pro rata annual leave in respect of every period of employment less than 1 year, if the employment of an employee by an employer is terminated.

(2) Any such period must be computed from the date of commencement of the employment or, if the employee has, during the employment, become entitled to annual leave provided for by sections 233 and 234, from the date on which the employee last became entitled to such leave.

Division 3—Conditions for long service leave

Source of long service leave entitlement

238.(1) Except as prescribed by subsection (2), the entitlement to long service leave on full pay of employees who have such entitlement under any award, industrial agreement, certified agreement or enterprise flexibility agreement is as prescribed by this Division, notwithstanding the terms of the award or agreement.

(2) The entitlement to benefits in the nature of long service leave of employees who have the entitlement under any industrial agreement duly approved by the Industrial Commission under section 239, or under an industrial agreement duly approved by the Commission under the *Industrial Conciliation and Arbitration Act 1961*, is as provided by the industrial agreement.

(3) The entitlement to long service leave of employees who have the entitlement under an Act, other than this Act, is as prescribed by or under that other Act.

(4) The entitlement to long service leave of employees who have the entitlement—

(a) under an order in council made pursuant to section 252; or

(b) under section 253;

is as is prescribed by the order or, as the case may be, section 253.

Commission's jurisdiction to approve conditions for long service leave

239.(1) On application therefor, the Industrial Commission is to insert in any award, industrial agreement, certified agreement or enterprise flexibility agreement provisions entitling employees to long service leave on full pay as prescribed by this Division, except if the Commission is excused from doing so by this section.

(2) An award or industrial agreement that, before the commencement of this Act, contained provisions for an entitlement to long service leave of employees is to be construed to confer, on and from the commencement of this Act, the entitlement on employees bound by the award or agreement to whom an entitlement to long service leave is extended by this Act.

(3) The Industrial Commission may approve as an industrial agreement, certified agreement or enterprise flexibility agreement an agreement under which employees bound thereby are entitled to benefits in the nature of long service leave that, in the Commission's opinion, are not less favourable to employees than the entitlement to long service leave as prescribed by this Division, which the employees would have if the Commission made the insertion in the agreement under subsection (1).

(4) The Industrial Commission is not to exercise its jurisdiction under subsection (3) unless it is satisfied—

(a) that every employer who is a party to the agreement has concurred in the agreement's provisions that confer the benefits in the nature of long service leave on employees bound by the agreement; and

(b) that the community in general will not be prejudiced by conferral of the benefits.

(5) If the Industrial Commission duly exercises its jurisdiction under subsection (3), it is not to make the insertion prescribed by subsection (1),

while the conferral of such benefits in the nature of long service leave under the industrial agreement in question subsists.

Entitlement to long service leave

240.(1) The entitlement of an employee to long service leave on full pay as prescribed by this Division—

(a) is nil—if the employee has an entitlement to benefits in the nature of long service leave pursuant to any law, award, industrial agreement, certified agreement, enterprise flexibility agreement, or other agreement or arrangement, which entitlement is not less favourable to the employee than the entitlements prescribed by this Division;

(b) in any other case—is in respect of the employee's continuous service with the same employer (whether wholly in the State, or partly in and partly outside the State), and is—

(i) in the case of an employee who has completed 15 years continuous service with the same employer—13 weeks;

(ii) in the case of an employee who has completed 10 years continuous service, but less than 15 years continuous service with the same employer, and whose service has been terminated—

(A) by the employee's death;

(B) by the employee;

(C) by the employer, for a cause other than serious misconduct;

a period that bears to 13 weeks the proportion that the employee's period of such continuous service (expressed in years, and a fraction of a year where necessary) bears to 15 years;

(c) in the case of an employee who, having completed the first, or a subsequent, 15 years continuous service with the same employer, continues that service until the completion of a further 15 years continuous service with that employer—is a further 13 weeks;

(d) in the case of an employee who, having completed the first, or a subsequent, 15 years continuous service with the same employer, continues that service until the completion of a further 5 years continuous service, but less than 15 years continuous service, with that employer and whose service has been terminated—

(i) by the employee's death;

(ii) by the employee;

(iii) by the employer, for a cause other than serious misconduct;

a further period that bears to 13 weeks the proportion that the employee's further period of such continuous service (expressed in years, and a fraction of a year where necessary) bears to 15 years.

(2) Long service leave is exclusive of any public holiday that occurs during a period of such leave taken.

(3) This section applies subject to adjustments made for—

(a) a seasonal employee under either of the following sections—

- section 251 (Long service leave in meat works and sugar industry)
- section 252 (Long service leave for other seasonal workers); and

(b) an employee with an entitlement to long service leave based on continuous service calculated under section 245 (Continuous service of casual employees).

Continuity of service generally

241.(1) For the purpose of calculating an employee's entitlement to long service leave under this Division—

(a) service with an employer who becomes a member of a partnership and service with the partnership is service with the same employer;

(b) service with a partnership and—

(i) service with 1 or more of the former partners on dissolution

of the partnership; and

(ii) service with the partnership as reconstituted, on dissolution of the partnership;

is service with the same employer;

(c) continuity of an employee's service with an employer is not broken, and never has been broken, by—

(i) absence from work on leave granted by the employer, including such absence through illness or injury on leave so granted;

(ii) the employee's being dismissed or stood down by the employer, or the employee's terminating employment with the employer, because of illness or injury, if—

(A) the employee is re-employed by the same employer; and

(B) the employee has not engaged in a calling (whether on the employee's own account or as an employee) between the dismissal, stand down or termination and the re-employment;

(iii) the employee's being dismissed or stood down by the employer, or the employee's terminating employment with the employer, for a period not exceeding 3 months, if the employee is re-employed by the same employer;

(iv) any interruption or termination of the employee's service with the employer, if the interruption or termination—

(A) has been effected by the employer with an intention of avoiding an obligation imposed on the employer by this Division, an award, an industrial agreement, a certified agreement or an enterprise flexibility agreement; or

(B) has arisen directly or indirectly from an industrial dispute; or

(C) has been effected by the employer because of slackness in trade or business;

if, in the case referred to in sub-subparagraph (B) or (C), the

employee is re-employed by the same employer;

(v) transmission (either by operation of law or by agreement and either before or after the commencement of this Act) of the calling in which the employer is engaged from the employer to another person, if the employee's service is thereby transmitted from the employer to the other person as employer;

(vi) the employee's being dismissed or stood down by the employer, or the employee's terminating employment with the employer, on the date on which the calling in which the employer is engaged is transmitted from the employer to another person (either by operation of law or by agreement and either before or after the commencement of this Act), or within 1 month immediately preceding that date, if the employee is re-employed by the person to whom the calling is transmitted within 3 months following the dismissal, stand down or termination;

(d) periods of continuous service of an employee with each of the employers from or to whom the calling in which the employer is engaged is transmitted (either by operation of law or by agreement and either before or after the commencement of this Act) are to be taken into account in determining the length of the employee's continuous service with the employer to whom the employee's service is thereby transmitted.

(2) For the purposes of subsection (1)—

"transmission" includes, without limiting the generality of its meaning, transfer, assurance, conveyance, assignment and succession.

Determination of length of continuous service

242.(1) Where an employee's entitlement to long service leave is referable to employment by an employer before the commencement of this Act—

(a) the determination of the length of the employee's continuous service before such commencement; and

(b) the calculation of the employee's entitlement to long service leave

in respect of continuous service before such commencement;

are to be made in accordance with the provisions of sections 17, 18, 19 or 20 of the *Industrial Conciliation and Arbitration Act 1961*, (whichever provisions are relevant for the purpose) which provisions are taken to continue in force for this purpose.

(2) For the purpose of determining the length of an employee's continuous service, a period of the employee's absence from work that pursuant to—

(a) section 241(1)(c)(ii); or

(b) section 241(1)(c)(iv)(B) or (C);

does not break the continuity of the employee's service is not to be taken into account by reason only of such of them, that section and those provisions, as is relevant.

(3) For the purpose of determining the length of an employee's continuous service, if the employee's service is, or has been before the commencement of this Act, temporarily lent or let on hire by one employer (**"the first employer"**) to another employer (**"the second employer"**), the period of service had by the employee with the second employer is taken to be service had by the employee with the first employer, and is to be taken into account in determining the length of the employee's continuous service with the first employer.

(4) For the purpose of determining the length of an employee's continuous service, if the employee's service is, or has been before the commencement of this Act, transferred by one employer (**"the first employer"**) to another employer (**"the second employer"**) the period of service had by the employee with each of the employers, which service would be continuous service if the 2 employers were the same employer, is taken to be service had by the employee with the second employer.

(5) In determining the length of the employee's continuous service with the second employer, the period of service had by the employee with the first employer, except for any part thereof in respect of which the employee has taken long service leave on full pay before commencing service with the second employer, is to be taken into account.

(6) For the purpose of determining the length of an employee's continuous service with an employer that is a corporation, if a corporation is

a subsidiary of another corporation, or is a subsidiary of a corporation that is a subsidiary of that other corporation, periods of service had by the employee with each of those corporations, which service would be continuous service if those corporations were the same employer, are to be taken into account in determining the length of the employee's continuous service with that corporation by which the employee is employed for the time being.

(7) Such aggregate service is taken to be service had by the employee with such last mentioned corporation, except for any period of service had by the employee with any of those corporations in respect of which the employee has taken long service leave on full pay.

(8) For the purposes of subsections (6) and (7), a corporation is to be taken to be a subsidiary of another if, according to the Companies (Queensland) Code, it would be taken to be such a subsidiary, whether or not in a particular case that Code is relevant.

Service performed in apprenticeship or traineeship

243.(1) If an employer to whom an employee has been apprenticed, or with whom an employee has been a trainee, continues or, before the commencement of this Act, has continued to employ the employee on the completion of the apprenticeship or traineeship, the period of apprenticeship or traineeship is to be taken into account in determining the length of the employee's continuous service with the employer for the purpose of calculating the employee's entitlement to long service leave under this Division.

(2) For the purposes of this section, an employer who re-employs a person at any time within 3 months following completion of the person's apprenticeship or traineeship with that employer is taken to have continued to employ the person on completion of the apprenticeship or traineeship.

Service in Defence Force

244.(1) In this section—

"Defence Force" means the Australian Defence Force.

"permanent forces" has the meaning given by section 4(1) of the *Defence*

Act 1903 (Cwlth).

"service", as a member of the Defence Force, means service in the Defence Force other than in the permanent forces.

(2) In calculating an employee's entitlement to long service leave under this Division, service by that person as a member of the Defence Force is taken to be continuous service by the person with the employer by whom the person was employed immediately before the person began service with the Force.

Continuous service of casual employees

245.(1) When calculating an employee's entitlement to long service leave under this Division, service of an employee who is employed more than once by the same employer over a period constitutes continuous service with the employer even if the employment is broken during the period.

(2) However, the continuous service ends if the employment is broken by the passing of more than 3 months between the end of 1 employment contract and the next employment contract.

(3) Subsection (1) applies despite the fact that—

(a) any of the employment is not full-time employment; or

(b) the employee is employed by the employer under 2 or more employment contracts; or

(c) the employee would, apart from this section, be regarded as engaged in casual employment; or

(d) the employee has engaged in other employment during the period.

(4) When calculating the employee's continuous service under section 240—

(a) subject to subsection (5), service by the employee before 23 June 1990 must not be taken into account; and

(b) if the employee only obtained the entitlement because of the enactment of this section under the *Industrial Relations Reform Act 1994*—the employee's service between 23 June 1990 and the commencement of the section must not be taken into account; and

(c) subject to subsection (2), any period when the employee was not in employment with the employer must be taken into account.

(5) Subsection (4)(a) does not affect an employee's entitlement to long service leave under—

(a) an award or industrial agreement made before 23 June 1990; or

(b) the *Industrial Conciliation and Arbitration Act 1961*.

(6) This section does not limit an entitlement to long service leave calculated other than under this section.[2]

Time and manner of taking long service leave

246.(1) Subject to section 240, the Industrial Commission may insert in any award, industrial agreement, certified agreement or enterprise flexibility agreement such provisions as the Commission considers necessary or desirable—

(a) in relation to the time when, the manner in which and the conditions on which long service leave may be given and taken;

(b) to the effect that leave taken as a benefit in the nature of long service leave by an employee bound by the award or agreement before insertion in the award or agreement of provisions for long service leave on full pay is to be deducted from the long service leave to which an employee becomes entitled pursuant to such insertion and this Division (other than this paragraph).

(2) Every such provision operates and is to be given effect as if it were prescribed by this Division.

(3) Subject to the award, industrial agreement, certified agreement or enterprise flexibility agreement as to the time when long service leave may be given to and taken by employees bound by the award or agreement, such time may be agreed between an industrial organisation of employees of

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2 See section 241, which provides other rules for calculating an employee's entitlement to long service leave.
This section does not affect an employees entitlement to long service leave accrued under section 245 of the *Industrial Relations Act 1990* between 23 June 1990 and the commencement of the section because this is protected under section 20 of the *Acts Interpretation Act 1954*.

which such employees are members and the employer.

(4) If the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement does not provide as to—

(a) the time when; or

(b) the manner in which;

long service leave may be given and taken, and if an employee (or an industrial organisation of which the employee is a member) and the employer fail to agree on those matters, the employer may give to the employee 3 months notice at least of the date on and from which the employee is required to take at least 4 weeks long service leave, and the employee is to comply with such notice.

Time and manner of taking long service leave—casual employees

247.(1) An employer may agree with an employee who has an entitlement to long service leave based on continuous service calculated under section 245 that the entitlement may be taken in the form of its full-time equivalent.

Example—

If an employee—

(a) is entitled to be paid for 260 hours long service leave; and

(b) works under an award that provides for a full-time working week of 40 ordinary hours;

the employee and the employer may agree that the employee take $6^1/_2$ weeks leave ($260 \div 40 = 6^1/_2$).

(2) This section applies subject to a provision in an award, industrial agreement, certified agreement or enterprise flexibility agreement about the employee's long service leave.

Payment for long service leave

248.(1) Long service leave is to be paid for by the employer as ordinary time, which, for the purpose of making such payment, is taken to be worked continuously by the employee during the period of the employee's long service leave.

(2) If, immediately before commencing long service leave, an employee is being paid for ordinary time worked at a rate in excess of the rate payable under the relevant award, industrial agreement, certified agreement or enterprise flexibility agreement for ordinary time, the employee's long service leave is to be paid for at the rate at which the employee is being paid as ordinary time, which, for the purpose of making such payment at that rate, is taken to be worked continuously by the employee during the period of long service leave.

(3) However—

(a) if during the employee's long service leave the rate payable for ordinary time under the relevant award or agreement is increased to a rate greater than the rate at which the employee is entitled to be paid under subsection (2)—the employee is to be paid at that increased rate for the part of the period of leave during which that increased rate is the rate for ordinary time payable under the relevant award or agreement;

(b) if during the employee's long service leave the rate payable for ordinary time under the relevant award or agreement is decreased—the employee may be paid at the rate at which the employee is entitled to be paid under subsection (2) before the decrease, less the whole or any portion of the amount of the decrease, for any part of the period of leave during which that decreased rate is the rate for ordinary time payable under the relevant award or agreement.

(4) If the Industrial Commission is satisfied that an employer has decreased the rate at which an employee is being paid for ordinary time before the employee commences a period of long service leave, being a rate in excess of the rate for ordinary time payable under a relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, with intent to avoid the obligation of an employer under subsection (2), the Commission may order that employee's long service leave to be paid for at the rate at which the employee was being paid immediately before such decrease, whereupon that subsection applies in respect of that employee as if the employee were being paid such last mentioned rate for ordinary time worked immediately before the employee commenced the period of long service leave.

(5) The amount payable to an employee mentioned in section 245(1) for

long service leave is calculated using the formula—

$$\textbf{number of hours} \times \textbf{hourly rate}$$

in which the number of hours is calculated using the formula—

$$\frac{\textbf{actual service}}{\textbf{52}} \times \frac{\textbf{13}}{\textbf{15}}.$$

(6) In subsection (5)—

"actual service" means the total ordinary hours actually worked by an employee during the period of continuous service to which the entitlement to long service leave relates.

"hourly rate" means the hourly rate for ordinary time payable to the employee—

(a) if the employee takes the long service leave—on the day the employee starts the leave; or

(b) otherwise—on the day immediately before the entitlement becomes payable.

"number of hours" means the number of hours for which payment is to be made for long service leave.

Example of subsection (5)—

An employee who worked 15 600 ordinary hours over a 15 year period and is being paid an hourly rate of $10 would be entitled to be paid—

$$\$10 \times \left(\frac{15\,600}{52} \times \frac{13}{15}\right)$$

$$= \$10 \times 260$$

$$= \$2\,600.$$

(7) In the event of a dispute between an employee who is paid at piecework rates and the employer as to the rate for ordinary time at which the employee should be paid for a period of long service leave, the Industrial Commission may determine the payment that should be made, and the employee is entitled to that payment accordingly.

(8) An employer and employee may agree on the times when and the manner in which the employee will be paid for a period of long service leave, and the Industrial Commission may determine any matter relating to such payment on which they fail to agree.

(9) A sum payable for long service leave becomes payable—

(a) on cessation of the employee's employment with the employer;

(b) in a case to which section 249 applies—on the death of the employee;

(c) subject to paragraphs (a) and (b), at a time agreed between the employer and the employee or, failing such agreement, determined by the Industrial Commission.

Payment in lieu of long service leave

249.(1) Except upon termination of an employee's employment, an employer is not to make, and an employee is not to accept, payment in lieu of long service leave.

(2) If an employee entitled to long service leave dies—

(a) before taking such leave; or

(b) after commencing, but before completing, such leave;

then, unless the sum hereinafter in this subsection referred to has been already paid to, or on account of, the employee, the employer is to pay to the employee's legal personal representative the sum payable as prescribed by section 248 for long service leave in respect of the whole of the employee's entitlement to long service leave or, as the case may require, that part of such entitlement in respect of which payment as prescribed by section 248 has not been made.

(3) Without prejudice to any other mode of recovery, the employee's legal personal representative may recover the sum payable under subsection (2), and unpaid, as unpaid wages due and owing to the employee by the employer, and may make application therefor under section 409(1) and (3).

Inquiry upon re-employment of employee during long service leave

250.(1) If—

(a) an employee's service with an employer is terminated by either the employer or the employee; and

(b) the employer makes payment for long service leave to which the employee is entitled, or any part thereof; and

(c) the employer re-employs the employee before the end of a period, commencing on the date of termination of the employee's service, equal to the period of long service leave for which payment was made;

then, on application therefor made by an Industrial Inspector or an industrial organisation of employees of which the employee is a member, an Industrial Magistrate may inquire into the matter.

(2) If upon an inquiry under subsection (1) the Industrial Magistrate is satisfied that the employer and the employee arranged such termination, payment and re-employment in order to avoid the giving by the employer and the taking by the employee of long service leave in accordance with the employee's entitlement as prescribed, or a part thereof, the Industrial Magistrate may make such order or orders as the Industrial Magistrate considers just, having regard to the objective of this Division that long service leave is to be given by an employer, and taken by an employee, in accordance with the employee's entitlement thereto.

Long service leave in meat works and sugar industry

251.(1) In this section—

"actual service", in relation to an employee to whom this section applies, means the period of actual service the employee is taken to have had with an employer under the rules in subsection (5).

"continuous service", in relation to an employee to which this section applies, means the period of continuous service the employee is taken to have had with an employer under the rules in subsection (5) for the purpose of section 240.

"meat works" means a place where livestock are slaughtered or meat is boned.

"owners" of a meat works includes any person who carries on the business of the works.

"period between seasons" includes—

(a) the period between the termination of one season and the start of

the next season; and

(b) in relation to a particular employee—the period between the day on which the employee ceases employment in one season and the day on which the employee starts employment in the next season.

"season" means—

(a) in relation to the sugar industry—a period, whether falling—

(i) completely in one calendar year; or

(ii) partly in one calendar year and partly in the next calendar year;

during which—

(iii) sugar cane is taken delivery of and crushed at a sugar mill; or

(iv) harvesting of sugar cane, or farm work, is performed in the sugar industry; and

(b) in relation to a meat works—a period, whether falling—

(i) completely in one calendar year; or

(ii) partly in one calendar year and partly in the next calendar year;

during which stock are taken delivery of and slaughtered at a meat works.

"seasonal employment" means employment related to season.

"seasonal entitlement", in relation to each period of long service leave provided under section 240, means the period of long service leave to which an employee to whom this section applies is entitled by using the formula in subsection (6).

"unadjusted entitlement" means the period of long service leave to which an employee would be entitled under section 240 if—

(a) the rules in subsection (5) for calculating the period of continuous employment with the employer for the purpose of the section 240 were applied; but

(b) the adjustment of the entitlement by using the formula in subsection (6) were not made.

(2) This section applies to an employee who is entitled to a period of long service leave because the Commission has conferred, under section 239, an entitlement to long service leave on full pay on—

(a) employees employed in seasonal employment in the sugar industry; or

(b) employees employed in or about meat works in seasonal employment by the meat works owners.

(3) The object of this section is to prescribe the entitlement to long service leave of an employee to which it applies by—

(a) determining under subsection (5)—

(i) how the employee's period of continuous service with an employer must be calculated for the purpose of calculating the employee's unadjusted entitlement; and

(ii) how the employee's period of actual service with an employer must be calculated; and

(b) determining by the formula in subsection (6) how the employee's unadjusted entitlement must be adjusted to take into account the employee's actual service.

(4) The rules in subsection (5) apply for the purpose of determining, in relation to an employee—

(a) the employee's period of continuous service with an employer for the purpose of section 240; and

(b) the employee's period of actual service with the employer.

(5) The rules are—

(a) the employee's service with an employer (the **"employer"**) is taken not to be broken (and never has been broken) by a period when the employee was not employed by the employer between seasons if—

(i) in one season, the employee's service with the employer continued until the termination of the season or until an earlier day on which the employee's employment was terminated by the employer; and

(ii) in the next season, the employee's service with the same

employer started on the opening of the season or on a later day in that season on which the employer required the employee to start employment; and

(b) subject to paragraph (c), service before the commencement of this subsection is to be treated in the same way as service after the commencement; and

(c) if the employee is engaged in the calling of the harvesting of sugar cane or farm work in the sugar industry, service had by the employee with the employer before 23 June 1990 is not to be taken into account; and

(d) any period between seasons, during which period the employee is not in employment with the employer—

(i) must be taken into account for the purpose of calculating the employee's period of continuous service with an employer for the purpose of section 240; and

(ii) must not to be taken into account for the purpose of calculating the length of the employee's actual service; and

(e) times in a period between seasons when the employee is employed by the employer are to be taken into account; and

(f) long service leave to which an employee is entitled, or any part of that leave—

(i) may be given to, and taken by, the employee during the period between seasons; and

(ii) if taken during the period between seasons—is taken to have started on the last cessation of the employee's employment by the employer.

(6) In relation to each period of long service leave provided for under section 240, the seasonal entitlement of an employee to whom this section applies is the period obtained by using the following formula—

$$\frac{\textbf{unadjusted entitlement X actual service}}{\textbf{continuous service}}.$$

Long service leave for other seasonal workers

252.(1) The Governor in Council may, by regulation, declare that the provisions of—

(a) sections 240 to 250; and

(b) section 251(2) and (3);

or those provisions as modified or affected by the regulation, apply to employees of a description specified in the regulation in any calling whose employment with the same employer—

(c) is seasonal or of another periodic nature; and

(d) is not defined as casual by the award, industrial agreement, certified agreement or enterprise flexibility agreement concerned.

(2) A regulation under subsection (1) may do any of the following—

(a) may specify employees by reference to callings, duties, employers, places of employment or in any other way sufficient to identify them;

(b) may modify or affect the provisions of this Division declared by the regulation for the purpose of its application to employees for whom the provisions are declared by a regulation under the subsection to apply;

(c) may define terms for the purpose of the application of the provisions of this Division as declared by a regulation under the subsection.

Long service leave for employees not governed by awards etc.

253.(1) This section applies in relation to employees who, in their employment, are not bound by—

(a) any award, industrial agreement, certified agreement or enterprise flexibility agreement within the meaning of this Act; or

(b) any award or agreement or determination or order that makes provision for long service leave for employees, made, registered, approved or certified under a law of the Commonwealth relating to industrial relations; or

(c) an Act, other than this Act, or a law of the Commonwealth, by or under which entitlement to benefits in the nature of long service leave is conferred on them.

(2) Every employee in relation to whom this section applies is entitled to long service leave on full pay in accordance with—

(a) sections 240 to 250; and

(b) this section.

(3) In respect of an employee in relation to whom this section applies a reference in any of the provisions of sections 240 to 250, to any award, industrial agreement, certified agreement or enterprise flexibility agreement, being a reference relevant to the application of the provision, is to be read as including reference to an award, agreement, determination or order made, registered, approved or certified under a law of the Commonwealth relating to industrial relations, which applies to the employee and is relevant to the application of the provision.

(4) Subject to subsection (2), the Industrial Commission may determine all matters and questions as to the time when, the manner in which and the conditions on which long service leave may be given to and taken by an employee in relation to whom this section applies.

(5) Without limiting the jurisdiction of the Commission conferred by subsection (4), that jurisdiction extends to the declaration of general rulings by a Full Bench of the Industrial Commission.

(6) If an employee in relation to whom this section applies is employed in or about meat works by the owners thereof in employment that is seasonal as defined by section 251, then for the purposes of this section—

(a) the continuity of the employee's service with an employer is not broken, and never has been broken, by the employee's not being employed by that employer between seasons if—

(i) in one season, the employee's service with the employer continued until the termination of the season or until an earlier date on which the employee's employment was terminated by the employer; and

(ii) in the next following season, the employee's service with the same employer commenced on the opening of the season or on a later date in that season on which the employer required

the employee to commence employment;

(b) any period between seasons, during which period the employee is not in employment with an employer, is not to be taken into account for the purpose of determining the length of continuous service had by the employee with the employer, but times in such period when the employee is employed by the employer are to be taken into account for that purpose;

(c) long service leave to which an employee is entitled, or any part thereof, may be given to, and taken by, the employee during the period between seasons, and leave so taken is taken to have commenced upon the last cessation of the employee's employment by the employer in or about meat works.

(7) In subsection (6)—

"owners", in relation to meat works, includes any person who carries on the business of the works.

"period between seasons" includes—

(a) the period between the termination of one season and the commencement of the next following season; and

(b) in relation to a particular employee—the period between the date on which the employee ceases employment in one season and the date on which the employee commences employment in the next following season.

Recognition of certain exemptions

254.(1) The provisions of this Division that provide for long service leave for employees do not apply in respect of an employer to whom the Industrial Commission, pursuant to the *Industrial Conciliation and Arbitration Act 1961*, has granted an exemption from the application of—

(a) any award or industrial agreement; or

(b) the provisions of that Act;

in respect of the provision of long service leave for employees, if the exemption remains in force at the commencement of this Act.

(2) On application therefor, the Industrial Commission may revoke an

exemption, such as is referred to in subsection (1), that remains in force whereupon the provisions of this Division apply in respect of the employer whose exemption is revoked.

Person may be "employer" and "employee"

255. If in performance of duties in a calling a person is an employee the person has an entitlement as prescribed to long service leave notwithstanding that because of engagement in the calling, or the position held by the person in the calling, the person is defined to be an employer for the purposes of this Act.

Division 4—Parental leave

Subdivision 1—Preliminary

Object of Division

256. The object of this Division is to give effect to the Family Responsibilities Convention and the Family Responsibilities Recommendation.

Basic principles

257.(1) Under this Division, an employee who gives birth to a child, and her spouse, are entitled to unpaid parental leave (totalling 52 weeks) to care for the child.

(2) However, an employee's entitlement to leave under this Division is reduced by the employee's other entitlements to parental leave other than under this Division.

(3) To obtain parental leave under this Division, an employee must satisfy specified requirements about—

(a) length of service; and

(b) notice periods; and

(c) information and documentation.

(4) Except for 1 week at the time of the birth, an employee and the employee's spouse must take parental leave at different times.

(5) An employee may take other leave (annual leave for example) in conjunction with parental leave, but this will reduce the amount of parental leave the employee may take.

(6) Parental leave may be varied in certain circumstances.

(7) In general, if a variation is foreseeable, an employee must give notice of it, but if a variation is not foreseeable notice is not required (for example, when the birth is premature).

(8) Cancellation of parental leave by the employer is limited to situations when—

(a) the employee will not become, or ceases to be, the child's primary care-giver; or

(b) there has been a mistake in calculating the amount of leave to which the employee is entitled.

(9) An employee who takes parental leave is, in most circumstances, entitled to return to the position the employee held before the leave was taken.

(10) Parental leave does not break an employee's continuity of service.

Definitions

258. In this Division—

"continuous service" means—

(a) service under an unbroken contract of employment other than as a casual or seasonal employee; and

(b) includes a period of leave or absence authorised by—

(i) the employer; or

(ii) an award, industrial agreement, certified agreement, enterprise flexibility agreement or order; or

(iii) a contract of employment; or

(iv) this Division.

"Division 4 long paternity leave" has the meaning given by section 271.

"Division 4 maternity leave" has the meaning given by section 259.

"Division 4 short paternity leave" has the meaning given by section 271.

"employee" includes a part-time employee, but not a casual or seasonal employee.

"law" includes an unwritten law.

"long paternity leave" means Division 4 long paternity leave or other leave—

(a) that an employee is entitled to, has been applied for or been granted for the birth of his spouse's child, other than under this Division (for example, under an award, order or agreement); and

(b) that is analogous to Division 4 long paternity leave, or would be analogous except that—

(i) it is paid leave; or

(ii) different rules govern eligibility for it; or

(iii) it can be taken for different periods.

"maternity leave" means Division 4 maternity leave or other leave—

(a) that an employee is entitled to, has been applied for or been granted for her pregnancy or her child's birth, other than under this Division (for example, under an award, order or agreement); and

(b) that is analogous to Division 4 maternity leave, or would be analogous except that—

(i) it is paid leave; or

(ii) it can begin before the estimated date of birth; or

(iii) different rules govern eligibility for it; or

(iv) it can be taken for different periods.

"medical certificate" means a certificate signed by a doctor.

"parental leave" means maternity leave or paternity leave.

"paternity leave" means short paternity leave or long paternity leave.

"short paternity leave" means Division 4 short paternity leave or other leave—

(a) that an employee is entitled to, has been applied for or been granted for the birth of his spouse's child, other than under this Division (for example, under an award, order or agreement); and

(b) that is analogous to Division 4 short paternity leave, or would be analogous except that—

(i) it is paid leave; or

(ii) different rules govern eligibility for it; or

(iii) it can be taken for different periods.

"spouse" of an employee includes—

(a) a former spouse; and

(b) a person of the opposite sex to the employee who lives with the employee in a marriage-like relationship, although not legally married to the employee.

Subdivision 2—Maternity leave

Entitlement to maternity leave

259. An employee who becomes pregnant is entitled to 1 period of unpaid leave (**"Division 4 maternity leave"**) for the child's birth and to be the child's primary care-giver.

Conditions of entitlement to maternity leave

260.(1) An employer must grant Division 4 maternity leave to an employee if—

(a) she notifies the employer of the estimated date of birth at least 70 days before the date; and

(b) she applies for the leave at least 28 days before the first day of the leave; and

(c) the application states the first and last days of the leave; and

(d) the first day of the leave is the estimated date of birth or a later day; and

(e) she submits with the application a medical certificate that states—

(i) she is pregnant and the estimated date of birth; or

(ii) she has given birth to a living child and the date of birth; and

(f) she submits with the application a statutory declaration stating—

(i) the first and last days of all the following—

(A) short paternity leave for which her spouse intends to apply, or has applied, for the child's birth;

(B) long paternity leave for which her spouse intends to apply, or has applied, for the child's birth;

(C) annual or long service leave for which her spouse intends to apply or has applied, instead of or in conjunction with, the paternity leave; and

(ii) that she—

(A) will be the child's primary care-giver throughout the maternity leave; and

(B) will not engage in conduct inconsistent with her contract of employment while on maternity leave; and

(g) it is reasonable to expect that she will complete, or she had completed, at least 1 year of continuous service with the employer on the day before the estimated date of birth.

(2) Subsection (1)(a) and (g) does not apply if—

(a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with subsection (1)(a); and

(b) if it was not reasonably practicable for the employee to notify the employer before the actual date of birth of the estimated date of birth—she notified the employer as soon as reasonably practicable; and

(c) otherwise—the medical certificate submitted under subsection (1)(e) also states the date that, as at the 70th day before

the actual date of birth, was the estimated date of birth; and

(d) it is reasonable to expect the employee will complete, or the employee had completed, 1 year of continuous service with the employer on the day before the estimated date of birth.

(3) Subsection (1)(b) does not apply if—

(a) it was not reasonably practicable for the employee to comply with the paragraph because the child was premature, or for some other compelling reason; and

(b) the employee submits the application as soon as reasonably practicable before, on or after the first day of the leave; and

(c) if the child is born before the employee submits the application—the first day of the leave is the day of the child's birth or a later day.

(4) If subsection (3)(c) applies, subsection (1)(d) does not apply.

(5) If, because the child was premature, the first day of the leave is earlier than the estimated date of birth, a reference in this Division to 1 year of continuous service means a period of continuous service equal to 1 year less the period—

(a) beginning on the first day of the leave; and

(b) ending on the estimated date of birth.

(6) When an employee applies for maternity leave (the **"substitute leave"**) to be taken instead of maternity leave for which she has already applied (the **"original leave"**)—

(a) if a document, submitted under subsection (1)(e) or (f) with the application for the original leave, applies to the application for the substitute leave—the document is not required to be submitted with the latter application; and

(b) if the employer grants the substitute leave—the employer—

(i) must cancel the original leave if it has been granted; or

(ii) must not give the original leave if it has not been granted.

Period of maternity leave

261.(1) The Division 4 maternity leave—

(a) if the child has not been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the estimated date of birth; and

(ii) must not extend beyond the first anniversary of the estimated date of birth; and

(b) if the child has been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the child's date of birth; and

(ii) must not extend beyond the child's first birthday; and

(c) must not overlap with the spouse's leave (other than short paternity leave) stated in the relevant statutory declaration; and

(d) must be for a continuous period equal to the shorter of—

(i) the period applied for; or

(ii) the period of entitlement.

(2) The period of entitlement is 52 weeks less the total of all the following—

(a) unpaid leave (other than maternity leave) or paid sick leave that the employer has already granted to the employee for the pregnancy; and

(b) annual or long service leave the employee has applied to take instead of, or in conjunction with, maternity leave for the pregnancy; and

(c) the spouse's leave stated in the relevant statutory declaration.

Entitlement reduced by other maternity leave available to employee

262.(1) In this section—

"period of alternative leave" means the leave mentioned in subsection (2)(b).

"relevant section" means 1 of the following—

- section 260 (Conditions of entitlement to maternity leave)
- section 261 (Period of maternity leave).

"unadjusted period of maternity leave" means any Division 4 maternity leave that a relevant section would, apart from this section, require the employer to grant to the employee for the child's birth.

(2) This section applies if, had this Division not been enacted—

(a) an employee could have applied (for her pregnancy or her child's birth) for maternity leave to which paragraphs (a) and (b) of the definition of "maternity leave" in section 258 applies, whether or not she has in fact applied; and

(b) if she had applied as required by the rules governing the maternity leave, she would have a legally enforceable right to the leave, whether or not she has in fact applied.

(3) If the period of alternative leave is at least as long as the unadjusted period of maternity leave, the employer must not grant maternity leave to the employee under a relevant section.

(4) Otherwise, the employer must grant to the employee, instead of the unadjusted period of maternity leave, a period of maternity leave that—

(a) equals the difference between the unadjusted period of maternity leave and the period of alternative leave; and

(b) begins immediately after the period of alternative leave if the employer grants it; and

(c) otherwise complies with section 261.

Taking annual or long service leave instead of, or in conjunction with, maternity leave

263. If an employee applies to take annual or long service leave instead

of, or in conjunction with, Division 4 maternity leave, the employer must grant the annual or long service leave if—

(a) had this Division not been enacted, the employer would have been obliged to grant it; or

(b) the total of all the following is not more than 52 weeks—

(i) the annual or long service leave;

(ii) annual or long service leave that the employer has already granted to the employee instead of, or in conjunction with, the maternity leave;

(iii) the maternity leave;

(iv) unpaid leave (other than maternity leave) or paid sick leave that the employer has already granted to the employee for the pregnancy;

(v) the spouse's leave under section 260(1)(f) stated in the relevant statutory declaration.

Extending maternity leave

264.(1) An employee may apply to extend the Division 4 maternity leave granted to her.

(2) The employer must grant the application if—

(a) the application is given to the employer at least 14 days before the last day of the leave; and

(b) the application states the first or last day of the extended leave; and

(c) unless the things mentioned in section 260(1)(f)(i) are still as stated in the relevant statutory declaration—the employee submits with the application a statutory declaration stating the things mentioned; and

(d) the period of leave, if extended, would not exceed the period of entitlement under section 261, calculated at the time of granting the application.

(3) The maternity leave may be extended again only by agreement between the employer and the employee.

Shortening maternity leave

265.(1) An employee may apply to shorten the Division 4 maternity leave granted to her.

(2) The employer may grant the application if it states the last day of the shortened leave.

Effect on maternity leave of failure to complete 1 year of continuous service

266. The employer may cancel Division 4 maternity leave if—

(a) it has been granted on the basis that it is reasonable to expect the employee will complete a period of at least 1 year of continuous service with the employer on a particular day; and

(b) the employee does not complete the period on the day.

Effect on maternity leave if pregnancy terminates or child dies

267.(1) This section applies if an employer has granted Division 4 maternity leave to an employee and—

(a) the pregnancy terminates other than by the birth of a living child; or

(b) she gives birth to a living child but the child later dies.

(2) If an event mentioned in subsection (1)(a) or (b) happens before the leave begins, the employer may cancel the leave before it begins.

(3) If the leave has begun, the employee may notify the employer that she wishes to return to work.

(4) If the employee does so, the employer must notify her of the day when she must return to work.

(5) The day must be within 4 weeks after the employer received the notice.

(6) Also, despite subsections (3) to (5), if the leave has begun, the employer may notify the employee of the day when she must return to work.

(7) The day must be at least 4 weeks after the employer gives the notice.

(8) If the employee returns to work, the employer must cancel the rest of the leave.

Effect on maternity leave of ceasing to be the primary care-giver

268.(1) This section applies if—

(a) during a substantial period beginning on or after the beginning of an employee's Division 4 maternity leave, the employee is not the child's primary care-giver; and

(b) having regard to the length of the period and to any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary care-giver within a reasonable period.

(2) The employer may notify the employee of the day when she must return to work.

(3) The day must be at least 4 weeks after the employer gives the notice.

(4) If the employee returns to work, the employer must cancel the rest of the leave.

Return to work after maternity leave

269.(1) This section applies when an employee returns to work after Division 4 maternity leave.

(2) The employer must employ her in the position she held immediately before—

(a) if she was transferred to safe duties under section 270 (Transfer to safe duties because of pregnancy)—the transfer; or

(b) if she began working part-time because of the pregnancy—she began working part-time; or

(c) otherwise—she began maternity leave.

(3) If—

(a) the position no longer exists; but

(b) she is qualified for, and can perform the duties of, other positions in the employer's employment;

the employer must employ her in whichever of the other positions is nearest in status and remuneration to the position.

Transfer to safe duties because of pregnancy

270. If, in the opinion of a doctor—

(a) an illness or risk arising out of an employee's pregnancy; or

(b) hazards connected with an employee's work having regard to the employee's pregnancy;

make it inadvisable for the employee to continue existing duties, the employer may—

(c) assign the employee to other duties that—

(i) the employee can efficiently perform; and

(ii) nearest in status and remuneration to the existing duties; or

(d) direct the employee to take leave for the period that the doctor considers necessary.

Subdivision 3—Paternity leave

Entitlement to paternity leave

271. For the birth of his spouse's child, an employee is entitled to—

(a) up to 1 week of unpaid paternity leave (**"Division 4 short paternity leave"**) beginning on the child's date of birth; and

(b) unpaid paternity leave (**"Division 4 long paternity leave"**) to be the child's primary care-giver.

Conditions of entitlement to short paternity leave

272.(1) An employer must grant Division 4 short paternity leave to an employee if—

(a) at least 70 days before the estimated date of birth, he gives to the employer—

(i) a notice stating his intention to apply for the leave and how long (up to 1 week) the leave is to last; and

(ii) a medical certificate that names his spouse and states she is pregnant and the estimated date of birth; and

(b) he applies for the leave as soon as reasonably practicable on or after the first day of the leave; and

(c) the application states the first and last days of the leave; and

(d) the leave is for not more than 1 week; and

(e) unless the first day of the leave is the estimated date of birth—

(i) he submits with the application a medical certificate that names his spouse and states the actual date of birth; and

(ii) the first day of the leave is the actual date of birth; and

(f) it is reasonable to expect that he will complete, or he had completed, at least 1 year of continuous service with the employer on the day before the estimated date of birth.

(2) Subsection (1)(a) and (f) does not apply if—

(a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with subsection (1)(a); and

(b) if it was reasonably practicable for the employee to give to the employer (before the actual date of birth) the notice and certificate mentioned in subsection (1)(a)—he gave them as soon as reasonably practicable; and

(c) otherwise—the medical certificate submitted under subsection (1)(e)(i) also states the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and

(d) it is reasonable to expect the employee will complete, or the

employee had completed, 1 year of continuous service with the employer on the day before the estimated date of birth.

Conditions of entitlement to long paternity leave

273.(1) An employer must grant Division 4 long paternity leave to an employee if—

(a) he applies for the leave at least 70 days before the first day of the of leave; and

(b) the application states the first and last days of the leave; and

(c) he submits with the application a medical certificate that names his spouse and states—

(i) she is pregnant and the estimated date of birth; or

(ii) she has given birth to a living child and the date of birth; and

(d) he submits with the application a statutory declaration stating—

(i) the first and last days of all—

(A) unpaid leave (other than maternity leave) or paid sick leave for which his spouse intends to apply, or has applied, for the pregnancy; and

(B) maternity leave for which his spouse intends to apply, or has applied, for the child's birth; and

(C) annual or long service leave, for which his spouse intends to apply, or has applied, instead of, or in conjunction with, maternity leave; and

(ii) that he—

(A) will be the child's primary care-giver throughout the paternity leave; and

(B) will not engage in conduct inconsistent with his contract of employment while on paternity leave; and

(e) it is reasonable to expect that he will complete, or he had completed, at least 1 year of continuous service with the employer on the day before the first day of the leave.

(2) Subsection (1)(a) does not apply if—

(a) it was not reasonably practicable for the employee to comply with the subsection because the child was premature, or for some other compelling reason; and

(b) the employee submits the application as soon as reasonably practicable before, on or after the first day of the leave.

Period of long paternity leave

274.(1) The Division 4 long paternity leave—

(a) if the child has not been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the estimated date of birth; and

(ii) must not extend beyond the first anniversary of the estimated date of birth; and

(b) if the child has been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the child's date of birth; and

(ii) must not extend beyond the child's first birthday; and

(c) must not overlap with the spouse's leave stated in the relevant statutory declaration; and

(d) must be for a continuous period equal to the shorter of—

(i) the period applied for; or

(ii) the period of entitlement.

(2) The period of entitlement is 52 weeks less the total of all the following—

(a) if the employee has notified the employer of his intention to apply

for short paternity leave for the child's birth—the short paternity leave; and

(b) annual or long service leave the employee has applied to take instead of, or in conjunction with, long paternity leave for the child's birth; and

(c) the spouse's leave stated in the relevant statutory declaration.

Entitlement reduced by other paternity leave available to employee

275.(1) In this section—

"period of alternative leave" means the leave mentioned in subsection (2)(b).

"relevant section" means 1 of the following—

- section 272 (Conditions of entitlement to short paternity leave)
- section 273 (Conditions of entitlement to long paternity leave).

"unadjusted period of paternity leave" means any Division 4 short paternity leave or Division 4 long paternity leave that a relevant section would, apart from this section, require the employer to grant to the employee for the child's birth.

(2) This section applies if, had this Division not been enacted—

(a) an employee could have applied (for the birth of his spouse's child) for short paternity leave or long paternity leave to which paragraphs (a) and (b) of the definition of "short paternity leave" or "long paternity leave" in section 258 apply, whether or not he has in fact applied; and

(b) if he had applied as required by the rules governing the paternity leave—he would have a legally enforceable right to the leave, whether or not he has in fact applied.

(3) If the period of alternative leave is at least as long as the unadjusted period of paternity leave, the employer must not grant leave to the employee under a relevant section.

(4) Otherwise, the employer must grant to the employee, instead of the unadjusted period of paternity leave, a period of short paternity leave, or long paternity leave, that—

(a) equals the difference between the unadjusted period of paternity leave and the period of alternative leave; and

(b) begins immediately after the period of alternative leave if the employer grants it; and

(c) otherwise complies with a relevant section.

Taking annual or long service leave instead of, or in conjunction with, paternity leave

276. If an employee applies to take annual or long service leave, instead of, or in conjunction with, Division 4 short paternity leave or Division 4 long paternity leave, the employer must grant the annual or long service leave if—

(a) had this Division not been enacted, the employer would have been obliged to grant it; or

(b) the total of all the following is not more than 52 weeks—

(i) the annual or long service leave;

(ii) annual or long service leave that the employer has already granted to the employee instead of, or in conjunction with, the paternity leave;

(iii) the paternity leave;

(iv) the spouse's leave stated under section 273(1)(d) in the relevant statutory declaration.

Extending long paternity leave

277.(1) An employee may apply to extend the Division 4 long paternity leave granted to him.

(2) The employer must grant the application if—

(a) the application is given to the employer at least 14 days before the last day of the leave; and

(b) the application states the first or last day of the extended leave; and

(c) unless the things mentioned in section 273(1)(d)(i) are still as

stated in the relevant statutory declaration—the employee submits with the application a statutory declaration stating the things mentioned; and

(d) the period of leave, if extended, would not exceed the period of entitlement under section 274(2), calculated at the time of granting the application.

(3) The paternity leave may be extended again only by agreement between the employer and the employee.

Shortening paternity leave

278.(1) An employee may apply to shorten the Division 4 paternity leave granted to him.

(2) The employer may grant the application if it states the last day of the shortened leave.

Effect on long paternity leave of failure to complete 1 year of continuous service

279. The employer may cancel Division 4 long paternity leave if—

(a) it has been granted on the basis that it is reasonable to expect the employee will complete a period of at least 1 year of continuous service with the employer on a particular day; and

(b) the employee does not complete the period on the day.

Effect on long paternity leave if pregnancy terminates or child dies

280.(1) This section applies if an employer has granted Division 4 long paternity leave to an employee and—

(a) his spouse's pregnancy terminates other than by the birth of a living child; or

(b) his spouse gives birth to a living child but the child later dies.

(2) If an event mentioned in subsection (1)(a) or (b) happens before the leave begins, the employer may cancel the leave before it begins.

(3) If the leave has begun, the employee may notify the employer that he

wishes to return to work.

(4) If the employee does so, the employer must notify him of the day when he must return to work.

(5) The day must be within 4 weeks after the employer received the notice.

(6) Also, despite subsections (3) to (5) the leave has begun, the employer may notify the employee of the day when he must return to work.

(7) The day must be at least 4 weeks after the employer gives the notice.

(8) If the employee returns to work, the employer must cancel the rest of the leave.

Effect on paternity leave of ceasing to be the primary care-giver

281.(1) This section applies if—

(a) during a substantial period beginning on or after the beginning of an employee's Division 4 long paternity leave, the employee is not the child's primary care-giver; and

(b) having regard to the length of the period and to any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary care-giver within a reasonable period.

(2) The employer may notify the employee of the day he must return to work.

(3) The day must be at least 4 weeks after the employer gives the notice.

(4) If the employee returns to work, the employer must cancel the rest of the leave.

Return to work after paternity leave

282.(1) This section applies when an employee returns to work after Division 4 long paternity leave.

(2) The employer must employ him in the position he held immediately before he began paternity leave.

(3) If—

(a) the position no longer exists; but

(b) he is qualified for, and can perform the duties of, other positions in the employer's employment;

the employer must employ him in whichever of the other positions is nearest in status and remuneration to the position.

Subdivision 4—General

Employee's duty if excessive leave granted or if maternity leave and paternity leave overlap

283.(1) This section applies if—

(a) the total of all the following is more than 52 weeks—

(i) maternity leave granted by an employer to an employee for a pregnancy;

(ii) annual or long service leave granted by the employer to the employee instead of, or in conjunction with, the maternity leave;

(iii) unpaid leave (other than maternity leave) or paid sick leave granted by the employer to the employee for the pregnancy;

(iv) paternity leave granted by an employer to the employee's spouse;

(v) annual or long service leave granted by the employer to the employee's spouse instead of, or in conjunction with, the paternity leave; or

(b) leave granted to the employee overlaps with leave granted to the employee's spouse.

(2) The employee must give to her employer a notice—

(a) if subsection (1)(a) applies—stating that the total is more than 52 weeks and specifying the amount of the excess; and

(b) if subsection (1)(b) applies—specifying the period of overlap; and

(c) suggesting how the employer may vary or cancel leave granted to

her (other than leave she has already taken) to reduce or remove the excess or overlap; and

(d) unless the variations and cancellations suggested will remove the excess or overlap—setting out the suggestions her spouse has made or will make under subsection (3)(c).

(3) The employee's spouse must give to his employer a notice—

(a) if subsection (1)(a) applies—stating that the total is more than 52 weeks and specifying the amount of the excess; and

(b) if subsection (1)(b) applies—specifying the period of overlap; and

(c) suggesting how the employer may vary or cancel leave granted to him (other than leave he has already taken) to reduce or remove the excess or overlap; and

(d) unless the variations or cancellations suggested will remove the excess or overlap—setting out the suggestions his spouse has made or will make under subsection (2)(c).

(4) The variations and cancellations suggested must be of a kind that, if they are all made, the excess or overlap will be removed.

(5) An employer who receives a notice under subsection (2) or (3) may vary or cancel leave as suggested in the notice, or as agreed with the employee or her spouse.

Employer to warn replacement employee that employment is only temporary

284. An employer must not employ a person—

(a) to replace an employee while the employee is on parental leave; or

(b) to replace an employee who, while another employee is on parental leave, must perform the duties of the position held by the other employee;

unless the employer has informed the person—

(c) that the person's employment is only temporary; and

(d) about the rights of the employee who is on parental leave.

Parental leave and continuity of service

285. A period of parental leave does not break an employee's continuity of service, but does not count as service other than—

(a) to determine the employee's entitlement to a later period of parental leave; or

(b) as expressly provided in this Act, or in an award, industrial agreement, certified agreement, enterprise flexibility agreement or order; or

(c) as prescribed by regulation.

Effect of Division on other laws

286.(1) To avoid doubt, this Division has effect despite—

(a) another law of the State; or

(b) an award, industrial agreement, certified agreement, enterprise flexibility agreement or order.

(2) However, this Division is not intended to exclude or limit the operation of the law, award, industrial agreement, certified agreement, enterprise flexibility agreement or order so far as it can operate concurrently with this Division.

Regulations for adoption leave

287. The regulations may provide for employers to give employees unpaid adoption leave.

Division 5—Dismissal

Subdivision 1—Object and interpretation

Object of Division

288. The object of this Division is to give effect to—

(a) the Termination of Employment Convention; and

(b) the Termination of Employment Recommendation 1982 (the English text of which is set out in Schedule 13); and

(c) the Discrimination (Employment and Occupation) Convention; and

(d) the Discrimination (Employment and Occupation) Recommendation; and

(e) the Family Responsibilities Convention; and

(f) the Family Responsibilities Recommendation.

Meaning of expressions

289. If an expression used in this Division is also used in the Termination of Employment Convention, it has the same meaning as in the Convention.

Exclusion of employees from Division

290.(1) Section 293(1)(a) does not apply to—

(a) a casual employee; or

(b) an employee engaged by the hour or day; or

(c) an employee engaged for a specific period or task.

(2) Subdivisions 4 and 5 do not apply to—

(a) a casual employee; or

(b) an employee engaged by the hour or day; or

(c) an employee engaged for a specific period or task; or

(d) an employee with less than 1 year of continuous service.

(3) Subdivision 3 (Remedies for unlawful dismissal) applies to casual employees other than casual employees excluded by regulation.

(4) The regulations may exclude particular employees from the operation of particular provisions of this Division.

Subdivision 2—Requirements for lawful dismissal

When dismissal is unlawful

291.(1) An employer must not dismiss an employee—

(a) in contravention of an order under section 302; or

(b) unless there is a valid reason—

(i) related to the employee's conduct, capacity or performance; or

(ii) based on the operational requirements of the employer's undertaking, establishment or service.

(2) A reason is not valid if—

(a) having regard to the employee's conduct, capacity or performance and the operational requirements, the dismissal is harsh, unjust or unreasonable; or

(b) it is any of the following reasons—

(i) temporary absence from work because of illness or injury (other than an injury within the meaning of Division 6);

(ii) seeking office as, or acting or having acted in the capacity of, an employees' representative;

(iii) filing a complaint, or taking part in proceedings, against an employer involving alleged violation of laws or recourse to competent administrative authorities;

(iv) the making by anybody, or a belief that anybody has made or may make—

(A) a public interest disclosure under the *Whistleblowers Protection Act 1994*; or

(B) a complaint under the *Health Rights Commission Act 1991*;

(v) an attribute for which discrimination is prohibited under the *Anti-Discrimination Act 1991*;

(vi) family responsibilities;

(vii) absence from work during parental leave.

(3) Despite subsection (2), a matter mentioned in subsection (2)(b)(v) is a valid reason for dismissal if—

(a) the reason is based on the inherent requirements of the particular position; or

(b) for staff of an institution conducted to conform with the doctrines, tenets, beliefs or teachings of a particular religion or creed—the dismissal is done in good faith to avoid injury to the religious susceptibilities of adherents of the religion or creed.

Opportunity to defend against allegations before dismissal

292.(1) An employer may dismiss an employee for reasons related to the employee's conduct, capacity or performance only if the employer first gives the employee a reasonable opportunity to defend against the allegations made.

(2) Subsection (1) does not apply if the employer could not reasonably be expected to give the employee the opportunity.

Notice of dismissal or compensation to be given

293.(1) An employer may dismiss an employee only if—

(a) the employee has been given—

(i) the period of notice required by subsection (2); or

(ii) compensation; or

(b) the employee engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the notice period.

(2) The minimum period of notice is—

(a) if the employee's continuous service is—

(i) not more than 1 year—1 week; and

(ii) more than 1 year but not more than 3 years—2 weeks; and

(iii) more than 3 years but not more than 5 years—3 weeks; and

(iv) more than 5 years—4 weeks; and

(b) increased by 1 week if the employee—

(i) is over 45 years old; and

(ii) has completed at least 2 years of continuous service with the employer.

(3) A regulation may prescribe matters that must be disregarded when calculating continuous service under subsection (2).

(4) The compensation must at least equal the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.

(5) The total must be calculated on the basis of—

(a) the ordinary hours worked by the employee; and

(b) the amounts payable to the employee for the hours, including (for example) allowances, loadings and penalties; and

(c) any other amounts payable under the employee's employment contract.

Contravention of Subdivision not an offence

294. A contravention of this Subdivision is not an offence.

Subdivision 3—Remedies for unlawful dismissal

Orders only on application

295.(1) The Commission may make an order under this Subdivision only if it has received an application from—

(a) an employee; or

(b) an industrial organisation—

(i) whose rules entitle it to represent the industrial interests of the employee; and

(ii) acting on behalf of the employee with the employee's consent.

(2) An application must be made—

(a) within 21 days after the dismissal; or

(b) within the further period the Commission allows on an application made during or after the 21 days.

Conciliation before application heard

296.(1) For the purposes of this section, the parties to an application are, unless the Commission otherwise orders—

(a) the employer; and

(b) the employee; and

(c) if the application is made under section 295(1)(b)—the industrial organisation.

(2) Before the Commission hears an application, the parties to the application must hold a conference—

(a) to explore the possibility of resolving the issues by conciliation; and

(b) to ensure the parties are fully informed of the possible consequences of further proceedings on the application.

Onus of proof

296A.(1) This section applies to an application that alleges an employer dismissed an employee in contravention of section 291(1)(b) (which deals with dismissal without valid reason).

(2) The onus is on the employer to prove the employee was dismissed for a reason mentioned in section 291(1)(b).

(3) If the employer does so—

(a) for an application that alleges the reason was not valid under section 291(2)(a) because the dismissal was harsh, unjust or unreasonable—the employee must prove the reason was not valid; or

(b) for an application that alleges the reason was not valid under

section 291(2)(b)—the employer must prove the reason was valid.

Orders for unlawful dismissal other than under s 307

297.(1) Unless satisfied an employer has not dismissed an employee contrary to this Division other than section 307 (Employer must notify CES of proposed dismissals), the Commission may make the orders it considers appropriate to put the employee in the same position (as nearly as can be done) as if the employee had not been dismissed.

(2) If the Commission is satisfied an employer contravened this Division when dismissing an employee (other than a contravention of section 293 or 307[3]), it may order—

(a) the employee be reinstated, on conditions no less favourable than those on which the employee was employed immediately before dismissal, by the employer by—

(i) reappointing the employee to the position in which the employee was employed immediately before dismissal; or

(ii) appointing the employee to another position; or

(b) if the Commission considers reinstatement would be impracticable—the employer pay the employee an amount of compensation decided by the Commission.

(3) If the Commission makes an order under subsection (2)(a), it may also—

(a) make any order it considers necessary to maintain the continuity of the employee's employment; and

(b) order the employer to pay the employee the remuneration lost by the employee because of the dismissal, after taking into account any employment benefits or wages received by the employee since the dismissal; and

(c) order the employee to repay any amount paid to the employee by

[3] Section 293 deals with the notice or compensation required to be given to an employee who is being dismissed. Section 307 deals with the notice required to be given by an employer to the CES when dismissing 15 or more employees.

or for the employer on the dismissal.

(4) Under subsection (2)(b), the amount of compensation must not be greater than the remuneration the employer would have been liable to pay the employee for the 6 months immediately following the dismissal, paid at the rate the employee received immediately before the dismissal.

(5) Neither section 296 (Conciliation before application heard) nor this section limits the Commission's power to make an interim or interlocutory order in relation to an application under section 295 (Orders only on application).

Orders for unlawful dismissal under s 307

298.(1) If satisfied an employer has dismissed an employee contrary to section 307(2), the Commission may order the employer—

(a) to pay a penalty of an amount of not more than the monetary value of 16 penalty units; or

(b) not to dismiss the employee, other than as allowed by the order.

(2) An application for an order under subsection (1) may be made by—

(a) an Industrial Inspector; or

(b) an employee who has been, or is to be, dismissed; or

(c) an industrial organisation whose members include the employee; or

(d) an officer or employee of the industrial organisation, if the organisation's rules allow the officer or employee to sue on the organisation's behalf.

(3) An application must be made within 6 years after subsection 307(2) is contravened.

Effect of order on leave

299. If the Commission makes an order under section 297(2)(a), the interruption to the employee's continuity of service caused by the dismissal must be disregarded when calculating the employee's entitlement to sick, annual or long service leave.

Costs for frivolous or vexatious applications

300. If it considers an application under section 295 (Orders only on application) is frivolous or vexatious, the costs the Commission may order against the applicant include costs of representation by counsel, solicitor or agent, whether or not the Commission has certified under section 106 (Costs).

Further orders against employer

301.(1) If an employer wilfully fails to comply with an order under section 295 (Orders only on application), the Commission may—

(a) further order the employer to pay the employee—

(i) an amount of not more than the monetary value of 50 penalty units; and

(ii) an amount as remuneration for lost wages; and

(b) may make these further orders until the employer complies with the order under section 295.

(2) This section does not affect another provision of this Act allowing proceedings to be taken against the employer.

Subdivision 4—Orders giving effect to Articles 12 and 13 of Convention

Orders giving effect to Articles 12 and 13 of Convention

302.(1) The Commission may make an order giving effect to the requirements about the dismissal of employees under—

(a) Article 12 of the Termination of Employment Convention, so far as it is about a severance allowance or other separation benefits; or

(b) Article 13 of the Termination of Employment Convention.

(2) When making an order to give effect to Article 13, the Commission must limit the order's application to cases where an employer decides to dismiss a number of employees that is at least the number (not less than 15) stated in the order.

Orders only on application

303. The Commission may make an order under section 302 only if it has received an application from—

(a) an employee to be covered by the order; or

(b) an industrial organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order.

Commission's powers not limited by Sdiv 5

304. The Commission's powers under this Subdivision are not limited by Subdivision 5.

Subdivision 5—Dismissals of 15 or more employees

Orders if employer does not consult industrial organisation about proposed dismissals

305.(1) An employer who decides to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature must, as soon as practicable after making the decision and in any event before dismissing any of the employees—

(a) notify each industrial organisation, of which any of the employees is a member, of—

(i) the dismissals; and

(ii) the reasons for the dismissals; and

(iii) the number and categories of employees; and

(iv) the time when, or the period over which, the employer intends to carry out the dismissals; or

(b) give each industrial organisation an opportunity to consult with the employer on ways—

(i) to avoid or minimise the dismissals; and

(ii) to minimise the adverse effects of the dismissals (for example, by finding alternative employment).

(2) The Commission may make the orders it considers appropriate to put employees dismissed in contravention of subsection (1), and their industrial organisations, in the same position (as nearly as can be done) as if—

(a) when subsection (1)(a) applies—the employer had informed the industrial organisation; and

(b) when subsection (1)(b) applies—the employer had given the industrial organisation an opportunity to consult.

(3) Subsections (1) and (2) do not apply to an industrial organisation if the employer could not reasonably be expected to have known (at the time of the decision) that the industrial organisation's rules entitled it to represent the industrial interests of the dismissed employees.

Orders only on application

306. The Commission may make an order under section 305 only if it has received an application from an employee or industrial organisation whose position is to be affected by the order as mentioned in section 305(2).

Employer must notify CES of proposed dismissals

307.(1) This section applies if an employer decides to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature.

(2) The employer may dismiss the employees only if the employer, as soon as practicable after making the decision, notifies the Commonwealth Employment Service of—

(a) the dismissals; and

(b) the reasons for the dismissals; and

(c) the number and categories of employees; and

(d) the time when, or the period over which, the employer intends to carry out the dismissals.

Subdivision 6—Miscellaneous

Division does not limit other rights

308. This Division does not limit any right a person or industrial organisation may otherwise have to secure the making of awards, certified agreements, enterprise flexibility agreements, industrial agreements or orders about a dismissal.

Orders to be written

309. An order of the Commission under this Division must be in writing.

Inconsistent awards, orders etc.

310. An award, industrial agreement, certified agreement, enterprise flexibility agreement or order of the Commission that is inconsistent with an order under this Division does not apply to the extent the inconsistency detrimentally affects the rights of employees concerned.

Division 6—Protection of injured employees

Interpretation of Division

311. In this Division—

"dismissed", in relation to an injured employee—

(a) includes a case where—

(i) the employer imposes any unreasonable condition of employment which is designed to make the employee leave the employment; and

(ii) the employee leaves the employment; and

(b) does not include a case where the dismissal happens before, but takes effect after, the commencement of this section.

"former position", in relation to an injured employee, means—

(a) the position from which the injured employee was dismissed; or

(b) if the employee was transferred to a less advantageous position before dismissal—the position held by the employee when the employee became unfit for employment in the former position;

at the option of the employee.

"injured employee" means an employee who receives an injury.

"injury" means an injury within the meaning of the *Workers' Compensation Act 1990* in relation to which workers' compensation is payable under the Act.

Wages to be paid for the day employee injured

312.(1) An injured employee is entitled to be paid by the employee's employer full wages for the day on which the injury happens.

(2) Subsection (1) has effect despite any award, industrial agreement, certified agreement, enterprise flexibility agreement or contract of employment.

Application to employer for reinstatement after dismissal

313.(1) If an injured employee is dismissed because of unfitness for employment in a position because of the injury, the employee may apply to the employer for reinstatement to the employee's former position.

(2) Subject to section 316, application must be made within 21 days after the dismissal.

(3) The employee must produce to the employer a certificate given by a medical practitioner to the effect that the employee is fit for employment in the former position.

Application to Commission for reinstatement order

314.(1) If an employer fails to reinstate immediately an employee who applies under section 313 to be reinstated, the employee may apply to the Commission for a reinstatement order.

(2) An application may be made by—

(a) the employee; or

(b) an industrial organisation of employees of which the employee is a member applying on behalf of the employee and with the employee's consent.

Commission order to reinstate

315.(1) If the Commission is satisfied that an employee, in relation to whom an application under section 314 is made, is fit for employment in the employee's former position, the Commission may order the employer to reinstate the employee.

(2) The order may specify terms of reinstatement, for example, the day on which reinstatement is to take effect.

Extension of time for application

316. The Commission may order an employer to reinstate an employee under section 315 even if the employee applied to the employer to be reinstated more than 21 days after the dismissal, if the Commission considers that this would be appropriate in the circumstances of the case.

Dismissal an offence in certain cases

317.(1) An employer must not dismiss an injured employee solely or principally because the employee is not fit for employment in a position because of the injury within 3 months after the employee becomes unfit.

(2) A person who contravenes subsection (1) commits an offence against this Act.

Maximum penalty—40 penalty units

(3) This section applies to a dismissal after the commencement of this section even if the employee mentioned in subsection (1) became unfit before the commencement.

Preservation of employee's rights

318.(1) This Division does not affect any other right of a dismissed

employee under any Act or law.

(2) This Division cannot be affected by any contract or agreement.

PART 13—PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES

Action on industrial dispute on notification or in public interest

319.(1) An Industrial Commissioner is not to take action under this section unless—

(a) notification of an industrial dispute has been received by the Industrial Registrar under subsection (2) or (8); or

(b) the Commissioner is of the opinion that taking such action is in the public interest.

(2) If an industrial dispute exists between—

(a) an industrial organisation of employers, or employer, of the one part; and

(b) an industrial organisation of employees, or employee, of the other part;

and remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, each party to the dispute is to forthwith give notification of the existence of the dispute—

(c) to the Industrial Registrar, if the dispute exists within the area of the City of Brisbane; or

(d) the Industrial Registrar or the nearest Industrial Magistrate, if the dispute exists outside of the City of Brisbane.

(3) Any such notification may be given by letter, telex, facsimile transmission, or electronic mail, or other means of written communication, and must specify the parties to the dispute, the place where the dispute exists and the subject matter thereof.

(4) An Industrial Commissioner who proposes taking action under this

section, having first ascertained (in a case where notification under subsection (2) or (8) has not been received by the Industrial Registrar) the identities of the parties to the industrial dispute and the subject matter of the dispute, is to take such steps as the Commissioner thinks fit for the prevention or prompt settlement of the dispute, by conciliation in the first instance, and by arbitration if the Commissioner is satisfied that conciliation has failed.

(5) Without limiting the Commissioner's powers under subsection (4), the Commissioner may—

(a) remit the matter of the dispute to an Industrial Magistrate for hearing and determination, or for exercise of such of the Industrial Magistrate's jurisdiction and powers under this Act for the prevention or prompt settlement of the dispute as the Commissioner thinks fit;

(b) exercise the Commission's powers under section 42, without application therefor required by that section and without any application seeking directions, and may make an order in the nature of an interim injunction ex parte.

(6) If the Minister is aware of the existence of an industrial dispute the Minister may give notification thereof to an Industrial Commissioner or the Industrial Registrar, but a Commissioner is not to take action under this section on the basis of that notification unless, in the Commissioner's opinion, such action is desirable in the public interest.

(7) If an Industrial Commissioner is of the opinion that it is desirable in the public interest to do so, whether or not a notification has been given under subsection (2), the Commissioner is to make all such orders and give all such directions of an interlocutory nature and may exercise therein such of the powers of the Industrial Commission as the Commissioner considers necessary or expedient with a view to the prevention or the prompt settlement of an industrial dispute.

(8) An Industrial Magistrate—

(a) if notified of an industrial dispute pursuant to subsection (2)—

(i) is to forthwith communicate to the Industrial Registrar the particulars specified in the notification and, if the Industrial Magistrate thinks fit, convene a compulsory conference

under section 321;

(ii) if the parties to the dispute agree—is to forthwith hear and determine the matter of the dispute or exercise such of the Industrial Magistrate's jurisdiction and powers for the prevention or prompt settlement of disputes, as the case may require;

(iii) may, or, if directed by the Industrial Commission to do so, must remit the matter of the dispute to the Commission at any stage of proceedings in relation to the dispute;

(iv) is to keep informed the Industrial Registrar of the progress and outcome of proceedings conducted in relation to the dispute;

(b) if in receipt of the matter of an industrial dispute by way of remission from an Industrial Commissioner—

(i) is to forthwith hear and determine the matter of the dispute or exercise such of the Industrial Magistrate's jurisdiction and powers for the prevention or prompt settlement of disputes, as the case may require;

(ii) may, or, if directed by the Industrial Commission to do so, must remit the matter of the dispute to the Commission at any stage of proceedings in relation to the dispute;

(iii) is to keep informed the Industrial Commissioner who remitted the matter of the progress and outcome of proceedings conducted in relation to the dispute.

(9) For the purposes of proceedings in respect of an industrial dispute to which this section relates—

(a) the Industrial Commission may name a party to the dispute as having carriage of the proceedings before it;

(b) an Industrial Magistrate may name a party to the dispute as having carriage of the proceedings before the Industrial Magistrate;

and the party so named has the carriage of the proceedings accordingly.

(10) This section is to be construed so as not to affect the operation of provisions of any award, industrial agreement, certified agreement or

enterprise flexibility agreement that impose a duty on a party to the award or agreement or confer or impose a power or duty on an Industrial Magistrate.

Mediation by Commissioner or Industrial Magistrate

320. An Industrial Commissioner or an Industrial Magistrate may act as mediator in any industrial cause, whether or not it is within the jurisdiction of the Industrial Commission or an Industrial Magistrate—

(a) on the request of the parties directly involved in the cause to do so; or

(b) if it appears that mediation is desirable in the public interest.

Compulsory conference

321.(1) An Industrial Commissioner or Industrial Magistrate who is duly taking action under section 319 may summon any person to attend at a time and place specified in the summons at a conference presided over by the Commissioner or Industrial Magistrate, if the holding of a conference is desirable for the purpose of preventing or settling the industrial dispute in relation to which such action is being taken.

(2) A person may be summoned under subsection (1) notwithstanding that the person is not directly involved in the dispute, if the Industrial Commissioner or Industrial Magistrate thinks that the person's presence at the conference is likely to be conducive to the prevention or prompt settlement of the dispute.

(3) A person summoned to attend a conference pursuant to this section is to attend as directed by the summons and continue to attend as directed by the presiding Industrial Commissioner or Industrial Magistrate.

(4) A conference may be held in public or in private, or partly in public and partly in private, at the discretion of the Industrial Commissioner or Industrial Magistrate.

(5) A person summoned to attend a conference pursuant to this section and who attends as required by subsection (3) is entitled to be paid by the Crown an amount certified by the Industrial Commissioner or Industrial Magistrate to be reasonable recompense for the person's expenses and loss of time.

Secret ballot on strike action

322.(1) If a strike occurs, or it appears to the Industrial Commission or to any person or persons who may make application to the Commission under this subsection that a strike is likely to occur—

(a) the Commission may—

(i) of its own motion; or

(ii) on application made to it by any employer or industrial organisation of employers; or

(iii) on application made to it by or on behalf of 5% of the number of employees engaged on or in the project, establishment, undertaking or calling concerned, or by 250 of those employees, whichever is less, but being, in any case, not fewer than 4; or

(b) the Commission must—

(i) on application made to it by an industrial organisation of employees; or

(ii) if directed by the Minister to do so;

direct the Industrial Registrar or an Industrial Magistrate to conduct a secret ballot of such employees, or of such members of an industrial organisation of employees, as the Commission thinks fit and specifies in its direction, in such manner, on such date, and at such place or places as the Commission specifies in its direction, with a view to ascertaining the number of such employees, or members, who are in favour of the strike.

(2) A direction given under subsection (1) may require the conduct of separate secret ballots of members of different industrial organisations of employees, and the Industrial Registrar or Industrial Magistrate to whom a direction under subsection (1) is directed—

(a) is to conduct a secret ballot directed by the Industrial Commission in accordance with the terms of the direction; and

(b) in relation to the conduct of a secret ballot—is to take such steps and do such things as are provided for by the rules of court.

(3) All officers of the public service are to assist the Industrial Registrar or an Industrial Magistrate, as the registrar or magistrate may direct or

require, in the exercise of powers or the discharge of duties conferred or imposed on the registrar or magistrate in relation to the conduct of a secret ballot pursuant to a direction given under subsection (1).

(4) The Industrial Registrar or Industrial Magistrate is to cause the result of the secret ballot to be published by advertisement in any newspaper or newspapers circulating in the locality concerned.

Consequence of ballot adverse to strike

323.(1) If a secret ballot conducted pursuant to a direction of the Industrial Commission given under section 322(1) indicates that a majority of employees, or members, of whom the ballot was directed to be conducted is not in favour of the strike, then—

(a) if the strike exists at the time the ballot is taken; or

(b) if the strike appeared at that time likely to occur, and occurs in respect of the same issue within 1 month following the publication under section 322(4) of the result of the ballot;

the Industrial Registrar or Industrial Magistrate who conducted the ballot is to cause to be published a date, not less than 7 days after the date of publication thereof, on or before which the employees, or members of an industrial organisation of employees, who are on strike, are required to discontinue the strike.

(2) Such publication must be by advertisement in any newspaper or newspapers circulating in the locality concerned, and may be included in the advertisement published pursuant to section 322(4).

(3) Every employee, or member of an industrial organisation of employees, being one of the employees or members of whom a secret ballot was required to be conducted is to comply with the requirement referred to in subsection (1).

(4) Any such employee, or member, who fails to discontinue the strike on or before the date published under subsection (1) is taken to have terminated, on and from that date, the employment in which the employee, or member, was engaged when the strike commenced, unless the employee, or member, proves that the failure was due to reasonable cause.

(5) For the purposes of subsection (4), disagreement by a person with

the result of a secret ballot conducted pursuant to a direction of the Industrial Commission does not constitute reasonable cause.

Nonparticipation in strike or lockout

324.(1) Any industrial organisation of employees or other person (whether or not any officer, employee or member of an industrial organisation) is not—

(a) to incite, advise or encourage any person to act to the prejudice of an employee who has refused or failed to participate in a strike; or

(b) to impose or threaten to impose a penalty, forfeiture or disability of any kind on any employee, or member of an industrial organisation of employees, because the employee, or member, has refused or failed to participate in a strike.

(2) Any industrial organisation of employers or other person (whether or not any officer, employee or member of an industrial organisation) is not—

(a) to incite, advise or encourage any person to act to the prejudice of an employer who has refused or failed to participate in a lockout; or

(b) to impose or threaten to impose a penalty, forfeiture or disability of any kind on any employer, or member of an industrial organisation of employers, because the employer, or member, has refused or failed to participate in a lockout.

(3) If, in proceedings for an offence consisting in a contravention of subsection (1)(b) or (2)(b), it is proved that an imposition or threat has occurred on or to a person who has refused or failed to participate in a strike or lockout, as the case may be, it is to be presumed that the reason for the imposition or threat is such refusal or failure, unless the contrary be proved.

Indemnity against agent's unauthorised actions

325. An industrial organisation or an association of persons is not liable to any suit or action, and its funds are not chargeable in any way, in respect of any word spoken or written, or action done, during or in connection with a strike or lockout by an agent thereof, if it be shown that the agent has acted therein without the knowledge of the governing body of the industrial

organisation or association and that the governing body could not, by the exercise of reasonable diligence have prevented the action.

PART 14—INDUSTRIAL ORGANISATIONS

Division 1—Preliminary

Objects of Part

326. Without limiting section 3, the particular objects of this Part are—

(a) to encourage the democratic control of industrial organisations; and

(b) to encourage members of industrial organisations to participate in the organisation's affairs; and

(c) to encourage the efficient management of industrial organisations; and

(d) to encourage and assist industrial organisations to develop in a way that promotes economic prosperity and welfare; and

(e) to encourage and assist the amalgamation of industrial organisations.

Division 2—Registration

Applicants for registration

327.(1) An association that may make application for registration as an industrial organisation is—

(a) an association of whose members all or some are employers, and, where some only are such employers, the other members are—

(i) officers of the association; or

(ii) persons who carry on business otherwise than as employees; or

(iii) persons who were employers when admitted to membership of the association and whose membership has not been terminated, by resignation or otherwise;

(b) an association of whose members all or some are employees, and, where some only are such employees, the other members are officers of the association.

(2) An association of whose members some are persons referred to in subsection (1)(a)(ii) or (iii) is not one authorised by that subsection to make application unless the association is effectively representative of persons who are employers.

Application for registration

328.(1) An application for registration as an industrial organisation must be in the form provided for by the rules of court, signed by the president and secretary of the association, and made to the Industrial Commission.

(2) Notice of every such application must be published as prescribed.

(3) An application for registration as an industrial organisation of employers must be accompanied by—

(a) particulars of the name of each employer who is a member of the association and of the place or places in which each such employer carries on business;

(b) a list of persons holding appointment as the following officers of the association—

(i) president;

(ii) secretary;

(iii) members of the committee of management or executive committee;

(iv) trustees (if any);

(v) other officers, and their official designations;

(c) 2 copies of the association's rules;

(d) in the case of an association consisting of more than 1 person—a copy of a resolution passed in accordance with the association's rules by a majority of the employers who are members of the association (or by other competent authority within the association) in favour of registration of the association under this Act;

(e) a list of the callings in which employees are employed by the members of the association who are employers;

(f) particulars of the control of the association's property and of the investment of its funds, as distinct from the property and funds of the member or members of the association;

(g) the appropriate fee provided for by the rules of court.

(4) An application for registration as an industrial organisation of employees must be accompanied by—

(a) a list of the members of the association;

(b) a list of the persons holding appointment as the following officers of the association—

(i) president;

(ii) secretary;

(iii) members of the committee of management or executive committee;

(iv) trustees (if any);

(v) other officers, and their official designations;

(c) 2 copies of the association's rules;

(d) a copy of a resolution passed in accordance with the association's rules by a majority of its members present at a general meeting of the association (or by other competent authority within the association) in favour of registration of the association under this Act;

(e) a list of callings of its members or to which its eligibility rules relate;

(f) the name of the localities in which its members exercise their

callings;

(g) the appropriate fee provided for by the rules of court.

Criteria for registration

329.(1) In this section—

"industry-based association" means an association of employees whose eligibility rules restrict eligibility for membership to persons who are employees in relation to the same kind of calling of employers.

(2) On application made to it in accordance with section 328, the Industrial Commission may approve registration of an association as an industrial organisation if—

(a) the association is an association of a description referred to in section 327 and exists for furthering or protecting the interests of its members;

(b) in the case of an association of employers—

(i) its members who are employers have, in the aggregate, employed on an average taken per month at least 100 employees throughout the period of 6 months immediately preceding the date of the application; or

(ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's registration as an industrial organisation;

(c) in the case of an association of employees—

(i) the association has at least 100 members who are employees; or

(ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's registration as an industrial organisation;

(d) in the case of an association of employees—

(i) the association is an industry-based association; or

(ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's

registration as an industrial organisation;

(e) the association's rules make provision required by this Act to be made by the rules of an industrial organisation and the Commission has approved the rules under section 346;

(f) the association's name is not the same as that of any industrial organisation or so similar to that of any industrial organisation as to be likely to cause confusion;

(g) registration of the association would further the objects of this Act;

(h) there is no industrial organisation to which the association's members might conveniently belong.

(3) The provisions of subsection (2)(d) do not apply in respect of—

(a) an association proposed to be registered as an industrial organisation under a proposed amalgamation under Division 9;

(b) an association previously registered as an industrial organisation whose registration has been cancelled according to law.

Continued registration of small industrial organisations

330.(1) In this section—

"small industrial organisation" means—

(a) for an industrial organisation of employees—an organisation that has fewer than 100 members who are employees; or

(b) for an industrial organisation of employers—an organisation, whose members who are employers have (in the aggregate) employed, on an average taken per month, fewer than 100 employees in the 6 months immediately before the day the Commission acts under subsection (2).

(2) The Industrial Commission is authorised to consider, in respect of a small industrial organisation, whether special circumstances exist, which justify the continued registration of the industrial organisation in the public interest.

(3) The authority conferred by subsection (2) is not to be exercised in respect of a particular industrial organisation more than once in any period

of 1 year.

(4) If, on exercising the authority conferred by subsection (2), the Industrial Commission is not satisfied that special circumstances exist that justify the continued registration of a small industrial organisation in the public interest, the Commission is to cancel the registration of the industrial organisation.

Registration of several industrial organisations for the same calling

331.(1) If 2 or more associations exist in respect of a calling, any 2 or more of them may apply for joint registration as an industrial organisation.

(2) If an association applies for registration for a calling for which an industrial organisation is already registered, the Industrial Commission may approve the application and, if it does so approve, is to thereupon bracket together, in respect of the calling, the registration of the industrial organisations.

(3) Subsection (2) applies in relation to any subsequent application for registration by any other association in respect of the same calling.

(4) On receipt of an application for registration of an association for a calling in respect of which an industrial organisation is registered, the Industrial Commission is to cause notice of the application to be given to the industrial organisation at least 14 days before the Commission considers whether the application should be approved.

(5) An industrial organisation given notice under subsection (4) is entitled to be heard as prescribed before the Commission in opposition to the approval of the application.

(6) Industrial organisations, which, in respect of a calling, have had their registrations bracketed have joint rights under this Act.

(7) In proceedings before the Industrial Court, Industrial Commission, an Industrial Magistrate, or the Industrial Registrar such industrial organisations may appear jointly or separately.

Change of callings

332. On application therefor made by an industrial organisation in the

manner prescribed, the Industrial Commission may alter the calling or callings in respect of which the industrial organisation is registered.

Determination of application

333.(1) Any person having a proper interest in the matter may, within the prescribed time and in the prescribed manner, by notice to the Industrial Commission, oppose an application for registration as an industrial organisation.

(2) On receipt of a notice of opposition to an application for registration, the Industrial Commission—

(a) is to fix a date for hearing any objection to the application;

(b) is to cause notification of the date to be given as prescribed;

(c) on the date notified, or other date to which the matter is adjourned, is to hear and determine the matter of the application and any objection thereto.

(3) If the Industrial Commission grants an application by an association for registration as an industrial organisation, the Industrial Registrar is to forthwith register the association as an industrial organisation.

(4) On registration of an industrial organisation, the Industrial Registrar is to issue to the industrial organisation a certificate of registration under this Act in the form provided for by the rules of court, and may at any time issue to an industrial organisation a copy of, or a certificate as a replacement for, the certificate of registration.

Industrial organisations corporate bodies

334. An industrial organisation, in its registered name—

(a) is a body corporate;

(b) has perpetual succession;

(c) has power to purchase, take on lease or hire, hold, sell, lease, let, mortgage, exchange, accept or dispose of by way of gift, own, possess, and otherwise deal with any real or personal property;

(d) must have a common seal;

(e) may sue and be sued.

Registered name of industrial organisation

335.(1) The registered name of an industrial organisation registered after the commencement of this Act—

(a) if it is an industrial organisation of employers—must include the words 'industrial organisation of employers' or 'industrial union of employers';

(b) if it is an industrial organisation of employees—must include the words 'industrial organisation of employees' or 'industrial union of employees'.

(2) On application therefor by or on behalf of a union of employers or employees registered at the commencement of this Act, the Industrial Registrar may so alter the registered name of the union that the name contains reference to the words 'industrial organisation' in lieu of reference to the word 'union'.

(3) The registered name of every industrial organisation of employers or employees must contain reference to the locality in which the majority of its members reside or engage in their business or calling.

Division 3—Rules of industrial organisations

Requirement for rules

336.(1) Every industrial organisation must have rules that make provision as prescribed.

(2) A rule of an industrial organisation that makes provision as prescribed may be mandatory or directory.

General requirements for rules

337. The rules of an industrial organisation—

(a) must not fail to make provision required by this Act;

(b) must not be contrary to—

(i) this Act;

(ii) an award, industrial agreement, certified agreement or enterprise flexibility agreement;

(iii) law;

(c) must not be such as to prevent or hinder members of the industrial organisation from or in—

(i) observing the law, the provisions of an award, industrial agreement, certified agreement or enterprise flexibility agreement, or other decision of the Industrial Court or Industrial Commission; or

(ii) entering into written agreements under an award, industrial agreement, certified agreement, enterprise flexibility agreement or other decision of the Industrial Commission;

(d) must not impose on applicants for membership, or on members, of the industrial organisation conditions, obligations or restrictions that, having regard to the objects of this Act and the purposes of registration of industrial organisations under this Act, are oppressive, unreasonable or unjust.

Subject matter of rules

338.(1) In this section—

"committee", used in relation to an industrial organisation or branch thereof, means a body of the members or officers of the industrial organisation or branch that has powers of the kind referred to in paragraph (b) of the definition "office" in section 5.

(2) The rules of an industrial organisation—

(a) must specify the purposes for which the industrial organisation is formed, and the conditions of eligibility for membership, and may specify the industry in respect of which the industrial organisation is formed;

(b) must make provision for—

(i) the powers and duties of the committees of the industrial

organisation and of its branches, and the powers and duties of holders of office in the industrial organisation and in its branches;

(ii) the manner of summoning meetings of members of the industrial organisation and of its branches, and meetings of the committees of the industrial organisation and of its branches;

(iii) the removal of holders of office in the industrial organisation and in its branches;

(iv) the control of committees of the industrial organisation and of its branches by the members of the industrial organisation and of its branches respectively;

(v) the manner in which documents may be executed by or on behalf of the industrial organisation;

(vi) the notification of the Industrial Commission, in the prescribed manner, of the existence or likelihood of industrial disputes by the holder or holders of the office or offices in the industrial organisation specified in the rules as authorised to give such notification;

(vii) the times when, and the terms on which persons become or cease (otherwise than by resignation) to be members;

(viii) the resignation of members;

(ix) the manner in which property of the industrial organisation is to be controlled and its funds invested;

(x) the conditions under which funds of the industrial organisation may be spent;

(xi) the yearly or other more frequent audit of the industrial organisation's accounts;

(xii) the keeping of a register of the members, arranged, if there are branches of the industrial organisation, according to branches;

(xiii) the manner in which the rules may be altered;

(c) may provide for the removal of a person elected to an office in the

industrial organisation only if the person has been found guilty, under the rules, of—

(i) misappropriation of the industrial organisation's funds; or

(ii) a substantial breach of the rules; or

(iii) gross misbehaviour or gross neglect of duty;

or has ceased to be eligible under the rules to hold the office;

(d) must require the industrial organisation to inform applicants for membership, in writing, of—

(i) the financial obligations arising from membership; and

(ii) the circumstances and the manner in which a member may resign from the industrial organisation;

(e) may make such other provision as is not inconsistent with this Act.

Rules to provide for election of officers

339.(1) The rules of an industrial organisation—

(a) must provide for the election of the holder of each office in the industrial organisation by—

(i) a direct voting system; or

(ii) a collegiate electoral system; and

(b) must provide for the conduct of every such election (including the acceptance or rejection of nominations) by a returning officer who is not the holder of any office in, or an employee of, the industrial organisation or any of its branches;

(c) must provide that a returning officer conducting an election who finds a nomination to be defective, before rejecting the nomination, is to notify the person concerned of the defect and, where practicable, give the person the opportunity of remedying the defect within such period as is applicable under the rules, which period, where practicable, must be not less than 7 days after the person is notified;

(d) must provide for—

(i) the manner in which persons may become candidates for election;

(ii) the duties of returning officers;

(iii) the declaration of the result of an election;

(e) must provide that any ballot required is to be a secret ballot, and must make provision for—

(i) absent voting;

(ii) the conduct of the ballot;

(iii) the appointment, conduct and duties of scrutineers to represent the candidates at the ballot;

(f) must be such as to ensure, as far as is practicable, that no irregularities can occur in relation to an election;

(g) may provide for compulsory voting in any ballot required.

(2) The rules of an industrial organisation relating to elections for office must relate to elections for all offices in the industrial organisation, including offices in the branches of the industrial organisation.

(3) The reference in subsection (1)(c) to a nomination being defective does not include reference to a nomination of a person that is defective because the person is not qualified to hold the office to which the nomination relates.

(4) In this section—

"collegiate electoral system" means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and 1 subsequent stage at which persons are elected by and from a body of persons consisting of persons elected at the first stage.

Rules to provide for elections by secret postal ballot

340.(1) If the rules of an industrial organisation provide for election to an office in the industrial organisation or any of its branches to be by a direct voting system, the rules must also provide that, where taking a ballot is necessary, it is to be a secret postal ballot.

(2) An industrial organisation may lodge with the Industrial Registrar an application for an exemption from subsection (1), accompanied by particulars of proposed alterations of the rules of the industrial organisation to provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot.

(3) If the Industrial Registrar is satisfied, on application of an industrial organisation under subsection (2), that—

(a) the proposed alterations of the rules—

(i) are not contrary to this Act (other than subsection (1)) or to law; and

(ii) have been duly decided on according to the rules of the industrial organisation; and

(b) the taking of a ballot under the rules of the industrial organisation as proposed to be altered—

(i) is likely to result in a greater participation by members of the industrial organisation in the ballot than would result from a postal ballot; and

(ii) will afford members entitled to vote with an adequate opportunity of voting without intimidation;

the Industrial Registrar may grant to the industrial organisation an exemption from subsection (1), and the industrial organisation is so exempt accordingly while the exemption remains in force.

(4) Proposed alterations of the rules of an industrial organisation referred to in subsection (2) take effect if and when the Industrial Registrar grants to the industrial organisation an exemption from subsection (1).

(5) An exemption under subsection (3) remains in force until it is revoked under subsection (6).

(6) The Industrial Registrar may revoke an exemption of an industrial organisation granted under subsection (3)—

(a) on application therefor by the industrial organisation, if the Industrial Registrar is satisfied that the rules of the industrial organisation comply with subsection (1); or

(b) if the Industrial Registrar is no longer satisfied—

(i) that the rules of the industrial organisation provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot; or

(ii) of a matter referred to in subsection (3)(b);

and the Industrial Registrar has given the industrial organisation the opportunity, as prescribed, to show cause why the exemption should not be revoked.

(7) If the Industrial Registrar revokes an exemption of an industrial organisation on a ground specified in subsection (6)(b), the registrar may, by instrument, after giving the industrial organisation the opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the industrial organisation as are, in the registrar's opinion, necessary to bring them into conformity with subsection (1).

(8) An alteration of the rules of an industrial organisation, determined under subsection (7), takes effect on the date of the instrument of determination.

Rules to provide for term of office

341.(1) In this section—

"retirement age", in relation to an office, means the retirement age applicable to the office under the rules of the industrial organisation concerned or, if the rules provide for a minimum retirement age and a maximum retirement age in relation to the office, means the maximum retirement age.

(2) The rules of an industrial organisation—

(a) subject to paragraph (b) and subsection (4), must provide for terms of office for officers in the industrial organisation or its branches, being terms no longer than 4 years without re-election;

(b) may provide that, if a person elected to a full-time office will attain retirement age within 12 months following the end of the term for which the person is elected, the person may hold the office, without being re-elected until attaining retirement age.

(3) If the rules of an industrial organisation provide as permitted by subsection (2)(b), the rules must further provide that if a candidate duly

nominated for election to a full-time office is a person who, if elected, could hold the office in the circumstances provided for by that subsection, the ballot papers for the election must indicate the maximum term for which such a candidate, if elected, could hold office.

(4) The rules of an industrial organisation may provide for the extension of a term of office in the industrial organisation or its branches for a specified period, if the extension is for the purpose of synchronising elections for offices in the industrial organisation or, as the case may be, a branch.

(5) However, a term of office as so extended will not in any case exceed 5 years.

(6) Rules may be made to provide as permitted by subsection (4) so as to apply in relation to a term of office that began before the commencement of this Act.

Rules may provide for filling casual vacancies

342.(1) In this section—

"ordinary election" means an election held under rules that comply with section 339.

"relevant provisions", in relation to an industrial organisation, means—

(a) the provisions of this Act (other than this section); and

(b) the rules of the industrial organisation (other than rules such as are permitted by subsection (2) to be made) providing for the filling of a casual vacancy in an office otherwise than by an ordinary election.

"term", in relation to an office, means the total period for which the person last elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (disregarding any rule, such as is permitted by section 341(2)(b), that has been made, but having regard to any rule, such as is permitted by section 341(4), (5) and (6) that has been made) to hold the office without being re-elected.

(2) The rules of an industrial organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section,

in any other manner provided by the rules.

(3) Rules permitted by subsection (2) to be made must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds—

(a) 12 months; or

(b) $^3/_4$ of the term of office;

whichever is the greater.

(4) If, under rules such as are permitted by subsection (2) to be made, a vacancy in an office in an industrial organisation or any of its branches is filled otherwise than by an ordinary election, the person filling the vacancy is taken for the purposes of the relevant provisions, to have been elected to the office under the relevant provisions.

Rules to provide conditions for loans, grants and donations

343.(1) In this section—

"relevant committee of management", in relation to an industrial organisation, or branch of an industrial organisation, means the committee of management of the industrial organisation or, as the case may be, branch.

(2) The rules of an industrial organisation must provide that expenditure by way of loan, grant or donation to any recipient of an amount exceeding, or in the aggregate exceeding, $1 000 is not to be made by the industrial organisation or any of its branches unless the relevant committee of management has satisfied itself—

(a) that the making of the loan, grant or donation would be in accordance with the other rules of the industrial organisation; and

(b) in the case of a loan—that the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for repayment of the loan are satisfactory;

and has approved the making of the loan, grant or donation.

(3) Notwithstanding subsection (2), the rules of an industrial organisation may provide for a person authorised by the rules to make expenditure by

way of loan, grant or donation to a member of the industrial organisation of an amount not exceeding, or in the aggregate not exceeding, $3 000 if the loan, grant or donation—

(a) is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and

(b) is subject to a condition to the effect that, if the relevant committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it is to be repaid as determined by the committee.

(4) In considering whether to approve a loan, grant or donation made under subsection (3), the relevant committee of management is to have regard to—

(a) whether the loan, grant or donation was made under the rules of the industrial organisation; and

(b) in the case of a loan—whether the security (if any) given for repayment of the loan is adequate and the arrangements for repayment of the loan are satisfactory.

(5) Nothing in subsection (2) requires the rules of an industrial organisation to make provision of the kind referred to in that subsection in relation to payments made by the industrial organisation or any of its branches by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the industrial organisation or branch.

Model rules, adoption by industrial organisations

344.(1) The Minister may make rules (**"model rules"**) that accord with this Part as model rules for industrial organisations.

(2) The model rules are subordinate legislation.

(3) For the purpose of complying with this section, an industrial organisation may, by its resolution, adopt—

(a) all of the model rules, with such modifications as are necessary;

(b) any of the model rules, with or without modification.

(4) On receipt by the Industrial Registrar of notification by the secretary

of the industrial organisation that a resolution adopting model rules without modification has been duly approved the registrar is to register the notification as an alteration of the rules of the industrial organisation, whereupon the model rules so adopted become, and are, the rules of the industrial organisation in relation to the matters to which the adopted rules relate, in lieu of any rules of the industrial organisation that immediately before such registration related to those matters.

(5) If an industrial organisation adopts model rules with modification, the case is one to be dealt with under the following provisions of this section.

(6) At any time—

(a) after the commencement of this Act; and

(b) before the end of 12 months following the publication of the model rules, or of such longer period as the Industrial Registrar allows in a particular case;

every industrial organisation—

(c) is to take all steps necessary to alter its rules so that they conform to the requirements of this Division; and

(d) is to lodge with the Industrial Registrar a complete set of its rules as altered.

(7) If an industrial organisation does not comply with subsection (6), and does not take action permitted by subsection (3), then, at the end of the time limited by subsection (6) for compliance by that industrial organisation, the model rules become and are the rules of the industrial organisation in relation to the matters to which the model rules relate, in lieu of any rules of the industrial organisation at that time relating to those matters.

(8) If an industrial organisation adopts the eligibility rules of the model rules without necessary modification, for the purpose of giving practical effect to such adoption the eligibility rules as adopted are to be taken as specifying the same persons as eligible for membership of the industrial organisation following such adoption as were eligible for membership of the industrial organisation under its eligibility rules immediately before such adoption.

(9) If—

(a) an industrial organisation complies with subsection (6); but

(b) the rules are not approved by the Industrial Registrar as conforming with this Division's requirements;

the Registrar must require the organisation to file with the Registrar, in a specified time, a complete set of its rules altered to conform with this Division's requirements.

(10) If—

(a) the organisation does not lodge a complete set of its rules in the specified time; or

(b) the organisation lodges a complete set of rules in the specified time but the Industrial Registrar still refuses to approve the rules as conforming with this Division's requirements;

the model rules become the organisation's rules for the matters to which they relate.

(11) The model rules replace any existing rules for those matters—

(a) if the rules are not lodged in the specified time—at the end of the specified time; or

(b) if the rules are lodged in the specified time but the Industrial Registrar still refuses to approve the rules—on the refusal.

Change of name or alteration of eligibility rules of industrial organisation

345.(1) In this section—

"industry-based industrial organisation" means an industrial organisation of employees whose eligibility rules restrict membership to persons who are employees in relation to the same kind of calling of employers.

(2) This section does not apply to a change in the name, or an alteration of the eligibility rules, of an industrial organisation that is a change or alteration—

(a) made by the Industrial Registrar under section 335(2); or

(b) determined by the Industrial Commission under section 45(5) or 348(7); or

(c) proposed to be made for the purposes of an amalgamation under Division 9.

(3) A change in the name of an industrial organisation, or an alteration of the eligibility rules of an industrial organisation, does not take effect unless the Industrial Commission consents to the change or alteration.

(4) The Industrial Commission may consent to a change in the name of an industrial organisation or an alteration of the eligibility rules in whole or part, but is not to consent unless the Commission is satisfied that the change or alteration has been made under the rules of the industrial organisation.

(5) The Industrial Commission is not to consent to a change in the name of an industrial organisation unless the Commission is satisfied that the proposed new name of the industrial organisation—

(a) is not the same as the name of another industrial organisation; and

(b) is not so similar to the name of another industrial organisation as to be likely to cause confusion.

(6) The Industrial Commission is not to consent to an alteration of the eligibility rules of an industrial organisation if, in relation to persons who would be eligible for membership because of the alteration, there is, in the opinion of the Commission, another industrial organisation to which those persons might conveniently belong.

(7) The Industrial Commission is not to consent to an alteration of the eligibility rules of an industrial organisation that is an industry-based industrial organisation if, because of the alteration, the industrial organisation would cease to be an industry-based industrial organisation, unless the Commission is satisfied that there are special circumstances justifying the alteration.

Approval and registration of rules and alterations

346.(1) The Industrial Registrar must submit the rules of an association seeking registration as an industrial organisation to the Commission for approval.

(2) The Commission must approve the rules if satisfied they are not contrary to this Act or to law.

(3) The Industrial Registrar may approve a proposed alteration of rules of

an industrial organisation other than—

(a) an alteration consisting of the adoption without change of model rules mentioned in section 344; or

(b) an alteration ordered, directed or decided and prepared by—

(i) the Industrial Court; or

(ii) the Industrial Commission; or

(iii) an Industrial Commissioner; or

(iv) the Industrial Registrar.

(4) The Industrial Registrar must approve a proposed alteration if satisfied it—

(a) is not contrary to this Act or to law; and

(b) is made in accordance with the rules of the industrial organisation concerned.

(5) The Industrial Registrar must register all rules and alterations of rules.

(6) The rules of an association seeking registration as an industrial organisation take effect when registered.

(7) The alteration of rules takes effect—

(a) for an alteration mentioned in subsection (3)(a)—from the time mentioned in section 344; or

(b) for an alteration mentioned in subsection (3)(b)—from the day of the order, direction or decision; or

(c) otherwise—when registered.

Certain alterations of rules to be recorded

347. If there has been a change in the name of an industrial organisation, or an alteration of the eligibility rules of an industrial organisation, under this Act, the Industrial Registrar—

(a) is to immediately enter, in the register kept under section 80(1) particulars of the change or alteration; and

(b) in the case of a change of name—as soon as is practicable after

the industrial organisation produces its certificate of registration to the registrar, is to amend the certificate accordingly and return it to the industrial organisation.

Transitional rules

347A.(1) This Act, as it existed immediately before the commencement of the *Industrial Relations Amendment Act 1994*, applies to rules submitted to the Certifying Barrister under sections 344 or 346 before the commencement.

(2) This section expires 6 months after it commences.

Division 4—Validity and performance of rules

Rules contravening s 337

348.(1) In this section—

"appropriate authority" means—

(a) in relation to the eligibility rules of an industrial organisation—the Industrial Commission;

(b) in relation to the other rules of an industrial organisation—the Industrial Registrar.

(2) The Chief Industrial Inspector or a member of an industrial organisation may apply to the Industrial Court for an order under this section in relation to the industrial organisation.

(3) An order under this section may declare that the whole or a part of a rule of an industrial organisation contravenes section 337 or that the rules of an industrial organisation contravene section 337 in a particular respect.

(4) An industrial organisation in relation to which an application is made under this section is to be given an opportunity of being heard by the Industrial Court.

(5) The Industrial Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and

conditions as it considers appropriate for the purpose of giving the industrial organisation an opportunity to alter its rules.

(6) If an order under this section declares that the whole or a part of a rule contravenes section 337, the rule or that part of the rule, as the case may be, is taken to be void from the date of the order.

(7) If—

(a) the Industrial Court makes a declaratory order under subsection (3); and

(b) at the end of 3 months following the making of the order, the rules of the industrial organisation have not been altered in a manner that, in the opinion of the appropriate authority, brings them into conformity with section 337 in relation to the matters that gave rise to the order;

the appropriate authority, after giving the industrial organisation an opportunity to be heard, is to determine, by instrument, such alterations of the rules as will, in the appropriate authority's opinion, bring them into conformity with that section in relation to those matters.

(8) The appropriate authority may, on the application of the industrial organisation made within the period of 3 months referred to in subsection (7) or within any extension of the period, extend, or further extend, the period.

(9) In proceedings under this section, the Industrial Court may make such interim orders as it considers appropriate in relation to a matter to which the matter of the proceedings is relevant.

(10) An order made under subsection (9) continues in force until the completion of the proceedings in which it is made, or until the end of a shorter period for which the order is expressed to operate, or until it is discharged, whichever event is the first to occur.

Directions for performance of rules

349.(1) In this section—

"election" includes a putative election that is a nullity.

"order under this section" means an order giving directions for the

performance or observance of any of the rules of an industrial organisation by any person who is under an obligation to perform or observe those rules.

(2) The Chief Industrial Inspector or a member of an industrial organisation may apply to the Industrial Court for an order under this section in relation to the industrial organisation.

(3) An industrial organisation in relation to which an application is made under this section and every person against whom an order is sought therein is to be given an opportunity of being heard by the Industrial Court.

(4) The Industrial Court may refuse to deal with an application under this section unless it is satisfied that the applicant has taken all reasonable steps to have the subject matter of the application resolved within the industrial organisation.

(5) In proceedings under this section, the Industrial Court may make such interim orders as it considers appropriate, and, in particular, orders intended to further the resolution within the industrial organisation concerned of the subject matter of the application.

(6) An order made under subsection (5) continues in force until the completion of the proceedings in which it is made, or until the end of a shorter period for which the order is expressed to operate, or until it is discharged, whichever event is the first to occur.

(7) An order under this section is not to be made if it would have the effect of treating as invalid an election to an office in an industrial organisation or a step in relation to such an election.

(8) If the Industrial Court, in considering an application under this section, finds that the whole or a part of a rule of an industrial organisation contravenes section 337 or that the rules of an industrial organisation contravene that section in a particular respect, the Court may, by order, make a declaration to that effect.

(9) Section 348 (other than subsections (2) to (5)) applies in relation to an order made under subsection (8) as if the order had been made under section 348.

Financial assistance for application under this Division

350.(1) A member of an industrial organisation who proposes to take, is taking, or has taken proceedings under section 348 or 349 may apply to the Minister for a grant of financial assistance at any time before the end of 3 months following the completion of the proceedings.

(2) If it appears to the Minister that—

(a) there are, or were, reasonable grounds for taking the proceedings; and

(b) the proceedings are proposed to be, or were, taken in good faith;

the Minister may direct that financial assistance be given by the State to the member in respect of the cost of those proceedings in such amount or amounts as the Industrial Registrar determines should be paid to or on behalf of the member accordingly.

(3) Subject to appropriation by Parliament, all amounts determined by the Industrial Registrar under subsection (2) to be payable are to be paid out of the Consolidated Fund.

Division 5—Conduct of elections for office

Conduct by Electoral Commission

351.(1) Each election for an office in an industrial organisation or branch of an industrial organisation is to be conducted by the Electoral Commission.

(2) Subsection (1) does not apply to an election for an office in an industrial organisation or branch if an exemption granted to the organisation or branch under section 354 is in force in relation to elections in the organisation or branch or an election for the particular office.

Application for industrial organisation or branch to conduct its elections

352.(1) A committee of management of an industrial organisation or branch of an industrial organisation may file in the Industrial Registrar's Office an application for the organisation or branch, as the case may be, to

be exempted from section 351(1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.

(2) An application may be made by a committee of management of an industrial organisation or branch of an industrial organisation only if the committee of management—

(a) has resolved to make the application; and

(b) has notified the members of the organisation or branch, as prescribed, of the making of the resolution.

(3) The application must be accompanied by a statutory declaration by a member of the committee of management stating that subsection (2) has been complied with.

(4) On the filing of an application, the Industrial Registrar must publish as prescribed, a notice setting out details of the application for the purpose of bringing the notice to the attention of members of the industrial organisation or branch concerned.

(5) If the rules of an industrial organisation require an office to be filled by an election by the members, or by some of the members, of a single branch of the organisation, an election to fill the office is taken to be an election for the branch.

Objections to application to conduct elections

353.(1) Objection may be made to an application under section 352(1) by a member of the industrial organisation or branch of the industrial organisation in relation to which the application was made.

(2) The Industrial Registrar is to hear, in the way prescribed, the application and any objections properly made.

Registrar may permit industrial organisation or branch to conduct its elections

354.(1) If an application in relation to an industrial organisation or branch has been filed under section 352(1) and, after any objections properly made have been heard, the Industrial Registrar is satisfied—

(a) that the rules of the industrial organisation or branch comply with

the requirements of this Act relating to the conduct of elections; and

(b) that, if the organisation or branch is exempted from section 351(1), the elections for the organisation or branch, or the election for the particular office, will be conducted—

(i) under the rules of the organisation or branch, as the case may be, and this Act; and

(ii) in a way that will afford members entitled to vote at the elections or election an adequate opportunity of voting without intimidation;

the Industrial Registrar may exempt the organisation or branch from section 351(1) in relation to elections for the organisation or branch, or the election for the particular office, as the case may be.

(2) The Industrial Registrar may revoke an exemption granted to an industrial organisation or branch under subsection (1)—

(a) on application by the committee of management of the organisation or branch; or

(b) if the registrar—

(i) is no longer satisfied as mentioned in subsection (1); and

(ii) has given the committee of management of the organisation or branch an opportunity, as prescribed, to show cause why the exemption should not be revoked.

Industrial Registrar to arrange for conduct of elections

355.(1) An industrial organisation or branch of an industrial organisation (other than an organisation or branch to which the Industrial Registrar has, under section 354, granted an exemption) must file the prescribed information in relation to an election in the Industrial Registrar's Office before the prescribed day or any later day the registrar allows.

(2) If—

(a) the prescribed information is filed in the Industrial Registrar's Office by the industrial organisation or branch (whether or not before the prescribed day or the later day allowed by the Industrial

Registrar); and

(b) the Industrial Registrar is satisfied that an election is required to be held under the rules of the organisation or branch;

the registrar must arrange for the conduct of the election by the Electoral Commission.

Provisions applicable to elections conducted by Electoral Commission

356.(1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office in, or in a branch of, an industrial organisation, the electoral official—

(a) subject to paragraph (b), must comply with the rules of the organisation or branch; and

(b) may, despite anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary—

(i) to ensure that no irregularities happen in relation to the election; or

(ii) to remedy any procedural defects that appear to the electoral official to exist in the rules.

(2) An election conducted by an electoral official, or a step taken in relation to such an election, is not invalid merely because of a breach of the rules of the industrial organisation or branch because of—

(a) action taken under subsection (1); or

(b) an act done in compliance with a direction under subsection (1).

(3) If an electoral official conducting an election, or taking a step in connection with an election—

(a) dies or becomes unable to complete the conduct of the election or the taking of the step; or

(b) ceases to be qualified to conduct the election or to take the step;

the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

Expenses of election ballot

357.(1) The expenses (other than the expenses mentioned in subsection (2)) of a ballot conducted by the Electoral Commission under this Division are payable by the State.

(2) The industrial organisation in relation to which the ballot is held must pay for the printing, postage and distribution costs incurred by the Electoral Commission in the conduct of the ballot.

(3) The industrial organisation must pay to the State the costs mentioned in subsection (2) within 1 month after receiving a written request from the Electoral Commission to do so.

(4) An amount payable by an industrial organisation under this section may be recovered by the State as a debt payable to it.

Death of candidate

358.(1) If—

(a) 2 or more candidates are nominated for an election in relation to an office in an industrial organisation or branch; and

(b) 1 of the candidates dies before the close of the ballot;

the election must be discontinued and a new election must be held.

(2) Subsection (1) has effect despite anything in the rules of an industrial organisation or branch.

Ballot papers etc. from elections to be preserved

359.(1) If—

(a) an election for an office is held under this Division; and

(b) the election is conducted by the Electoral Commission;

the industrial organisation or branch of the industrial organisation concerned, every officer of the organisation or branch who is in a position to do so, and the Electoral Commission, are to take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the election are preserved and kept by the Electoral Commission for a period of 1 year after the election.

(2) If—

(a) an election for an office is held under this Division; and

(b) the election is conducted by the industrial organisation or branch;

the industrial organisation or branch of the industrial organisation concerned, and every officer of the organisation or branch who is in a position to do so, are to take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the election are preserved and kept by the industrial organisation or branch for a period of 1 year after the election.

(3) Subsections (1) and (2) have effect despite anything in the rules of the industrial organisation or branch concerned.

No action for defamation in certain cases

360.(1) A proceeding (whether civil or criminal) for defamation does not lie against—

(a) the State; or

(b) an electoral official; or

(c) a person acting at the request or direction of an electoral official;

in relation to the printing or publication of a document by the official or person in the course of the conduct of an election under this Division.

(2) In this section—

"document" means a document or a copy of a document authorised by, or on behalf of, a candidate in the election.

Division 6—Disqualification from holding office in industrial organisation

Interpretation

361.(1) In this Division the expression—

"prescribed offence" means—

(a) an offence under an Act or under a law of the Commonwealth, a

State or Territory, or another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more;

(b) an offence under section 568, 570, 571, 572 or 576;

(c) an offence in relation to the formation, registration or management of an association or industrial organisation;

(d) an offence under an Act or under a law of the Commonwealth, a State or Territory, or another country, involving the intentional—

(i) use of violence towards another person;

(ii) causing of death or injury to any person;

(iii) damage or destruction of property.

(2) A reference in this Division to a person having been convicted of a prescribed offence includes a reference to a person having been convicted before the commencement of this Act of an offence such that it is a prescribed offence.

(3) A reference in this Division to a person being convicted of a prescribed offence does not include a reference to a person being convicted, otherwise than on indictment, of an offence referred to in subsection (1)(c).

(4) A reference in this Division to a person being convicted of a prescribed offence does not include a reference to a person being convicted of an offence referred to in subsection (1)(d) unless the person has served, or is serving, a term of imprisonment in relation to the offence.

Eligibility for office in industrial organisation

362.(1) A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an industrial organisation unless—

(a) on an application made under section 363 or 364 in relation to the conviction of the person for the prescribed offence—

(i) the person was granted leave to hold office in industrial organisations; or

(ii) the person was refused leave to hold office in industrial organisations but, under section 363(2)(b) or

section 364(2)(b), the Industrial Court specified a period for the purposes of this section, and the period has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison; or

(b) in any other case—a period of 5 years has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison.

(2) If a person who holds an office in an industrial organisation is convicted of a prescribed offence, the person ceases to hold the office at the end of the period of 28 days following the conviction unless, within the period, the person makes an application to the Industrial Court under section 363 or 364.

(3) If a person who holds an office in an industrial organisation makes an application to the Industrial Court under section 363 or 364 and the application is not determined—

(a) except in a case to which paragraph (b) applies—within the period of 3 months following the date of the application; or

(b) if the Court, on application by the person, has extended the period—within that period as extended;

the person ceases to hold the office at the end of the period of 3 months or the period as extended, as the case may be.

(4) The Industrial Court, under subsection (3)(b), is not to extend a period for the purposes of that subsection unless—

(a) the application for the extension is made before the end of the period of 3 months referred to in subsection (3)(a); or

(b) if the Industrial Court has previously extended the period under subsection (3)(b)—the application for the further extension is made before the end of the period as extended.

(5) An industrial organisation, a member of an industrial organisation or the Industrial Registrar may apply to the Industrial Court for a declaration whether, because of the operation of this section or section 363 or 364—

(a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the industrial organisation; or

(b) a person has ceased to hold an office in the industrial organisation.

(6) The granting to a person, on an application made under section 363 or 364 in relation to a conviction of the person for a prescribed offence, of leave to hold office in industrial organisations does not affect the operation of this section or section 363 or 364 in relation to another conviction of the person for a prescribed offence.

Application for leave to hold office in industrial organisation by prospective candidate for office

363.(1) A person who—

(a) wants to be a candidate for election, or to be appointed, to an office in an industrial organisation; and

(b) has been, within the immediately preceding period of 5 years, convicted of a prescribed offence or released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence;

may, subject to subsection (4), apply to the Industrial Court for leave to hold office in industrial organisations.

(2) If a person makes an application under subsection (1), the Industrial Court may—

(a) grant the person leave to hold office in industrial organisations;

(b) refuse the person leave to hold office in industrial organisations and specify, for the purposes of section 362(1), a period less than 5 years;

(c) refuse a person leave to hold office in industrial organisations.

(3) A person who—

(a) holds an office in an industrial organisation; and

(b) is convicted of a prescribed offence; and

(c) on an application made under subsection (1) in relation to the conviction for the prescribed offence, is refused leave to hold office in industrial organisations;

ceases to hold the office in the industrial organisation.

(4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or under section 364 in relation to the conviction.

Application for leave to hold office in industrial organisation by office holder

364.(1) If a person who holds an office in an industrial organisation is convicted of a prescribed offence, the person may, subject to subsection (4), within 28 days following the conviction, apply to the Industrial Court for leave to hold office in industrial organisations.

(2) If a person makes an application under subsection (1), the Industrial Court may—

(a) grant the person leave to hold office in industrial organisations;

(b) refuse the person leave to hold office in industrial organisations and specify, for the purposes of section 362(1), a period less than 5 years;

(c) refuse the person leave to hold office in industrial organisations.

(3) A person who, on an application made under subsection (1), is refused leave to hold office in industrial organisations ceases to hold the office held at the time of making the application.

(4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or section 363 in relation to the conviction.

Court to have regard to certain matters

365. For the purposes of exercising the power under section 363 or 364 to grant or refuse leave to a person who has been convicted of a prescribed

offence to hold office in industrial organisations, the Industrial Court is to have regard to—

(a) the nature of the prescribed offence;

(b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence;

(c) the general character of the person;

(d) the fitness of the person to be involved in the management of industrial organisations, having regard to the conviction for the prescribed offence;

(e) any other matter that, in the Court's opinion, is relevant.

Action by Court

366.(1) Notwithstanding anything in the rules of an industrial organisation, the Industrial Court may make such order to give effect to a declaration made under section 362(5) as it considers appropriate.

(2) If an application is made to the Industrial Court under section 362(5)—

(a) the person whose eligibility, or whose holding of office, is in question is to be given an opportunity of being heard by the Court; and

(b) if the application is made otherwise than by the industrial organisation concerned—the industrial organisation is to be given an opportunity of being heard by the Court.

(3) If an application is made to the Industrial Court under section 363 or 364, the industrial organisation concerned is to be given an opportunity of being heard by the Court.

Division 7—Disputed elections in industrial organisation

Application for election inquiry

367.(1) If a financial member of an industrial organisation, or a person who, within the preceding 12 months, has been a financial member of an

industrial organisation, claims that there has been an irregularity in, or in connection with, an election for an office in the industrial organisation, or in a branch of the industrial organisation, the person may make application for an inquiry by the Industrial Commission into the matter.

(2) An application under subsection (1) must—

(a) be in writing in the form provided for by the rules of court;

(b) be lodged with the Industrial Registrar before the completion of the election, or within 6 months following the completion of the election, or, in special circumstances, within such extended period as the Industrial Registrar allows;

(c) specify the election in respect of which the application is made and the irregularity that is claimed to have occurred, and state the facts relied on in support of the application;

(d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant's knowledge and belief, true.

Action by Industrial Registrar in respect of election inquiry

368.(1) If on lodgment of an application under section 367 the Industrial Registrar is satisfied that—

(a) there are reasonable grounds for an inquiry into the question whether there has been an irregularity in or in connection with the election, which may have affected, or may affect, the result of the election; and

(b) the circumstances of the matter justify an inquiry by the Industrial Commission under this Division;

the registrar is to grant the application and refer the matter to the Industrial Commission, but otherwise the registrar is to refuse the application and inform the applicant accordingly.

(2) The Industrial Registrar may exercise powers under subsection (1) on the basis of the matters stated in the application, but may also take into account any relevant information of which the registrar has knowledge.

(3) At any time after lodgment with the Industrial Registrar of an

application under section 367 for an inquiry in connection with an election, the Industrial Commission may authorise the Industrial Registrar—

(a) to inspect any ballot papers, envelopes or records that have been used in connection with, or are relevant to, the election;

(b) for the purpose of any such inspection, to enter with such assistance as the registrar considers necessary, any premises used or occupied by the industrial organisation, or a branch of the industrial organisation, in which the registrar believes any such ballot papers, envelopes or records to be;

(c) to require a person to deliver to the registrar, in accordance with the requisition, any such ballot papers, envelopes or records in the possession, or under the control, of that person;

(d) to take possession of any such ballot papers, envelopes or records;

(e) to retain any ballot papers, envelopes or records delivered to the registrar, or of which possession has been taken, until the completion of the proceedings arising out of the application, or until such earlier time as the Industrial Commission orders.

(4) If the Industrial Commission exercises power conferred on it by subsection (3), the Industrial Registrar may act in accordance with the terms of the authority thereby conferred, or may authorise another person to so act on the registrar's behalf, in which event this subsection is to be construed as if every reference to the registrar included reference to that other person.

(5) Before authorising any action under subsection (3), the Industrial Commission is to give to any person who in the Commission's opinion should be heard the opportunity to be heard by the Commission.

Commission to conduct inquiry

369.(1) Upon reference of a matter to the Industrial Commission under section 368, the inquiry is taken to have been instituted in the Commission.

(2) On institution of an inquiry, the Industrial Commission is to fix a time and place for conducting the inquiry, and may give such directions as it considers necessary to ensure that all persons who are, or may be, justly

entitled to appear, or be represented, at the inquiry are notified of the time and place so fixed.

Commission may make interim orders

370.(1) At any time after the institution of an inquiry under section 368, the Industrial Commission may, if it thinks fit, make 1 or more of the following orders—

(a) an order that no further steps be taken in the conduct of the election in question or in carrying into effect the result of the election;

(b) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, being an office to which the inquiry relates, not act in that office;

(c) an order that a person who holds, or who last held before the election in question, an office to which the inquiry relates, act or continue to act in that office;

(d) if the Commission considers that an order under paragraph (c) would not be practicable or would be prejudicial to the efficient conduct of the affairs of the industrial organisation, or branch of the industrial organisation, or would be inappropriate having regard to the nature of the inquiry, an order that a member of the industrial organisation or branch, or another person specified in the order, act in an office to which the inquiry relates;

(e) an order incidental or supplementary to an order made under this subsection;

(f) an order varying or discharging an order made under this subsection.

(2) If the Industrial Commission orders that a person act, or continue to act, in an office, that person, while the order remains in force, and notwithstanding any provision of the rules of the industrial organisation, or branch of the industrial organisation, is taken, for all purposes, to hold the office.

(3) An order made under this section continues in force until the completion of the proceedings in the Industrial Commission in connection

with the election and of all matters ordered (otherwise than under this section) by the Commission in those proceedings, or until the end of any shorter period for which the order is expressed to operate, or the order is discharged, whichever event is the first to occur.

Procedure at inquiry into election

371.(1) The Industrial Commission—

(a) is to grant to all persons who apply therefor and appear to the Commission to be justly entitled to do so, leave to appear, or be represented, at an inquiry in connection with an election;

(b) may order any person to appear, or be represented, at an inquiry in connection with an election.

(2) All persons who appear, or are represented, at an inquiry in connection with an election, or who are ordered to appear, or be represented, at such an inquiry are taken to be parties to the proceedings.

Functions and powers of Commission at inquiry

372.(1) At an inquiry in connection with an election the Industrial Commission is to inquire into and determine the question whether any irregularity has occurred in, or in connection with, the election, and such further questions concerning the conduct and results of the election as the Commission considers necessary.

(2) The Industrial Commission may make such orders (including an order for recounting votes) as the Commission considers necessary for the purposes of an inquiry in connection with an election.

(3) If the Industrial Commission finds that an irregularity has occurred, or is likely to occur, in connection with the election, the Commission may, subject to subsection (4), make 1 or more of the following orders—

(a) an order directing, notwithstanding any provision of the rules of the industrial organisation, or branch of the industrial organisation, the taking of such safeguards as the Commission considers necessary against irregularities in or in connection with the election;

(b) an order declaring the election, or any step taken in connection

with the election, to be void;

(c) an order declaring a person supposed to have been elected not to have been elected;

(d) an order declaring another person to have been elected in place of a person declared not to have been elected;

(e) an order directing the holding of a fresh election and in connection therewith the taking again of any step (including the calling for and submission of nominations) in accordance with the rules of the industrial organisation, or branch of the industrial organisation, or in accordance with those rules as varied or added to in such manner as the Industrial Commission considers necessary to rectify procedural defects therein that appear to the Commission to exist;

(f) an order directing the holding of a fresh election and, notwithstanding any provision of the rules of the industrial organisation, or branch of the industrial organisation, the taking or taking again of any step (including the calling for and submission of nominations) and, in connection therewith, the taking of such safeguards as the Commission considers necessary against irregularities;

(g) an order appointing and authorising a person to act as returning officer, in conjunction with the returning officer (if any) under the rules of the industrial organisation, or branch of the industrial organisation, in connection with the election or any fresh election, and to exercise such powers as the Industrial Commission specifies in its order;

(h) an order incidental or supplementary to an order made under this subsection.

(4) The Industrial Commission is not to declare an election or any step taken in connection with an election to be void, or that a person has not been elected, unless the Commission is of opinion that, having regard to the irregularity found and to the likelihood that similar irregularities have occurred or may occur, the result of the election may have been affected or may be affected by irregularity.

Enforcement of orders under this Division

373. The Industrial Commission may make such orders in the nature of injunctions (either mandatory or restrictive) as the Commission considers necessary for the effectual exercise of its powers and functions, and the enforcement of its orders, under this Division.

Validation of certain acts

374.(1) If the Industrial Commission declares void the election of a person who has, since the election, purported to act in the office to which the person is supposed to have been elected, all acts done by the person while so purporting to act, and which could validly have been done by the person if duly elected, are, unless the Commission orders otherwise, valid and effectual for all purposes.

(2) The Industrial Commission may, if it considers it desirable to do so, declare any such act to have been void, and thereupon that act is taken, for all purposes, to be, and to have been at all times void and of no effect.

(3) Any election held, or step in or in connection with an election taken, in compliance with an order of the Industrial Commission, is not invalidated by reason only of a departure from the rules of an industrial organisation, or branch of an industrial organisation, for the purpose of complying with the order of the Commission.

Inquiry costs

375.(1) If, on an inquiry, the Industrial Commission finds that an irregularity has occurred, and if the Minister considers the circumstances justify expenditure by the State, the Minister may authorise payment by the State, to the person who applied for the inquiry, of the whole or a part of the person's costs and expenses (including expenses of witnesses).

(2) If, on an inquiry, the Industrial Commission does not find that an irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Minister may authorise payment by the State to that person of the whole or a part of the person's costs and expenses (including expenses of witnesses).

(3) If the Minister is satisfied that, having regard to the findings of the

Industrial Commission on an inquiry, it is not just that a person (other than the one who applied for the inquiry) should be required to bear, or to bear in full, expenses (including expenses of witnesses) incurred by the person in connection with the inquiry, the Minister may authorise payment by the State of the whole or a part of those expenses.

(4) Nothing in this section limits the power of the Industrial Commission to make an order as to the costs and expenses (including expenses of witnesses) of proceedings before the Commission in or in connection with an inquiry.

(5) Subject to appropriation by Parliament, all costs and expenses authorised by the Minister under this section to be paid are to be paid out of the Consolidated Fund.

Registrar to conduct elections on request

376.(1) An industrial organisation, or branch of an industrial organisation, may, in writing, request the Industrial Registrar that an election (other than an election conducted under section 351 or Division 9) for an office in the industrial organisation or, as the case may be, the branch be conducted under this section with a view to ensuring that no irregularity occurs in or in connection with the election.

(2) For the purposes of subsection (1) a request by an industrial organisation or branch of an industrial organisation may be made—

(a) by or on behalf of the committee of management of the industrial organisation or of the branch of the industrial organisation, as the case may be; or

(b) by a number, being not less than 5% or 250, whichever is less, of the members of the industrial organisation or of the branch of the industrial organisation, as the case may be.

(3) The regulations may make provision with respect to the times at which requests may be made under this section.

(4) On receipt of a request purporting to be made under this section, if the Industrial Registrar, after making any inquiries that the registrar considers necessary, decides that the request has been duly made—

(a) the registrar is to notify the industrial organisation, or branch of

the industrial organisation, accordingly; and

(b) the registrar is to make arrangements with the Electoral Commissioner for the conduct of the election by an electoral official.

(5) When the Industrial Registrar has given the notification prescribed by subsection (4)(a), any election already held, being an election to which the request made and notification given are relevant, is void and of no effect.

(6) Notwithstanding anything contained in the rules of the industrial organisation, or branch of the industrial organisation, the person conducting the election pursuant to subsection (4)(b) may take such action and give such directions as the person considers necessary to ensure that no irregularities occur in or in connection with the election or to remedy any procedural defects that appear to the person to exist in those rules.

(7) This Division does not authorise the conduct of an inquiry in relation to an election conducted under this section.

(8) An election conducted under this section is not invalid by reason only of an irregularity in the request as a consequence of which the election was conducted, or by reason of a breach of the rules of the industrial organisation, or branch of the industrial organisation, arising from an act done under this section or in compliance with a direction given under this section.

Conduct of election of Industrial Registrar's own motion

377.(1) If the Industrial Registrar is satisfied, on reasonable grounds, that there is a likelihood of irregularity in connection with an election for an office in an industrial organisation, or a branch of an industrial organisation, then, notwithstanding that a request under section 376 has not been made, the registrar may act as prescribed by section 376(4) as if such a request had been made and had been found to have been duly made.

(2) When the Industrial Registrar has given the notification prescribed by section 376(4)(a), the provisions of section 376 apply, and any election already held, which is affected by the irregularity, is void and of no effect.

Expenses in connection with elections under this Division

378.(1) If—

(a) the Industrial Commission orders—

(i) a fresh election to be held; or

(ii) any step in connection with an election to be taken again; or

(iii) any safeguards, not provided for in the rules of the industrial organisation, or branch of the industrial organisation, to be observed in connection with any election or any uncompleted steps in an election; or

(b) an election is conducted under section 376 or 377;

the expenses of compliance with the order of the Commission, or of the election so conducted, are, to the extent prescribed by this section, to be paid by the State.

(2) The State is to pay—

(a) the wages, salary or other remuneration of an employee of the State who performs any duty for the purpose of complying with the Industrial Commission's order or conducting the election, whether the duty is the employee's sole duty or is performed in conjunction with other duties; and

(b) expenses in connection with the provision or use of premises provided by the State for the purpose of complying with the Industrial Commission's order or conducting the election, whether the premises are provided or used solely for that purpose or in conjunction with other purposes.

(3) If the membership of the industrial organisation, or branch of the industrial organisation, concerned is not more than 1 500, the State is to pay the whole of the expenses in connection with the provision of ballot papers, envelopes and records required for the purpose of complying with the order of the Industrial Commission or of conducting the election and the dispatch and return by post of any of those ballot papers, envelopes and records.

(4) If the membership of the industrial organisation, or branch of the industrial organisation, concerned is more than 1 500, the State is to pay $^1/_2$ of the expenses specified in subsection (3).

(5) Subject to appropriation by Parliament, all expenses prescribed by this section to be paid by the State are to be paid out of the Consolidated Fund.

Division 8—Membership of industrial organisations

Entitlement to membership

379. A person who—

(a) by the nature of the person's occupation or employment engages in a calling that is a registered calling of an industrial organisation; and

(b) has the qualifications required by the eligibility rules of the industrial organisation; and

(c) is not of general bad character;

is entitled to be admitted to membership of the industrial organisation, and to remain a member thereof, and enjoy all advantages of membership for as long as the person complies with the rules of the industrial organisation.

Disputes concerning membership cognisable by Court

380.(1) A question or dispute—

(a) whether a person is entitled to be, or is, a member of an industrial organisation;

(b) as to the qualifications or character of an applicant for membership of an industrial organisation;

(c) as to the reasonableness of any admission fee, subscription, fine or levy, or other requirement made of members of an industrial organisation by the rules of the industrial organisation;

unless it be previously resolved, is to be determined by the Industrial Court.

(2) On a hearing of a question or dispute referred to in subsection (1), the Industrial Court may, by its order—

(a) determine that an applicant for membership of an industrial organisation is or is not entitled to membership, and, if it

determines that the applicant is so entitled, direct that the applicant be admitted forthwith to membership thereof;

(b) declare that a person is or is not a member of an industrial organisation;

(c) direct that the rules of an industrial organisation be altered or annulled in a particular case to secure their conformity with what the Court declares to be reasonable in that case;

as the case may require, and, where the Court directs as prescribed by paragraph (c), the relevant rules of the industrial organisation are taken to have been thereby altered or annulled accordingly.

Membership of persons under 18

381.(1) A person is not to require or compel an employee who has not attained the age of 15 years to become or remain a member of an industrial organisation.

(2) A person who has not attained the age of 18 years—

(a) may be a member of an industrial organisation, unless the rules of the organisation provide to the contrary;

(b) subject to the rules of an industrial organisation and this Division, may enjoy all the rights of a member of the industrial organisation;

(c) may execute all instruments and give all acquittances required by the rules of an industrial organisation;

but cannot be a member of the committee of management, trustee or treasurer of an industrial organisation.

Register of members and officers

382.(1) Every industrial organisation is to keep in respect of each year a register of its members and a register of its officers, and is to enter therein—

(a) the name of every member or officer and—

(i) in the case of a person who is an individual—the person's

ordinary place of residence;

(ii) in the case of a corporation that is a member of an industrial organisation of employers—the address of its registered office;

(iii) in the case of a person who, at the date of becoming a member, or renewing membership, is residing elsewhere than at the member's ordinary place of residence—that place and the place where the member is residing at that date;

(b) the date on which each person is entered in the register as a member or, as the case may be, an officer;

(c) the date on which each person ceases to be a member or, as the case may be, an officer during the year for which the register is kept.

(2) A register required by subsection (1) may be kept in the form of a book or books (bound or loose leaf) or a computer print-out.

(3) Particulars required by subsection (1) to be entered in a register are to be entered therein opposite and relative to the name of the person to whom they relate, or otherwise in a manner such that the person to whom they relate is easily identified.

(4) An industrial organisation that has a number of members greater than 100 whose register of members is not in such a form as to be an alphabetical index itself, is to keep an index in alphabetical order of the names of its members, or former members, which index may be in a loose leaf, computer print-out or card index form.

Filing of registers with Industrial Registrar

383.(1) Unless it is duly exempted for the time being pursuant to this Division, an industrial organisation, within 7 days following its registration under this Act, or within such extended period as the Industrial Commission allows in a particular case, is to file with the Industrial Registrar a true copy of the register of its members, and of the register of its officers, each as at the date of such filing.

(2) Unless it is duly exempted for the time being pursuant to this Division, an industrial organisation—

(a) not later than 31 March in each year or such later date as the Industrial Registrar allows in a particular case, is to file with the registrar a true copy of the register of its members, and of the register of its officers, each as at 31 December last preceding the date of filing;

(b) within 30 days following the appointment or resignation of an officer of the industrial organisation, is to notify the registrar, in writing, of such appointment or resignation.

Exemption from filing registers etc.

384.(1) If the Industrial Registrar is satisfied that the register of members of an industrial organisation is maintained as required by section 383, the registrar may issue to the industrial organisation a certificate exempting the industrial organisation wholly, or in relation to a branch thereof, from the application of section 383.

(2) While such certificate remains in force—

(a) if it exempts an industrial organisation wholly—section 383 does not apply to the industrial organisation;

(b) if it exempts an industrial organisation in relation to a branch of the industrial organisation—section 383 applies to the industrial organisation as if the portion of the register of members, that relates to the branch did not form part of the register and as if the members or officers of the branch were not members of the industrial organisation.

(3) If it appears to the Industrial Registrar—

(a) that the register of members of an industrial organisation to which a certificate of exemption relates, or of a branch of the industrial organisation to which a certificate of exemption relates, is no longer maintained as required by section 383;

(b) that an industrial organisation to which a current certificate of exemption is issued refuses or has failed to give to the registrar information or facilities required by the registrar for the purpose of deciding whether the exemption should be continued;

the registrar may revoke the certificate by notice in writing given to the

industrial organisation.

(4) If a certificate of exemption is revoked the industrial organisation concerned, within 30 days following the revocation or within such extended period as the Industrial Registrar allows in a particular case, is to file with the registrar a true copy of the register of its members, as at the date of filing, or, if the certificate of exemption related to a branch of the industrial organisation, a true copy of the portion of such register that relates to the membership of that branch.

Registers subject to rectification by Commission and access by Industrial Registrar

385.(1) The Industrial Commission may, at any time, order such rectification of the register of members, or of officers, of an industrial organisation as it considers necessary to ensure that the registers are a true record as required by section 383 of the persons who are members, or who are officers, of the industrial organisation at the time.

(2) Rectification is to be made of the register or registers of the industrial organisation to which the Commission's order relates, and also of the copy of the register or registers filed with the Industrial Registrar, in accordance with the order.

(3) An order under subsection (1) is taken to be directed to and is binding on the following persons—

(a) the industrial organisation to which the order is directed;

(b) the president of such industrial organisation;

(c) the secretary of such industrial organisation;

and, if rectification of the industrial organisation's register or registers is not made in accordance with the order, each of such persons is taken to have failed to comply with the order and is liable to be dealt with as prescribed for failing to comply with an order of the Industrial Commission.

(4) The register of members, or of officers, of an industrial organisation and the relevant index is open to inspection by—

(a) the Industrial Registrar or any person authorised by the registrar in writing;

(b) any member of the industrial organisation or any person authorised by the member in writing;

at the office of the industrial organisation at all times while the office is open for transaction of business.

(5) Subject to subsection (7), the Industrial Registrar may, by notice in writing, direct an industrial organisation to deliver the register of its members, or of its officers, and the relevant index, to the registrar or a person named by the registrar at a time and place specified in the notice, and the industrial organisation is to comply with the direction.

(6) A direction under subsection (5) is taken to be directed to and to be binding on, the following persons—

(a) the industrial organisation to which the order is directed;

(b) the president of such industrial organisation;

(c) the secretary of such industrial organisation;

and if the direction is not complied with each of such persons is taken to have failed to comply with the direction and is liable to be dealt with as prescribed for such failure.

(7) A direction is not to be given under subsection (5) unless the register and index, are required—

(a) for the purpose of taking a ballot under this Act;

(b) for any other purpose, if the Industrial Court or the Industrial Commission so orders.

Industrial organisation to keep butts of documents issued

386.(1) In this section—

"butt" includes a duplicate original or copy of a union ticket issued to a member.

"union ticket" means any receipt, document or writing that acknowledges a person to be a member of an industrial organisation, or to have renewed membership thereof, or to have paid any subscription, dues or other moneys payable in respect of membership thereof or the renewal of such membership.

(2) An industrial organisation is to keep a butt of every union ticket issued to a member of the industrial organisation during the last preceding period of 12 months and upon the butt is to record the ordinary place of residence of the member and, if the member is, at the time, residing elsewhere than at the member's ordinary place of residence, the address of the place where the member is then residing.

Resignation of member of membership of industrial organisation

387.(1) The manner of terminating membership of an industrial organisation prescribed by this section is in addition to any manner provided for by the rules of the industrial organisation for terminating membership thereof.

(2) A termination of membership of an industrial organisation effected as prescribed by this section is effectual regardless of the rules of the industrial organisation.

(3) Membership of an industrial organisation is terminated if the member duly gives notification in writing of the member's resignation from the industrial organisation.

(4) A notification of resignation is taken to be duly given if—

(a) it is left at the registered office of the industrial organisation; or

(b) it is addressed to the industrial organisation, or any officer thereof, and sent by post to the registered office of the industrial organisation.

(5) If a person who wants to terminate membership of an industrial organisation specifies in a notification of resignation a day on which, or a time at which, the resignation is to be effective, being a day or time subsequent to the time when the notification is duly given, the person's membership of the industrial organisation terminates on the day, or at the time, as specified, and not before.

Conscientious objection to membership of industrial organisation

388.(1) In this section—

"conscientious beliefs" means the beliefs held by an individual based on the individual's moral values, or on the individual's fundamental

religious beliefs, and does not include beliefs founded wholly or principally on objections to policies of industrial organisations generally, or of a particular industrial organisation.

(2) A person may make application, in writing, to—

(a) an Industrial Magistrate; or

(b) the Industrial Registrar;

for exemption from membership of any industrial organisation of employees on the ground of the person's conscientious beliefs.

(3) On receipt of an application under subsection (2), the Industrial Magistrate or, as the case may be, Industrial Registrar is to forthwith notify, in writing—

(a) the applicant; and

(b) the industrial organisation of employees that, in the magistrate's or registrar's opinion, is the appropriate industrial organisation for the calling in which the applicant is, or is seeking to be, employed;

of the time (being not less than 2 clear days following the date of the notification) and place at which the magistrate or registrar will interview the applicant.

(4) At an interview of the applicant—

(a) the Industrial Magistrate or, as the case may be, Industrial Registrar; and

(b) the applicant; and

(c) 1 member or officer of the industrial organisation notified under subsection (3);

and no other person, may attend.

(5) The member or officer of such industrial organisation in attendance at the interview may participate therein, by relevant questions of the applicant and relevant submissions to the magistrate or, as the case may be, registrar.

(6) If the Industrial Magistrate or, as the case may be, Industrial Registrar is satisfied that the applicant's claimed conscientious beliefs are genuinely held by the applicant, the magistrate or registrar, on the applicant's paying

into the office of the appropriate clerk of the Magistrates Court, or, as the case may be, the Industrial Registrar's Office an amount equivalent to the subscription required by the rules of the industrial organisation notified under subsection (3) in respect of membership of the industrial organisation, is to issue to the applicant a certificate of exemption, in the form provided for in the rules of court, from membership of any industrial organisation of employees.

(7) No appeal lies in respect of the determination of an Industrial Magistrate or the Industrial Registrar as to a person's conscientious beliefs.

(8) A certificate issued under subsection (6) is in force for 12 months following a date specified for the purpose in the certificate.

(9) Moneys paid as required by subsection (6) are to be paid into Queensland Treasury for the Consolidated Fund.

Division 9—Amalgamation of industrial organisations

Subdivision 1—General

Application of objects to Division etc.

389. It is the intention of the Parliament—

(a) that, in the application to this Division of the objects of this Act, particular regard should be had to the attainment of the objects mentioned in section 3(j) and (l); and

(b) that this Act should be applied in relation to the amalgamation of industrial organisations in a way that, to the greatest extent that is consistent with the attainment of the objects mentioned in section 3(g), (h) and (i), is fair, practical, quick and non-legalistic.

Interpretation

390. In this Division—

"alternative provision" means a provision of the kind mentioned in section 395(1).

"amalgamated organisation", in relation to a completed amalgamation, means the industrial organisation of which members of the deregistered industrial organisations have become members under section 425(3)(d).

"amalgamation day", in relation to a completed amalgamation, means the day fixed under section 425(2) in relation to the amalgamation.

"asset" means property of any kind, and includes any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

"authorised person", in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation.

"charge" means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

"closing day" for a ballot for a proposed amalgamation means the day, from time to time, fixed under section 411 as the closing day of the ballot.

"commencing day" for a ballot for a proposed amalgamation means the day, from time to time, fixed under section 411 as the commencing day of the ballot.

"completed amalgamation" means a proposed amalgamation that has taken effect.

"debenture" has the same meaning as in the Corporations Law, Part 7.12, Division 4.

"defect" includes a nullity, omission, error and irregularity.

"deregistered organisation", in relation to a completed amalgamation, means an industrial organisation that has been deregistered under this Division.

"deregistration", in relation to an industrial organisation, means the cancellation of its registration.

"holder" of a charge includes a person in whose favour a charge is to be

given or executed (whether on demand or otherwise) under an agreement.

"instrument" means an instrument of any kind, and includes—

(a) any contract, deed, undertaking or agreement; and

(b) any mandate, instruction, notice, authority or order; and

(c) any lease, licence, transfer, conveyance or other assurance; and

(d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and

(e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing.

"instrument to which this Division applies", in relation to a completed amalgamation, means an instrument—

(a) to which a deregistered organisation is a party; or

(b) that was given to, by or in favour of a deregistered organisation; or

(c) in which a reference is made to a deregistered organisation; or

(d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a deregistered organisation.

"interest", in relation to a company, includes a prescribed interest made available by the company within the meaning of the Corporations Law.

"invalidity" includes a defect.

"irregularity" includes a breach of the rules of an industrial organisation, but in Subdivision 7 does not include an irregularity in relation to a ballot.

"proceeding to which this Division applies", in relation to a completed amalgamation, means a proceeding to which a deregistered organisation was a party immediately before the amalgamation day.

"proposed alternative amalgamation", in relation to a proposed amalgamation, means an amalgamation proposed to be made under an alternative provision.

"proposed amalgamated organisation", in relation to a proposed amalgamation, means the industrial organisation or proposed industrial organisation of which members of the proposed deregistering organisations are proposed to become members under this Division.

"proposed amalgamation" means the proposed carrying out of arrangements in relation to 2 or more industrial organisations under which—

(a) an industrial organisation is, or 2 or more industrial organisations are, to be deregistered under this Division; and

(b) members of the industrial organisation or organisations to be deregistered are to become members of another industrial organisation (whether existing or proposed).

"proposed deregistering organisation", in relation to a proposed amalgamation, means an industrial organisation that is to be deregistered under this Division.

"proposed principal amalgamation", in relation to a proposed amalgamation, means—

(a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or

(b) in any other case—the proposed amalgamation.

Procedure to be followed for proposed amalgamation etc.

391.(1) For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Division is to be followed.

(2) If it appears to the Commission that the performance of an act, including—

(a) the deregistration of an industrial organisation; and

(b) the registration of an organisation; and

(c) the giving of consent to—

(i) a change in the name of an industrial organisation; or

(ii) an alteration of the eligibility rules of an industrial

organisation;

is sought for the purposes of a proposed amalgamation, the Commission may perform the act only in accordance with this Division.

(3) If any difficulty arises, or appears likely to arise, in the application of this Act for the purpose of implementing the scheme for a proposed amalgamation, the Commission may give directions and make orders to resolve the difficulty.

(4) Directions and orders under subsection (3)—

(a) have effect subject to any order of the Court; and

(b) have effect despite anything in—

(i) the regulations or the rules of court; or

(ii) the rules of an industrial organisation or any association proposed to be registered as an industrial organisation.

Subdivision 2—Preliminary matters

Federations

392.(1) The existing industrial organisations concerned in a proposed amalgamation may jointly file in the Industrial Registrar's Office an application for recognition as a federation.

(2) The application must—

(a) be filed before an application is filed under section 265 in relation to the amalgamation; and

(b) include such particulars as are prescribed.

(3) If the Commission is satisfied that the industrial organisations intend to file an application under section 398 in relation to the amalgamation within the prescribed period, the Commission must grant the application for recognition as a federation.

(4) If the application is granted, the Industrial Registrar must enter in the register kept under section 80(1)(b) the prescribed details in relation to the federation.

(5) On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Act.

(6) Subsection (5) does not authorise the federation to become a party to an award, industrial agreement, certified agreement or enterprise flexibility agreement.

(7) After the federation is recognised, it may vary its composition by—

(a) including, with the approval of the Commission, another industrial organisation within the federation if the other industrial organisation intends to become concerned in the amalgamation; or

(b) releasing, with the approval of the Commission, an industrial organisation from the federation.

(8) The federation ceases to exist—

(a) on the day on which the amalgamation takes effect; or

(b) if an application under section 398 is not filed in relation to the amalgamation within the prescribed period—on the day after the end of the period; or

(c) if it appears to a Full Bench, on an application by a prescribed person, that the industrial conduct of the federation, or an industrial organisation belonging to the federation, is preventing or hindering the attainment of an object of this Act—on the day the Full Bench so determines.

(9) Nothing in this section limits the right of an industrial organisation belonging to a federation to represent itself or its members.

Use of resources to support proposed amalgamation

393.(1) An existing industrial organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if—

(a) the committee of management of the organisation has resolved

that the organisation should so use its resources; and

(b) the committee of management has given reasonable notice of its resolution to the members of the organisation.

(2) Subsection (1) does not limit any power that the existing industrial organisation has, apart from that subsection, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

Subdivision 3—Commencement of amalgamation procedure

Scheme for amalgamation

394.(1) There is to be a scheme for every proposed amalgamation.

(2) The scheme must contain the following matters—

(a) a general statement of the nature of the amalgamation, identifying the existing industrial organisations concerned and indicating—

(i) if 1 of the existing industrial organisations is the proposed amalgamated organisation—that fact; and

(ii) if an association proposed to be registered as an industrial organisation is the proposed amalgamated organisation—that fact and the name of the association; and

(iii) the proposed deregistering industrial organisations;

(b) if it is proposed to change the name of an existing industrial organisation—particulars of the proposed change;

(c) if it is proposed to alter the eligibility rules of an existing industrial organisation—particulars of the proposed alterations;

(d) if it is proposed to alter any other rules of an existing industrial organisation—particulars of the proposed alterations;

(e) if an association is proposed to be registered as an industrial organisation—the eligibility and other rules of the association;

(f) such other matters as are prescribed.

(3) Subsection (2) does not limit the matters that the scheme may contain.

Alternative scheme for amalgamation

395.(1) If 3 or more existing industrial organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if—

(a) the members of 1 or more of the organisations do not approve the amalgamation; and

(b) the members of 2 or more of the organisations (the **"approving organisations"**) approve, in the alternative, the amalgamation so far as it involves—

(i) the other of the approving organisations; or

(ii) 2 or more of the other approving organisations; and

(c) if 1 of the existing organisations is the proposed amalgamated organisation—that organisation is 1 of the approving organisations;

there is to be an amalgamation involving the approving organisations.

(2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of—

(a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and

(b) the differences between the rules of any association proposed to be registered as an industrial organisation, and any proposed alterations of the rules of the existing industrial organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

Approval by committee of management

396.(1) The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing industrial organisation concerned in the amalgamation.

(2) Despite anything in the rules of an existing industrial organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the

rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

Community of interest declaration

397.(1) The existing industrial organisations concerned in a proposed amalgamation may jointly file in the Industrial Registrar's Office an application for a declaration under this section in relation to the amalgamation.

(2) The application must be filed—

(a) before an application has been filed under section 398 in relation to the amalgamation; or

(b) with the application that is filed under section 398 in relation to the amalgamation.

(3) If the application is filed before an application has been filed under section 398 in relation to the amalgamation, the Commission—

(a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and

(b) must ensure that all industrial organisations are promptly notified of the time and place of the hearing; and

(c) may inform any other person who is likely to be interested of the time and place of the hearing.

(4) If, at the conclusion of the hearing arranged under subsection (3) or section 406 in relation to the proposed amalgamation, the Commission is satisfied that there is a community of interest between the existing industrial organisations in relation to their industrial interests, the Commission must declare that it is so satisfied.

(5) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations of employees in relation to their industrial interests if the Commission is satisfied that a substantial number of members of 1 of the organisations are—

(a) eligible to become members of the other organisation or each of the other organisations; or

(b) engaged in the same work or in aspects of the same or similar work as members of the other organisation or each of the other organisations; or

(c) bound by the same awards, industrial agreements, certified agreements or enterprise flexibility agreements as members of the other organisation or each of the other organisations; or

(d) employed in the same or similar work by employers engaged in the same industry as members of the other organisation or each of the other organisations; or

(e) engaged in work, or in industries, in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

(6) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations of employers in relation to their industrial interests if the Commission is satisfied that a substantial number of members of 1 of the organisations are—

(a) eligible to become members of the other organisation or each of the other organisations; or

(b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or

(c) bound by the same awards as members of the other organisation or each of the other organisations; or

(d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

(7) Subsections (5) and (6) do not limit the circumstances in which the Commission may be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations in relation to their industrial interests.

(8) If—

(a) an application for a declaration under this section in relation to a proposed amalgamation is filed before an application has been

filed under section 398 in relation to the amalgamation; and

(b) a declaration is made under this section in relation to the amalgamation; and

(c) an application is not filed under section 398 in relation to the amalgamation within 6 months after the declaration is made;

the declaration ceases to be in force.

(9) The Commission may revoke a declaration under this section if the Commission is satisfied that there is no longer a community of interest between the industrial organisations concerned in relation to their industrial interests.

Application for approval for submission of amalgamation to ballot

398.(1) The existing industrial organisations concerned in a proposed amalgamation, and any association proposed to be registered as an industrial organisation under the amalgamation, must jointly file in the Industrial Registrar's Office an application for approval for the submission of the amalgamation to ballot.

(2) The application must be accompanied by—

(a) a copy of the scheme for the amalgamation; and

(b) a written outline of the scheme.

(3) Subject to section 415, the outline must, in no more than 3 000 words, provide sufficient information on the scheme to enable members of the existing industrial organisations to make informed decisions in relation to the scheme.

Holding office after amalgamation

399.(1) The rules of—

(a) an association proposed to be registered as an industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation; or

(b) an existing industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation;

may, despite section 339, make provision in relation to—

(c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed deregistering organisations immediately before the amalgamation takes effect; and

(d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the proposed amalgamated organisation immediately before the amalgamation takes effect;

but the rules may not permit an office to be held under subsection (1)(c) or (d) for longer than—

(e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or

(f) the period that ends 2 years after that day;

whichever ends last, without an ordinary election being held in relation to the office.

(2) If—

(a) a person holds an office in an industrial organisation under rules made under subsection (1); and

(b) the organisation is involved in a proposed amalgamation;

the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

(3) The rules of an industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under subsection (1)(c) with elections for other offices in the organisation.

(4) Section 341 does not apply to an office held under rules made under subsection (1).

(5) Section 342 applies to an office held under rules made under subsection (1)(c).

(6) In this section—

"ordinary election" means an election held under rules that comply with section 339.

Application for exemption from ballot

400.(1) The proposed amalgamated organisation under a proposed amalgamation may file in the Industrial Registrar's Office an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

(2) The application must be filed with the application that is filed under section 398 in relation to the amalgamation.

Application for ballot not conducted under s 419

401.(1) An existing industrial organisation concerned in a proposed amalgamation may file in the Industrial Registrar's Office an application for approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 419.

(2) The application must be filed with the application that is filed under section 398 in relation to the amalgamation.

Lodging "yes" case

402.(1) Subject to section 413, an existing industrial organisation concerned in a proposed amalgamation may file a written statement of not more than 2 000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.

(2) The statement must be filed with the application that is filed under section 398 in relation to the amalgamation.

Subdivision 4—Role of the Electoral Commission

Ballots to be conducted by the Electoral Commission

403. All ballots under this Division are to be conducted by the Electoral Commission.

Notification of Electoral Commission

404.(1) If an application is filed under section 398 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the Electoral Commission of the application.

(2) On being notified of the application, the Electoral Commission must immediately take the action that it considers necessary or desirable to enable it to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

Officer of industrial organisation to provide information for ballot etc.

405. An electoral official who is authorised, in writing, by the Electoral Commission for the purposes of a proposed amalgamation may, if it is reasonably necessary for the purposes of any ballot that may be required or is required in relation to the amalgamation, by written notice, require an officer or employee of the industrial organisation concerned or a branch of the industrial organisation concerned—

(a) to give to the electoral official, within a reasonable period of not less than 7 days, and in a reasonable way, specified in the notice, any information within the knowledge or in the possession of the person; and

(b) to produce or make available to the electoral official, at a reasonable time and place specified in the notice, any documents—

(i) in the custody or under the control of the person; or

(ii) to which the person has access.

Subdivision 5—Procedure for approval of amalgamation

Fixing hearing for amalgamation etc.

406.(1) If an application is filed under section 398 for a proposed amalgamation, the Commission must immediately fix a time and place for hearing submissions about—

(a) the granting of an approval for the submission of the amalgamation to ballot; and

(b) if an application for a declaration under section 397 was filed with the application—the making of a declaration under the section for the amalgamation; and

(c) if an application was filed under section 400 for exemption from the requirement that a ballot be held for the amalgamation—the granting of the exemption; and

(d) if an application was filed under section 401 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 419—the granting of the approval.

(2) The Commission—

(a) must ensure all industrial organisations are promptly notified of the time and place of the hearing; and

(b) may notify other persons who are likely to be interested of the time and place of the hearing.

(3) The Commission must also ensure the members of the proposed amalgamated organisation are promptly notified of the time and the place of the hearing if—

(a) the hearing is about the granting of an exemption mentioned in subsection (1)(c); and

(b) section 417 (Exemption from ballot—recognition of federal ballot) applies to the application.

(4) A notice under subsection (3)—

(a) must inform the members of the right to object mentioned in section 417(3); and

(b) may be given in 1 of the following ways—

(i) personally or by post addressed to the member's residential address shown in the organisation's register of members;

(ii) in a journal published by the organisation that is circulated generally to the organisation's members;

(iii) by publication in a newspaper circulating throughout the State.

Submissions at amalgamation hearings

407.(1) Submissions at a hearing arranged under section 397(3) or 406 may only be made under this section.

(2) Submissions may be made by the applicants.

(3) Submissions may be made by another person only with the leave of the Commission and may be made by the person only in relation to a prescribed matter.

Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.

408.(1) At the hearing arranged under section 406, the Commission must consider whether the application satisfies the following conditions—

(a) that the amalgamation does not involve the registration of an association as an industrial organisation; and

(b) that a person who is not eligible for membership of an existing industrial organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and

(c) that any proposed alteration of the name of an existing industrial organisation concerned in the amalgamation will not result in the organisation having a name that—

(i) is the same as the name of another industrial organisation or an organisation within the meaning of the Commonwealth Act; or

(ii) is so similar to the name of another industrial organisation or an organisation within the meaning of the Commonwealth Act as to be likely to cause confusion;

without the written permission of the other organisation; and

(d) that any proposed alterations of the rules of an existing industrial organisation comply with, and are not contrary to, this Act and awards, industrial agreements, certified agreements and enterprise flexibility agreements and are not contrary to law; and

(e) that any proposed deregistration of an existing industrial organisation complies with this Act and is not otherwise contrary to law.

(2) If the Commission considers the application satisfies the conditions, the Commission must grant the application and—

(a) approve the submission of the amalgamation to ballot; or

(b) if a successful application is made for an exemption from the requirement that the ballot be held—grant an exemption under section 416 or 417.

(3) If it is not satisfied, the Commission must, subject to subsections (4) and (8), refuse the application.

(4) If, apart from this subsection, the Commission would be required to refuse the application, the Commission may—

(a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or

(b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must grant the application under subsection (2).

(5) A permission under subsection (4)(a)—

(a) may, despite anything in the rules of an existing industrial

organisation concerned in the proposed amalgamation, authorise the industrial organisation to alter the scheme (including any proposed alterations of the rules of the industrial organisation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

(6) If—

(a) the Commission—

(i) gives a permission under subsection (4)(a) subject to conditions; or

(ii) accepts an undertaking under subsection (4)(b); and

(b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;

the Commission may—

(c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the proposed amalgamation; or

(d) give directions and orders—

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

(7) Subsection (6) does not limit the powers that the Commission has apart from that subsection.

(8) If, apart from this subsection, the Commission would be required to refuse the application, the Commission may adjourn the proceeding.

(9) Subsection (8) does not limit the power of the Commission to adjourn the proceeding at any stage.

Objections in relation to amalgamation involving extension of eligibility rules etc.

409.(1) If an objection to a matter involved in a proposed amalgamation is about the extension of eligibility rules, the objection may only be made to the Commission under this section.

(2) The objection may only be made if the Commission has refused to approve, under section 408, the submission of the amalgamation to ballot.

(3) Objection may be made by a prescribed person on a prescribed ground.

(4) The Commission is to hear, as prescribed, all objections properly made to the amalgamation.

Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.

410.(1) If, after the prescribed time allowed for making objections under section 409 in relation to a proposed amalgamation and after hearing any objections properly made to the amalgamation, the Commission—

(a) finds that no properly made objection is justified; and

(b) is satisfied that, so far as the amalgamation involves—

(i) the registration of an association; or

(ii) a change in the name of an industrial organisation; or

(iii) an alteration of the rules of an industrial organisation; or

(iv) the deregistration of an industrial organisation under this Division;

it complies with, and is not contrary to, this Act and awards, industrial agreements, certified agreements and enterprise flexibility agreements and is not otherwise contrary to law;

the Commission must approve the submission of the amalgamation to ballot or, if a successful application is made for an exemption from the requirement that a ballot be held, grant an exemption under section 416 or 417.

(2) If the Commission is not satisfied, the Commission must, subject to

subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

(3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot or, if a successful application is made for an exemption from the requirement that a ballot be held, grant an exemption under section 416 or 417, the Commission may—

(a) permit the applicants to alter the scheme for the amalgamation, including—

(i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or

(b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including—

(i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot or, if a successful application is made for an exemption from the requirement that a ballot be held, grant an exemption under section 416 or 417.

(4) A permission under subsection (3)(a)(i)—

(a) may, despite anything in the rules of any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation, authorise the existing industrial organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and

(b) may make provision in relation to the procedure that, despite anything in the rules of the existing industrial organisations or the rules of the association, may be followed, or is to be followed, by

the committees of management in that regard; and

(c) may be given subject to conditions.

(5) A permission under subsection (3)(a)(ii)—

(a) may, despite anything in the rules of an existing industrial organisation concerned in the proposed amalgamation, authorise the industrial organisation to alter the scheme (including any proposed alterations of the rules of the industrial organisation, but not including the scheme so far as it affects any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

(6) If—

(a) the Commission—

(i) gives a permission under subsection (3)(a) subject to conditions; or

(ii) accepts an undertaking under subsection (3)(b); and

(b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;

the Commission may—

(c) amend the scheme for the amalgamation, including—

(i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or

(d) give directions and orders—

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in

relation to the amalgamation.

(7) Subsection (6) does not limit the powers that the Commission has apart from that subsection.

(8) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.

(9) Subsection (8) does not limit the power of the Commission to adjourn the proceeding at any stage.

Fixing commencing and closing days of ballot

411.(1) If the Commission approves, under section 408 or 410, the submission of a proposed amalgamation to ballot, the Commission must, after consulting with the Electoral Commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.

(2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless—

(a) the Commission is satisfied that the Electoral Commission requires a longer period to make the arrangements necessary to enable it to conduct the ballot; or

(b) the existing industrial organisations concerned in the amalgamation request the Commission to fix a later day.

(3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.

(4) The Commission may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

(5) Subsection (4) does not limit the powers of the person conducting a ballot under this Division.

Roll of voters for ballot

412. The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the Commission fixes the

commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later)—

(a) have the right under the rules of the existing industrial organisation concerned to vote at such a ballot; or

(b) if the rules of the existing industrial organisation concerned do not then provide for the right to vote at such a ballot—have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system.

"Yes" case and "no" case for amalgamation

413.(1) If an existing industrial organisation concerned in a proposed amalgamation files a statement under section 402 in relation to the amalgamation, the Commission may permit the organisation to alter the statement.

(2) Not later than 7 days before the day fixed under section 406 for hearing submissions in relation to the amalgamation, members of the industrial organisation (whose number is at least the required minimum number) may file in the Industrial Registrar's Office a written statement of not more than 2 000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

(3) The Commission may permit a statement filed under subsection (2) to be altered.

(4) Subject to subsections (5), (6) and (7), a copy of the statements mentioned in subsections (1) and (2), or, if the statements have been altered or amended, the statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

(5) If 2 or more statements in opposition to the amalgamation are properly filed in the Industrial Registrar's Office under subsection (2)—

(a) the Commission must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who filed each of the statements, a written statement of not more than 2 000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting

fairly the substance of the arguments against the amalgamation contained in both or all the statements; and

(b) the statement prepared by the Commission must accompany the ballot paper for the amalgamation as if it had been the sole statement filed under subsection (2).

(6) The Commission may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Act.

(7) A statement mentioned in subsection (1) or (2) may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(9) Subsections (4) and (5)(b) do not apply to a ballot that is not conducted under section 419.

(10) In this section—

"required minimum number", in relation to an industrial organisation, means—

(a) 5% of the total number of members of the industrial organisation on the day on which the application was filed under section 398 in relation to the proposed amalgamation concerned; or

(b) 1 000;

whichever is the lesser.

Alteration and amendment of scheme

414.(1) The Commission may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing industrial organisations concerned in the amalgamation to alter the scheme for the amalgamation, including—

(a) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(b) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation.

(2) A permission under subsection (1)(a)—

(a) may, despite anything in the rules of any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation, authorise the existing industrial organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and

(b) may make provision in relation to the procedure that, despite anything in the rules of the existing industrial organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and

(c) may be given subject to conditions.

(3) A permission under subsection (1)(b)—

(a) may, despite anything in the rules of an existing industrial organisation concerned in a proposed amalgamation, authorise the industrial organisation to amend the scheme (including any proposed alterations of the rules of the industrial organisation, but not including the scheme so far as it affects any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

(4) If—

(a) the Commission gives a permission under subsection (1) subject to conditions; and

(b) the conditions are breached;

the Commission may—

(c) amend the scheme for the amalgamation, including—

(i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or

(d) give directions and orders—

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

(5) Subsection (4) does not limit the powers that the Commission has apart from that subsection.

(6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

Outline of scheme for amalgamation

415.(1) The outline of the scheme for a proposed amalgamation may, if the Commission approves, consist of more than 3 000 words.

(2) The outline may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(3) The Commission—

(a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing industrial organisations concerned in the amalgamation to alter the outline; and

(b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Act.

Exemption from ballot—number of members

416.(1) If—

(a) an application was filed under section 400 for exemption from the requirement that a ballot be held in relation to a proposed

amalgamation; and

(b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant industrial organisation on the day on which the application was filed;

the Commission must, at the conclusion of the hearing arranged under section 406 in relation to the amalgamation, grant the exemption unless the Commission considers that, in the special circumstances of the case, the exemption should be refused.

(2) If the exemption is granted, the members of the applicant industrial organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

Exemption from ballot—recognition of federal ballot

417.(1) This section applies if—

(a) an industrial organisation's counterpart federal body has amalgamated with another industrial organisation's counterpart federal body after each body has—

(i) conducted a ballot under the Commonwealth Act (the **"federal ballot"**); or

(ii) been granted an exemption under the Commonwealth Act; and

(b) the industrial organisations propose to amalgamate under this Act.

(2) The industrial organisation may apply to the Commission under section 400 for an exemption from the requirement that a ballot of its members be held for the amalgamation.

(3) Section 400 applies to the industrial organisation, as if it were the proposed amalgamated organisation, with all changes that are necessary or prescribed under the regulations.

(4) A member of the industrial organisation may object to the exemption—

(a) on the grounds that the exemption would detrimentally affect the objector's interests; and

(b) in the way prescribed by regulation.

(5) At the conclusion of the hearing arranged under section 406 about the amalgamation, the Commission may grant the exemption only if satisfied that—

(a) of the Queensland members who voted in the federal ballot, the percentage who approved the amalgamation was equivalent to the percentage required under section 420 (that is, if the Queensland members were the voters in an amalgamation to which the section applied); and

(b) if the State and Federal bodies' eligibility rules differ—the interests of the members of the industrial organisation who were not eligible to vote in the federal ballot have not been detrimentally affected; and

(c) objections about the possible extension of eligibility rules have been resolved; and

(d) in the Federal jurisdiction, all likely legal challenges (including inquiries under the Commonwealth Act) have ended.

(6) If satisfied of the matters mentioned in subsection (5), the Commission must grant the exemption unless it considers the exemption should be refused in the special circumstances of the case.

(7) If the exemption is granted, the members of the industrial organisation are taken to have approved the proposed principal amalgamation and any proposed alternative amalgamation.

(8) For this section a federal organisation or a branch or part of a federal organisation is a **"counterpart federal body"** of an industrial organisation if a substantial number of members of each are—

(a) members or eligible to be members of both; or

(b) engaged in the same work, in aspects of the same work or in similar work; or

(c) employed in the same or similar work by employers engaged in the same industry; or

(d) engaged in work or in industries in relation to which there is a community of interest.

Approval for ballot not conducted under s 419

418. If—

(a) an application was filed under section 401 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 419; and

(b) the proposal provides for—

(i) the ballot to be by secret ballot of the members of the industrial organisation; and

(ii) the ballot to be held at duly constituted meetings of the members; and

(iii) the ballot to be conducted by the Electoral Commission; and

(iv) the members to be given at least 21 days notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and

(v) the distribution or publication of—

(A) the outline of the scheme for the amalgamation; and

(B) the statements mentioned in section 413(1), (2) or (5); and

(vi) absent voting; and

(vii) the ballot to be otherwise conducted in accordance with the regulations; and

(c) the Commission is satisfied, after consulting with the Electoral Commissioner—

(i) that the proposal is practicable; and

(ii) that approval of the proposal is likely—

(A) to result in participation by members of the industrial organisation that is fuller than the participation that would have been likely to have resulted if the ballot

were conducted under section 419; and

(B) to give the members of the industrial organisation an adequate opportunity to vote on the amalgamation without intimidation;

the Commission must, at the conclusion of the hearing arranged under section 406 in relation to the amalgamation, approve the proposal.

Secret postal ballot of members

419.(1) If the Commission approves, under section 408 or 410, the submission of a proposed amalgamation to ballot, the Electoral Commission must, in relation to each of the existing industrial organisations concerned in the amalgamation, conduct a secret postal ballot of the members of the industrial organisation on the question whether they approve the proposed principal amalgamation.

(2) If the scheme for the amalgamation contains a proposed alternative provision, the Electoral Commission must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing industrial organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

(3) If, under subsection (2), the Electoral Commission is required to conduct 2 or more ballots of the members of an industrial organisation at the same time, the same ballot paper is to be used for both or all the ballots.

(4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Act.

(5) A copy of the outline of the scheme for the amalgamation as filed under this Division, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

(6) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

(7) This section does not apply to an existing industrial organisation

concerned in the amalgamation if—

(a) the Commission has granted the industrial organisation an exemption under section 416 from the requirement that a ballot be held in relation to the proposed amalgamation; or

(b) the Commission has approved under section 418 a proposal by the industrial organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

Determination of approval of amalgamation by members

420. If the question of a proposed amalgamation is submitted to a ballot of the members of an existing industrial organisation concerned in the amalgamation, the members of the industrial organisation approve the amalgamation if, and only if—

(a) if a declaration under section 397 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or

(b) in any other case—

(i) at least 25% of the members on the roll of voters cast a vote in the ballot; and

(ii) more than 50% of the formal votes cast are in favour of the amalgamation.

Further ballot if amalgamation not approved

421.(1) If—

(a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing industrial organisation; and

(b) the members of the industrial organisation do not approve the amalgamation;

the existing industrial organisations concerned in the amalgamation may jointly file in the Industrial Registrar's Office a further application under section 398 for approval for the submission of the amalgamation to ballot.

(2) If the application is filed within 1 year after the result of the ballot is

declared, the Commission may order—

(a) that any step in the procedure provided by this Division be dispensed with in relation to the proposed amalgamation; or

(b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;

and the Commission may give such directions and make such further orders as it considers necessary or desirable.

(3) Subsection (2) does not by implication require a further application under section 398 to be filed within the 1 year period mentioned in that subsection.

Inquiries into irregularities

422.(1) Not later than 30 days after the result of a ballot under this Division is declared, application may be made to the Commission, as prescribed, for an inquiry by the Commission into alleged irregularities in relation to the ballot.

(2) If the Commission finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Commission may—

(a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or

(b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;

and may make such further orders as it considers necessary or desirable.

(3) A regulation may make provision with respect to the procedure for inquiries by the Commission into alleged irregularities in relation to ballots under this Division, and for matters relating to, or arising out of, inquiries.

Approval of amalgamation

423.(1) If the members of each of the existing industrial organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Division.

(2) If—

(a) the scheme for a proposed amalgamation contains an alternative provision; and

(b) the members of 1 or more of the existing industrial organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and

(c) the members of 2 or more of the industrial organisations (the **"approving organisations"**) approve a proposed alternative amalgamation; and

(d) if 1 of the existing industrial organisations is the proposed amalgamated organisation—that organisation is 1 of the approving organisations;

the proposed alternative amalgamation is approved for the purposes of this Division.

Expenses of ballot

424. The expenses of a ballot conducted by the Electoral Commission under this Division are payable by the State.

Subdivision 6—Amalgamation taking effect

Action to be taken after ballot

425.(1) The scheme of a proposed amalgamation that is approved for the purposes of this Division takes effect in accordance with this section.

(2) If the Commission is satisfied—

(a) that the period, or the latest of the periods, within which application may be made to the Commission under section 422 in relation to the amalgamation has ended; and

(b) that any application to the Commission under section 422 has been disposed of, and the result of any fresh ballot ordered by the Commission has been declared; and

(c) that there are no proceedings (other than civil proceedings)

pending against any of the existing industrial organisations concerned in the amalgamation in relation to—

(i) contraventions of this Act or another law; or

(ii) breaches of—

(A) awards, industrial agreements, certified agreements or enterprise flexibility agreements; or

(B) orders made under this or another Act;

the Commission must, after consultation with the existing industrial organisations, by notice published as prescribed, fix a day as the day on which the amalgamation is to take effect.

(3) On the amalgamation day—

(a) if the proposed amalgamated organisation is not already registered, the Industrial Registrar must enter, in the register kept under section 80(1)(b), the prescribed particulars in relation to the organisation, and the date of the entry; and

(b) any proposed alteration of the rules of an existing industrial organisation concerned in the amalgamation takes effect; and

(c) the Commission must deregister the proposed deregistering industrial organisations; and

(d) the persons who, immediately before that day, were members of a proposed deregistering industrial organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

Assets and liabilities of deregistered industrial organisation become assets and liabilities of amalgamated organisation

426.(1) On the amalgamation day, all assets and liabilities of a deregistered industrial organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.

(2) For all purposes and in all proceedings, an asset or liability of a deregistered organisation existing immediately before the amalgamation day

is taken to have become an asset or liability of the amalgamated organisation on that day.

Effect of amalgamation on existing decisions of Commission

427. On and from the amalgamation day—

(a) a decision of the Commission that was, immediately before that day, binding on a proposed deregistering industrial organisation and its members becomes, by force of this section, binding on the proposed amalgamated organisation and its members; and

(b) the decision has effect for all purposes (including the obligations of employers and industrial organisations of employers) as if references in the decision to a deregistered organisation included references to the amalgamated organisation.

Instruments

428.(1) On and after the amalgamation day, an instrument to which this Division applies continues, subject to subsection (2), in full force and effect.

(2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or happening on or after that day as if a reference in the instrument to a deregistered organisation were a reference to the amalgamated organisation.

Pending proceedings

429. If, immediately before the amalgamation day, a proceeding to which this Division applies was pending in a court or before the Commission—

(a) the amalgamated organisation is, on that day, substituted for each deregistered organisation as a party; and

(b) the proceeding is to continue as if the amalgamated industrial organisation were, and had always been, the deregistered organisation.

Subdivision applies despite laws and agreements prohibiting transfer etc.

430.(1) This Subdivision applies, and must be given effect to, despite anything in—

(a) any other Act; or

(b) any contract, deed, undertaking, agreement or other instrument.

(2) Nothing done by this Subdivision, and nothing done by a person because of, or for a purpose connected with or arising out of this Subdivision—

(a) is to be regarded as—

(i) placing an industrial organisation or other person in breach of contract or confidence; or

(ii) otherwise making an industrial organisation or other person guilty of a civil wrong; or

(b) is to be regarded as placing an industrial organisation or other person in breach of—

(i) any Act; or

(ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or

(c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.

(3) Without limiting subsection (1), if, but for this section, the consent of a person would be necessary in order to give effect to this Subdivision in a particular respect, the consent is taken to have been given.

Amalgamated organisation to take steps necessary to carry out amalgamation

431.(1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Subdivision in relation to the amalgamation, are fully effective.

(2) The Commission may, on the application of an interested person,

make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

Certificates in relation to land and interests in land

432.(1) If land or an interest in land becomes, under this Subdivision, land or an interest in land of the amalgamated organisation, a certificate that—

(a) is signed by an authorised person; and

(b) identifies the land or interest, whether by reference to a map or otherwise; and

(c) states that the land or interest has, under this Subdivision, become land or an interest in land of the amalgamated organisation;

is evidence that the land or interest is an asset of the amalgamated organisation.

(2) If the certificate is filed with the Registrar of Titles, the registrar must—

(a) register the matter in the same way as dealings in land or interests in land of that kind are registered; and

(b) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State.

(3) If the certificate is filed with the person or authority who has, under the law of another State or a Territory, responsibility for keeping a register dealing with land registration, the person or authority may, if the person or authority is permitted by law to do so—

(a) register the matter in the same way as dealings in land or interests in land of that kind are registered; and

(b) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in

the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State or Territory.

Certificates in relation to charges

433.(1) If the amalgamated organisation under an amalgamation becomes, under this Subdivision, the holder of a charge, a certificate that—

(a) is signed by an authorised person; and

(b) identifies the charge; and

(c) states that the amalgamated organisation has, under this Subdivision, become the holder of the charge;

is evidence that the charge is an asset of the amalgamated organisation.

(2) If the certificate is filed with the Australian Securities Commission, the Commission may, if it is permitted by law to do so—

(a) register the matter in the same way as assignments of charges are registered; and

(b) deal with, and give effect to, the certificate;

as if it were a notice of assignment of the charge that had been properly filed with that Commission.

Certificates in relation to shares etc.

434.(1) If the amalgamated organisation becomes, under this Subdivision, the holder of a share, debenture or interest in a company, a certificate that—

(a) is signed by an authorised person; and

(b) identifies the share, debenture or interest; and

(c) states that the amalgamated organisation has become, under this Subdivision, the holder of the share, debenture or interest;

is evidence that the share, debenture or interest is an asset of the amalgamated organisation.

(2) If the certificate is delivered to the company, the company may—

(a) register the matter in the same way as transfers of shares,

debentures or interests, as the case may be, in the company are registered; and

(b) complete all the appropriate certificates, debentures or other documents in relation to the matter; and

(c) deliver the completed certificates, debentures or other documents to the amalgamated organisation;

as if the certificate were a proper instrument of transfer.

Certificates in relation to other assets

435.(1) If an asset (other than an asset to which section 432, 433 or 434 applies) becomes, under this Subdivision, an asset of the amalgamated organisation, a certificate that—

(a) is signed by an authorised person; and

(b) identifies the asset; and

(c) states that the asset has, under this Subdivision, become an asset of the amalgamated organisation;

is evidence that the asset is an asset of the amalgamated organisation.

(2) If the certificate is given to the person or authority who has, under a law of the State, responsibility for keeping a register in relation to assets of that kind, the person or authority must—

(a) register the matter in the same way as transactions in relation to assets of that kind are registered; and

(b) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

(3) If the certificate is given to the person or authority who has, under a law of another State, a Territory or the Commonwealth, responsibility for keeping a register in relation to assets of that kind, the person or authority may, if the person or authority is permitted by law to do so—

(a) register the matter in the same way as transactions in relation to assets of that kind are registered; and

(b) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

Commission may resolve difficulties

436.(1) If any difficulty arises in relation to the application of this Subdivision to a particular matter, the Commission may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this Act or another Act.

Subdivision 7—Validation

Validation of certain acts done in good faith

437.(1) Subject to this section and to section 439, an act done in good faith for the purposes of a proposed or completed amalgamation by—

(a) an industrial organisation or association concerned in the amalgamation; or

(b) the committee of management of such an organisation or association; or

(c) an officer of such an organisation or association;

is valid despite any invalidity that may later be discovered in or in connection with the act.

(2) For the purposes of this section—

(a) an act is treated as done in good faith until the contrary is proved; and

(b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and

(c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was

known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and

(d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.

(3) This section applies—

(a) to an act whenever done (including an act done before the commencement of this section); and

(b) to an act done to or by an association before it became an industrial organisation.

(4) Nothing in this section affects—

(a) the operation of an order of the Court or the Commission made before the commencement of this section; or

(b) the operation of section 343, 382, 383, 384, 385, 422, 431 or 436.

Validation of certain acts after 4 years

438.(1) Subject to subsection (2) and section 439, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by—

(a) an industrial organisation or association concerned in the amalgamation; or

(b) the committee of management of such an organisation or association; or

(c) an officer of such an organisation or association;

the act is taken to have complied with this Division and the rules of the industrial organisation or association.

(2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar act of the Court, any other court or the Commission made before the end of that 4 years.

(3) This section applies—

(a) to an act whenever done (including an act done before the

commencement of this section); or

(b) to an act done to or by an association before it became an industrial organisation.

Orders affecting application of s 437 or 438

439.(1) If, on an application for an order under this section, the Commission is satisfied that the application of section 437 or 438 (the **"relevant section"**) in relation to an act would do substantial injustice, having regard to the interests of—

(a) the industrial organisation or association concerned; or

(b) members or creditors of the industrial organisation or association concerned; or

(c) persons having dealings with the industrial organisation or association concerned;

the Commission must, by order, declare accordingly.

(2) If the declaration is made, the relevant section does not apply, and is taken never to have applied, in relation to the act specified in the declaration.

(3) The Commission may make an order under subsection (1) on the application of the industrial organisation or association concerned, a member of the industrial organisation or association concerned or any other person having a sufficient interest in relation to the industrial organisation or association concerned.

Commission may make orders in relation to consequences of invalidity

440.(1) An industrial organisation or association, a member of an industrial organisation or association or any other person having a sufficient interest in relation to an industrial organisation or association may apply to the Commission for a determination of the question whether an invalidity has happened in a proposed or completed amalgamation concerning the industrial organisation or association.

(2) On an application under subsection (1), the Commission may make such declaration as it considers proper.

(3) If, in a proceeding under subsection (1), the Commission finds that an invalidity of the kind mentioned in that subsection has happened, the Commission may make such orders as it considers appropriate—

(a) to rectify the invalidity or cause it to be rectified; or

(b) to negative, modify or cause to be modified the consequences in law of the invalidity; or

(c) to validate any act, matter or thing that is made invalid by or because of the invalidity.

(4) If an order is made under subsection (3), the Commission may give such ancillary or consequential directions as it considers appropriate.

(5) The Commission must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to—

(a) the industrial organisation or association concerned; or

(b) any member or creditor of the industrial organisation or association concerned; or

(c) any person having dealings with the industrial organisation or association concerned.

(6) This section applies—

(a) to an invalidity whenever happening (including an invalidity that happened before the commencement of this section); and

(b) to an invalidity happening in relation to an association before it became an industrial organisation.

Subdivision 8—Miscellaneous

Ballot papers etc. from ballots to be preserved

441. If a ballot for a proposed amalgamation is held under this Division, the Electoral Commission must take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the ballot are preserved and kept by the Electoral Commission for a period of 1 year after the ballot.

No action for defamation in certain cases

442.(1) A proceeding (whether civil or criminal) for defamation does not lie against—

(a) the State; or

(b) an electoral official; or

(c) a person acting at the request or direction of an electoral official;

in relation to the printing or publication of a document by the official or person in the course of the conduct of a proposed amalgamation under this Division.

(2) In this section—

"document" means a document or a copy of a document authorised by, or on behalf of, an industrial organisation or association that is seeking amalgamation.

Division 10—Cancellation of registration

Cancellation of registration for industrial conduct

443.(1) Any industrial organisation, person interested, the Industrial Registrar, or the Minister, may apply to the Full Industrial Court for an order cancelling the registration of an industrial organisation on the ground that—

(a) the conduct of—

(i) the industrial organisation (in relation to its continued breach of any award, order of the Industrial Commission, industrial agreement, certified agreement or enterprise flexibility agreement, or its continued failure to ensure that its members comply with and observe an award or such an order or agreement, or in any other respect); or

(ii) a substantial number of the members of the industrial organisation, or of a section or class of members of the industrial organisation (in relation to their continued breach of any award, order of the Industrial Commission, industrial agreement, certified agreement or enterprise flexibility

agreement, or in any other respect);

has prevented or hindered the achievement of any of the objects of this Act; or

(b) the industrial organisation, or a substantial number of the members of the industrial organisation, or of a section or class of members of the industrial organisation, has engaged in industrial action that has prevented, hindered or interfered with trade or commerce or the provision of any public service; or

(c) the industrial organisation, or a substantial number of the members of the industrial organisation, or of a section or class of members of the industrial organisation, has been, or is, engaged in industrial action that has had, is having, or is likely to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community.

(2) An industrial organisation in relation to which an application is made under subsection (1) is to be given an opportunity of being heard by the Full Industrial Court.

(3) If the Full Industrial Court—

(a) finds that a ground of the application has been established; and

(b) does not consider that it would be unjust to do so, having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the industrial organisation in relation to the matters;

the Court, subject to subsection (4) and section 444, is to cancel the registration of the industrial organisation.

(4) If—

(a) the Full Industrial Court finds that a ground of the application has been established; and

(b) that finding is made, wholly or mainly because of the conduct of a section or class of members of the industrial organisation;

the Court may, if it considers it just to do so, instead of cancelling the registration of the industrial organisation under subsection (3), by order—

(c) determine alterations of the eligibility rules of the industrial

organisation so as to exclude from eligibility for membership of the industrial organisation persons belonging to the section or class; or

(d) exclude any person from membership of the industrial organisation.

(5) If the Full Industrial Court cancels the registration of an industrial organisation, the Court may direct that an application by the former industrial organisation to be registered as an industrial organisation is not to be dealt with under this Act before the end of a specified period.

Orders where cancellation of registration deferred

444.(1) If the Full Industrial Court finds that a ground of an application under section 443 has been established, the Court may, if it considers it just to do so, instead of cancelling the registration of the industrial organisation concerned under that section, or making an order under that section, exercise 1 or more of the powers prescribed by subsection (2) of this section.

(2) The powers that may be exercised by the Full Industrial Court, by order, under subsection (1) are as follows—

(a) the power to suspend, to the extent specified in the order, any of the rights, privileges or capacities of the industrial organisation, or of all or any of its members, as such members, under this Act or under awards, orders made under this Act, industrial agreements, certified agreements or enterprise flexibility agreements;

(b) the power to give directions as to the exercise of any rights, privileges or capacities that have been suspended;

(c) the power to make provision restricting the use of the funds or property of the industrial organisation, or a branch of the industrial organisation, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.

(3) Where the Full Industrial Court exercises a power prescribed by subsection (2), it is to defer the determination of the question whether to cancel the registration of the industrial organisation concerned until—

(a) the orders made in the exercise of the power cease to be in force; or

(b) on application by a party to the proceedings, the Full Industrial Court considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of any order and to any other relevant circumstance;

whichever is earlier.

(4) An order made in the exercise of a power prescribed by subsection (2) has effect notwithstanding the rules of the industrial organisation concerned, or branch of the industrial organisation.

(5) An order made in the exercise of a power prescribed by subsection (2)—

(a) may be revoked by further order of the Full Industrial Court, on application by a party to the proceedings in which the first order was made; and

(b) unless sooner revoked, ceases to be in force—

(i) at the end of 6 months after it comes into force; or

(ii) at the end of such longer period after it comes into force as is ordered by the Full Industrial Court on application by a party to the proceedings, made while the order remains in force.

Cancellation of registration on other grounds

445. The Full Industrial Court may cancel the registration of an industrial organisation—

(a) upon the happening of any event declared by the industrial organisation's rules to be the termination of the industrial organisation; or

(b) on application by any industrial organisation or person interested, or the Minister, if the Full Industrial Court is satisfied that—

(i) the industrial organisation was registered by mistake; or

(ii) the rules of an industrial organisation—

(A) do not provide for admission of members to the industrial organisation with reasonable facility; or

(B) impose unreasonable conditions on continuance of any person's membership of the industrial organisation;

or the rules are, or the manner in which they are administered is, tyrannical or oppressive; or

(iii) a majority of the members of the industrial organisation consent to the cancellation of the registration of the industrial organisation; or

(c) on the motion of the Industrial Registrar, if the Full Industrial Court is satisfied that the industrial organisation is defunct.

Directions as to cancellation

446. If the Full Industrial Court cancels the registration of an industrial organisation pursuant to the provisions of section 112, 443 or 445, it may give such directions to give effect to the cancellation as it thinks fit.

Cancellation to be recorded

447. Where the registration of an industrial organisation is cancelled, the Industrial Registrar is to enter the cancellation, and the date of cancellation, in the register kept under section 80(1).

Consequences of cancellation of registration

448. The cancellation of the registration of an industrial organisation has the following consequences—

(a) the industrial organisation ceases to be an industrial organisation and a body corporate, but does not, because of the cancellation, cease to be an association;

(b) the cancellation does not relieve the association or any of its members from any penalty or liability incurred by the industrial organisation or those members before the cancellation;

(c) on and from the cancellation, the association and its members are

not entitled to the benefits of an award, order of the Industrial Commission, industrial agreement, certified agreement or enterprise flexibility agreement that was binding on the association, as an industrial organisation, and on its members;

(d) the Industrial Commission may, on application by an industrial organisation or person interested, make such order as the Commission considers appropriate about the other effects (if any) of an award, order of the Commission, industrial agreement, certified agreement or enterprise flexibility agreement on the association and its members;

(e) subject to any order made under paragraph (d), an award, order of the Industrial Commission, or industrial agreement that was binding on the association, as an industrial organisation, and on its members ceases in all other respects to have effect in relation to the association and its members at the end of 21 days following the cancellation;

(f) the Full Industrial Court may, on application by a person interested, make such order as it considers appropriate in relation to the satisfaction of the debts and liabilities of the industrial organisation out of the property of the association;

(g) the property of the industrial organisation is, subject to any order made under paragraph (f), the property of the association and is to be held and applied for the purposes of the association under the rules of the industrial organisation so far as they can still be carried out or observed.

Division 11—Accounts and audit

Application of Division

449.(1) Every industrial organisation to which the Companies (Queensland) Code applies is to lodge with the Industrial Registrar, within 14 days following the date of the annual general meeting of the industrial organisation, a true copy of the industrial organisation's—

(a) annual report;

(b) annual accounts;

(c) auditor's report;

for the preceding financial year of the industrial organisation.

(2) Except as is prescribed by subsection (1), this Division applies to all industrial organisations, other than industrial organisations to which the Companies (Queensland) Code applies.

Interpretation of Division

450.(1) If the rules of an industrial organisation change the period that is the financial year of the industrial organisation, the period between the commencement of the first financial year after the change and the end of the preceding financial year is, for the purposes of this Division, to be taken to be a financial year of the industrial organisation.

(2) This Division does not apply, in relation to an association that becomes registered as an industrial organisation, in relation to any financial year before the first financial year of the industrial organisation that begins after the date of registration.

Application of this Division to industrial organisations with branches

451.(1) This Division, other than this section and sections 460(5) and 463, applies in relation to an industrial organisation, and to every branch of the industrial organisation, as if—

(a) the financial affairs (including transactions) of a branch did not form part of the financial affairs of the industrial organisation; and

(b) the branch were an industrial organisation.

(2) For the purposes of the application of this Division, in accordance with subsection (1)(b), in relation to a branch of an industrial organisation—

(a) the members of the industrial organisation constituting the branch are to be taken to be members of the branch;

(b) employees of the industrial organisation employed in relation to the branch (whether or not they are also employed in relation to any other branch) are to be taken to be employees of the branch;

(c) a journal published by the industrial organisation is taken to be a journal published by the branch.

(3) On application by an industrial organisation that has branches, if the Industrial Registrar is satisfied—

(a) that the committee of management of the industrial organisation has, by the rules of the industrial organisation or established practice not inconsistent with the rules, the management and control of the assets of the industrial organisation (including assets of the branches of the industrial organisation) or otherwise has effective control over the financial management of the industrial organisation; and

(b) that, if subsections (1) and (2) did not apply in relation to the industrial organisation, it would be able to comply with the requirements of this Division;

the Industrial Registrar may issue to the industrial organisation a certificate to that effect, and, until the certificate is revoked under subsection (4), subsections (1) and (2) do not apply in relation to the industrial organisation.

(4) The Industrial Registrar may at any time, by notice in writing, revoke a certificate issued to an industrial organisation under subsection (3) if the registrar is no longer satisfied, in relation to the industrial organisation, of the matters referred to in that subsection.

Industrial organisation to keep proper accounting records

452.(1) An industrial organisation—

(a) is to keep such accounting records as correctly record and explain the transactions and financial position of the industrial organisation, including such records as are prescribed; and

(b) is to keep its accounting records in such a manner as will enable accounts and statements to be prepared from them under section 453; and

(c) is to keep its accounting records in such a manner as will enable the accounts of the industrial organisation to be conveniently and properly audited under this Division.

(2) Accounting records of an industrial organisation may, so far as they relate to the income and expenditure of the industrial organisation, be kept on a cash basis or accrual basis, at the option of the industrial organisation.

(3) If an industrial organisation keeps the accounting records referred to in subsection (1) on an accrual basis, it may keep the accounting records for its membership subscriptions separately on a cash basis.

(4) An industrial organisation is to retain the accounting records kept under subsection (1) for a period of 7 years following the completion of the transactions to which they relate.

Industrial organisation to prepare accounts

453.(1) As soon as is practicable after the end of each financial year of the industrial organisation, an industrial organisation—

(a) is to cause to be prepared from the accounting records kept by it under section 452(1) in relation to the financial year, such accounts and other statements, in relation to the financial year, as are prescribed; and

(b) is to include in the accounts (other than accounts prepared in relation to the first financial year of the industrial organisation to which this Division applies) the relevant figures from the accounts prepared by the industrial organisation, under this subsection, in relation to the preceding financial year.

(2) The regulations may provide for the giving of certificates in, or in relation to, accounts or other statements prepared under subsection (1).

Information to be provided to members

454.(1) Application may be made to an industrial organisation by—

(a) a member of the industrial organisation;

(b) the Industrial Registrar, at the request of a member of the industrial organisation;

for such prescribed information in relation to the industrial organisation as is specified in the application.

(2) On application made under subsection (1) an industrial organisation

is to make available to the applicant such prescribed information as is specified in the application in such manner and within such time as is prescribed.

(3) If the Industrial Registrar is an applicant under subsection (1), the registrar is to provide to the member at whose request the application was made all information made available to the registrar pursuant to the application.

(4) Accounts prepared under section 453 must include a notice drawing attention to subsections (1), (2) and (3) and setting out those subsections.

Duties of officers of industrial organisation

455.(1) An officer of an industrial organisation is to furnish to the Industrial Registrar such information with respect to the funds and accounts of the industrial organisation as the registrar requires of the officer and is to comply with the requirements of the registrar in relation to—

(a) the books and forms of account kept, or to be kept;

(b) the entries made, or to be made, therein;

(c) the manner in which such entries are made, or are to be made, therein.

(2) The Industrial Registrar may at any time require an officer of an industrial organisation to produce to the registrar, or to an auditor or auditors appointed by the registrar, any books of the industrial organisation and such officer is to comply with the registrar's requisition.

Auditors of industrial organisations

456.(1) In this section—

"competent person" means, for the purpose of an audit and audit report—

(a) in relation to an industrial organisation whose financial year income is more than $10 000—a person—

(i) who is a registered company auditor; and

(ii) who is not an officer or a member of the industrial organisation; and

(iii) who is not employed for the purposes of the industrial organisation in any capacity other than that of auditor; or

(b) in relation to any other industrial organisation—a person—

(i) who is—

(A) a registered company auditor; or

(B) certified by the Industrial Registrar as having had sufficient experience in keeping or auditing accounts; and

(ii) who is not an officer or a member of the industrial organisation.

"financial year income" of an industrial organisation, for the purpose of deciding who is a competent person to perform an audit and prepare an audit report, means the industrial organisation's income for the financial year immediately before the financial year for which the audit is to be carried out.

(2) An industrial organisation is to ensure that there is an auditor of the industrial organisation at any time when an auditor is required for the purposes of the operation of this Division in relation to the industrial organisation.

(3) An industrial organisation is to ensure that the person who actually performs the audit of the industrial organisation's accounts and financial statements, and prepares the report thereon, for the purposes of this Division, is a competent person.

(4) A person—

(a) is not to accept; or

(b) continue in;

an appointment to actually perform the audit of an industrial organisation's accounts and financial statements, and to prepare the report thereon, for the purposes of this Division, unless the person is a competent person.

(5) A person who actually performs an audit, and prepares a report thereon, in relation to an industrial organisation is to comply with the provisions of this Act that are applicable to the person in the capacity of auditor.

Powers and duties of auditors

457.(1) An auditor of an industrial organisation is to inspect and audit the accounting records kept by the industrial organisation in relation to each financial year and, within the prescribed period following the end of the year, is to make a report in relation to the year to the industrial organisation in accordance with this section.

(2) An auditor, or a person authorised by an auditor for the purposes of this subsection, is—

(a) entitled at all reasonable times to full and free access to all records of the industrial organisation relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the industrial organisation; and

(b) entitled to seek from any officer or employee of the industrial organisation such information and explanations as the auditor or authorised person wants for the purposes of the audit.

(3) Where an auditor authorises a person for the purposes of subsection (2), the auditor is to serve on the industrial organisation a notification that sets out the name and address of the person.

(4) An auditor, in a report under this section in relation to a financial year, is to state—

(a) whether in the auditor's opinion—

(i) there were kept by the industrial organisation in relation to the year satisfactory accounting records, including—

(A) records of the sources and nature of the income of the industrial organisation (including income from members); and

(B) records of the nature and purposes of the expenditure of the industrial organisation; and

(ii) the accounts and statements prepared under section 453 in relation to the year were properly drawn up so as to give a true and fair view of—

(A) the financial affairs of the industrial organisation as at the end of the year; and

(B) the income and expenditure, and any surplus or deficit, of the industrial organisation for the year; and

(b) whether all the information and explanations that, under subsection (2), officers or employees of the industrial organisation were required to provide were provided;

and, in addition, the auditor is to state in the report particulars of any deficiency, failure or shortcoming in relation to a matter referred to in paragraph (a) or (b).

(5) If—

(a) an auditor, in the course of performing duties as auditor of an industrial organisation, becomes aware that there has been a breach of this Act; and

(b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report;

the auditor is to immediately report the matter, in writing, to the Industrial Registrar.

Fees and expenses of auditors

458. An industrial organisation is to pay the reasonable fees and expenses of an auditor of the industrial organisation.

Removal of an auditor from office

459. An auditor of an industrial organisation may only be removed during the term of appointment as auditor—

(a) if the auditor was appointed by the committee of management of the industrial organisation—by resolution passed at a meeting of the committee by an absolute majority of the members of the committee; or

(b) if the auditor was appointed by a general meeting of the members of the industrial organisation—by resolution passed at a general meeting by a majority of the members of the industrial organisation voting at the meeting.

Copies of report and audited accounts to be provided to members and presented to meetings

460.(1) An industrial organisation is to provide free of charge to its members—

(a) a copy of the report of the auditor in relation to the inspection and audit of the accounting records kept by the industrial organisation in relation to a financial year; and

(b) a copy of the accounts and statements prepared under section 453 to which the report relates.

(2) If, under the rules of the industrial organisation, the committee of management of the industrial organisation resolves to provide to the members of the industrial organisation a summary of the report, accounts and statements, the industrial organisation may comply with subsection (1) by providing free of charge to its members a copy of the summary if—

(a) the industrial organisation lodges a copy of the summary with the Industrial Registrar; and

(b) the auditor certifies that the summary is, in the auditor's opinion, a fair and accurate summary of the report, accounts and statements; and

(c) the summary contains a statement to the effect that the industrial organisation will provide a copy of the report, accounts and statements free of charge to any member who so requests; and

(d) where particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 457(4) are set out in the report—the summary contains the particulars.

(3) The copies referred to in subsection (1), or the summary referred to in subsection (2), must be provided within 56 days (or such longer period as the Industrial Registrar allows) after the making to the industrial organisation of the report concerned.

(4) If an industrial organisation publishes a journal of the industrial organisation that is available to the members of the industrial organisation free of charge, the industrial organisation may comply with subsection (1)—

(a) by publishing in the journal the report, accounts and statements

referred to in that subsection; or

(b) by preparing a summary that accords with subsection (2), by complying with that subsection in respect of the summary, and by publishing the summary in the journal.

(5) If a branch of an industrial organisation publishes a journal of the branch that is available to the members of the branch free of charge, the industrial organisation may comply with subsection (1) in relation to those members—

(a) by publishing in the journal the report, accounts and statements referred to in that subsection; or

(b) by preparing a summary that accords with subsection (2), by complying with that subsection in respect of the summary, and by publishing the summary in the journal.

(6) Subject to subsection (7), an industrial organisation is to cause the report, accounts and statements referred to in subsection (1) to be presented—

(a) to a general meeting of the members of the industrial organisation, or a meeting of the committee of management of the industrial organisation, held within the period commencing on the eighth day after the report, accounts and statements referred to in subsection (1), or the summary referred to in subsection (2), become or becomes available to be supplied to the members (whichever time is relevant) and ending 28 days (or such longer period as the Industrial Registrar allows) after the end of the period referred to in subsection (3)—such first mentioned period being referred to in this subsection and subsection (7) as **"the relevant period"**; or

(b) if such a meeting is not due to be held within the relevant period—to the first meeting of the committee of management held after the relevant period.

(7) If—

(a) the report sets out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 457(4); and

(b) neither a general meeting of the members of the industrial

organisation nor a meeting of the committee of management of the industrial organisation is due to be held within the relevant period;

the industrial organisation, within the relevant period, is to cause the report, accounts and statements referred to in subsection (1) to be presented to a meeting of the committee of management convened for the purpose.

Reports to be lodged with Industrial Registrar

461.(1) An industrial organisation, within 14 days (or such longer period as the Industrial Registrar allows) after the relevant meeting referred to in section 460(6) or (7) (whichever is applicable), is to lodge with the registrar—

(a) copies of the report, accounts and statements presented to the meeting; and

(b) a certificate by the president or secretary of the industrial organisation that the documents lodged are copies of the documents presented to the meeting.

(2) Subject to subsection (3)—

(a) if the documents lodged with the Industrial Registrar under subsection (1) include a report of an auditor setting out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 457(4); or

(b) if for any other reason a matter revealed in the documents lodged with the registrar under subsection (1) should, in the registrar's opinion, be investigated;

the registrar is to investigate the deficiency, failure or shortcoming or, as the case may be, the matter.

(3) The Industrial Registrar is not required to investigate the deficiency, failure or shortcoming if—

(a) it consists solely in the fact that the industrial organisation concerned has kept accounting records for its membership subscriptions separately on a cash basis as provided in section 452(3); or

(b) after consultation with the industrial organisation concerned and the auditor, the registrar is satisfied that the deficiency, failure or shortcoming is trivial or will be remedied in the following financial year.

(4) If, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (2), the Industrial Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the industrial organisation concerned, the registrar may make the further investigation.

(5) When documents have been lodged with the Industrial Registrar under subsection (1), request may be made, in writing, of the registrar by—

(a) at least 250 members of the industrial organisation concerned, if the industrial organisation has more than 5 000 members;

(b) at least 5% of the members of the industrial organisation concerned, in any other case;

to investigate the finances and the financial administration of the industrial organisation.

(6) On receipt of a request under subsection (5), the Industrial Registrar is to investigate the finances and the financial administration of the industrial organisation concerned.

(7) For the purpose of making an investigation under subsection (2), (4) or (6), the Industrial Registrar may, by notice in writing, require an officer or employee of the industrial organisation concerned—

(a) to provide the registrar with specified information relevant to the investigation; or

(b) to attend before the registrar, so that the registrar may put to the officer or employee questions relating to matters relevant to the investigation, and to produce to the registrar all records in the custody, or under the control, of the officer or employee relating to the matters under investigation;

and the officer or employee to whom the notice is given is to comply with the notice in all respects.

(8) If, at the conclusion of an investigation under subsection (2), (4) or (6), the Industrial Registrar is satisfied that the industrial organisation

concerned has contravened—

(a) subsection (1) or any other provision of this Division or a provision of the regulations; or

(b) a rule of the industrial organisation relating to the finances or financial administration of the industrial organisation;

the registrar is to notify the industrial organisation accordingly, and include in the notification a request that the industrial organisation take specified action, within a specified period, to rectify the matter.

(9) If the Industrial Registrar has given a notification to an industrial organisation under subsection (8), the registrar is not to take proceedings under this Act against the industrial organisation in relation to a matter to which the notification relates unless the industrial organisation has refused or failed to comply with the request made in the notification.

Examination and audit by Industrial Registrar's auditor

462.(1) If the Industrial Registrar is dissatisfied with—

(a) the manner in which an inspection and audit of the accounting records of an industrial organisation have been made; or

(b) the report, accounts and statements presented to a relevant meeting in accordance with section 460(6) or (7);

the registrar may engage the services of an auditor to examine the accounting records of the industrial organisation.

(2) The Industrial Registrar is to provide to each person engaged under subsection (1) a notification in writing that—

(a) evidences the engagement of the person as auditor for the purposes of this section; and

(b) specifies the industrial organisation whose accounting records are to be examined by the person.

(3) An auditor who examines the accounting records of an industrial organisation for the purposes of this section is to report thereon to the Industrial Registrar.

(4) If, upon receipt of an auditor's report under subsection (3), the Industrial Registrar has reason to believe that—

(a) the industrial organisation concerned does not keep accounting records as required by section 452; or

(b) in respect of the industrial organisation concerned there is a deficiency, failure or shortcoming in relation to any matter referred to in section 457(4); or

(c) property of the industrial organisation concerned has been misappropriated or otherwise improperly applied; or

(d) the industrial organisation concerned, or an officer of the industrial organisation, has committed an offence in relation to the property of the industrial organisation;

the registrar may authorise the auditor in writing to conduct an audit of the accounts, accounting records and affairs of the industrial organisation concerned in relation to a period nominated by the registrar.

(5) In respect of an examination made or audit conducted for the purposes of this section—

(a) the auditor, or a person authorised by the auditor for the purposes of this section, has the powers and entitlements, and, subject to paragraph (c), has the duties, prescribed by section 457 for an auditor, or, as the case may be, such authorised person, referred to in that section, which is to be construed as if a reference therein to a financial year were a reference to the period nominated by the Industrial Registrar under subsection (4);

(b) any officer or employee of the industrial organisation concerned and any person having custody of any records relating to the affairs of the industrial organisation is to furnish to the auditor, or a person authorised by the auditor for the purposes of this section, all information that is required by the auditor for the purposes of the examination or audit and that is within the knowledge or control of the officer, employee or person;

(c) the auditor is to report on the audit to the Industrial Registrar instead of the industrial organisation.

(6) The costs of or associated with an examination or audit conducted under authority conferred by this section are to be paid by the industrial organisation concerned.

(7) The Industrial Registrar may recover by action in a court of

competent jurisdiction any such costs incurred by the registrar and not paid to the registrar upon demand made of the industrial organisation concerned, as a debt due and owing to the registrar by the industrial organisation and unpaid.

Industrial organisation may lodge accounts of all branches

463.(1) In this section—

"relevant branch", in relation to a relevant industrial organisation, means each part of an industrial organisation to which this Division (other than this section, section 451 and section 460(5)) applies under section 451(1)(a) or (b), other than, in relation to a particular financial year, a part of the industrial organisation in relation to which a certificate has been issued under section 467(1) in relation to the year.

"relevant day", in relation to a relevant industrial organisation, means the day on which relevant documents in relation to a relevant branch of the industrial organisation in relation to a financial year are presented to a general meeting of the members, or a committee of management, of the branch under section 460(6) or (7), whichever is applicable, being a day on or before which relevant documents in relation to the financial year are or have been so presented by each of the other relevant branches of the industrial organisation.

"relevant documents", in relation to a relevant branch, means the report, accounts and statements referred to in section 460(1).

"relevant industrial organisation" means an industrial organisation that has branches, other than an industrial organisation in relation to which a certificate issued by the Industrial Registrar under section 451(3) is in force.

(2) The rules of a relevant branch of a relevant industrial organisation may provide that this section applies in relation to the branch, or otherwise provide for the relevant documents of the branch to be lodged under subsection (4).

(3) If the rules of each relevant branch of the industrial organisation provide as referred to in subsection (2) and the financial years in relation to all the relevant branches end on the same day—

(a) the following provisions of this section apply in relation to the

industrial organisation; and

(b) section 461(1) does not apply to a relevant branch of the industrial organisation.

(4) The industrial organisation, within 14 days (or such longer period as the Industrial Registrar allows) after the relevant day, is to lodge with the registrar—

(a) copies of the relevant documents of each relevant branch of the industrial organisation that were presented to a meeting of the committee of management, or general meeting of members, of the branch under section 460(6) or (7); and

(b) a certificate by the president or secretary of the branch that the documents lodged are copies of the relevant documents that were presented.

(5) If the industrial organisation fails to comply with subsection (4), each relevant branch of the industrial organisation, within 14 days (or such longer period as the Industrial Registrar allows) after the end of the period referred to in that subsection, is to lodge with the registrar—

(a) copies of the relevant documents of the branch that were presented to a meeting of the committee of management, or general meeting of members, of the branch under section 460(6) or (7); and

(b) a certificate by the president or secretary of the branch that the documents lodged are copies of the relevant documents that were presented.

(6) Section 461(2) to (9) apply in relation to a relevant branch of the industrial organisation as if the references therein to documents lodged with the Industrial Registrar under section 461(1) were references to relevant documents in relation to the branch lodged—

(a) where subsection (5) of this section does not apply in relation to the branch—by the industrial organisation under subsection (4) of this section; or

(b) where subsection (5) of this section applies in relation to the branch—by the branch under that subsection.

Industrial organisation to forward notices to auditor

464. An industrial organisation is to forward to the auditor of the industrial organisation a notice of, and any other communication relating to, a meeting of the industrial organisation, or the committee of management of the industrial organisation, at which the report of the auditor, or any accounts or statements to which the report relates, are to be presented, being a notice or other communication that a member of the industrial organisation, or the committee of management of the industrial organisation, as the case may be, would be entitled to receive.

Auditor entitled to attend meetings

465.(1) An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of an industrial organisation, or the committee of management of an industrial organisation, at which—

(a) the report of the auditor, or any accounts or statements to which the report relates, are to be presented or considered; or

(b) there is to be conducted any business of the meeting that relates to—

(i) the auditor in that capacity; or

(ii) a person authorised by the auditor, in the capacity of a person so authorised;

as the case may be.

(2) If an auditor authorises a person for the purposes of this section, the auditor is to serve on the industrial organisation a notification that sets out the name and address of the person.

Auditors and other persons to enjoy qualified privilege in certain circumstances

466.(1) It is lawful for—

(a) an auditor of an industrial organisation; or

(b) an auditor engaged by the Industrial Registrar under section 462;

to make in good faith, orally or in writing, in the course of performing the duties as an auditor for the purposes of this Act, a statement or comment relevant to those duties that is defamatory.

(2) It is lawful for any person to publish in good faith, a document prepared by—

(a) an auditor of an industrial organisation; or

(b) an auditor engaged by the Industrial Registrar under section 462;

in the course of performing the duties as an auditor for the purposes of this Act and required by this Act to be lodged with or made to the registrar, notwithstanding that the document contains matter that is defamatory.

Accounts and audit where income of industrial organisation less than certain amount

467.(1) If, on the application of an industrial organisation made after the end of a financial year, the Industrial Registrar is satisfied that the income of the industrial organisation for the year did not exceed $10 000 or, in the case of a financial year that, because of section 450(1), is a period other than 12 months, did not exceed such amount as the registrar considers appropriate in the circumstances, the registrar is to issue to the industrial organisation a certificate to that effect.

(2) If a certificate is issued under subsection (1) in relation to an industrial organisation in relation to a financial year—

(a) the following provisions of this section apply in relation to the industrial organisation in relation to the year; and

(b) except as provided in paragraph (c), this Division continues to apply in relation to the industrial organisation in relation to the year; and

(c) sections 453, 460 and 461(1) do not apply in relation to the industrial organisation in relation to the year.

(3) This Division (other than this section) applies to the industrial organisation in relation to the year as if—

(a) a reference to accounts and statements prepared or to be prepared under section 453 were a reference to accounts and statements

prepared under subsection (5) of this section; and

(b) the reference in section 454(4) to accounts prepared under section 453 were a reference to accounts prepared under subsection (5) of this section; and

(c) the reference in section 461(2) and (5) to section 461(1) were a reference to subsection (9) of this section.

(4) Section 580 (other than subsection (1)) and section 581 apply to the industrial organisation in relation to the financial year as if—

(a) a reference in section 580(3) and (4) to section 460(6) and (7) were a reference to subsection (7) of this section; and

(b) the reference in section 581 to section 460(1) were a reference to subsection (7) of this section; and

(c) there were omitted from section 581 the words 'or in a summary of the kind referred to in section 460(2)'.

(5) As soon as is practicable after the issue of the certificate under subsection (1), the industrial organisation—

(a) is to cause to be prepared, from the accounting records kept under section 452(1) in relation to the year, the prescribed accounts and other statements in relation to the year; and

(b) is to include in the accounts (other than accounts prepared in relation to the first financial year of the industrial organisation to which this Division applies) the relevant figures from the accounts prepared by the industrial organisation, under this subsection or section 453(1), in relation to the preceding financial year.

(6) The regulations may make provision with respect to the giving of certificates in, or in relation to, accounts or other statements prepared under subsection (5).

(7) After the making to the industrial organisation of the report of the auditor under section 457 in relation to the auditor's inspection and audit of the accounting records kept by the industrial organisation in relation to the year, and before the end of the financial year immediately following the year, the industrial organisation is to cause a copy of the report, together with copies of the accounts and statements prepared under subsection (5) to

which the report relates, to be presented to a meeting of the members of the industrial organisation.

(8) If a member of an industrial organisation requests the industrial organisation to provide to the member a copy of the report, accounts and statements referred to in subsection (7), the industrial organisation is to provide a copy of each of the documents to the member, free of charge, within 14 days following receipt of the request.

(9) The industrial organisation, within 90 days (or such longer period as the Industrial Registrar allows) following the making to the industrial organisation of the report under section 457, is to lodge with the registrar copies of the report and the accounts and statements referred to in subsection (7) of this section together with a certificate by the president or secretary of the industrial organisation that the information contained in the accounts and statements is correct.

Division 12—Presumed validity of industrial organisations' actions

Interpretation

468. In this Division—

"collective body", in relation to—

(a) an industrial organisation, means the committee of management or a conference, council, committee, panel or other body of, or within, the industrial organisation;

(b) a branch of an industrial organisation, means the committee of management or a conference, council, committee, panel or other body of, or within, the branch.

"invalidity" includes nullity, and includes invalidity or nullity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that—

(a) any of the persons purporting to act as members of a collective body of an industrial organisation, or of a branch of an industrial organisation, or purporting to hold an office in an industrial organisation, or branch of an industrial organisation—

(i) is not duly elected or appointed; or

(ii) is not, or was not at a material time, entitled to be elected or appointed or to hold office; or

(iii) is not, or was not at a material time, a member of the industrial organisation or branch; or

(iv) claims to have been elected or appointed by means of an alleged election or appointment where any of the persons who participated in that election or appointment was not entitled to do so; or

(b) any persons, not entitled to do so, took part in the alleged making of a rule, or an alteration to the rules, of an industrial organisation, or branch of an industrial organisation, as an officer, a voter or otherwise.

Validation of action taken in good faith

469.(1) Subject to this section, all actions done in good faith by persons purporting to act as a collective body of an industrial organisation, or of a branch of an industrial organisation, are valid notwithstanding any invalidity discovered later in—

(a) the election or appointment of the collective body, or of any of the persons purporting to act as the collective body; or

(b) the making of a rule, or an alteration to the rules, of the industrial organisation or branch.

(2) Subject to this section, all actions done in good faith by a person purporting to hold an office in an industrial organisation, or in a branch of an industrial organisation, are valid notwithstanding any invalidity discovered later in—

(a) the election or appointment of the person;

(b) the making of a rule, or an alteration to the rules, of the industrial organisation or branch.

(3) For the purposes of this section—

(a) a person is not taken to purport to act as a member of a collective body of, or as the holder of an office in, an industrial organisation unless the person has, in good faith, purported to be, and has been

treated by officers or members of the industrial organisation as being, such a member or the holder of the office;

(b) a person is not taken to purport to act as a member of a collective body of, or as the holder of an office in, a branch of an industrial organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the branch as being, such a member or the holder of the office.

(4) For the purposes of this section—

(a) an action is taken as done in good faith until the contrary is proved;

(b) a person who has purported to be a member of a collective body of an industrial organisation, or of a branch of an industrial organisation, is taken to have done so in good faith until the contrary is proved;

(c) knowledge of facts from which an invalidity arises is not, of itself, to be treated as knowledge that the invalidity exists;

(d) an invalidity in—

(i) the election or appointment of a collective body of a branch of an industrial organisation, or of any person who purports to be a member of such a collective body; or

(ii) the election or appointment of a person who purports to hold an office in a branch of an industrial organisation; or

(iii) the making, or alteration, of a rule of a branch of an industrial organisation;

is not taken as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the persons purporting to act as the committee of management of the branch;

(e) an invalidity in any other election or appointment, or in the making, or alteration, of a rule to which this section applies is not taken as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the persons purporting to act as the committee of management of the industrial organisation.

(5) This section—

(a) does not affect the operation of Division 5;

(b) does not validate the expulsion or suspension of, or the imposition of a fine or other penalty on, a member of an industrial organisation that would not have been valid if this section had not been enacted;

(c) applies to an action whenever done, including one done before the commencement of this Act, or done in relation to an association before it became an industrial organisation.

Validation of action after 4 years

470.(1) Subject to this section, at the end of 4 years from—

(a) the doing of an action by persons purporting to act as a collective body of an industrial organisation, or of a branch of an industrial organisation and purporting to exercise power conferred by or under the rules of the industrial organisation or branch;

(b) the doing of an action by a person purporting to hold an office in an industrial organisation, or in a branch of an industrial organisation, and purporting to exercise power conferred by or under the rules of the industrial organisation or branch;

(c) the alleged election or alleged appointment of a person to an office in an industrial organisation, or in a branch of an industrial organisation;

(d) the alleged making, or alleged alteration, of a rule of an industrial organisation, or of a branch of an industrial organisation;

the action, election, appointment or making or alteration of the rule is taken to have been done, or to have occurred in accordance with the rules of the industrial organisation or, as the case may be, the branch.

(2) This section—

(a) does not affect the validity, operation or enforcement of any judgment, order, declaration, direction or sentence or other judicial act of the Industrial Court or any other court made or imposed before the end of the 4 years referred to in

subsection (1);

(b) extends to an action, alleged election, alleged appointment or alleged making or alteration of a rule, whenever done or occurring, including one done or occurring before the commencement of this Act, or done or occurring in relation to an association before it became an industrial organisation.

Division 13—Miscellaneous

Registered office of industrial organisation

471.(1) Every industrial organisation is to have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of such registered office, and of any change therein, is to be given to the Industrial Registrar, and is to be recorded by the registrar, and until such notice is given the industrial organisation is taken to have not complied with this section.

Documents open to inspection

472.(1) The list of members and officers, and the rules of an industrial organisation filed with the Industrial Registrar are open to inspection by any person on payment of the fee prescribed by the rules of court.

(2) A copy of its rules is to be given by an industrial organisation, or a branch of an industrial organisation, to every person, on request and payment of a sum not exceeding an amount determined from time to time by order in council.

Industrial organisations to notify particulars of loans, grants and donations

473.(1) As soon as is practicable after the end of each financial year, an industrial organisation is to lodge with the Industrial Registrar a statement showing the relevant particulars of expenditure, by way of loan, grant or donation, made by the industrial organisation to any recipient in an amount exceeding, or in the aggregate exceeding, $1 000 during the financial year.

(2) A statement lodged with the Industrial Registrar under subsection (1) must be signed by an officer of the industrial organisation.

(3) A statement lodged with the Industrial Registrar under subsection (1) may be inspected, during office hours, by a member of the industrial organisation concerned.

(4) The relevant particulars, in relation to a loan made by an industrial organisation, are—

(a) the amount of the loan;

(b) the purpose for which the loan was required;

(c) the security given in relation to the loan;

(d) except where the loan was made to relieve a member of the industrial organisation, or a dependant of a member of the industrial organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.

(5) The relevant particulars, in relation to a grant or donation made by an industrial organisation, are—

(a) the amount of the grant or donation;

(b) the purpose for which the grant or donation was made;

(c) except where the grant or donation was made to relieve a member of the industrial organisation, or a dependant of a member of the industrial organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.

(6) If an industrial organisation has branches—

(a) this section applies in relation to the industrial organisation as if expenditure, by way of loan, grant or donation, made by a branch of the industrial organisation were not made by the industrial organisation;

(b) this section applies in relation to each of the branches as if the branch were an industrial organisation.

(7) For the purposes of the application of this section in accordance with subsection (6) in relation to a branch of an industrial organisation, the

members of the industrial organisation constituting the branch are taken to be members of the branch.

Nomination

474.(1) A member of an industrial organisation may, by writing delivered at or sent by post to the registered office of the industrial organisation, nominate any person, not being an officer or employee of the industrial organisation (unless such officer or employee of the industrial organisation is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), to whom any moneys payable on the member's death are to be paid in that event, and may from time to time revoke or vary such nomination in like manner.

(2) On receiving satisfactory proof of the death of a nominator the industrial organisation is to pay to the nominee the amount due and payable in the event of the nominator's death.

Recovery of moneys due to industrial organisation

475.(1) Subject to this section, all subscriptions, fees, dues, fines, levies and other moneys payable to an industrial organisation under its rules by a member, or former member, of the industrial organisation may be sued for and recovered in an Industrial Magistrates Court, and not otherwise.

(2) When membership of an industrial organisation—

(a) is terminated as prescribed by section 387; or

(b) has been terminated as prescribed by section 48 of the *Industrial Conciliation and Arbitration Act 1961*;

the former member—

(c) continues to be liable to pay any subscription, fee, dues, fine, levy or other moneys that first became payable before termination of such membership and that are recoverable in accordance with this section;

(d) is not liable to pay any subscription, fee, dues, fine, levy or other moneys that first becomes, or become, payable after termination of such membership.

(3) Proceedings to recover any subscription, fee, dues, fine, levy or other moneys due and payable to an industrial organisation from a member or former member must be commenced—

(a) within 3 years following the time when the subscription, fee, dues, fine, levy or other moneys in question becomes, or become, due and payable, if the same first becomes or become due and payable after the commencement of this Act;

(b) within 1 year following the time when the subscription, fee, dues, fine, levy or other moneys in question became due and payable, if the same first became due and payable before the commencement of this Act;

and if proceedings for the recovery thereof are not so commenced, the subscription, fee, dues, fine, levy or other moneys in question is, or are, not recoverable.

Prejudice of employee by reason of membership of industrial organisation

476.(1) An employer is not to refuse employment to any person, or dismiss an employee, or injure an employee in employment, or alter an employee's position to the employee's prejudice, by reason that the person or employee—

(a) is an officer or member of an industrial organisation, or of an association that has applied to be registered as an industrial organisation; or

(b) is a health and safety representative appointed under the *Workplace Health and Safety Act 1989*; or

(c) is entitled to, or has claimed, the benefit of any award, industrial agreement, certified agreement or enterprise flexibility agreement; or

(d) has appeared as a witness, or has given evidence, in proceedings under this Act or under the repealed Acts; or

(e) being a member of an industrial organisation that is seeking better industrial conditions, is dissatisfied with employees' conditions; or

(f) has been absent from work without leave if—

(i) the absence was for the purpose of carrying out duties or exercising rights as an officer of an industrial organisation; and

(ii) application for leave was made before such absence and leave was unreasonably refused or withheld; or

(g) has failed to agree or consent to, or vote in favour of, the making of an agreement to which an industrial organisation of which the employee is a member would be a party; or

(h) has failed to become a party to, or otherwise agree or consent to the making of, or vote in favour of the making of, an enterprise flexibility agreement.

(2) An employer is not to threaten to dismiss an employee, or to injure an employee in employment, or to alter an employee's position to the employee's prejudice—

(a) by reason that the employee is, or proposes to become, an officer or member of an industrial organisation, or of an association that has applied to be registered as an industrial organisation, or that the employee proposes to appear as a witness or to give evidence in proceedings under this Act; or

(b) with the intent to dissuade or prevent the employee from becoming such officer or member or from so appearing or giving evidence; or

(c) to force the employee, or because the employee has failed, to agree or consent to, or vote in favour of, the making of an agreement to which an industrial organisation of which the employee is a member would be a party; or

(d) to force the employee, or because the employee has failed, to become a party to, or otherwise agree or consent to the making of, or vote in favour of the making of, an enterprise flexibility agreement.

(3) An employer must not, whether by threats, promises or otherwise, induce an employee to stop being an officer or member of—

(a) an industrial organisation; or

(b) an association that has applied to be registered as an industrial organisation.

(4) A person is not to engage, or threaten to engage, in conduct that would be likely to have the effect, directly or indirectly, of prejudicing in employment an employee by reason that the employee is a member of an industrial organisation.

Prejudice of employee by reason of non-membership of industrial organisation

477.(1) Except where membership of an industrial organisation is a condition of a contract of employment, an employer is not—

(a) to dismiss, or threaten to dismiss, an employee;

(b) to injure, or threaten to injure, an employee in employment;

(c) to alter, or threaten to alter, an employee's position to the employee's prejudice;

by reason that the employee is not a member of an industrial organisation or intends to terminate membership of an industrial organisation.

(2) A person is not—

(a) to engage, or threaten to engage, in conduct that would be likely to have the effect, directly or indirectly, of prejudicing in employment an employee by reason that the employee is not a member of an industrial organisation; or

(b) to demand from another person who is not a member of an industrial organisation, with threats of injury or detriment of any kind to be caused to that other person if the demand is not met, that any action be done or procured to be done, or any omission be made or procured to be made, being any action or omission that is for the benefit, direct or indirect, of an industrial organisation or of a person acting on behalf of an industrial organisation.

(3) Subsection (2) does not apply in relation to an employer's conduct to which subsection (1) applies.

(4) Subsection (2) does not make a person liable to punishment by

reason of engaging in conduct, which apart from that subsection is lawful, for the purpose of remedying a breach of a provision of any award, industrial agreement, certified agreement or enterprise flexibility agreement that requires an employee to be a member of an industrial organisation.

Conduct in relation to holder of conscientious objector's certificate

478.(1) This section applies in relation to a person or employee who is the holder of a current certificate issued under section 388, and so applies notwithstanding any other provision of this Division, any Act, award, industrial agreement, certified agreement or enterprise flexibility agreement.

(2) An employer is not—

(a) to refuse employment to a person to whom this section applies by reason that the person is not a member of an industrial organisation;

(b) to dismiss an employee to whom this section applies, injure such an employee in employment or alter such an employee's position to the employee's prejudice by reason that the employee is not a member of an industrial organisation;

(c) to threaten—

(i) to dismiss an employee to whom this section applies;

(ii) to injure such an employee in employment;

(iii) to alter such an employee's position to the employee's prejudice;

with intent to coerce the employee to become a member of an industrial organisation.

(3) A person is not to cause a person to whom this section applies to gain an advantage, or suffer a detriment, that such last mentioned person would not have gained or suffered, if such person were a member of an industrial organisation.

(4) An industrial organisation is not—

(a) to advise, encourage or incite an employer to take action that would be a contravention of subsection (2) or (3);

(b) to take, or threaten to take, industrial action in relation to an

employer with intent to coerce the employer to take action that would be a contravention of subsection (2) or (3);

(c) to take, or threaten to take, action having the effect, directly or indirectly, of prejudicing in employment an employee to whom this section applies, with intent to coerce the employee to become a member of an industrial organisation.

Prejudice of employer by reason of membership of industrial organisation

479. An industrial organisation is not to engage in, or threaten to engage in, a strike against an employer because the employer is an officer, delegate or member of an industrial organisation or an association that has applied to be registered as an industrial organisation.

Conduct in relation to independent contractors

480.(1) In this section—

"discriminatory action against an eligible person" means—

(a) refusal to use, or to agree to use, a service offered by the eligible person; or

(b) refusal to supply, or to agree to supply, goods or services to the eligible person.

"eligible person" means a person who—

(a) engages in a calling or an industry otherwise than as an employee; and

(b) because of so engaging would be eligible, if the person were an employee, to become a member of an industrial organisation of employees.

(2) An industrial organisation is not—

(a) to advise, encourage or incite any person to take discriminatory action against an eligible person because the eligible person is not a member of an industrial organisation; or

(b) to take, or threaten to take, action against an employer with the

intent of coercing the employer to take discriminatory action against an eligible person because the eligible person is not a member of an industrial organisation; or

(c) take, or threaten to take, action against an eligible person with the intent of coercing that person to become, or to remain, a member of an industrial organisation.

When conduct presumed that of industrial organisation

481. For the purposes of sections 478, 479 and 480, action, or a threat of action—

(a) by or at the instigation of the committee of management of an industrial organisation or of a branch of an industrial organisation;

(b) by an officer, employee or agent of an industrial organisation, or of a branch of an industrial organisation, acting in that capacity;

(c) by a group of members of an industrial organisation;

(d) by a member of an industrial organisation who performs a function of dealing with an employer on behalf of—

(i) members of the industrial organisation; or

(ii) that member;

acting in that capacity;

is taken to be action taken, or threat made, by the industrial organisation, and the intent of the person or persons who—

(e) takes, take or instigate the action; or

(f) makes, make or instigate the threat;

is taken to be the intent of the industrial organisation.

PART 15—INDUSTRIAL INSPECTORS

Appointment of Industrial Inspectors

482.(1) From time to time there is to be appointed by the Governor in Council, by notification published in the Industrial Gazette, a Chief Industrial Inspector, who holds the appointment subject to the *Public Service Management and Employment Act 1988*.

(2) From time to time there may be appointed under and subject to the *Public Service Management and Employment Act 1988* such number of Industrial Inspectors and other persons as is necessary for the effectual administration of this Act.

(3) A person who immediately before the commencement of this Act holds an appointment as Industrial Inspector (including that of Chief Industrial Inspector) continues to hold the appointment until the person ceases to hold the appointment.

(4) Every Industrial Inspector, by virtue of appointment as such, is an inspector for the purposes of—

(a) the *Trading Hours Act 1990*;

(b) the *Factories and Shops Act 1960*;

(c) the *Pastoral Workers Accommodation Act 1980*;

(d) the *Workers' Accommodation Act 1952*;

for as long as the inspector holds the appointment.

(5) Arrangements may be made under section 40 of the *Public Service Management and Employment Act 1988* for—

(a) officers of the Commonwealth public service to exercise the powers and perform the functions of inspectors; and

(b) officers of the Queensland public service to exercise the powers and perform the functions of an inspector under the Commonwealth Act.

(6) An arrangement under subsection (5)(a) is sufficient authority for an officer of the Commonwealth public service to exercise the powers and perform the functions of an inspector.

Evidence of appointment

483.(1) Notification of every appointment to be an Industrial Inspector is to be published in the Industrial Gazette, and judicial notice is to be taken of every appointment so notified.

(2) As far as is practicable, every person appointed to be an Industrial Inspector is to be provided with a certificate of appointment signed by the Minister or the Chief Industrial Inspector.

(3) Upon seeking to enter any place pursuant to a power conferred by this Act an Industrial Inspector, if required to do so by the occupier of the place, is to produce to the occupier such certificate of appointment or, if the inspector has not been provided with such a certificate, the writing by which the inspector was informed of the appointment as an Industrial Inspector.

Extent of Industrial Inspector's jurisdiction

484. An Industrial Inspector—

(a) may exercise the powers and perform the duties of an Industrial Inspector under this Act throughout Queensland;

(b) is to perform the duties of an Industrial Inspector under this Act subject to the general supervision and direction of the Chief Industrial Inspector.

Validity of Industrial Inspector's conduct despite administrative breach

485.(1) Failure of an Industrial Inspector to observe the requirement of section 483(3) or the administrative arrangement prescribed by section 484(b) does not affect the lawfulness or effect of any action done or omission made by the inspector for the purposes of this Act.

(2) A failure, such as is referred to in subsection (1), renders the Industrial Inspector concerned liable to disciplinary action only.

Duty of Industrial Inspector

486. It is the duty of an Industrial Inspector to ensure, as far as possible,

that the provisions of awards, industrial agreements, certified agreements, permits and orders of the Industrial Commission are duly observed.

Powers of Industrial Inspector

487.(1) An Industrial Inspector may—

(a) at any time enter, inspect and examine any place in or on which the inspector suspects on reasonable grounds that a calling is, has been, or is about to be carried on;

(b) call in aid a police officer if the inspector reasonably apprehends any obstruction to, or hindrance in, the exercise of the inspector's powers, or performance of the inspector's duties, under this Act;

(c) make such examination and inquiry as is necessary to ascertain whether the provisions of this Act, any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement, permit or order are being, have been, or will be complied with in respect of a calling by any employer or employee in that calling, or should be given operation in relation to a calling;

(d) at any time during business operations or working hours, require an employer in a calling to produce for the inspector's examination time sheets, pay sheets and other records relating to employees in the calling, and make copies of or extracts from such sheets and records;

(e) at any time during business operations or working hours, question with respect to matters under this Act or under any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement, permit or order—

(i) an employer in a calling;

(ii) any person found in or on any place, in or on which the inspector suspects on reasonable grounds that a calling is, has been or is about to be carried on;

to ascertain whether the provisions of this Act or any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement, permit or order are being, have been or will be complied with, or should be given operation in relation to the

calling, and require such employer or person questioned to answer the questions put, and to sign a statutory declaration (which any justice is authorised to take) as to the truth of the answers;

(f) require a person whom the inspector is authorised by this Act to question, or whose name and address are, in the inspector's opinion, reasonably required for the purposes of this Act, to state that person's name and address and, if the inspector suspects on reasonable grounds that the name or address, or both, as stated, to be false, require evidence of the correctness thereof;

(g) institute proceedings under this Act and apply to the Industrial Commission for interpretation of any award, industrial agreement, certified agreement, enterprise flexibility agreement, permit or order;

(h) exercise such other powers as are prescribed.

(2) The power conferred on an Industrial Inspector by subsection (1) to question an employee includes power to question the employee out of the hearing of the employer or any supervisor, deputy, manager, or other superior officer, or any other employee with respect to any matter.

(3) An Industrial Inspector is not empowered by this Act to enter premises used as a private dwelling house or land used in connection with such use of the premises, unless there is carried on in the premises or the land some calling in which at least 1 employee is employed.

(4) If proceedings in the Industrial Commission for interpretation of an award, industrial agreement, certified agreement, enterprise flexibility agreement or order relate to an alleged ambiguity therein, the Commission is to hear and determine the proceedings in the absence of a statement of agreed facts.

Obstruction of Industrial Inspector

488.(1) A person is not—

(a) to assault, resist, obstruct or hinder an Industrial Inspector in exercise of powers or performance of duties under this Act, or attempt to do so;

(b) to use any threat or abusive or insulting language to an Industrial Inspector or to any other person in connection with any inspection, examination or questioning under this Act;

(c) to fail to answer a question put for the purposes of this Act by an Industrial Inspector, or give a false or misleading answer to any such question;

(d) to fail to comply in all respects with a lawful requisition directed to the person by an Industrial Inspector pursuant to this Act;

(e) when required by an Industrial Inspector pursuant to this Act to furnish assistance (other than aid sought under section 487(1)(b)) or information, to fail to furnish such assistance or information or, when information is sought, to furnish information that is false or misleading;

(f) to directly or indirectly obstruct or hinder a person from appearing before or being questioned by an Industrial Inspector, or attempt to do so.

(2) Subsection (1) does not apply so as to render liable to punishment as for an offence, other than an offence that consists in the supply of an answer or information that is false or misleading, a person who fails to supply an answer or information on the ground that to do so would tend to incriminate the person.

Confidentiality of information

489. An Industrial Inspector or officer appointed for the purposes of this Act is not to disclose to any person information acquired in the exercise of powers or performance of duties, under this Act unless the disclosure is made—

(a) for the purposes of this Act and in performance of a duty under this Act; or

(b) with the Minister's permission first obtained; or

(c) under the authority of an order of any court for the purposes of the hearing and determination of any proceeding before the court.

Protection from liability

490. An Industrial Inspector or a person acting in aid of an inspector does not incur any liability in law on account of any action or omission—

(a) done or made by the inspector or person pursuant to this Act; or

(b) done or made, in good faith and without negligence, by the inspector or person purporting to act pursuant to this Act.

Assistance in exercise of Industrial Inspector's powers

491. A person being—

(a) an owner or a person entitled to immediate possession of any place in or on which a calling is carried on; or

(b) an employer carrying on a calling in or on any place;

is to furnish to an Industrial Inspector, as required by the inspector, all reasonable assistance and all information that the person is capable of furnishing for the purpose of the inspector's exercise of powers and performance of duties in respect of such place.

Payment of employee's wages etc. to Industrial Inspector

492.(1) A demand such as is referred to in this section may be made in respect of—

(a) an employee of an employer;

(b) a person who was an employee of an employer;

and in subsections (2) and (3) the expression **"employee"** includes a former employee.

(2) Upon demand duly made therefor by an Industrial Inspector an employer is to pay—

(a) in respect of any employee—the amount of wages due and payable to the employee, or payable on account of the employee, and unpaid;

(b) in respect of any eligible employee—a sum comprised of—

(i) the amount of contribution payable by the employer to an

approved occupational superannuation scheme or fund under any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement on behalf of the employee, and unpaid; and

(ii) an amount based on the return that would have accrued in respect of such contribution had it been duly paid to such scheme or fund.

(3) The payment must be made—

(a) under subsection (2)(a)—to the inspector; or

(b) under subsection (2)(b)—

(i) into a complying superannuation fund in the time specified by the inspector; or

(ii) if not paid into a complying superannuation fund in the specified time—to the inspector.

(4) A demand, such as referred to in subsection (1), must not be made, and if made need not be complied with, if—

(a) the demand would relate, or relates, to an amount of unpaid wages that had become due and payable at a time such that an order for their recovery could not be made on an application under section 543; or

(b) the demand would relate, or relates, to wages unpaid in respect of an entitlement to long service leave of an employee whose employment with the employer has ceased and 3 years have passed since the date on which the employment ceased.

(5) A court that hears and determines a complaint against an employer for an offence against subsection (2)(a)—

(a) apart from any penalty order that it may make; and

(b) whether or not it convicts the employer;

may order the employer to pay to the employee to whose wages the complaint relates the amount the court finds, on the balance of probabilities, to be due and payable to the employee, or on account of the employee, as the case may be.

(6) A court that convicts an employer of an offence against

subsection (2)(b) may make in relation to the employer any order that an Industrial Magistrate is authorised by section 75 to make on an application made under the section.

(7) If an order is made under subsection (6), the provisions of section 75 apply to the order in the same way they apply in relation to an order made under section 75.

Industrial Inspector's obligation for moneys paid on demand

493.(1) In this section—

"employee" includes a former employee.

(2) An Industrial Inspector to whom moneys are paid on demand under section 492 is to give to the payer a receipt therefor, forthwith upon payment.

(3) The receipt of an Industrial Inspector for such moneys is a full discharge to the employer in question for the amount specified in the receipt.

(4) An Industrial Inspector to whom moneys are paid on demand under section 492 is to account for the moneys as follows—

(a) if the moneys are in respect of—

(i) an employer's contribution to an approved occupational superannuation scheme or fund to the credit of an eligible employee, which was unpaid; or

(ii) an amount such as is referred to in section 492(2)(b)(ii);

they are to be paid to—

(iii) if the employee is employed by the employer—an approved occupational superannuation fund relevant to the employee's employment; or

(iv) if the employee is no longer employed by the employer—

(A) an approved occupational superannuation fund relevant to the employee's employment with that employer; or

(B) a complying superannuation fund; or

(C) a superannuation fund nominated by the employee; or

(D) an eligible rollover fund; or

(E) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee;

(b) if the moneys are not moneys referred to in paragraph (a)—they are to be paid to the employee to whose credit they were paid to the inspector.

(5) If at the end of 30 days following receipt of moneys paid on demand under section 492 an Industrial Inspector has not accounted for the moneys as prescribed by subsection (4), the inspector is to pay the moneys forthwith to the department.

(6) The department must account for the money given to it by an Industrial Inspector in the way specified under subsection (4).

(7) If—

(a) moneys are paid to the department; and

(b) the employee in relation to whom the moneys are to be paid—

(i) cannot be located after all reasonable inquiries; or

(ii) fails to nominate a superannuation scheme or fund for the purpose of subsection (4);

the department is to pay the moneys into the Unclaimed Moneys Fund in the Treasury.

PART 16—FACILITATION OF ADMINISTRATION

Division 1—Maintenance and inspection of employers' records

Interpretation

494. In this Division—

"authorised industrial officer" means an officer or employee of an

industrial organisation, or branch of an industrial organisation, who is the holder for the time being of an authority issued under section 495 that is in force, or issued under section 136 of the *Industrial Conciliation and Arbitration Act 1961* that is in force.

"similar record" includes a computer print-out if—

(a) its contents relevant to this Division are separate from all other material contained in the print-out; and

(b) it provides particulars required by this Division accurately and in a manner and form convenient for the purpose of inspection under this Division.

Issue of authorisation

495.(1) An industrial organisation that wants a person to be, or to continue as, an authorised industrial officer is to make application to the Industrial Registrar for an authorisation under this section to be issued to the person nominated in the application.

(2) On application for an authorisation under this section, the Industrial Registrar may issue the authorisation if the registrar is satisfied that the applicant is a person of a description of person defined in section 494 as one who may be an authorised industrial officer.

(3) An authorisation under this section—

(a) must be applied for as prescribed by the regulations;

(b) is for a term specified therein in each case by the Industrial Registrar, unless it sooner ceases to be in force as prescribed;

(c) ceases to be in force—

(i) at the end of its term;

(ii) upon its revocation;

(iii) upon its suspension, for the period of suspension;

(iv) upon its holder ceasing to be an officer or, as the case may be, employee of the industrial organisation that made application for the authorisation or ceasing to be an authorised industrial officer acceptable to the industrial organisation.

(4) When an authorisation under this section ceases to be in force the industrial organisation that made application for the authorisation—

(a) is to notify the Industrial Registrar thereof within 14 days following the authorisation's so ceasing;

(b) upon request of the registrar, surrender to the registrar the authorisation issued on the application.

Time and wages record of award employees

496.(1) Every employer is to keep and have available for inspection, during the hours of operation of the employer's business, by an Industrial Inspector, by an authorised industrial officer, and as required by section 505, a time and wages book or similar record that accords with subsection (3) in respect of all persons who—

(a) are for the time being in the employer's employment and working under any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit; or

(b) were in the employer's employment and working under any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit at any time within 6 years before the date of an inspection of such book or record.

(2) Notwithstanding subsection (1)(b), subsection (1) does not require an employer to keep such book or record in respect of any person whose employment with the employer ceased at least 3 years before the commencement of this Act.

(3) Subject to subsection (4), a time and wages book or similar record referred to in subsection (1) must contain, in respect of each employee in respect of whom such book or record is required by subsection (1) to be kept, the following particulars—

(a) the full name and full address of each person who is employed, or was employed by the employer;

(b) the date of birth of each employee;

(c) in respect of each pay period—

(i) the designation of each employee and the name of the award,

industrial agreement, certified agreement or enterprise flexibility agreement under which the employee is, or was, working;

(ii) the number of hours worked by each employee during each day and week and, subject to subsection (4), the times during each of those periods at which each employee started and ceased work, and details of any work breaks including meal periods;

(iii) if the relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit provides for—

(A) a weekly, daily or hourly rate of wage—details of the rate of wages per week, per day, or per hour, as the case may be, at which each employee is paid; or

(B) piecework rates—details of the piecework performed and the rate at which payment is made to each employee;

(iv) the gross and net amounts of wages paid to each employee, together with details of deductions made from those wages;

(v) contributions made by the employer to an occupational superannuation scheme or fund;

(d) for an employee whose entitlement to long service leave is calculated under section 245—the total hours (other than overtime) worked by the employee since the start of the period to which the entitlement relates, calculated up to 30 June in each year;

(e) details of sick leave credited or granted, and sick leave payments to each employee;

(f) the date on which each employee commenced employment with the employer and, where appropriate, the date of termination of such employment;

(g) such other particulars as are necessary to show that the hours of work, rates of pay and general conditions of employment provided for by the relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit are being

complied with in every particular.

(4) If an award, industrial agreement, certified agreement or enterprise flexibility agreement does not provide for a limitation of the daily or weekly working hours of an employee who works under it, particulars of the employee's times of starting and ceasing work each day need not be contained in the time and wages book or similar record as required by subsection (3)(c)(ii), unless the award or agreement requires an employer to record such particulars.

(5) If an employer keeps in the one book or record particulars that an authorised industrial officer is authorised by section 503(2) to inspect and other particulars, the employer is not required to make available for inspection by that officer those other particulars.

(6) An authorised industrial officer who inspects a time and wages book or similar record may make a copy of or extract from the book or record, but is not entitled to require any assistance from the employer in the making thereof.

(7) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (3)(d) for the employee, calculated to the previous 30 June.

Wages record of non-award employees

497.(1) Every employer is to keep and have available for inspection, during the hours of operation of the employer's business, by an Industrial Inspector and as required by section 505, a wages book or similar record that accords with subsection (3) in respect of all persons who—

(a) are for the time being in the employer's employment and working otherwise than under any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit; or

(b) were in the employer's employment and working otherwise than under any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit at any time within 6 years before the date of an inspection of such book or similar record.

(2) Notwithstanding subsection (1)(b), subsection (1) does not require an employer to keep such book or record in respect of the employment of any

person whose employment with the employer ceased at least 3 years before the commencement of this Act.

(3) The wages book or similar record mentioned in subsection (1) must contain, for each employee for whom the book or record is required under the subsection to be kept, particulars of—

(a) for each pay period—

(i) the employee's designation; and

(ii) the employee's rate of wages; and

(iii) the gross wages payable to or for the employee; and

(iv) the deductions made from the employee's wages; and

(v) the net wages payable to or for the employee; and

(b) if an employee's entitlement to long service leave is calculated under section 245—the total hours (other than overtime) worked by the employee since the start of the period to which the entitlement relates, calculated to 30 June in each year.

(4) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (3)(b) for the employee, calculated to the previous 30 June.

Register of employees

498.(1) Every employer is to keep and have available for inspection during the hours of operation of the employer's business, by the Industrial Registrar or a person authorised by the registrar, a book or similar record that is a register of the employees of that employer containing the following particulars—

(a) the full name and full residential address of each employee;

(b) in the case of a person who is residing elsewhere than at the person's permanent residence at the date on which the person becomes an employee—both the permanent residential address and the address of residence as at that date;

(c) the calling in which each employee is engaged;

(d) the date on which each employee became an employee of the

employer;

(e) where appropriate, the date on which each employee ceased employment with the employer.

(2) All such particulars are to be entered in the register opposite and relative to the name of the employee to which they relate.

(3) If the register of employees of an employer who has more than 100 employees is not in such a form as to be an alphabetical index itself, the employer is to keep and have available for inspection during the hours of operation of the employer's business, by the Industrial Registrar or a person authorised by the registrar, an index in alphabetical order of the names of the employees of the employer, which index may be in a loose leaf, computer print-out or card index form.

(4) Within 14 days following a change in the calling of an employee, the employer is to enter in the register opposite and relative to the employee's name particulars of the change and the date on which the change occurred.

(5) An employee—

(a) whenever requested by the employer to do so, is to inform the employer of the residential address of the employee;

(b) whenever a change in the employee's residential address occurs, is to inform the employer forthwith of the new address.

(6) If an employer carries on business at more than 1 place this section requires the employer to keep a register of employees and, as prescribed by subsection (3), an index in respect of each such place.

Records to be kept in English

499. Particulars required by sections 496 to 498 to be recorded must be recorded, and an index required by section 498 to be kept must be kept, in the English language.

Failure to keep records a composite offence

500. A complaint for an offence consisting in a failure to comply with section 496, 497 or 498 is not bad for duplicity or uncertainty, because it

charges the defendant with having failed to 'keep and have available for inspection' the prescribed book, similar record, register or index.

Notation of wages details

501.(1) Upon payment of wages to or on account of an employee, the employer is to indicate, or cause to be indicated, by noting on the pay envelope, or by statement in writing, given to the employee, at the time payment of the wages is made, how the payment is made up.

(2) The noting or statement must include the following particulars—

(a) the date of payment;

(b) the period covered by the payment;

(c) the number of hours covered by the payment at—

(i) ordinary rate of pay;

(ii) overtime rate of pay;

(d) the ordinary hourly rate and the amount paid at that rate;

(e) the overtime hourly rate and the amount paid at that rate;

(f) the gross amount of wages payable;

(g) the net amount of wages paid;

(h) details of any deductions made;

(i) the amount of contribution paid to an occupational superannuation scheme or fund.

Inspection of employer's record by Industrial Inspector

502.(1) An Industrial Inspector may inspect at the place of business of an employer, during the hours of operation of the employer's business, the book or similar record required to be kept and had available by the employer by section 496 or 497.

(2) If such book or similar record is not produced to the Industrial Inspector or if an inspection thereof is obstructed, the inspector may give notice in writing to the employer directing production of the book or similar record to the inspector for inspection—

(a) at a place of business of the employer specified therein or, if the employer has no official place of business, at a reasonably convenient place nominated by the inspector; and

(b) at a time, which is reasonable in the circumstances, specified therein.

(3) If a book or similar record of an employer is not produced as required by a notice given under subsection (2), it is to be taken, without further or other proof, that the employer has failed to keep and have available for inspection the book or similar record required of the employer by section 496 or, as the case may be, section 497.

(4) A notice is taken to be duly given under subsection (2) if—

(a) it is served personally on the person to whom it is directed; or

(b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it; or

(c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

Inspection by authorised industrial officer

503.(1) An authorised industrial officer is entitled to enter, as prescribed by this section, any place in or on which a person carries on a calling that is a registered calling of the industrial organisation of which the authorised industrial officer is an officer or employee.

(2) The authorised industrial officer—

(a) may enter any such place at any time when the relevant calling is being carried on therein or thereon;

(b) may interview or converse with the employer, or with any of the employees during any lunch hour or non-working time during the hours of operation of the employer's business;

(c) is not to wilfully obstruct or hinder the employer or any of the employees during the employee's working time;

(d) may inspect at the place of business of the employer, during the hours of operation of the employer's business, the book or

similar record required to be kept and had available by the employer by section 496.

(3) Subsection (2) is subject to subsection (4).

(4) A person who is an authorised industrial officer is not authorised as prescribed by subsection (2) in respect of—

(a) a place where the person is required to be, in the course of the person's employment with an employer other than the industrial organisation, or branch of an industrial organisation, of which the person is an officer or employee;

(b) any ship, vessel or aircraft that is in a place referred to in paragraph (a).

(5) An authorised industrial officer who enters any place pursuant to authority conferred by this section, forthwith upon such entry and before the officer exercises any authority conferred on the officer by this Act, is to give notice of the officer's presence to the employer or the employer's representative, and is to produce the officer's written authorisation if required.

(6) An authorised industrial officer who is present in or on any place for the purposes of this Act without having given notice or produced the written authorisation as prescribed by subsection (5) is a trespasser and may be ejected and proceeded against accordingly.

(7) Subsection (5) is subject to subsection (8).

(8) Subsection (5) does not apply in a case where—

(a) due to the remoteness of any place it is impracticable for the authorised industrial officer to give to an employer or the employer's representative notice of the presence of the officer therein or thereon;

(b) upon entering any place, the authorised industrial officer discovers that neither the employer nor any employer's representative having charge of the place is present.

Inspection by Industrial Registrar

504.(1) The register of employees, and index (if any), required by

section 498 to be kept is open to inspection by the Industrial Registrar or a person authorised, in writing, by the registrar, at the place of business of the employer whose register or index it is, at all times while the place is open for business.

(2) If—

(a) the Industrial Registrar requires a register of employees, or an index, for the purposes of taking a ballot; or

(b) the Industrial Court or Industrial Commission so orders for any other purpose;

the registrar may, by notice in writing, direct the employer, who is required to keep and have available the register or index to deliver the register or index to the registrar, or to a person nominated by the registrar, at a time and place specified in the direction.

(3) An employer to whom a direction is duly given under subsection (2) is to comply with the direction in all respects.

Inspection by employees

505.(1) Subject to this section, any employee is entitled—

(a) to inspect; or

(b) at the discretion of the employer, to be furnished, in writing, with;

such of the particulars contained in the book or similar record required by section 496 to be kept and had available by the employer as relate to the employee's employment.

(2) An entitlement prescribed by subsection (1)—

(a) is not available for exercise by any employee at intervals less than 12 months; and

(b) is restricted to particulars relating to an employee's employment during the period of 12 months, immediately preceding the occasion of exercising the entitlement.

(3) An entitlement prescribed by subsection (1) to inspect a book or similar record is available for exercise—

(a) only during the employer's hours of business;

(b) only at times other than the employee's working time, except with the employer's consent first obtained.

Revocation and suspension of industrial officer's authorisation

506. If, upon application by an employer, it is proved to the Industrial Commission that an authorised industrial officer has—

(a) in a case to which section 503(5) applies—failed to comply with that section; or

(b) exercised the officer's entitlement to enter in an unreasonable or vexatious manner; or

(c) made unreasonable, vexatious or improper use of information obtained from inspection of any book or record made available because of the officer's authority as an authorised industrial officer;

the Commission may—

(d) revoke the officer's authorisation; or

(e) suspend the officer's authorisation for such period as it thinks fit; or

(f) attach such conditions to the officer's authorisation as it thinks fit.

Division 2—Other facilitating provisions

Copy of award and industrial agreement to be displayed

507. Every employer is to keep affixed in some conspicuous place at or near the entrance of each factory, workroom, shop or other premises in which an award, industrial agreement, certified agreement or enterprise flexibility agreement has application, in such a position as to be easily read by the employees therein, a true copy of the award, industrial agreement, certified agreement or enterprise flexibility agreement.

Incorporation of variations in reprint of award, industrial agreement, certified agreement or enterprise flexibility agreement

508. If an award, industrial agreement, certified agreement or enterprise flexibility agreement made or taken to have been made under this Act has been varied, before or after the commencement of this Act, the Government Printer, if and when required so to do by the Industrial Registrar, is to reprint the award, industrial agreement, certified agreement or enterprise flexibility agreement in a form certified as correct by the registrar.

Obsolete award or industrial agreement

509.(1) The Industrial Registrar, after such inquiry as the registrar thinks sufficient, may notify in the Industrial Gazette an intention to declare that an award or industrial agreement made or continued in force under this Act and specified in the notification, is obsolete.

(2) Any person may, within the time and in the manner specified in the notification of intention given under subsection (1), lodge with the Industrial Commission notice of objection to the proposal, and the Commission is to hear and determine the objection.

(3) Where no objection is lodged within the prescribed time, or all objections lodged are dismissed, the Industrial Registrar may notify in the Industrial Gazette that the award or industrial agreement in respect of which notification of intention was given under subsection (1) is obsolete, whereupon that award or industrial agreement ceases to have any force or effect.

Certificate of employment on termination

510. An employer, upon request of a person whose employment with the employer has been terminated (by the employer or the employee), is to give to that person a certificate, signed by the employer, as to the prescribed particulars.

False pretences relating to employment

511.(1) A person is not—

(a) to pretend that another has been in the person's employment for a

period, or in a capacity, other than that for, or in, which the other was in the person's employment;

(b) to assert in writing that another has been in the person's employment for a period, or in a capacity, knowing the assertion to be false;

(c) to assert in writing any other matter relating to the person's employment of another, knowing the assertion to be false in a material particular.

(2) A person is not—

(a) to forge a certificate, or other document, that purports to be a discharge from, or a record of previous employment;

(b) to use a certificate, or other document, that purports to be a discharge from, or a record of, previous employment, knowing the certificate or document to be not genuine or false;

(c) to pretend, or falsely claim, for the purpose of seeking employment, to be a person named in a genuine certificate, or other document, of a description referred to in paragraph (b) as a person to whom the certificate or document was issued;

(d) to seek to obtain employment by assuming the name of another, living or dead, with intent to deceive.

(3) If under an award, industrial agreement, certified agreement or enterprise flexibility agreement relevant to a calling the amount of wages payable to an employee depends wholly or partly on the age, experience or duration of previous employment of the employee, a person—

(a) when seeking employment in that calling; or

(b) while an employee in that calling;

is not to give information, or make a statement, relating to any such particulars that is false to the person's knowledge.

Stamp duty

513. Notwithstanding the provisions of any other Act, no stamp duty is payable in respect of—

(a) an instrument evidencing a transfer of property from trustees of

an industrial organisation to the industrial organisation, or any agreement relating to such a transfer; or

(b) any certificate, agreement, order, statutory declaration, power of attorney or instrument executed pursuant to or to give effect to this Act.

Payments to financially distressed

514.(1) The Governor in Council may, on the recommendation of the Minister, authorise payment from the Unclaimed Moneys Fund in the Treasury to a person who—

(a) is suffering hardship because an employer has failed to pay to or on account of the person the whole or part of wages; and

(b) is unlikely to be able to recover by lawful means the whole or a substantial part of the unpaid wages;

of an amount, not exceeding the amount that the person is unlikely to recover, as the Governor in Council determines.

(2) A payment made under subsection (1) does not relieve an employer from liability to pay wages due and payable to or on account of an employee.

(3) If a person to whom payment is made under subsection (1) subsequently receives remuneration, in money or in kind, in satisfaction or part satisfaction of the liability of an employer in relation to which the payment was made, the person is to forthwith pay to the department (to be paid to the Unclaimed Moneys Fund in the Treasury) an amount equal to—

(a) the value of the remuneration received as conclusively assessed by the Minister; or

(b) the amount of the payment made to the person under subsection (1) and not previously repaid by the person to the department under this subsection;

whichever amount is less.

(4) An amount payable to the department under subsection (3) is a debt due and owing to the department and may be recovered on its account by action in a court of competent jurisdiction.

Regulation making power

515.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made—

(a) creating an offence against a regulation; and

(b) fixing a penalty for an offence against a regulation (including different penalties for successive offences against a regulation) of not more than a fine of 20 penalty units.

Notices and applications to be written

516. Unless otherwise provided, if a person is required to give a notice or make an application, the notice or application must be written.

Inaccurate descriptions

517. No misnomer, inaccurate description or omission in or from any proclamation, order in council, regulation, rule, award, industrial agreement, certified agreement, enterprise flexibility agreement, permit, order, notice or other document issued under this Act prevents or abridges the operation of this Act with respect to the subject matter of that misnomer, inaccurate description or omission, provided the same is designated so as to be understood.

PART 17—EMPLOYEES IN EMPLOYMENT OF STATE

Application of Act to Crown

518.(1) This Act other than Part 15 binds the Crown, except in relation to—

(a) a matter (other than one of a description referred to in paragraph (b)) as to which an Act, other than this Act, prescribes a means by which that matter must, or may, be determined, and a

determination of that matter has been made by that means and is in force;

(b) a matter as to which an Act, other than this Act, prescribes a process or procedure by which to pursue the matter and does not allow for jurisdiction of the Industrial Court or Industrial Commission in respect of the matter;

(c) a matter as to which an Act, other than this Act, excludes the jurisdiction of the Industrial Court or Industrial Commission or the application of any decision within the meaning of this Act in respect of the matter.

(d) section 235(2) when—

(i) an award, industrial agreement, certified agreement or enterprise flexibility agreement otherwise provides; or

(ii) the Commission otherwise decides.

(2) In no case is the Crown liable to prosecution in respect of an offence against this Act.

Conflict between award etc. and statutory determination

519. If an award, industrial agreement, certified agreement, enterprise flexibility agreement or other decision of the Industrial Court or Industrial Commission is in force in relation to a matter in respect of which an Act, other than this Act—

(a) prescribes a means by which that matter must, or may, be determined; and

(b) does not prescribe to the effect that in determining that matter any relevant award or decision of the Commission or industrial agreement, certified agreement, enterprise flexibility agreement or enterprise flexibility agreement must be observed, or complied with;

and a determination made in relation to that matter in accordance with that other Act is inconsistent with any such award, industrial agreement, certified agreement, enterprise flexibility agreement or other decision, the determination prevails to the extent of the inconsistency and, to that extent, the award, agreement or decision ceases to have operation.

Protection of public property and officers

520.(1) In no case is execution or attachment, or process in the nature thereof, to be issued against property or revenues of—

(a) the Crown;

(b) any department of government;

to enforce an award, industrial agreement, certified agreement or enterprise flexibility agreement or other decision of the Industrial Court, Industrial Commission or an Industrial Magistrate.

(2) In no case is a person in a department of government, who is an employer of employees therein, or is taken to be an employer of employees therein for the purposes of this Act, personally liable under any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement or in respect of any breach thereof.

Ambit of reference to Crown

521.(1) This Act binds any instrumentality or body that is not a department of government or part thereof but that by any Act, or otherwise pursuant to law, is taken—

(a) to be, or to represent, the Crown; or

(b) to have the rights, privileges or immunities of the Crown;

as it binds any employer, other than the Crown.

(2) The application of this Act prescribed by section 518 does not include the application of this Act to an instrumentality or body such as is referred to in subsection (1).

(3) A reference in section 520 to the Crown does not include reference to an instrumentality or body such as is referred to in subsection (1).

Representation of public sector units

522.(1) In this section, and in section 523—

"unit of the public sector" has the meaning assigned to the expression by the *Public Sector Management Commission Act 1990*.

(2) A unit of the public sector, or any person in such a unit, that is concerned as an employer in any industrial cause must be represented in the Industrial Court or Industrial Commission or an Industrial Magistrates Court by 1 of the following persons, or where this Act so permits, by counsel, solicitor or agent on behalf of 1 of the following persons, to the exclusion of all other persons—

(a) the chief executive of the department or an officer of the department who is nominated for the purpose generally or in a particular case by such chief executive, unless the Minister of the Crown for the time being responsible for the unit of the public sector concerned as an employer in the industrial cause furnishes to the Minister for the time being responsible for the administration of the department a request in writing that such representation be in accordance with paragraph (b);

(b) if a request referred to in paragraph (a) is so furnished, the chief executive, or officer in charge, of the unit of the public sector concerned as an employer in the industrial cause, or a person employed in the unit who is nominated for the purpose by such chief executive or officer in charge.

Industrial cause affecting diverse employees

523.(1) If the Minister determines an industrial cause to be one that affects, or is likely to affect, employees in more than 1 unit of the public sector, the chief executive of the department is taken to be the employer of all employees who are, or are likely to be, so affected and to be a party to the cause and to proceedings in the Industrial Court, Industrial Commission or an Industrial Magistrates Court in the cause, in lieu of all other persons who, but for this subsection, would be employers of those employees or any of them.

(2) Any—

(a) agreement made by the chief executive of the department as employer pursuant to subsection (1); or

(b) order made in proceedings to which the chief executive of the department is a party pursuant to subsection (1);

is binding on all persons, and their employees, to whom the agreement or order purports to apply.

PART 18—WAGES

Division 1—Protection for wages

Interpretation

524.(1) In this Division—

"employer" means the person with whom a prime contractor has contracted for performance of work by that person or who has obligations to a prime contractor for performance of work.

"prime contractor" means a person who contracts with another person for the performance of work by that other person, or at whose request, or on whose credit or behalf and with whose knowledge and consent, work is performed and includes any person claiming under such first mentioned person, whose rights are acquired after commencement of the work.

"subcontractor" means a person who contracts with an employer for the performance of work that is in discharge of the employer's obligation to a prime contractor.

(2) A reference in this Part to service on a person includes reference to service on the person's agent.

Wages are first charge on moneys due to employer

525.(1) Wages due to employees employed on any work are, subject to the prime contractor's rights as prescribed, a first charge on the moneys due to the employer by the prime contractor in respect of the work performed, or under the contract or undertaking in performance of which the work is or is to be performed.

(2) Until service on the prime contractor of notice of attachment provided

for by section 528, the prime contractor is at liberty to pay to the employer all moneys that have become due and payable by the prime contractor to the employer in respect of the work performed, or under the contract or undertaking in performance of which the work is or is to be performed.

Assignment etc. of moneys due and payable ineffectual against claims for wages

526.(1) An assignment, disposition, or charge (legal or equitable) made or given by an employer of or on moneys that have become, or are to become, due and payable to the employer by a prime contractor in respect of work performed, or under a contract or undertaking in performance of which work is or is to be performed, is of no force or effect as against wages due or to become due to employees employed by the employer in performance of the work.

(2) Subsection (1) does not apply where the assignment, disposition or charge is one made or given to the employees employed by the employer in performance of the work concerned for wages due or to become due to them for performing the work.

Moneys due to or received by employer to be applied in payment of wages due or to become due

527.(1) Moneys—

(a) due and payable to an employer by a prime contractor; or

(b) received by an employer from a prime contractor;

in respect of work performed, or under a contract or undertaking in performance of which work is or is to be performed, are not liable to be attached or charged, except by employees such as are referred to in subsection (3), until all wages due and payable, or to become due and payable, to such employees have been duly paid to them or have been secured to them in a manner to the satisfaction of an Industrial Magistrate.

(2) The employer is to apply all such moneys received, so far as is necessary, in payment of wages due and payable, or to become due and payable, to employees employed by the employer in performance of work in respect of which the moneys are received.

(3) The employer—

(a) is to keep a full and true account in writing of all such moneys received from the prime contractor, and of the manner in which the moneys have been disbursed or disposed of; and

(b) on the application of any of the employees referred to in subsection (2), whose wages are more than 8 days in arrears and are not paid when demanded, is to produce the account to the employee for inspection, and permit the employee to make a copy of or an extract from the account.

Notice of attachment

528. An employee whose wages remain unpaid for 24 hours after they have become due and payable and have been demanded by the employee, may serve the prime contractor with a notice of attachment in or to the effect of the prescribed form.

Consequences of notice of attachment

529.(1) When notice of attachment is served on the prime contractor—

(a) the prime contractor is to retain such part of the moneys due and payable, or to become due and payable, by the prime contractor to the employer as is sufficient to satisfy the claim for wages to which the notice relates and all further claims for wages to which relate all like notices of attachment served on the prime contractor within 7 days following the service of the first such notice;

(b) at the end of such period of 7 days the amount claimed as wages in all such notices are attached in the prime contractor's hands, and must be retained by the prime contractor until—

(i) an Industrial Magistrate orders to whom, and in what manner, the amount is to be paid; or

(ii) the prime contractor deals with the amount in accordance with subsection (2); or

(iii) all such notices are withdrawn.

(2) A prime contractor may, at any time after being served with a notice

of attachment, pay the amount to which the notice relates to a clerk of the Magistrates Court to abide—

(a) the order of an Industrial Magistrate; or

(b) the withdrawal as prescribed of the notice of attachment.

(3) Payment under subsection (2)—

(a) must be accompanied by the notice of attachment or a true copy thereof;

(b) is a full discharge of the prime contractor from liability in respect of the amount paid and costs of proceedings in relation to the amount.

(4) Moneys paid to a clerk of the Magistrates Court under subsection (2) are not to be paid out except—

(a) on the order of an Industrial Magistrate; or

(b) on withdrawal as prescribed of the relevant notice of attachment.

(5) A prime contractor who fails to retain, or to pay in accordance with subsection (2), an amount required by subsection (1) to be retained is personally liable to each employee in the amount of the employee's claim for wages specified in the employee's notice of attachment served on the prime contractor.

(6) An employee who has served a notice of attachment on a prime contractor may at any time withdraw the notice of attachment by giving written notice of withdrawal—

(a) to the prime contractor; and

(b) to the employer to whom moneys are due and payable, or are to become due and payable, by the prime contractor.

Orders for payment by prime contractor or clerk of the court

530.(1) If the employee who has served a notice of attachment on a prime contractor obtains judgment against the employer in respect of the claim for wages the employee is entitled to an order, in the prescribed form, of the Industrial Magistrate who has given judgment in the cause for payment of an amount determined by the Industrial Magistrate—

(a) by the prime contractor; or

(b) if the prime contractor has paid moneys to a clerk of the Magistrates Court in respect of the employee's claim for wages, by the clerk of the court;

or both such orders, if the case requires it.

(2) In determining the amount that should be ordered to be paid under subsection (1) in respect of an employee's claim for wages, the Industrial Magistrate is to take into account the existence of claims for wages of other employees of the employer of which the magistrate has knowledge.

(3) Unless an appeal against the Industrial Magistrate's decision is duly instituted and notice thereof is served on the prime contractor or clerk of the Magistrates Court (or both of them) on whom an order is made under subsection (1), the prime contractor or, as the case may be, clerk of the court is to pay the amount stated in the relevant order to the employee from the moneys attached and retained in the hands of the prime contractor or, as the case may be, paid to the clerk of the court under section 529(2).

(4) Payment required by subsection (3) to be made is to be made at the end of 21 days following service of a copy of the order made under subsection (1) on the prime contractor or, as the case may be, clerk of the court.

(5) If an appeal is duly instituted and notice thereof served as referred to in subsection (3), the prime contractor or clerk of the court is to continue to retain or hold the moneys from which payment is to be made to satisfy the order made on the contractor or, as the case may be, clerk under subsection (1) to await—

(a) the determination of the appeal and any proceedings consequent thereon; or

(b) the withdrawal or discontinuance of the appeal;

whichever event occurs.

(6) In no case is the prime contractor who has been served with any order or orders referred to in subsection (1) liable to a greater extent than the sum that is actually due and payable by the prime contractor to the employer—

(a) at the time of service of such order or orders; or

(b) at the time of payment under the order or orders;

whichever is the greater.

Employees to be paid according to time at which notices of attachment are served

531.(1) Subject to sections 528 to 530 and to subsection (2), moneys attached as prescribed in the hands of a prime contractor, or paid to a clerk of the Magistrates Court as prescribed, are to be paid in priority according to the order of the service of the relevant notices of attachment.

(2) For the purposes of this section, all notices of attachment served within 7 days following the service of the first such notice are taken to have been served simultaneously with the first such notice, so as to secure an equal priority to distribution of the moneys attached, or paid, among all employees whose notices are so served simultaneously.

(3) The claims for wages of all employees who are taken to have served notices of attachment simultaneously as prescribed must be paid in full unless the moneys attached in the hands of the prime contractor or held by the clerk of the Magistrates Court are insufficient for the purpose, in which case those claims are to abate in equal proportions among themselves.

Employee may sue prime contractor

532.(1) If a prime contractor is served with a copy of the Industrial Magistrate's order duly made under section 530(1), and the amount stated in the order is not paid as prescribed the employee in whose favour the order is made may, in an Industrial Magistrates Court and in the employee's own name, sue for and recover from the prime contractor the amount stated in the order, or so much thereof as is unpaid, by way of all actions and proceedings that the employer could have brought against the prime contractor—

(a) had there been no attachment of moneys under this Part; and

(b) had the moneys required by the attachment under section 528 to be retained been due and payable to the employer and unpaid.

(2) Jurisdiction is hereby conferred on every Industrial Magistrate to hear and determine proceedings commenced in an Industrial Magistrates Court

pursuant to this section, irrespective of the amount in issue.

(3) The entitlement of an employee under subsection (1) is subject to the prime contractor's right to set off against the employee's claim—

(a) all moneys properly paid by the prime contractor to the employer in accordance with the provisions of section 525(2); and

(b) all moneys that the employer was, at the time the notice of attachment was served on the prime contractor, liable to pay to the prime contractor on account of any breach, or non-performance, of the contract or undertaking in performance of which the relevant work is or is to be performed.

Cessation of attachment not to prejudice prime contractor

533. If an attachment of moneys under section 528 in connection with an employee's claim for wages to which an order under section 530 relates ceases to operate by reason of—

(a) satisfaction of the employee's claim; or

(b) the setting aside of the order;

a prime contractor who has made payment in good faith in accordance with such order served on the contractor, before receiving notice of such satisfaction or setting aside, is not to be prejudiced in respect of such payment because of such cessation of operation.

Discharge by employee for payment received

534. An employee who receives payment of an amount on account of a claim for wages to which an order under section 530 relates, on request of the person making the payment and at the time of receiving payment, is to sign a discharge therefor in the prescribed form.

Remedy of employees of subcontractor

535.(1) If an employer has let the performance of any work to a subcontractor every employee employed by the subcontractor in that work has the same rights and remedies in respect of a claim for wages against such employer as are conferred by this Division on an employee of such

employer against a prime contractor.

(2) For the purpose of giving effect to subsection (1), in construing the provisions of this Division (other than section 524 and this section) the term 'employer' is substituted for the term 'prime contractor' and the term 'subcontractor' is substituted for the term 'employer'.

Prime contractor's right to reimbursement.

536.(1) If a prime contractor has paid a claim for wages due to an employee of the employer, in satisfaction of the prime contractor's obligations under this Division, then in the event of—

(a) winding-up proceedings being commenced against the employer, being a corporation; or

(b) distribution of the employer's assets in insolvency of, or a composition with creditors of, the employer, being an individual;

the prime contractor is taken to have a claim for wages against the employer's assets, which is a preferential claim, as if the prime contractor were an employee of the employer to whom wages were due and payable by the employer.

(2) This section applies in the case referred to in subsection (1)(a) or (b) only to the extent that a law of the State may validly apply to the distribution of assets in such a case.

Mode of service

537. A notice of attachment or a copy of an Industrial Magistrate's order under section 530 to be served on any person for the purposes of this Division is taken to have been duly served if—

(a) it is given personally to such person; or

(b) it is left at the place of residence or registered place of business of such person last known to the person who seeks to serve it; or

(c) it is sent by post addressed to the place of residence or the registered place of business of such person last known to the person who seeks to serve it.

Industrial Magistrate may hear claim for wages ex parte

538. An Industrial Magistrate may hear and determine proceedings in respect of a claim for wages in the absence of any person to whom the originating process is directed upon proof on oath or affirmation of the service thereof in a manner prescribed.

Division 2—Payment and recovery of wages

Payment of wages

539.(1) An employer who employs an employee to perform work for a price or rate as fixed by any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit is to pay to the employee or, with the employee's consent in writing, on account of the employee, the price or rate so fixed, without deduction except such as is authorised by the award, agreement, this Division, or the consent in writing of the employee.

(2) An employer who employs an employee to perform work for a price or rate as agreed between the employer and the employee and either—

(a) the price or rate for such work is not fixed by any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit; or

(b) the price or rate so agreed exceeds the price or rate fixed by any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit;

is to pay to the employee, or, with the employee's consent in writing, on account of the employee, the price or rate so agreed without deduction except such as is authorised by this Division or the consent in writing of the employee.

(3) Subsections (1) and (2) do not affect a contract made, or a transaction entered into, before the commencement of this Act that is of a description referred to in section 28 of the *Wages Act 1918*.

(4) Wages payable to an employee must be paid—

(a) to the employee in Australian units of currency and parts thereof, or as authorised by subsection (6);

(b) at least monthly.

(5) If—

(a) wages are payable to an employee in cash; and

(b) the amount is not a multiple of 5c;

the amount may be rounded to the nearest amount that is a multiple of 5c, even if this involves a reduction.

(6) Wages may be paid—

(a) with the employee's consent in writing, wholly or partially to the employee's credit in an account nominated by the employee with a financial institution; or

(b) with the employee's consent in writing, by cheque of a description prescribed by subsection (7), draft, money order or electronic fund transfer; or

(c) by any means (including means referred to in paragraph (a) or (b)) provided by an award, industrial agreement, certified agreement or enterprise flexibility agreement.

(7) If wages are paid otherwise than by payment in cash they are to be paid in such amount that the employee receives or is credited with the full amount of wages to which the employee is entitled in accordance with this Division, free and clear of all charges made on account of the method of payment of the wages.

(8) A cheque by which wages are paid—

(a) must be one that is payable to a bearer thereof on demand; and

(b) must not be crossed;

except with the employee's consent in writing first obtained.

(9) If wages are due to an employee at a time when the employee ceases employment with the employer, such wages are to be paid to the employee, or, as authorised by the employee's consent in writing, on account of the employee, within 3 days after the employee ceases such employment, unless—

(a) the case is one to which section 542 applies; or

(b) the employer has complied with an Industrial Inspector's demand

made under section 492 in respect of such wages.

(10) If in relation to payment of wages an employee accepts a cheque, draft or money order that is dishonoured, the employee is entitled to recover from the employer a reasonable sum on account of damages sustained by the employee in consequence of such dishonour, by action in a court of competent jurisdiction as a debt due and payable to the employee, in addition to any wages due and payable to or on account of the employee.

Provision for payment of wages contrary to s 539 void

540. A provision of a contract, or an authority, to the extent that it provides—

(a) for payment of wages otherwise than in accordance with section 539; or

(b) for the making of any deduction from wages in contravention of section 539;

is void.

Contract not to stipulate mode of expending wages

541.(1) Subject to this Division, an employer is not, directly or indirectly, to impose as a condition, express or implied, of the employment of an employee, a provision as to the place at which, manner in which, or person with whom wages of an employee, or any part thereof, are to be expended.

(2) An employer is not to dismiss an employee from employment because wages of the employee, or any part thereof, are expended, or are not expended, at any place, in any manner, or with any person.

Payment of unpaid wages etc. where employee's whereabouts unknown

542.(1) If an employer is unable to comply with section 539(9) because the whereabouts of the former employee are unknown to the employer and cannot be ascertained by the employer with reasonable diligence, and such inability continues for 30 days after cessation of employment by the former employee, the employer, forthwith at the end of that period, is to pay the

wages due and payable to the former employee to the nearest clerk of the Magistrates Court on account of the former employee.

(2) The receipt of the clerk of the court for a payment made under subsection (1) is a full discharge to the employer for the amount specified therein.

(3) The clerk of the court to whom payment under subsection (1) is made is to pay the moneys received to the former employee on whose account the moneys were paid to the clerk, if the former employee's whereabouts are ascertained, but if at the end of a further period of 30 days, the moneys have not been paid to the former employee, the clerk of the court is to pay the moneys into the funds of the department on account of the former employee.

(4) This section does not apply if the employer has complied with an Industrial Inspector's demand made under section 492 in respect of such wages.

Recovery of wages etc.

543.(1) An application may be made to an Industrial Magistrate for an order for payment of wages due and payable to an employee, or payable on account of an employee, and unpaid.

(2) An application may be made by—

(a) the employee; or

(b) an industrial organisation of employees of which the employee is a member, acting on behalf of the employee; or

(c) a person acting on behalf of the employee and authorised by the employee to make the application; or

(d) an Industrial Inspector.

(3) An application under subsection (1) for payment of wages in respect of long service leave must be made within 3 years following the time when the wages become due and payable.

(4) An application under subsection (1) may be made—

(a) if, when the application is made, the employee whose wages are applied for is in employment with the employer to whom the

application relates—in respect of wages that have become due and payable within 6 years preceding the making of the application;

(b) if, when the application is made, the employee whose wages are applied for has ceased employment with the employer to whom the application relates—in respect of wages that have become due and payable within 6 years preceding the time when the employee ceased such employment.

(5) Notwithstanding subsection (4) an employer's liability on an application under subsection (1)—

(a) in respect of an employee who ceased employment with the employer to whom the application relates in the 12 months preceding the commencement of this Act—does not extend to wages that became due and payable earlier than 12 months before such cessation;

(b) in respect of an employee who is in employment with the employer to whom the application relates at the commencement of this Act—does not extend to wages that became due and payable earlier than 12 months before such commencement.

(6) Upon the hearing and determination of an application under subsection (1) the Industrial Magistrate—

(a) is to order the employer to make payment to the employee of such amount as the Industrial Magistrate finds to be due and payable to the employee or, as the case may be, payable on account of the employee;

(b) is authorised to make an order for such payment notwithstanding any express or implied provision of any agreement to the contrary;

(c) may order the payment to be made on such terms as the Industrial Magistrate considers just;

(d) may award costs to either party in an amount assessed by the Industrial Magistrate.

Enforcement of Industrial Magistrate's order

544.(1) An order of an Industrial Magistrate for payment by an employer of—

(a) wages found to be due and payable; or

(b) contributions to an approved superannuation scheme or fund found to be due and payable; or

(c) costs in proceedings relating to unpaid sums mentioned in paragraph (a) or (b);

is enforceable under the *Justices Act 1886* as an order for payment of money made by justices under that Act.

(2) If an order, such as is referred to in subsection (1), is made—

(a) the amount ordered to be paid (including an amount of costs) constitutes a debt due and owing to the person, in whose favour the order is made, by the employer;

(b) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*;

(c) upon being so filed, the order is taken to be an order duly made by a Magistrates Court constituted under such Act and, in addition to the means of enforcement prescribed by subsection (1), may be enforced as an order so made.

Recovery from employee of amounts overpaid

545.(1) No provision of this Division is to be construed to prevent the recovery of any amount paid by an employer to or on account of an employee but to which the employee is not entitled because of absence from work at any time.

(2) Without limiting the employer's right to recover any such amount from the employee, the amount may be recovered by the employer's commencing, within 12 months following the payment of the amount in question, and no later, to make from the employee's wages for any subsequent pay period or periods a deduction that accords with subsection (4).

(3) Deductions duly commenced may extend over a period of 6 years

following the payment of the amount in question.

(4) In no case is a deduction to be made under this section in an amount that would reduce the amount of wages due and payable in respect of the employee for any pay period to less than—

(a) in the case of an employee who has no dependant—$^2/_3$ of the guaranteed minimum wage for each week of the period;

(b) in the case of an employee who has a dependant—the guaranteed minimum wage for each week of the period, or $^1/_3$ of the employee's gross wages for the period, whichever is the greater.

Deduction in default of notice of termination

546. If a contract of employment is governed by an award, industrial agreement, certified agreement or enterprise flexibility agreement that provides for notice of termination of the employment for a specified period and an employee ceases such employment without giving to the employer such notice for the period so specified, the employer is entitled to deduct from wages due and payable by the employer to or on account of the employee any amount stated by the award or agreement to be forfeited or payable to the employer in the event that notice of termination is not given by an employee for the period specified.

Minor may sue

547. A person under 18 years of age may sue, or bring other proceedings under this Division, in respect of wages due and payable in respect of the person as an employee, in the same manner and to the same extent as if the person were of the age of 18 years.

Division 3—Wages in rural and mining industries

Interpretation

548. In this Division—

"mortgagee" means a person entitled to payment under the security of an instrument of mortgage, a crop lien, a stock mortgage or a bill of sale.

"mortgagor" means a person liable to make payment to a mortgagee under an instrument of mortgage, a crop lien, a stock mortgage or a bill of sale.

Wages recoverable against mortgagee where mortgagor defaults

549.(1) If an employee has performed work—

(a) in cultivating or otherwise improving land that is subject to mortgage; or

(b) in cultivating or otherwise in connection with a crop that is subject to a lien; or

(c) in connection with animal or vegetable matter prepared or manufactured by machinery that is subject to a bill of sale; or

(d) in tending, feeding, driving, or otherwise in connection with stock that is subject to a mortgage;

and is prevented from, or hindered in, recovering wages for the work from the mortgagor as employer because the mortgagee has entered into, or taken possession of the land, crop, machinery or stock or is taken to have done so, or has sold the same, pursuant to the mortgagee's security, or because any cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee then—

(e) the mortgagee is taken to be the employer of the employee for the performance of the work;

(f) the mortgagor is taken, in engaging the employee for the work, to have acted as the duly authorised agent of the mortgagee.

(2) Subsection (1) and the presumptions therein prescribed do not affect appropriate accounting as between the mortgagor and the mortgagee.

(3) A mortgagee is not liable, pursuant to subsection (1), for wages of the employee that have become due and payable—

(a) more than 6 months before the employee first applies to the mortgagee for payment of the wages; or

(b) more than 6 months before the mortgagee takes possession of or sells the land, crop, machinery, or, as the case may be, stock;

whichever period is earlier.

(4) The liability imposed on a mortgagee by this section is in addition to the mortgagor's liability for the employee's wages and does not affect the rights, liabilities, powers and duties as between the mortgagor and the employee.

(5) If an employee brings proceedings against a mortgagor for payment of wages (whether or not the employee obtains an order for payment against the mortgagor) and, for a cause referred to in subsection (1), fails to obtain payment of the wages, or some portion thereof, from the mortgagor, the employee does not thereby lose any right to bring proceedings against the mortgagee pursuant to this section for payment of the wages, or the unpaid portion thereof, and costs of the proceedings against the mortgagee.

Distress warrant levied on property of mortgagor or mortgagee

550.(1) A warrant of distress issued to enforce an order for payment of wages due and payable to or on account of an employee in respect of work performed in connection with property referred to in section 549(1), so far as such land (and fixtures thereon), crop, machinery or stock is concerned—

(a) authorises distress on and sale of property of the mortgagee and also property of the mortgagor;

(b) may be executed on the mortgaged land (and fixtures thereon) or the encumbered crop, machinery, or stock notwithstanding that the mortgagee has entered into or taken possession of the land (and fixtures thereon), crop, machinery or stock, or is taken to have done so, pursuant to the mortgagee's security.

(2) Any sums paid by or recovered from the mortgagee in respect of wages referred to in subsection (1) are taken to be advances made by the mortgagee to or on account of the mortgagor under the mortgagee's security and may be recovered by the mortgagee under the security.

Application of ss 415 and 416 to mines

551.(1) If an employee has performed work in or about—

(a) a mine (including fixtures therein or thereon) that is subject to a mortgage; or

(b) machinery or apparatus, used in or in connection with a mine, that is subject to a bill of sale;

and is prevented from, or hindered in, recovering wages for the work, or earnings in respect of the work, from the mortgagor as employer—

(c) because the mortgagee has entered into, or taken possession of the mine, machinery or apparatus, or is taken to have done so, or has sold the same, pursuant to the mortgagee's security; or

(d) because any cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee;

then, subject to this section, the provisions of sections 549 and 550 apply in relation to the case, with any necessary adaptation.

(2) A mortgagee is not liable, pursuant to the application of sections 549 and 550 as prescribed by subsection (1), for wages or earnings of the employee that have become due and payable—

(a) more than 1 month before the employee first applies to the mortgagee for payment of the wages or earnings; or

(b) more than 1 month before the mortgagee takes possession of, or sells, the mine, machinery or apparatus;

whichever period is earlier.

Priority in payment of wages etc. earned in mine

552.(1) An amount of wages or other earnings due and payable in respect of employees in relation to employment in or about a mine, not exceeding 4 weeks such wages or earnings in respect of each such employee, is a first charge on the claim or land in or on which the mine is situated, notwithstanding that the claim or land is mortgaged or charged to secure payment of other moneys, or that there is a lien thereon.

(2) In the winding-up of a corporation formed for or engaged in working a mine, an amount of wages or other earnings that, at the date on which the order for such winding-up is made, is due and payable in respect of employees of the corporation in relation to employment in or about the mine, not exceeding 4 weeks such wages or earnings in respect of each such employee, is to be paid in priority to all other debts, secured or unsecured, of the corporation.

(3) Subsection (2) applies only to the extent that a law of the State may validly apply to the distribution of assets in a winding-up.

Provisions concerning application of ss 551 and 552

553.(1) In sections 551 and 552—

"mine" means a mine within the meaning of the *Mines Regulation Act 1964*.

(2) Where a first charge exists in accordance with section 552(1), the amount that is so charged includes—

(a) all sums awarded by a court as costs against an employer in proceedings brought by or on behalf of any employee or employees to recover the wages or earnings referred to in that section; and

(b) the amount of costs, charges and expenses reasonably incurred in attempting to enforce any order or orders for payment of such wages or earnings.

(3) The debts that are a first charge in accordance with section 552(1) or that are to be paid in priority to all other debts in a winding-up in accordance with section 552(2) rank equally among themselves and, if necessary, abate in equal proportions among themselves.

PART 19—OFFENCES

Contempt of Court

554.(1) The Industrial Court has all the protection, powers, jurisdiction and authority possessed by the Supreme Court in respect of contempt of that court, and in the exercise thereof by the Industrial Court the Rules of the Supreme Court relating to contempt of court apply, mutatis mutandis, and are to be observed.

(2) A motion for an order that a person be committed to prison for contempt of the Industrial Court may be made by the Industrial Registrar or

any officer of the Court.

(3) The jurisdiction of the Industrial Court to punish a contempt of the Court committed in the face and hearing of the Court may be exercised by the President sitting alone, of the President's own motion.

(4) In all other cases the jurisdiction of the Industrial Court to punish a contempt of the Court is to be exercised by the Full Industrial Court.

(5) The Industrial Court has jurisdiction to punish in respect of an action or omission as a contempt of the Court, although a penalty is prescribed in respect of that action or omission.

Offence to disobey certain orders

555. A person who disobeys an order of the Industrial Court or the Industrial Commission that provides for payment of a penalty in the event of disobedience thereof commits an offence against this Act and is liable to a penalty in the amount so provided for.

Obstruction of power of entry etc.

556. If an Industrial Commissioner, or an officer of the Industrial Commission or other person, authorised as prescribed by section 50, is seeking to exercise a power conferred by section 50, any person who—

(a) refuses or unduly delays entry to any place;

(b) fails to answer any question in relation to a matter referred to in that section;

(c) wilfully furnishes information or makes a statement that is false;

commits an offence against this Act, unless, in the case referred to in paragraph (b), the person has lawful excuse for the failure to answer.

Maximum penalty—40 penalty units or 12 months imprisonment.

Obstruction or hindrance of officers generally

557.(1) In this section—

"officer" means an officer of the Industrial Court or the Industrial Commission.

(2) A person who—

(a) obstructs, hinders or resists any officer in the exercise of any power, or performance of any duty, under this Act;

(b) being lawfully required by an officer to produce or exhibit any document, or to allow any document to be examined, fails to comply with the requisition;

(c) wilfully misleads any officer in any particular likely to affect the performance of the officer's duty;

(d) being lawfully asked a question for the purposes of this Act by any officer, fails to answer truthfully to the best of the person's knowledge, information and belief;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(3) Subsection (2) does not apply in a case provided for by section 556.

Improper conduct towards Industrial Commissioner, Industrial Magistrate or Industrial Registrar

558.(1) In this section—

"industrial authority" means the Industrial Commission, or an Industrial Magistrates Court, or the Industrial Registrar acting in the official capacity as registrar.

"prescribed person" means an Industrial Commissioner, an Industrial Magistrate or the Industrial Registrar.

(2) A person who—

(a) wilfully insults or disturbs a prescribed person who is acting in exercise of jurisdiction or powers or in performance of duties under this, or any other, Act;

(b) interrupts the proceedings of an industrial authority;

(c) uses insulting language towards a prescribed person who is acting in exercise of jurisdiction or powers or in performance of duties under this, or any other, Act;

(d) by writing or speech uses words calculated—

(i) to improperly influence a prescribed person in exercise of jurisdiction or powers or performance of duties under this, or any other, Act; or

(ii) to improperly influence a witness before an industrial authority; or

(iii) to bring a prescribed person or an industrial authority into disrepute;

commits an offence against this Act.

Maximum penalty—

(a) if the offender is an industrial organisation or other corporation—200 penalty units;

(b) if the offender is an individual—20 penalty units or imprisonment for 12 months.

(3) A person who commits an offence defined in subsection (2) in the face of an industrial authority may, by order of the authority, be excluded from the place where the authority is sitting, but without affecting the offender's liability to be punished for the offence.

(4) A police officer, or a person acting under the authority of the industrial authority, may enforce the order of the authority, using therein such reasonable force as is necessary.

Disturbances near tribunals

559. A person who creates a disturbance or takes any part in creating or continuing a disturbance in or near any place in which the Industrial Court, the Industrial Commission, an Industrial Magistrates Court or the Industrial Registrar is sitting for the purposes of this, or any other, Act commits an offence against this Act.

Maximum penalty—40 penalty units or 12 months imprisonment.

Contempt by witness

560.(1) In this section—

"industrial authority" means the Industrial Court, the Industrial

Commission, an Industrial Magistrates Court or the Industrial Registrar conducting proceedings under this, or any other, Act.

(2) A person—

(a) who, having been summoned to appear as a witness before an industrial authority, disobeys the summons; or

(b) who, having appeared as a witness before an industrial authority, whether in response to a summons or not—

(i) refuses to be sworn or to make affirmation or declaration as a witness; or

(ii) refuses to answer any question that the person is required by the authority to answer; or

(iii) refuses to produce any records that the person is required by the authority to produce;

commits an offence against this Act, unless the person has lawful excuse for the disobedience or refusal.

Maximum penalty—40 penalty units.

Disclosure of confidential material tendered in evidence

561. A person who—

(a) gives as evidence; or

(b) publishes;

any material in contravention of section 99 or of any direction given under that section commits an offence against this Act.

Maximum penalty—16 penalty units.

Avoiding Act's obligations

562.(1) In this section—

"obligation" under this Act includes an obligation under an award, industrial agreement, certified agreement or enterprise flexibility agreement.

(2) An employer must not, with intent to avoid an obligation under this

Act about the payment to or for an employee for any public holiday or leave due or accruing to the employee by way of annual, sick or long service leave—

(a) dismiss or stand down the employee; or

(b) if the employee's entitlement to long service leave is calculated under section 245—interrupt the continuity of the employee's service.

Maximum penalty—40 penalty units.

(3) The court that convicts a defendant of the offence defined in subsection (2) in relation to long service leave, apart from any penalty order it may make, is to order the defendant to pay to the employee dismissed or stood down a proportionate amount of long service leave on the basis of 13 weeks leave for 15 years service.

(4) A person who enters into arrangements referred to in section 250 commits an offence against this Act and an Industrial Magistrate exercising jurisdiction under that section may, in addition to any other order made under that section, order the person to pay a fine not exceeding 16 penalty units.

Offence re long service leave for employees not governed by awards etc.

563. A person who fails to comply with any determination or general ruling made or declared by the Industrial Commission under section 253, commits an offence against this Act.

Maximum penalty—16 penalty units.

Offence re compulsory conference

564. A person who fails to comply with any provision of section 321 commits an offence against this Act.

Maximum penalty—40 penalty units.

Offence re secret ballot

565.(1) In subsection (2)—

"secret ballot" means a secret ballot conducted pursuant to section 322.

(2) A person—

(a) is not to resist or obstruct, or attempt to resist or obstruct, an Industrial Magistrate, the Industrial Registrar, an officer of the public service, or other person acting under the direction or authority of an Industrial Magistrate or the Industrial Registrar, in the performance of any duty imposed, or of any action so directed or authorised to be done, with respect to the taking of a secret ballot;

(b) at or near the place where a secret ballot is being taken—

(i) is not to threaten or intimidate, or attempt to threaten or intimidate, or obstruct, or attempt to obstruct, the free passage of an employee proceeding to or attending at that place for the purpose of voting at that ballot;

(ii) is not to threaten or intimidate, or attempt to threaten or intimidate, an employee not to vote or to vote in a particular manner at that ballot;

(c) is not to obstruct or attempt to obstruct an employee or other person in the performance of an action directed or authorised to be done with respect to the taking of a secret ballot;

(d) is not, by any threat or intimidation, to prevent or attempt to prevent an employee or other person from performing an action directed or authorised to be done with respect to the taking of a secret ballot;

(e) is not to vote or attempt to vote at a secret ballot unless the person is entitled to vote thereat, and has received from the Industrial Magistrate or Industrial Registrar charged with taking the ballot a ballot paper;

(f) is not to vote or attempt to vote at a secret ballot in the name of another person;

(g) who is entitled to vote at a secret ballot, is not to mark a ballot paper that relates to that ballot, other than the ballot paper received

by the person from the Industrial Magistrate or Industrial Registrar charged with taking the ballot.

Maximum penalty—40 penalty units.

(3) A police officer may arrest without warrant a person found by the officer committing any offence specified in subsection (2)(a), (b), (c) or (d) and may institute a prosecution in respect of such offence.

(4) To the extent that this section is inconsistent with section 534 of the Criminal Code this section prevails and the provisions of section 534 of the Criminal Code, to the extent of the inconsistency, are of no force or effect.

Failure to comply with direction for performance of rules of industrial organisation

566. A person who fails to comply with an order of the Industrial Court made under section 349 commits an offence against this Act.

Maximum penalty—40 penalty units.

Offence re property of industrial organisation

567.(1) A person who—

(a) by any false representation, or any imposition, obtains possession of moneys, securities, records or effects of an industrial organisation; or

(b) having in possession any such thing—

(i) wilfully withholds it from a person entitled to possession of it; or

(ii) fraudulently misapplies it; or

(iii) wilfully applies it to a purpose other than the purposes expressed or directed in the rules of the industrial organisation;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) The court by which a defendant is convicted of an offence defined in

subsection (1), apart from any penalty order it may make, may order the defendant—

(a) to deliver up as directed by the order all moneys, securities, records or effects to which the conviction relates;

(b) to repay as directed by the order the amount found by the court to have been withheld, fraudulently misapplied or improperly applied;

and further order that in default the defendant be imprisoned for a period not exceeding 12 months.

Offences re action by Industrial Registrar in respect of election inquiry

568. A person who—

(a) refuses or fails to comply with a requirement under section 368; or

(b) obstructs or hinders the Industrial Registrar or any other person in the exercise of powers under section 368;

commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences re enforcement of orders concerning disputed elections in industrial organisation

569. A person who obstructs or hinders the carrying out of an order of the Industrial Commission under Part 14, Division 7 commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences re ballot papers and other records

570. A person who contravenes section 359 commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences re elections

571. A person who—

(a) refuses or fails to comply with a direction given under section 376; or

(b) obstructs or hinders—

(i) a person in the conduct of an election under section 376; or

(ii) a person conducting an election under section 377 in taking action under section 376(6); or

(iii) a person in carrying out a direction under section 376(6); or

(iv) a person conducting an election pursuant to an arrangement under section 399;

commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences in relation to the conduct of ballots

572.(1) This section applies in relation to the conduct of—

(a) an election under Part 14, Division 5; or

(b) a proposed amalgamation under Part 14, Division 9.

(2) A person who, without lawful authority or excuse—

(a) impersonates another person with a view to obtaining a ballot paper to which the first person is not entitled; or

(b) impersonates another person with a view to voting in the ballot for the election or proposed amalgamation; or

(c) destroys, defaces, alters, takes or interferes with a nomination paper, ballot paper or envelope; or

(d) puts a ballot paper, or other paper concerning the election or proposed amalgamation into a ballot box or other receptacle in use for ballot purposes; or

(e) delivers, or puts in the post for delivery, to a person receiving ballot papers for the election or proposed amalgamation a ballot

paper, or other paper concerning the election or proposed amalgamation; or

(f) records a vote having no entitlement to do so; or

(g) records more than 1 vote; or

(h) forges a nomination paper, ballot paper or envelope, or utters a nomination paper, ballot paper or envelope knowing it to be forged; or

(i) provides a ballot paper to another; or

(j) obtains, or has possession of, a ballot paper; or

(k) destroys, opens, takes or interferes with a ballot box or other receptacle in use for ballot purposes;

commits an offence.

Maximum penalty—80 penalty units.

(3) A person who—

(a) threatens, offers or suggests; or

(b) uses, inflicts, causes or procures;

violence, injury, punishment, damage, loss or disadvantage because of, or to induce—

(c) a candidature, or withdrawal of a candidature in an election or a proposed amalgamation; or

(d) a vote, or an omission to vote, in a ballot for an election or a proposed amalgamation; or

(e) support for, or opposition to, a candidate in an election or a proposed amalgamation; or

(f) a promise of a vote, omission to vote, support or opposition for or to a candidate or cause in an election or a proposed amalgamation;

commits an offence.

Maximum penalty—80 penalty units.

(4) A person who, without lawful authority or excuse—

(a) requests, requires or induces another—

(i) to show a ballot paper to the person; or

(ii) to permit the person to see a ballot paper;

in such a way that the person can see the vote recorded in the ballot paper, while the paper is being marked or after it has been marked; or

(b) if the person is performing duties for the purposes of the election or proposed amalgamation—shows to another person, or permits another person access to, a ballot paper used in the election or proposed amalgamation otherwise than in the performance of those duties;

commits an offence.

Maximum penalty—80 penalty units.

(5) A person who uses, inflicts, causes or procures violence, injury, punishment, damage, loss or disadvantage to another person because the other person has made an application under section 367 commits an offence.

Maximum penalty—80 penalty units.

(6) In subsection (3)—

"candidate" means—

(a) a person standing for office in an election; or

(b) an industrial organisation or association that is seeking amalgamation under Part 14, Division 9.

Offences re membership of industrial organisation

573.(1) In this section—

"union ticket" means a receipt, document or writing acknowledging that the person named therein is a member, or has renewed membership of the industrial organisation or that the person has complied with the rules of the industrial organisation relating to the obtaining or renewal of membership thereof.

(2) An industrial organisation that—

(a) fails to admit to its membership a person who is entitled to be admitted to membership of the industrial organisation pursuant to section 379—

(i) within 3 months following the date of the person's application in that behalf; or

(ii) if a question or dispute within the application of section 380 has within that period of 3 months been referred to the Industrial Court for determination, within 1 month following the date of the Court's determination that the person is entitled to such membership; or

(b) fails to provide a person who—

(i) is entitled to be admitted to membership of the industrial organisation, or to remain a member thereof, pursuant to the provisions of section 379; and

(ii) has complied with the rules of the industrial organisation that relate to obtaining membership thereof or to a renewal of such membership;

with a union ticket in respect of such compliance within 1 month following the date of such compliance;

commits an offence against this Act.

Maximum penalty—100 penalty units and, in addition, 2 penalty units for each day during which the failure constituting the offence continues.

(3) An offence defined in subsection (2) is a continuing offence, which may be charged in 1 complaint from time to time in respect of a period.

Offence re young person's membership

574. A person who contravenes the provisions of section 381 commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences re register of members and of officers of industrial organisation

575. If default is made in complying with a provision of section 382, 383 or 384, or with a direction of the Industrial Registrar under section 385 each of them—the industrial organisation that is in default and the president and secretary of the industrial organisation—commits an offence against this Act.

Maximum penalty—40 penalty units.

Failure to provide information re amalgamation ballot

576. An officer or employee of an industrial organisation, or of a branch of an industrial organisation, who fails to comply with a requisition directed to the officer or employee under section 405 commits an offence against this Act.

Maximum penalty—40 penalty units.

Offence re duty of officer of industrial organisation

577. An officer of an industrial organisation who fails to comply with section 455 commits an offence against this Act.

Maximum penalty—40 penalty units.

Failure to keep accounts—offences re auditor

578.(1) An industrial organisation that fails to comply with section 452, 453, 454 or 456(2) or (3) commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) A person who contravenes or fails to comply with section 456(4) or (5) commits an offence against this Act.

Maximum penalty—40 penalty units.

(3) An auditor of an industrial organisation who—

(a) makes in a report referred to in section 457(1) a statement that to the auditor's knowledge is false or misleading in a material particular; or

(b) fails to comply with section 457(5);

commits an offence against this Act.

Maximum penalty—40 penalty units.

Obstruction or hindrance of auditor

579.(1) In this section—

"auditor" includes—

(a) in subsection (2)(a) and (b)—a person authorised by the auditor for the purposes of section 457(2) or 462;

(b) in subsection (2) (c) and in subsection (4)—a person authorised by the auditor for the purposes of section 465.

(2) An officer, employee or member of an industrial organisation who—

(a) obstructs or hinders the auditor of the industrial organisation, or of the Industrial Registrar, in exercising the entitlement under section 457(2) (a);

(b) refuses or fails to produce to the auditor of the industrial organisation, or of the Industrial Registrar, a record or other document in the custody or control of the officer, employee or member that is sought by the auditor under section 457(2)(a);

(c) obstructs or hinders the auditor of the industrial organisation in attending a part of a meeting that the auditor is entitled under section 465 to attend;

commits an offence against this Act, unless, in the case referred to in paragraph (b), the officer, employee or member has a lawful excuse for such refusal or failure.

(3) An industrial organisation that fails to comply with section 464 commits an offence against this Act.

(4) Where the auditor of an industrial organisation—

(a) attends a part of a meeting that the auditor is entitled under section 465 to attend; and

(b) in the course of that part of the meeting indicates to the presiding officer of the meeting a wish to be heard pursuant to the

entitlement under that section;

the presiding officer, as soon as is practicable after the indication is given, is to afford the auditor an opportunity to be heard.

(5) A presiding officer who fails to comply with subsection (4) commits an offence against this Act.

(6) A person who commits an offence defined in this section is liable to a penalty of 40 penalty units.

(7) It is a defence to a charge of any offence defined in this section to prove that the defendant did not know, and could not reasonably have known, that the person in respect of whom the offence is alleged to have been committed was an auditor of the industrial organisation or, as the case may be a person authorised by such auditor.

Failure to provide and present reports of industrial organisation

580.(1) An industrial organisation that fails to comply with section 460(1) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(2) An industrial organisation that fails to provide a copy of a report, accounts or statements of a kind referred to in section 460(1) to a member of the industrial organisation, in accordance with a statement of a kind referred to in section 460(2)(c), within 14 days after receipt of a request by the member, commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(3) An industrial organisation that fails to comply with section 460(6) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(4) An industrial organisation that fails to comply with section 460(7) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(5) An offence defined in subsection (1), (2), (3) or (4), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

Offence re false or misleading statement in s 460 report, accounts or statement

581. If a member of the committee of management of an industrial organisation—

(a) provides to members of the industrial organisation; or

(b) publishes in a journal of the industrial organisation or a branch of the industrial organisation; or

(c) presents to a general meeting of the members of the industrial organisation, or a meeting of the committee of management of the industrial organisation;

comments on a matter dealt with in any report, accounts or statements of a kind referred to in section 460(1), or in a summary of the kind referred to in section 460(2), the member is not to make, in the comments, a statement that is, to the member's knowledge, false or misleading in a material particular.

Maximum penalty—40 penalty units.

Failure to lodge accounts with Industrial Registrar

582.(1) An industrial organisation that fails to comply with section 461(1) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(2) The offence defined in subsection (1), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

Offence re investigation by Industrial Registrar

583.(1) A person who—

(a) refuses or fails—

(i) to attend before the Industrial Registrar in accordance with a requisition under section 461(7); or

(ii) to provide information, or produce records, that the person is required to provide, or to produce under section 461(7);

(b) while purporting to comply with a requisition under section 461(7), provides information, or produces any record, that is, to the person's knowledge, false or misleading in a material particular;

(c) when attending before the Industrial Registrar in accordance with a requisition under section 461(7), makes a statement, orally or in writing, that is, to the person's knowledge, false or misleading in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) A person does not commit an offence defined in subsection (1)(a) only because of a refusal or failure to answer a question.

(3) In subsection (1) a reference to section 461(7) includes reference to that section as it applies under section 463(6).

Offences re lodging accounts

584.(1) If a branch of an industrial organisation fails to comply with section 463(5), the industrial organisation is taken to have committed a continuing offence against this Act and is liable to a penalty of 40 penalty units and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(2) The offence defined in subsection (1), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

Offence re accounts of low income industrial organisation

585. An industrial organisation that fails to comply with section 467(5),

(7), (8) or (9) commits an offence against this Act.

Maximum penalty—40 penalty units.

Failure to have registered office of industrial organisation

586.(1) If an industrial organisation has been established for a period of 7 days and has not complied with section 471, the industrial organisation, and each officer thereof, commits a continuing offence against this Act and is liable to a penalty of 2 penalty units for each complete week after such period of 7 days during which it fails to comply with that section.

(2) The offence defined in subsection (1), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

Offences re particulars of loans, grants and donations

587. An industrial organisation that—

(a) does not comply with section 473(1); or

(b) lodges under section 473(1) a statement that is, to the knowledge of the signatory thereto, false or misleading in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences re prejudice of person because of membership or non-membership of industrial organisation

588.(1) A person who contravenes section 476, 477, 478, 479 or 480 commits an offence against this Act.

Maximum penalty—

(a) if the offence is a continuing offence, and is charged as a continuing offence—40 penalty units for each day on which the offence has continued;

(b) if the offence is not one to which paragraph (a) applies—40 penalty units.

(2) An offence that consists in a contravention referred to in subsection (1) that continues from day to day is a continuing offence, which may be charged in 1 complaint, from time to time, in respect of a period.

(3) In a complaint relating to an offence defined in subsection (1) an allegation or averment as to the reason for, or intent with which, any action was taken or threatened is sufficient proof of the matter alleged or averred until the contrary is proved.

(4) The court by which a defendant is convicted of an offence defined in subsection (1), apart from any penalty order it may make—

(a) if the defendant is an employer convicted of an offence consisting in a contravention of section 476 or 477—may order the defendant—

(i) to reimburse the employee or former employee in relation to whom the offence was committed for the amount of wages lost by the employee or former employee because of the offence;

(ii) to reinstate the employee or former employee in relation to whom the offence was committed in the position from which the employee or former employee was removed or dismissed in committing the offence, or in a similar position;

(b) if the defendant is convicted of an offence consisting in a contravention of section 480(2)(c)—is to order the defendant to pay to the person in relation to whom the offence was committed the amount paid by that person, as a result of the commission of the offence, by way of subscription, fees or dues for admission to, or continuance of, membership of the industrial organisation in question.

(5) If 2 or more defendants are ordered to make a payment referred to in subsection (4)(b) they are jointly and severally liable therefor but the person entitled to such payment cannot recover more than the amount of subscription, fees or dues actually paid for admission to, or continuance of, membership of the industrial organisation in question.

Offence of obstruction of Industrial Inspector

589. A person who contravenes section 488 commits an offence against this Act.

Maximum penalty—16 penalty units.

Offence of disclosure of information

590. An Industrial Inspector, or other officer appointed for the purposes of this Act, who contravenes section 489 commits an offence against this Act.

Maximum penalty—16 penalty units.

Offences re records of time and wages

591. An employer who—

(a) fails to keep and have available, in accordance with sections 496 and 499, a time and wages book or similar record required by section 496 to be kept;

(b) fails to keep and have available, in accordance with sections 497 and 499, a wages book or similar record required by section 497 to be kept;

(c) fails to indicate to an employee as required by section 501 in relation to payment of wages;

(d) makes, causes to be made, or permits to be made—

(i) an entry in a book or record referred to in paragraph (a) or (b);

(ii) an indication to an employee referred to in paragraph (c);

that is false in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

Offences re register of employees

592.(1) An employer who—

(a) fails to keep and have available, in accordance with sections 498 and 499, a register of employees required by section 498 to be kept and an index, if so required by section 498;

(b) fails to comply with a direction given by the Industrial Registrar under section 504 in relation to such register or index;

(c) makes, causes to be made, or permits to be made an entry in such register or index that is false in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) If an offence defined in subsection (1) is committed by a corporation, each person who is charged with the management of the business of the corporation on its behalf is taken to have committed the offence and is liable to be dealt with in respect thereof, in addition to the corporation.

Offences re inspections by authorised industrial officers

593.(1) In this section—

"authorised industrial officer" has the meaning assigned to the expression by section 494.

(2) A person who resists, obstructs or hinders an authorised industrial officer in the exercise of the officer's entitlements under section 503 commits an offence against this Act.

Maximum penalty—16 penalty units.

(3) An authorised industrial officer who contravenes, or fails to comply with, any provision of section 503 commits an offence against this Act.

Maximum penalty—16 penalty units.

(4) A person who exercises the entitlements conferred on an authorised industrial officer under section 503 commits an offence against this Act unless the person is the holder of an authorisation issued under section 495 and such authorisation is in force, and the person has exercised the

entitlements in accordance with all conditions attached to the authorisation.

Maximum penalty—16 penalty units.

Offence re false pretences

594.(1) A person who contravenes section 511(1) or (2) commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) A person who contravenes section 511(3) commits an offence against this Act.

Maximum penalty—4 penalty units.

(3) Liability of a person to be dealt with for an offence defined in subsection (1) or (2) does not affect the person's liability to be dealt with under provisions of the Criminal Code relating to forgery or false pretences for an offence constituted by the person's conduct.

(4) However, the person is not to be dealt with under both this Act and the Criminal Code in respect of the same conduct.

Non-payment of wages

595.(1) A person who fails to pay wages due and payable to an employee under any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit commits an offence against this Act.

Maximum penalty—200 penalty units.

(2) A person who fails to pay on account of an employee moneys from wages due and payable to the employee under any award, industrial agreement, certified agreement, enterprise flexibility agreement or permit in accordance with the consent in writing of the employee relating to payment of such moneys commits an offence against this Act.

Maximum penalty—200 penalty units.

(3) An offence defined in subsection (1) or (2) is a continuing offence, which may be charged in 1 complaint, from time to time, in respect of a period, subject to this section.

(4) Jurisdiction is hereby conferred on every Industrial Magistrate to hear and determine complaints for such an offence.

(5) A complaint for an offence defined in subsection (1) in relation to wages in respect of long service leave may be laid at any time within 3 years following the time when the wages become due and payable, and not thereafter.

(6) A period in respect of which a complaint may be laid for an offence defined in subsection (1) or (2) is limited as follows—

(a) if, at the time the complaint is laid, the employee to whose wages the complaint relates is in employment with the employer charged in the complaint, the period must not exceed 6 years preceding the laying of the complaint;

(b) if, at the time the complaint is laid, the employee to whose wages the complaint relates has ceased employment with the employer charged in the complaint, the period must not exceed 6 years preceding the time when the employee ceased such employment.

(7) Notwithstanding subsection (6)—

(a) in respect of wages—

(i) due and payable to; or

(ii) payable on account of;

an employee who ceased employment with the employer charged in the complaint in the 12 months preceding the commencement of this Act, the period in respect of which the complaint may be laid must not exceed 12 months before such cessation;

(b) in respect of wages—

(i) due and payable to; or

(ii) payable on account of;

an employee who is in employment with the employer charged in the complaint at the commencement of this Act, the period in respect of which the complaint may be laid must not exceed 12 months before such commencement.

(8) A court that hears and determines a complaint for an offence defined in subsection (1) or (2), apart from any penalty order that it may make—

(a) if it convicts the defendant—is to order the defendant to pay to the employee to whose wages the complaint relates such amount as the court finds to be due and payable to the employee or, as the case may be, payable on account of the employee;

(b) if it does not convict the defendant—may order the defendant to pay to the employee to whose wages the complaint relates such amount as the court finds, on the balance of probabilities, to be due and payable to the employee or, as the case may be, payable on account of the employee.

(9) A court may make an order such as is referred to in subsection (8)—

(a) notwithstanding any express or implied provision of any agreement to the contrary;

(b) on such terms as the court considers just.

Offence of failure to make occupational superannuation contribution

596.(1) An employer who fails to make contribution on behalf of eligible employees to an approved occupational superannuation scheme or fund—

(a) at a level required by any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement; and

(b) in accordance with such award or agreement;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) The offence defined in subsection (1) is a continuing offence, which may be charged in 1 complaint, from time to time, in respect of a period.

(3) An employer whose contribution to an approved occupational superannuation scheme or fund is at a level required by any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement, but to such a scheme or fund other than that required by the award or agreement, does not thereby commit the offence defined in subsection (1) and is not liable to be dealt with as for an offence, unless the employer has knowingly failed to comply in that respect with the award or agreement.

(4) For the purposes of this section, if the Industrial Commission has made a determination and order under section 41(1) in relation to an

approved occupational superannuation scheme or fund as the one to which an award, industrial agreement, certified agreement or enterprise flexibility agreement requires contribution to be made, an employer who fails to make such contribution in accordance with such determination and order is taken to fail to make such contribution in accordance with such award or agreement, whether or not the order was directed to that employer.

(5) The court by which a defendant is convicted of an offence defined in subsection (1) may make in relation to the defendant an order that an Industrial Magistrate is authorised by section 75 to make on an application made under that section, and the provisions of that section apply and extend accordingly.

Offence to agree to accept reduced wages

597.(1) An employee who enters into an agreement with an employer to accept wages in an amount that, to the employee's knowledge, is less than the wages to which the employee is entitled under any relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit commits an offence against this Act.

Maximum penalty—

(a) for a first offence—4 penalty units;

(b) for a second or subsequent offence—8 penalty units.

(2) If the offence, being a second or subsequent offence defined in subsection (1), of which an employee stands convicted was committed at a time later than 12 months after the commission of a like offence of which the employee was last previously convicted, the employee is to be taken to stand convicted of a first such offence and to be liable to a penalty for a first offence accordingly.

(3) The return by or on behalf of an employee, to the employer, or to a person on behalf of the employer, of a portion of wages paid in accordance with a relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit for work performed by the employee is evidence and, in the absence of evidence to the contrary, conclusive evidence that the employee has entered into an agreement with the employer to accept wages in an amount that, to the employee's knowledge, is less

than the wages to which the employee is entitled under the award, industrial agreement, certified agreement, enterprise flexibility agreement or permit.

Publication of statement re employment at less than lawful rates

598.(1) A person who publishes or causes to be published a statement that can be reasonably construed to indicate—

(a) on the part of an employer, that the employer is ready and willing to employ a person; or

(b) on the part of a person seeking employment, that the person is ready and willing to be employed;

at a rate of wages that is less than the rate provided for in the award, industrial agreement, certified agreement or enterprise flexibility agreement relevant to the employment in question, commits an offence against this Act, unless such less rate is permitted under the terms of a permit held by the person.

Maximum penalty—16 penalty units.

(2) A statement is taken to be published within the meaning of this section if it is—

(a) inserted in a newspaper or any other publication printed and published in Queensland; or

(b) publicly exhibited—

(i) in, on, over or under any place (whether a public place or not); or

(ii) in the air in view of persons in or on any street or public place; or

(c) contained in a document gratuitously sent or delivered to any person, or thrown onto or left on premises in the occupation of any person; or

(d) broadcast by radio or television transmission.

(3) A prosecution for a offence defined in subsection (1) is not to be commenced against—

(a) the printer or proprietor of a newspaper;

(b) the distributor or seller of a newspaper;

(c) the printer, maker, operator or proprietor of an advertising device or advertising medium;

(d) the printer of a document uttered for advertising purposes;

(e) any person acting under the authority of any of such persons;

unless—

(f) that person has been warned by an Industrial Inspector that the publication of the statement, or of a statement substantially similar, is an offence against this Act; and

(g) that person has published, or caused the publication of, the statement after receipt of such warning; and

(h) the Minister's consent to the prosecution is first obtained.

(4) For the purposes of subsection (3), a proprietor of a newspaper or advertising medium by means of which an offence defined in subsection (1) has been committed is taken to have published the statement in question with knowledge of its unlawfulness unless the proprietor shows that—

(a) the proprietor had taken all reasonable precautions against committing the offence; and

(b) the proprietor had reasonable grounds to believe, and did believe, the publication of the statement to be lawful; and

(c) the proprietor had no reason to suspect publication of the statement to be unlawful.

Offence to offer or accept premiums

599.(1) A person who—

(a) offers;

(b) demands;

(c) requests;

(d) accepts or agrees to accept;

any consideration, premium, gift, allowance or forbearance in connection

with the employment of any person commits an offence against this Act.

Maximum penalty—16 penalty units.

(2) The court by which a defendant is convicted of an offence defined in subsection (1) that consists in the acceptance of any consideration, premium, gift or allowance, apart from any penalty order it may make, is to order the defendant to pay a sum, equivalent to the amount or value of that accepted, to the person from whom the person accepted the same.

Breaches of awards etc. generally

600.(1) A person who breaches a relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit commits an offence against this Act.

Maximum penalty—

(a) for an award made or amended under section 212, certified agreement, enterprise flexibility agreement or permit—

(i) for a first offence—

(A) if the offender is an employer or industrial organisation—80 penalty units; or

(B) if the offender is an employee—16 penalty units; or

(ii) for a second or subsequent offence consisting of a breach of the same provision of the award, agreement or permit—

(A) if the offender is an employer or industrial organisation—90 penalty units; or

(B) if the offender is an employee—20 penalty units; or

(b) otherwise—

(i) for a first offence—

(A) if the offender is an employer or industrial organisation—20 penalty units; or

(B) if the offender is an employee—4 penalty units; or

(ii) for a second or subsequent offence consisting of a breach of the same provision of the award, agreement or permit—

(A) if the offender is an employer or industrial organisation—40 penalty units; or

(B) if the offender is an employee—8 penalty units.

(2) If the offence, being a second or subsequent offence defined in subsection (1), of which a defendant stands convicted was committed at a time later than 12 months after the commission of a like offence of which the defendant was last previously convicted, the defendant is to be taken to stand convicted of a first such offence and to be liable to a penalty for a first offence accordingly.

(3) An employer who pays (directly or by an agent) to an employee, and an employee who receives from an employer (or the employer's agent) wages less than those to which the employee is entitled under a relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit is each taken to have thereby breached the award, agreement or permit.

(4) If an employee returns to an employer (or the employer's agent) any portion of wages paid to the employee in accordance with a relevant award, industrial agreement, certified agreement, enterprise flexibility agreement or permit—

(a) the employee is taken to have received; and

(b) the employer (or the employer's agent) is taken to have paid;

wages less than those to which the employee was entitled under the award, agreement or permit, unless the return is in discharge, or partial discharge, of a lawful debt or obligation of the employee.

Injunction restraining breaches

601.(1) If a person has been convicted of an offence consisting in a breach of an award, industrial agreement, certified agreement, enterprise flexibility agreement or permit, the Full Industrial Court, upon application made to it, if it is satisfied that the breach consisted of the wilful action or default of the person, may make an order in the nature of an injunction restraining the person—

(a) from continuing the breach; or

(b) from committing further breaches of the award, agreement or

permit, whether similar to or different from the breaches of which the person has been convicted.

(2) A person subject to an injunction ordered under subsection (1) who disobeys the injunction commits an offence against this Act.

Maximum penalty—200 penalty units.

Employees not to be dismissed etc. for engaging in industrial action

602.(1) An employer must not dismiss an employee only because the employee has engaged, or is proposing to engage, in industrial action about an industrial dispute that—

(a) has been notified to the Commission; or

(b) the Commission has found to exist.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply if the industrial action has involved or is likely to involve unlawful—

(a) personal injury; or

(b) wilful destruction of, or damage to, property; or

(c) taking, keeping or use of property.

(3) Subsection (1) does not apply to an employee included in a class of employees prescribed by regulation.

(4) The regulation may prescribe a class of employees only if the exclusion of employees in the class is consistent with documents mentioned in section 198(2).

(5) In proceedings for an offence against subsection (1) it is not necessary for the prosecution to prove—

(a) the defendant's reason for the action charged; or

(b) the intent with which the defendant took the action charged;

but it is a defence for the defendant to prove that the action was not motivated solely by the reason, or taken with the sole intent, stated in the charge.

(6) If an employer is found guilty of an offence against subsection (1),

the Commission may order the employer—

(a) to reinstate the dismissed person to the position that the person occupied immediately before the dismissal or to a position no less favourable than the position; and

(b) to pay the dismissed person compensation for loss suffered because of the dismissal.

(7) The rights about reinstatement conferred on a person by this section do not limit the person's other rights.

Persons considered parties to offences

603.(1) Without prejudice to the operation of section 7 of the Criminal Code, every industrial organisation or other person who—

(a) takes part in the commission of an offence against this Act;

(b) counsels, procures or aids in the commission of an offence against this Act;

(c) encourages the commission of an offence against this Act;

(d) is concerned, directly or indirectly in the commission of an offence against this Act;

is taken to have committed the offence and to be liable to the penalty prescribed for the offence.

(2) If a corporation commits an offence defined in section 595 or 596 each of the following persons is taken to be criminally responsible for the contravention or failure to comply in question, to have committed the offence, may be charged with the offence, in addition to the corporation, and is liable to the prescribed penalty and any other order that may be made on the hearing and determination of the charge—

(a) the members of the governing body of the corporation, by whatever name called;

(b) persons who manage or participate in the management or control of the corporation's business in the State.

(3) Notwithstanding the provisions of subsection (2), a person therein referred to is not liable to be punished for an offence for which the person would otherwise be liable to be punished, if it is shown that the

contravention or failure to comply occurred without the person's consent or connivance and that the person exercised reasonable diligence to prevent the commission of the offence.

General penalty

604.(1) A person who contravenes or fails to comply with any provision of this Act, being a contravention or failure not expressly provided for elsewhere in this Part, commits an offence against this Act.

(2) Subsection (1) does not create an offence consisting in—

(a) a failure to pay wages due and payable to an employee otherwise than under an award, industrial agreement, certified agreement, enterprise flexibility agreement or permit, or payable at a level greater than that provided for by an award, industrial agreement, certified agreement, enterprise flexibility agreement or permit; or

(b) a failure to pay moneys on account of an employee from wages such as are referred to in paragraph (a) in accordance with the consent in writing of the employee.

(3) Notwithstanding any provision of this Act, a person is not liable as for an offence (other than an offence that consists in the supply of an answer that is false or misleading) on account of a failure to answer a question asked for the purposes of this Act, if the failure is on the ground that to do so would tend to incriminate the person.

(4) A person who commits an offence against this Act for which a penalty is not expressly prescribed by any other provision of this Act is liable—

(a) if the offender is an industrial organisation or other corporation—to a penalty of 40 penalty units;

(b) if the offender is an individual—to a penalty of 4 penalty units.

(5) The whole of all penalties recovered under this Act are to be paid into the Consolidated Fund.

Attempt to commit offence

605.(1) A person who attempts to commit an offence—

(a) defined in this Act; or

(b) consisting of a contravention of or failure to comply with a provision of this Act;

commits an offence against this Act and is liable to the same penalty as if the offence attempted had been committed.

(2) For the purposes of this Act an attempt to commit an offence is as defined in the Criminal Code.

Proceedings generally

606.(1) Prosecution proceedings in respect of an offence against this Act are to be heard and determined by the Industrial Court or an Industrial Magistrate, within the limits of their respective jurisdictions.

(2) Subject to subsection (3), proceedings before an Industrial Magistrate are to be taken in a summary manner under the *Justices Act 1886* but the court in which such proceedings are taken is to be constituted by an Industrial Magistrate sitting alone.

(3) If the parties to proceedings commenced, or to be commenced, before an Industrial Magistrate agree, in writing signed by them, or their representatives, that the proceedings should be continued or, as the case may be, taken before an Industrial Magistrate at a particular place in the State (other than the place where the proceedings should be heard and determined under the *Justices Act 1886*) the Industrial Magistrate at that particular place is authorised to hear and determine the proceedings, and jurisdiction is hereby conferred on each Industrial Magistrate accordingly.

(4) If proceedings to which an agreement such as is referred to in subsection (3) relates have been duly commenced before an Industrial Magistrate before the agreement is made, that magistrate, upon being satisfied that the agreement exists—

(a) is to adjourn the proceedings to the Industrial Magistrate at the place agreed to;

(b) is to cause the record of the proceedings taken before that magistrate to be sent to the clerk of the Magistrates Court at the place agreed to;

(c) for the purpose of the hearing and determination of proceedings

adjourned pursuant to this section evidence heard or produced in the proceedings before they were adjourned is taken to have been heard or produced before the Industrial Magistrate to whom the proceedings are adjourned, unless the parties to the proceedings agree to the contrary.

Recovery of moneys by industrial organisation

607. Without prejudice to the authority of the Crown or any person to take proceedings in respect thereof, proceedings for—

(a) breaches of awards, industrial agreements, certified agreements, enterprise flexibility agreements or permits;

(b) offences against this Act;

(c) recovery of moneys due to an employee;

may be taken by an industrial organisation in its registered name.

Recovery of moneys from industrial organisation

608. For the recovery of—

(a) any penalty imposed under this Act on an industrial organisation;

(b) any sum ordered under this Act to be paid by an industrial organisation;

process may be issued and executed against property of which the industrial organisation has legal title, or property in which the industrial organisation has a beneficial interest, to the extent of the interest, whether such property is vested in trustees or is otherwise held on behalf of the industrial organisation, as if the industrial organisation, as a body corporate, were the absolute owner of such property or interest.

PART 20—INDUSTRIAL RELATIONS CONSULTATIVE COMMITTEE

Establishment of committee

609.(1) There is to be established as soon as is practicable after the commencement of this Act, and from time to time thereafter, a committee called the 'Industrial Relations Consultative Committee'.

(2) Such committee is referred to in this Part as **"the Committee"**.

Membership

610.(1) The Committee consists of—

(a) the chief executive of the department, who is the presiding officer;

(b) an officer of the department holding an appointment nominated by the chief executive of the department, who is the deputy presiding officer;

(c) a person holding an appointment nominated by the Public Sector Management Commission constituted by the *Public Sector Management Commission Act 1990*;

(d) 3 persons representative of industrial organisations of employers nominated by all or any of those industrial organisations upon request of the Minister or if at any time more than 3 such persons are so nominated, 3 of the nominees selected by the Minister;

(e) 3 persons representative of industrial organisations of employees nominated by all or any of those industrial organisations upon the request of the Minister or if at any time more than 3 such persons are so nominated, 3 of the nominees selected by the Minister;

(f) 2 persons, 1 being representative of employers and 1 being representative of employees, nominated by the Minister;

(g) 1 person representative of the Vocational Education, Training and Employment Commission constituted under the *Vocational Education, Training and Employment Act 1991*, having responsibilities for training, nominated by the Minister.

(2) The members of the Committee referred to in subsection (1)(a), (b) or (c) are members ex officio.

(3) The member of the Committee referred to in subsection (1)(g) is not entitled to vote on the business of the Committee.

Appointment of members

611. The members of the Committee, other than the members ex officio, are to be appointed by the Governor in Council by notification published in the Industrial Gazette.

Recommendation of members in absence of nomination by industrial organisations

612.(1) If upon request of the Minister made of them on any occasion, the industrial organisations of employers or employees fail to lodge with the Minister, within the time limited therefor by the Minister, any nominations of persons for appointment to the Committee, or lodge with the Minister an insufficient number of nominations, the Minister may recommend to the Governor in Council for appointment such 1 or more persons, as required, representative of the industrial organisations in default without further reference on that occasion to any of the industrial organisations in default.

(2) The person or persons so recommended are taken to have been duly nominated as prescribed.

Term of office

613.(1) The term of appointment of a member of the Committee is as specified in the notification of the member's appointment, not exceeding 3 years, and any member is eligible for reappointment if nominated or recommended in accordance with this Part.

(2) A member of the Committee—

(a) may resign the appointment at any time, by writing signed by the member and given to the Minister;

(b) may be removed from the appointment at any time by the Governor in Council.

Deputies of members

614.(1) If any member of the Committee, other than the presiding officer, is at any time, because of absence, illness, or other cause, unable to perform the duties of the appointment, the Governor in Council may, by notification published in the Industrial Gazette, appoint a person to act as the deputy of that member during the period of the member's inability.

(2) While a deputy of a member so acts, the deputy may exercise the powers and is to perform the duties, and has the entitlements of the member.

(3) The provisions of this Part that provide for nomination by industrial organisations of nominees for appointment to the Committee do not apply to the appointment of deputies, but as far as possible a deputy is to be a person representative of the same interests as is the member for whom the deputy is to act.

Emoluments of Committee members

615. Members of the Committee, other than the members thereof who are officers of the public service, are entitled to such fees and allowances as are approved for the time being by the Governor in Council.

Proceedings of Committee

616.(1) Meetings of the Committee are to be convened by its presiding officer and are to be held quarterly, as far as is practicable, or more frequently as the Committee determines.

(2) The presiding officer is to preside at all meetings of the Committee at which that officer is present and in that officer's absence the deputy presiding officer is to preside.

(3) A quorum of the Committee consists of 6 members of whom the presiding officer or deputy presiding officer must be one.

(4) Business must not be conducted at a meeting of the Committee unless a quorum is present.

(5) Business before a meeting of the Committee at which a quorum is present is to be decided by majority vote of the members who are present.

(6) A member present at a meeting who refrains from voting on an item of business before the Committee, except with leave of the presiding officer on the ground of conflict of interests, is taken to have voted in the negative.

(7) In the event of an equality of votes on any item of business the presiding officer has a second or casting vote.

(8) Minutes of each meeting of the Committee are to be recorded in writing, and the original only of such minutes is to be produced at, or for the purposes of, a meeting.

(9) Records of the Committee are in the custody of the presiding officer.

Functions of Committee

617.(1) The functions of the Committee are—

(a) to investigate any matter pertinent to industrial relations referred to it by the Minister, or considered by the Committee to be a matter pertinent to industrial relations appropriate to be brought to the Minister's attention, and to confer with and report to the Minister with respect to the matter;

(b) to investigate a particular industrial matter that has come to its attention, and report to the Minister with respect thereto;

(c) to investigate matters that come within the operation of this Act and confer with and report to the Minister with respect thereto;

(d) to review from time to time the provisions of this Act and their operation;

(e) to make to the Minister such recommendations as it considers necessary or appropriate concerning any matter within the scope of its functions.

(2) In discharging its functions the Committee—

(a) is to consult with the President on any matter that relates to the exercise or performance of the Industrial Court's jurisdiction, powers and functions, and with the Chief Industrial Commissioner on any matter that relates to the exercise or performance of the Industrial Commission's jurisdiction, powers and functions;

(b) may consult with any industrial organisation or other association of persons, or any individual;

(c) at all times is to have regard to the attainment of the objectives of this Act.

PART 21—SAVINGS, TRANSITIONAL AND REPEALS

References to Industrial Conciliation and Arbitration Act 1961

617A. In an Act or document, a reference to the *Industrial Conciliation and Arbitration Act 1961* is taken to be a reference to this Act.

Savings

618.(1) Every person of a description of person prescribed by or under any Act to be an employee within the meaning of the repealed Acts continues to be an employee within the meaning of this Act.

(2) Every proclamation, order in council, regulation or rule made under any of the repealed Acts and in force immediately before the commencement of this Act continues in force until it expires by effluxion of time, or is repealed, amended, suspended or cancelled under this Act.

(3) Every such proclamation, order in council, regulation or rule, while it so continues in force, is to be read subject to this Act.

(4) Every award, decision, exemption, judgment, ruling, permit or licence or other act of authority, or industrial agreement made, given, done, granted or approved by the Industrial Court, the Industrial Commission, an Industrial Magistrate or the Industrial Registrar under any of the repealed Acts and in force immediately before the commencement of this Act continues in force as if it had been made, given, done, granted or approved by the Court, Commission, magistrate or registrar, according to their respective functions and jurisdictions, under the corresponding provision of this Act and may be revoked, amended, suspended or modified pursuant to this Act.

(5) All proceedings instituted before the commencement of this Act under or for the purposes of a provision of any of the repealed Acts and pending at the date of the repeal of the provision may be carried on and prosecuted as if they had been instituted under or for the purposes of the corresponding provision of this Act.

(6) If the proceeding is one in which the person or entity before whom it was instituted had jurisdiction under the *Industrial Conciliation and Arbitration Act 1961* but has not jurisdiction under this Act, then—

(a) if the proceeding stands part heard at the commencement of this Act—it is to be completed before that person or entity who, for this purpose, is taken to have jurisdiction as if this Act had not been enacted; or

(b) if the proceeding does not stand part heard at the commencement of this Act—it is to be completed before the person or entity who has jurisdiction under this Act, as if it had been instituted before that person or entity under this Act in the first instance.

(7) A proceeding is taken to be part heard after commencement of the hearing until the decision in the proceeding is pronounced.

Demarcation orders and disputes

619.(1) An order in force under section 44 immediately before the commencement is taken, after the commencement, to have been made under section 45.

(2) If a matter is, immediately before the commencement, being dealt with by the Commission under section 44, the matter is to be dealt with, after the commencement, under section 45 as if the matter were being dealt with by the Commission on an application made under section 45.

(3) In this section—

"commencement" means the commencement of section 7 of the *Industrial Relations Amendment Act 1992*.

Transitional provisions in relation to amalgamations

620.(1) If the scheme for a proposed amalgamation was submitted to ballot under Division 8 of Part 13 (as in force immediately before the

commencement), but, before the commencement, the amalgamation had neither taken effect nor been rejected by the members of the industrial organisations concerned, then subject to subsections (2) and (4), the proposed amalgamation is to continue to be dealt with, and may take effect, as if the *Industrial Relations Amendment Act 1992* had not been enacted.

(2) If, immediately before the commencement, none of the ballots in relation to a proposed amalgamation had been started, Part 14, Division 9 (as in force after the commencement) applies to the proposed amalgamation as if—

(a) the submission of the proposed amalgamation to ballot had been approved by the Commission under that Division; and

(b) the reference in section 420(a) to a declaration having been made under section 397 included a reference to a declaration having been made under section 395 (as in force immediately before the commencement); and

(c) anything else done under this Act (as in force immediately before the commencement) in relation to the proposed amalgamation had been done under the corresponding provision of this Act (as in force immediately after the commencement).

(3) For the purposes of subsection (2), a ballot is taken to have started when notice of the ballot was published in the Industrial Gazette under section 400(2) (as in force immediately before the commencement).

(4) A proposed amalgamation in relation to which an application was lodged with the Industrial Registrar under section 391 (as in force before the commencement), and that has not taken effect before the commencement, may be withdrawn by the bodies that submitted the application at any time before the amalgamation takes effect.

(5) In this section—

"commencement" means the commencement of section 24 of the *Industrial Relations Amendment Act 1992*.

Transitional certified agreements

621.(1) In this section—

"amending Act" means the *Industrial Relations Reform Act 1994*.

"commencement day" means the day on which the amending Act commences.

(2) Despite the omission of Part 10, Division 2 by the amending Act—

(a) a memorandum of agreement made under the Division (although not certified) immediately before the commencement day has effect as if it had been made under section 158; and

(b) an agreement certified under the Division and in force immediately before the commencement day has effect as if this Act had not been amended by the amending Act, but may be extended under section 168; and

(c) if an application that was made under the Division for certification of an agreement was pending immediately before the commencement day—

(i) if each of the applicants so requests, the Commission must deal with the application as if the Division had not been omitted, and, if the agreement is certified, it has effect as if this Act had not been amended by the amending Act, but may be extended under section 168; or

(ii) otherwise—the Commission must deal with the application as if it had been made under section 158.

(3) The Commission may allow the parties to an agreement to which subsection (2)(a) or (c)(ii) applies to amend its terms to agree with Part 11, Division 2.

Transitional provision about dismissals

622.(1) Part 12, Division 5, as it existed immediately before the commencement of the *Industrial Relations Amendment Act 1994* (the **"amending Act"**), continues to apply to a dismissal within the meaning of the Division that happened before the commencement as if the amending Act had not been passed.

(2) Part 12, Division 5, as it exists after the commencement, does not apply to the dismissal.

(3) This section expires 6 months after it commences.

Transitional provision about small industrial organisations

623.(1) In this section—

"commencement" means the commencement of section 23(2) of the *Industrial Relations Reform Act 1994*.

"relevant industrial organisation" means an industrial organisation that before the commencement was a small industrial organisation, but ceased to be a small industrial organisation because of the commencement.

"small industrial organisation" means a small industrial organisation under section 330.

(2) The Industrial Commission must not exercise a power under section 330(2) about a relevant industrial organisation after the commencement, even if it was doing so, or authorised to do so, before the commencement.

SCHEDULE 1

MINIMUM WAGES CONVENTION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and

Considering that these Conventions have played a valuable part in protecting disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-second day of June of the year one thousand nine hundred and seventy, the following Convention, which may be cited as the Minimum Wage Fixing Convention, 1970—

SCHEDULE 1 (continued)

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the position of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

SCHEDULE 1 (continued)

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include—

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 hereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of—

(a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;

SCHEDULE 1 (continued)

(b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

Article 6

This Convention shall not be regarded as revising any existing Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

SCHEDULE 1 (continued)

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration

SCHEDULE 1 (continued)

in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

SCHEDULE 1 (continued)

Article 14

The English and French versions of the text of this Convention are equally authoritative.

SCHEDULE 2

EQUAL REMUNERATION CONVENTION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an International Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951—

Article 1

For the purpose of this Convention—

(a) the term **"remuneration"** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term **"equal remuneration for men and women workers for work of equal value"** refers to rates of remuneration established without discrimination based on sex.

SCHEDULE 2 (continued)

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principal of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of—

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

SCHEDULE 2 (continued)

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate—

(a) the territories in respect of which the Member concerned

SCHEDULE 2 (continued)

undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decisions pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be

SCHEDULE 2 (continued)

applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

SCHEDULE 2 (continued)

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

SCHEDULE 2 (continued)

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Thirty-fourth Session which was held at Geneva and declared closed the twenty-ninth day of June 1951.

IN FAITH WHEREOF we have appended our signatures this second day of August 1951.

SCHEDULE 3

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

section 5(1) of the Act

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialised agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries

SCHEDULE 3 (continued)

and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realisation of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality

SCHEDULE 3 (continued)

between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following—

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake—

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against

SCHEDULE 3 (continued)

women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to elimination discrimination against women by any person, organisation or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

SCHEDULE 3 (continued)

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures—

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

SCHEDULE 3 (continued)

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right—

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality.

They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

SCHEDULE 3 (continued)

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women—

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaption of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time,

SCHEDULE 3 (continued)

any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular—

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working

SCHEDULE 3 (continued)

conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures—

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

SCHEDULE 3 (continued)

2. Notwithstanding the provisions of paragraph 1 of this article, State Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular—

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right—

(a) To participate in the elaboration and implementation of

SCHEDULE 3 (continued)

development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and

SCHEDULE 3 (continued)

to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women—

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in maters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all

SCHEDULE 3 (continued)

cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.

SCHEDULE 3 (continued)

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3, and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

SCHEDULE 3 (continued)

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect—

(a) Within one year after the entry into force for the State concerned; and

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

SCHEDULE 3 (continued)

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

SCHEDULE 3 (continued)

Article 22

The specialised agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained—

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention.

SCHEDULE 3 (continued)

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

SCHEDULE 3 (continued)

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be

SCHEDULE 3 (continued)

bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed the present Convention.

SCHEDULE 4

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term **"discrimination"** includes—

(a) any distinction, exclusion or preference made on the basis of race,

SCHEDULE 4 (continued)

colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer's and worker's organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms **"employment"** and **"occupation"** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice—

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the

SCHEDULE 4 (continued)

acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special

SCHEDULE 4 (continued)

measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

SCHEDULE 4 (continued)

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration.

Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration

SCHEDULE 4 (continued)

in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

SCHEDULE 4 (continued)

Article 14

The English and French versions of the text of this Convention are equally authoritative.

SCHEDULE 5

ECONOMIC, SOCIAL AND CULTURAL RIGHTS COVENANT

section 5(1) of the Act

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

SCHEDULE 5 (continued)

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the

SCHEDULE 5 (continued)

present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational

SCHEDULE 5 (continued)

guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular—

(a) Remuneration which provides all workers, as a minimum, with—

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure—

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization

SCHEDULE 5 (continued)

concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

SCHEDULE 5 (continued)

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

SCHEDULE 5 (continued)

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed—

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for—

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

SCHEDULE 5 (continued)

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right—

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid

SCHEDULE 5 (continued)

down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone—

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

SCHEDULE 5 (continued)

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

SCHEDULE 6

EQUAL REMUNERATION RECOMMENDATION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, supplementing the Equal Remuneration Convention, 1951,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Recommendation, which may be cited as the Equal Remuneration Recommendation, 1951:

Whereas the Equal Remuneration Convention, 1951, lays down certain general principles concerning equal remuneration for men and women workers for work of equal value;

Whereas the Convention provides that the application of the principle of equal remuneration for men and women workers for work of equal value shall be promoted or ensured by means appropriate to the methods in operation for determining rates of remuneration in the countries concerned;

Whereas it is desirable to indicate certain procedures for the progressive application of the principles laid down in the Convention;

Whereas it is at the same time desirable that all Members should, in applying these principles, have regard to methods of application which have been found satisfactory in certain countries;

SCHEDULE 6 (continued)

The Conference recommends that each Member should, subject to the provisions of Article 2 of the Convention, apply the following provisions and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. Appropriate action should be taken, after consultation with the workers' organisations concerned or, where such organisations do not exist, with the workers concerned—

(a) to ensure the application of the principle of equal remuneration for men and women workers for work of equal value to all employees of central Government departments or agencies; and

(b) to encourage the application of the principle to employees of State, provincial or local Government departments or agencies, where these have jurisdiction over rates of remuneration.

2. Appropriate action should be taken, after consultation with the employers' and workers' organisations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value in all occupations, other than those mentioned in paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards—

(a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority;

(b) industries and undertakings operated under public ownership or control; and

(c) where appropriate, work executed under the terms of public contracts.

3.(1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women for work of equal value.

SCHEDULE 6 (continued)

(2) The competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully informed as to such legal requirements and, where appropriate, advised on their application.

4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration for men and women workers for work of equal value, in respect of employment covered by Paragraph 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures as—

(a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value;

(b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as—

(a) ensuring that workers of both sexes have equal or equivalent

SCHEDULE 6 (continued)

facilities for vocational guidance or employment counselling, for vocational training and for placement;

(b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement;

(c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and

(d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

SCHEDULE 7

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) RECOMMENDATION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958;

The Conference recommends that each Member should apply the following provisions:

I—DEFINITIONS

1.(1) For the purpose of this Recommendation the term **"discrimination"** includes—

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of

SCHEDULE 7 (continued)

opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, which such exist, and with other appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms **"employment"** and **"occupation"** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II—FORMULATION AND APPLICATION OF POLICY

2. Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles—

(a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;

(b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of—

(i) access to vocational guidance and placement services;

(ii) access to training and employment of their own choice on the basis of individual suitability for such training or

SCHEDULE 7 (continued)

employment;

(iii) advancement in accordance with their individual character, experience, ability and diligence;

(iv) security of tenure of employment;

(v) remuneration for work of equal value;

(vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;

(c) government agencies should apply non-discriminatory employment policies in all their activities;

(d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;

(e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;

(f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should—

(a) ensure application of the principles of non-discrimination—

(i) in respect of employment under the direct control of a

SCHEDULE 7 (continued)

national authority;

(ii) in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as—

(i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;

(ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;

(iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular—

(a) to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;

(b) to receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and

(c) to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

SCHEDULE 7 (continued)

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

SCHEDULE 7 (continued)

III—COORDINATION OF MEASURES FOR THE PREVENTION OF DISCRIMINATION IN ALL FIELDS

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.

SCHEDULE 8

FAMILY RESPONSIBILITIES CONVENTION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that 'all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity', and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes

SCHEDULE 8 (continued)

which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are 'aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women', and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

SCHEDULE 8 (continued)

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms **"dependent child"** and **"other member of the immediate family who clearly needs care or support"** mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as **"workers with family responsibilities"**.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are

SCHEDULE 8 (continued)

engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term **"discrimination"** means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken—

(a) to enable workers with family responsibilities to exercise their right to free choice of employment; and

(b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken—

(a) to take account of the needs of workers with family responsibilities in community planning; and

(b) to develop or promote community services, public or private, such as childcare and family services and facilities.

SCHEDULE 8 (continued)

Article 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

SCHEDULE 8 (continued)

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions—Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

SCHEDULE 8 (continued)

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall

SCHEDULE 8 (continued)

draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars off all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

SCHEDULE 8 (continued)

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

SCHEDULE 9

WORKERS WITH FAMILY RESPONSIBILITIES RECOMMENDATION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that 'all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity', and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

SCHEDULE 9 (continued)

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are 'aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women', and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities, and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers—workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts the twenty-third day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the Workers with Family Responsibilities Recommendation, 1981:

SCHEDULE 9 (continued)

I—DEFINITION, SCOPE AND MEANS OF IMPLEMENTATION

1.(1) This Recommendation applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(2) The provisions of this Recommendation should also be applied to men and women workers with responsibilities in relation to other members of their immediate family who need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(3) For the purposes of this Recommendation, the terms **"dependent child"** and **"other member of the immediate family who needs care or support"** mean persons defined as such in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(4) The workers covered by virtue of subparagraphs (1) and (2) of this Paragraph are hereinafter referred to as **"workers with family responsibilities"**.

2. This Recommendation applies to all branches of economic activity and all categories of workers.

3. The provisions of this Recommendation may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

4. The provisions of this Recommendation may be applied by stages if necessary, account being taken of national conditions—Provided that such measures of implementation as are taken should apply in any case to all the workers covered by Paragraph 1, subparagraph (1).

SCHEDULE 9 (continued)

5. Employers' and workers' organisations should have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Recommendation.

II—NATIONAL POLICY

6. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member should make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

7. Within the framework of a national policy to promote equality of opportunity and treatment for men and women workers, measures should be adopted and applied with a view to preventing direct or indirect discrimination on the basis of marital status or family responsibilities.

8.(1) For the purposes of Paragraphs 6 and 7 above, the term **"discrimination"** means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

(2) During a transitional period special measures aimed at achieving effective equality between men and women workers should not be regarded as discriminatory.

9. With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities should be taken—

(a) to enable workers with family responsibilities to exercise their

SCHEDULE 9 (continued)

right to vocational training and to free choice of employment;

(b) to take account of their needs in terms and conditions of employment and in social security; and

(c) to develop or promote child-care, family and other community services, public or private, responding to their needs.

10. The competent authorities and bodies in each country should take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

11. The competent authorities and bodies in each country should take appropriate measures—

(a) to undertake or promote such research as may be necessary into the various aspects of the employment of workers with family responsibilities with a view to providing objective information on which sound policies and measures may be based; and

(b) to promote such education as will encourage the sharing of family responsibilities between men and women and enable workers with family responsibilities better to meet their employment and family responsibilities.

III—TRAINING AND EMPLOYMENT

12. All measures compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

SCHEDULE 9 (continued)

13. In accordance with national policy and practice, vocational training facilities and, where possible, paid educational leave arrangements to use such facilities should be made available to workers with family responsibilities.

14. Such services as may be necessary to enable workers with family responsibilities to enter or re-enter employment should be available, within the framework of existing services for all workers or, in default thereof, along lines appropriate to national conditions; they should include, free of charge to the workers, vocational guidance, counselling, information and placement services which are staffed by suitably trained personnel and are able to respond adequately to the special needs of workers with family responsibilities.

15. Workers with family responsibilities should enjoy equality of opportunity and treatment with other workers in relation to preparation for employment, access to employment, advancement within employment and employment security.

16. Marital status, family situation or family responsibilities should not, as such, constitute valid reasons for refusal or termination of employment.

IV—TERMS AND CONDITIONS OF EMPLOYMENT

17. All measures compatible with national conditions and possibilities and with the legitimate interests of other workers should be taken to ensure that terms and conditions of employment are such as to enable workers with family responsibilities to reconcile their employment and family responsibilities.

SCHEDULE 9 (continued)

18. Particular attention should be given to general measures for improving working conditions and the quality of working life, including measures aiming at—

(a) the progressive reduction of daily hours of work and the reduction of overtime; and

(b) more flexible arrangements as regards working schedules, rest periods and holidays;

account being taken of the stage of development and the particular needs of the country and of different sectors of activity.

19. Whenever practicable and appropriate, the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work.

20. Family responsibilities and considerations such as the place of employment of the spouse and the possibilities of educating children should be taken into account when transferring workers from one locality to another.

21.(1) With a view to protecting part-time workers, temporary workers and homeworkers, many of whom have family responsibilities, the terms and conditions on which these types of employment are performed should be adequately regulated and supervised.

(2) The terms and conditions of employment, including social security coverage, of part-time workers and temporary workers should be, to the extent possible, equivalent to those of full-time and permanent workers respectively; in appropriate cases, their entitlement may be calculated on a pro rata basis.

(3) Part-time workers should be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances which determined assignment to part-time employment no longer exist.

SCHEDULE 9 (continued)

22.(1) Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded.

(2) The length of the period following maternity leave and the duration and conditions of the leave of absence referred to in subparagraph (1) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(3) The leave of absence referred to in subparagraph (1) of this Paragraph may be introduced gradually.

23.(1) It should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness.

(2) It should be possible for a worker with family responsibilities to obtain leave of absence in the case of the illness of another member of the worker's immediate family who needs that worker's care or support.

(3) The duration and conditions of the leave of absence referred to in subparagraphs (1) and (2) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

V—CHILD-CARE AND FAMILY SERVICES AND FACILITIES

24. With a view to determining the scope and character of the child-care and family services and facilities needed to assist workers with family responsibilities to meet their employment and family responsibilities, the competent authorities should, in co-operation with the public and private organisations concerned, in particular employers' and workers' organisations, and within the scope of their resources for collecting

SCHEDULE 9 (continued)

information, take such measures as may be necessary and appropriate—

(a) to collect and publish adequate statistics on the number of workers with family responsibilities engaged in or seeking employment and on the number and age of their children and of other dependants requiring care; and

(b) to ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for child-care and family services and facilities.

25. The competent authorities should, in co-operation with the public and private organisations concerned, take appropriate steps to ensure that child-care and family services and facilities meet the needs and preferences so revealed; to this end they should, taking account of national and local circumstances and possibilities, in particular—

(a) encourage and facilitate the establishment, particularly in local communities, of plans for the systematic development of child-care and family services and facilities, and

(b) themselves organise or encourage and facilitate the provision of adequate and appropriate child-care and family services and facilities, free of charge or at a reasonable charge in accordance with the workers' ability to pay, developed along flexible lines and meeting the needs of children of different ages, of other dependants requiring care and of workers with family responsibilities.

26.(1) Child-care and family services and facilities of all types should comply with standards laid down and supervised by the competent authorities.

(2) Such standards should prescribe in particular the equipment and hygienic and technical requirements of the services and facilities provided and the number and qualifications of the staff.

SCHEDULE 9 (continued)

(3) The competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and family services and facilities.

VI—SOCIAL SECURITY

27. Social security benefits, tax relief, or other appropriate measures consistent with national policy should, when necessary, be available to workers with family responsibilities.

28. During the leave of absence referred to in Paragraphs 22 and 23, the workers concerned may, in conformity with national conditions and practice, and by one of the means referred to in Paragraph 3 of this Recommendation, be protected by social security.

29. A worker should not be excluded from social security coverage by reference to the occupational activity of his or her spouse and entitlement to benefits arising from that activity.

30.(1) The family responsibilities of a worker should be an element to be taken into account in determining whether employment offered is suitable in the sense that refusal of the offer may lead to loss or suspension of unemployment benefit.

(2) In particular, where the employment offered involves moving to another locality, the considerations to be taken into account should include the place of employment of the spouse and the possibilities of educating children.

SCHEDULE 9 (continued)

31. In applying Paragraphs 27 to 30 of this Recommendation, a Member whose economy is insufficiently developed may take account of the national resources and social security arrangements available.

VII—HELP IN EXERCISE OF FAMILY RESPONSIBILITIES

32. The competent authorities and bodies in each country should promote such public and private action as is possible to lighten the burden deriving from the family responsibilities of workers.

33. All measures compatible with national conditions and possibilities should be taken to develop home-help and home-care services which are adequately regulated and supervised and which can provide workers with family responsibilities, as necessary, with qualified assistance at a reasonable charge in accordance with their ability to pay.

34. Since many measures designed to improve the conditions of workers in general can have a favourable impact on those of workers with family responsibilities, the competent authorities and bodies in each country should promote such public and private action as is possible to make the provision of services in the community, such as public transport, supply of water and energy in or near workers' housing and housing with labour-saving layout, responsive to the needs of workers.

SCHEDULE 9 (continued)

VIII—EFFECT ON EXISTING RECOMMENDATIONS

35. This Recommendation supersedes the Employment (Women with Family Responsibilities) Recommendation, 1965.

SCHEDULE 10

TERMINATION OF EMPLOYMENT CONVENTION

section 5(1) of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Noting the existing international standards contained in the Termination of Employment Recommendation, 1963, and

Noting that since, the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Termination of Employment Convention, 1982:

SCHEDULE 10 (continued)

PART I—METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention—

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned,

SCHEDULE 10 (continued)

where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

For the purpose of this Convention the terms **"termination"** and **"termination of employment"** mean termination of employment at the initiative of the employer.

SCHEDULE 10 (continued)

PART II—STANDARDS OF GENERAL APPLICATION

Division A—Justification for termination

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination—

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

(e) absence from work during maternity leave.

SCHEDULE 10 (continued)

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

Division B—Procedure prior to or at the time of termination

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Division C—Procedure of appeal against termination

Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

SCHEDULE 10 (continued)

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities—

(a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;

(b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

SCHEDULE 10 (continued)

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

Division D—Period of notice

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

Division E—Severance allowance and other income protection

Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to—

(a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits,

SCHEDULE 10 (continued)

under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III—SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

Division A—Consultation of workers' representatives

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall—

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended

SCHEDULE 10 (continued)

to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term **"the workers' representatives concerned"** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Division B—Notification to the competent authority

Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination

SCHEDULE 10 (continued)

of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV—FINAL PROVISIONS

Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

SCHEDULE 10 (continued)

Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full

SCHEDULE 10 (continued)

particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

SCHEDULE 10 (continued)

Article 22

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.

SCHEDULE 11

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION

section 198 of the Act

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares 'recognition of the principle of freedom of association' to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that 'freedom of expression and of association are essential to sustained progress';

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

SCHEDULE 11 (continued)

PART I—FREEDOM OF ASSOCIATION

Article 1

1. Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

SCHEDULE 11 (continued)

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

SCHEDULE 11 (continued)

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term **"organisation"** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II—PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

SCHEDULE 12

RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION

section 198 of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union

SCHEDULE 12 (continued)

activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

SCHEDULE 12 (continued)

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

SCHEDULE 13

TERMINATION OF EMPLOYMENT RECOMMENDATION

section 288 of the Act

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two, the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

I—METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

SCHEDULE 13 (continued)

2.(1) This Recommendation applies to all branches of economic activity and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation—

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a whole provide protection that is at least equivalent to the protection afforded under the Recommendation.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

3.(1) Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following—

(a) limiting recourse to contracts for a specified period of time to

SCHEDULE 13 (continued)

cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;

(b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;

(c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms **"termination"** and **"termination of employment"** mean termination of employment at the initiative of the employer.

II—STANDARDS OF GENERAL APPLICATION

Justification for Termination

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination—

(a) age, subject to national law and practice regarding retirement;

(b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6.(1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

SCHEDULE 13 (continued)

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

Procedure prior to or at the time of termination

7. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

8. The employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

9. A worker should be entitled to be assisted by another person when defending himself, in accordance with Article 7 of the Termination of Employment Convention, 1982, against allegations regarding his conduct or performance liable to result in the termination of his employment; this right may be specified by the methods of implementation referred to in Paragraph 1 of this Recommendation.

10. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

11. The employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.

SCHEDULE 13 (continued)

12. The employer should notify a worker in writing of a decision to terminate his employment.

13.(1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) Subparagraph (1) of this Paragraph need not be applied in the case of collective termination for the reasons referred to in Articles 13 and 14 of the Termination of Employment Convention, 1982, if the procedure provided for therein is followed.

Procedure of appeal against termination

14. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment.

15. Efforts should be made by public authorities, workers' representatives and organisations of workers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

Time off from work during the period of notice

16. During the period of notice referred to in Article 11 of the Termination of Employment Convention, 1982, the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

SCHEDULE 13 (continued)

Certificate of employment

17. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying only the dates of his engagement and termination of his employment and the type or types of work on which he was employed; nevertheless, and at the request of the worker, an evaluation of his conduct and performance may be given in this certificate or in a separate certificate.

Severance allowance and other income protection

18.(1) A worker whose employment has been terminated should be entitled, in accordance with national law and practice, to—

(a) a severance allowance or other separation benefits, the amount of which should be based, inter alia, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in subparagraph (1)(a) of this Paragraph solely because he is not receiving an unemployment benefit under subparagraph (1)(b).

(3) Provision may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1)(a) of this Paragraph in the event of termination for serious misconduct.

SCHEDULE 13 (continued)

III—SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

19.(1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.

(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

Consultations on major changes in the undertaking

20.(1) When the employer contemplates the introduction of major changes in production, program, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term **"the workers' representatives concerned"** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

SCHEDULE 13 (continued)

Measures to avert or minimise termination

21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

22. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.

Criteria for selection for termination

23.(1) The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

Priority of rehiring

24.(1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with

SCHEDULE 13 (continued)

comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights—particularly seniority rights—in the event of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

Mitigating the effects of termination

25.(1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

26.(1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in

SCHEDULE 13 (continued)

subparagraph (1) of this Paragraph, in accordance with national law and practice.

IV—EFFECT ON EARLIER RECOMMENDATION

27. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.

ENDNOTES

1 Index to Endnotes

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 February 1995. Future amendments of the Industrial Relations Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Table of earlier reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 32 of 1993	3 August 1993
2	to Act No. 12 of 1994	29 April 1994

4 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of Table	Reprint No.
Corrected minor errors	1
Renumbered provisions	1, 2
Comparative legislation	1, 2

5 List of legislation

Industrial Relations Act 1990 No. 28
date of assent 15 June 1990
ss 1–2 commenced on date of assent
s 1.4(2) commenced 30 June 1991 (see s 2(2))
remaining provisions commenced 23 June 1990 (proc pubd Ind Gaz 23 June 1990 p 324)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 Sch
date of assent 6 December 1990
commenced on date of assent (see s 2)

Superannuation (Miscellaneous Acts) Amendment Act 1991 No. 11 Pt 10
date of assent 15 April 1991
s 10.1 commenced on date of assent
remaining provisions commenced 11 May 1991 (proc pubd Gaz 4 May 1991 p 73)

Supreme Court of Queensland Act 1991 No. 68 s 111 Sch 2
date of assent 24 October 1991
commenced 14 December 1991 (1991 SL No. 173)

Anti-Discrimination Act 1991 No. 85 Ch 11
date of assent 9 December 1991
commenced 30 June 1992 (1992 SL No. 118)

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 Sch 1
date of assent 17 December 1991
commenced on date of assent

Industrial Relations Amendment Act 1992 No. 62
date of assent 7 December 1992
ss 5, 20–24, 34, 36 commenced 18 June 1993 (1993 SL No. 221)
s 37 commenced 2 August 1993 (1993 SL No. 288)
remaining provisions commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 Sch 1
date of assent 3 June 1993
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1993 No. 76 s 3 Sch 1
date of assent 14 December 1993
commenced on date of assent

Industrial Relations Reform Act 1994 No. 12 Pt 2 Sch
date of assent 30 March 1994
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1994 No. 15 s 3 Sch 2
date of assent 10 May 1994
commenced on date of assent

Industrial Relations Amendment Act 1994 No. 55
date of assent 4 November 1994
commenced on date of assent

Whistleblowers Protection Act 1994 No. 68 s 62 Sch 4
date of assent 1 December 1994
commenced 16 December 1994 (1994 SL No. 441)

Judicial Legislation Amendment Act 1994 No. 76 Pts 1–2
date of assent 1 December 1994
commenced on date of assent

6 List of annotations

Key to abbreviations in list of annotations

AIA	=	**Acts Interpretation Act 1954**
amd	=	**amended**
Ch	=	**Chapter**
def	=	**definition**
Div	=	**Division**
exp	=	**expires/expired**
hdg	=	**heading**
ins	=	**inserted**
om	=	**omitted**
prec	=	**preceding**
pres	=	**present**
prev	=	**previous**
(prev)	=	**previously**
prov	=	**provision**
Pt	=	**Part**
R1	=	**Reprint No. 1**
R2	=	**Reprint No. 2**
R3	=	**Reprint No. 3**
RA	=	**Reprints Act 1992**
renum	=	**renumbered**
Sdiv	=	**Subdivision**
sub	=	**substituted**

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

This reprint has been renumbered—see Tables of renumbered provisions in Endnote 10.

Commencement
s 2 amd 1993 No. 76 s 3 Sch 1

Objects
s 3 amd 1992 No. 62 s 4; 1994 No. 12 s 3

Repeals
s 1.4 om 1992 No. 62 s 5

Savings
s 1.5 om 1992 No. 62 s 5

Application
s 4 amd 1993 No. 76 s 3 Sch 1

Meaning of terms
s 5 amd 1994 No. 55 s 2 Sch
def **"Anti-Discrimination Conventions"** ins 1994 No. 12 s 4(2)
def **"apprentice"** sub 1993 No. 76 s 3 Sch 1
def **"approved occupational superannuation fund"** ins 1994 No. 55 s 2 Sch
def **"bonus payment"** amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch
def **"cause"** ins 1994 No. 55 s 2 Sch

def **"certified agreement"** ins 1992 No. 62 s 6(2)
sub 1994 No. 12 s 4(1)–(2)
def **"chief executive"** om 1991 No. 97 s 3 Sch 1
def **"Chief Industrial Inspector"** om 1994 No. 55 s 2 Sch
def **"Commission"** ins 1991 No. 97 s 3 Sch 1
def **"Commissioner"** ins 1994 No. 55 s 2 Sch
def **"Commonwealth Act"** ins 1992 No. 62 s 6(2)
def **"complying superannuation fund"** ins 1994 No. 55 s 2 Sch
def **"Court"** ins 1991 No. 97 s 3 Sch 1
def **"decision"** amd 1992 No. 62 s 6(3); 1994 No. 12 s 4(3); 1994 No. 55 s 2 Sch
def **"demarcation dispute"** om 1992 No. 62 s 6(1)
def **"demarcation dispute"** ins 1992 No. 62 s 6(2)
def **"Discrimination (Employment and Occupation) Convention"** ins 1994 No. 12 s 4(2)
def **"Discrimination (Employment and Occupation) Recommendation"** ins 1994 No. 12 s 4(2)
def **"discriminatory provision"** ins 1994 No. 12 s 4(2)
def **"Economic, Social and Cultural Rights Covenant"** ins 1994 No. 12 s 4(2)
def **"electoral official"** ins 1992 No. 62 s 6(2)
def **"eligible employee"** amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch
def **"eligible rollover fund"** ins 1994 No. 55 s 2 Sch
def **"enterprise flexibility agreement"** ins 1994 No. 12 s 4(2)
def **"Equal Remuneration Convention"** ins 1994 No. 12 s 4(2)
def **"Equal Remuneration Recommendation"** ins 1994 No. 12 s 4(2)
def **"Family Responsibilities Convention"** ins 1994 No. 12 s 4(2)
def **"Family Responsibilities Recommendation"** ins 1994 No. 12 s 4(2)
def **"Full Bench"** ins 1994 No. 12 s 4(2)
def **"industrial action"** ins 1994 No. 12 s 4(2)
def **"industrial agreement"** amd 1992 No. 62 s 6(4); 1993 No. 32 s 3 Sch 1
def **"industrial cause"** or **"cause"** om 1994 No. 55 s 2 Sch
def **"Industrial Commission"** ins 1991 No. 97 s 3 Sch 1
def **"Industrial Commission" or "Commission"** om 1991 No. 97 s 3 Sch 1
def **"Industrial Commissioner"** ins 1994 No. 55 s 2 Sch
def **"Industrial Commissioner"** or **"Commissioner"** om 1994 No. 55 s 2 Sch
def **"Industrial Court or Court"** om 1991 No. 97 s 3 Sch 1
def **"Industrial Gazette"** om 1991 No. 97 s 3 Sch 1
def **"Industrial Inspector"** sub 1994 No. 55 s 2 Sch
def **"Industrial Registrar"** om 1994 No. 55 s 2 Sch
def **"Minimum Wages Convention"** ins 1994 No. 12 s 4(2)
def **"Minister"** om 1991 No. 97 s 3 Sch 1
def **"paid rates award"** ins 1994 No. 12 s 4(2)
def **"party"** amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch
def **"President"** amd 1993 No. 76 s 3 Sch 1
def **"registered company auditor"** ins 1992 No. 62 s 6(2)

def **"repealed Acts"** ins 1992 No. 62 s 6(2)
def **"Termination of Employment Convention"** ins 1994 No. 12 s 4(2)
def **"the department"** om 1991 No. 97 s 3 Sch 1
def **"trainee"** sub 1993 No. 76 s 3 Sch 1
def **"wages"** sub 1991 No. 97 s 3 Sch 1
def **"young employee"** amd 1992 No. 62 s 38 Sch; 1993 No. 76 s 3 Sch 1; 1994 No. 12 s 2 Sch

References to offices in industrial organisations etc.
s 5A ins 1994 No. 55 s 2 Sch

References to making false or misleading statements
s 5B ins 1994 No. 55 s 2 Sch

References to engaging in conduct
s 5C ins 1994 No. 55 s 2 Sch

Industrial matter
s 6 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Construction of Act etc.
s 7 om 1993 No. 76 s 3 Sch 1

Jurisdiction of Court
s 12 amd 1992 No. 62 s 38 Sch; 1993 No. 76 s 3 Sch 1; 1994 No. 12 s 2 Sch; 1994 No. 55 s 2 Sch

Court's jurisdiction exclusive
s 13 amd 1994 No. 55 s 2 Sch

Binding nature of Court's decision
s 14 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Court may refuse to proceed
s 15 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Proceedings in Full Industrial Court
s 16 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Preservation of Commission
s 18 amd 1991 No. 97 s 3 Sch 1

Remuneration of Commissioners
s 27 sub 1994 No. 76 s 4

Pension benefits of Commissioners
s 28 amd 1991 No. 11 s 10.2; 1993 No. 76 s 3 Sch 1

Leave of absence to Commissioners
s 29 amd 1993 No. 76 s 3 Sch 1

Performance of Commission's functions
s 30 ins 1994 No. 12 s 5

Commission decisions to be in plain English
s 31 ins 1994 No. 12 s 5

General jurisdiction of Commission
s 32 amd 1991 No. 85 s 269

Commission may refuse to proceed
s 33 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Provisions affecting exercise of award jurisdiction
s 35 amd 1994 No. 12 s 2 Sch

General rulings
s 37 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Statement of policy
s 38 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Power to vary or void contracts
s 40 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Power to order superannuation contribution to particular fund
s 41 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Power to grant injunctions
s 42 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Demarcation disputes
s 44 sub 1992 No. 62 s 7

Organisation coverage
s 45 ins 1992 No. 62 s 7

Power to enter and inspect
s 50 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Division 4—Minimum wages
Div hdg ins 1994 No. 12 s 6

Object of Division
s 51 ins 1994 No. 12 s 6

Meaning of expressions
s 52 ins 1994 No. 12 s 6

Orders setting minimum wages
s 53 ins 1994 No. 12 s 6

Orders only on application
s 54 ins 1994 No. 12 s 6

When Commission may make order
s 55 ins 1994 No. 12 s 6

Matters to be considered when setting minimum wages
s 56 ins 1994 No. 12 s 6

Division does not limit other rights
s 57 ins 1994 No. 12 s 6

Division 5—Equal remuneration for work of equal value
Div hdg ins 1994 No. 12 s 6

Object of Division
s 58 ins 1994 No. 12 s 6

Meaning of expressions
s 59 ins 1994 No. 12 s 6

Orders requiring equal remuneration
s 60 ins 1994 No. 12 s 6

Orders only on application
s 61 ins 1994 No. 12 s 6

When Commission must and may only make order
s 62 ins 1994 No. 12 s 6

Immediate or progressive introduction of equal remuneration
s 63 ins 1994 No. 12 s 6

Employer not to reduce remuneration
s 64 ins 1994 No. 12 s 6

Division does not limit other rights
s 65 ins 1994 No. 12 s 6

Division 6—Further provisions about orders under Division 4 or 5
Div hdg ins 1994 No. 12 s 6

Orders to be written
s 66 ins 1994 No. 12 s 6

When orders take effect
s 67 ins 1994 No. 12 s 6

Compliance with orders
s 68 ins 1994 No. 12 s 6

Amendment and revocation of orders
s 69 ins 1994 No. 12 s 6

Inconsistent awards or orders
s 70 ins 1994 No. 12 s 6

Division 7—Industry consultative councils
Div hdg ins 1994 No. 12 s 6

Industry consultative councils
s 71 ins 1994 No. 12 s 6

Jurisdiction of Industrial Magistrate
s 74 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Power of Industrial Magistrate concerning unpaid superannuation contribution
s 75 amd 1992 No. 62 ss 8, 38 Sch; 1993 No. 76 s 3 Sch 1; 1994 No. 12 s 2 Sch; 1994 No. 55 s 3

Powers etc. vested in Commission by other jurisdictions
s 88 amd 1993 No. 76 s 3 Sch 1

Basis of procedures and decisions of the Commission and Industrial Magistrates
s 92 amd 1994 No. 12 s 7

Powers incidental to exercise of jurisdiction
s 94 amd 1992 No. 62 s 9

Confidential material tendered in evidence
s 99 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Evidentiary value at large of official records
s 100 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Proof of certain facts by averment
s 101 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Representation of parties
s 105 amd 1992 No. 62 s 10; 1994 No. 12 s 8

Intervention as of right
s 107 prov hdg sub 1992 No. 62 s 11

Enforcement of Commission's orders
s 111 sub 1994 No. 12 s 9

Remedies on show cause
s 112 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch

Rules of court
s 115 amd 1993 No. 76 s 3 Sch 1

Appeal to Supreme Court from Industrial Court
s 117 amd 1991 No. 68 s 111 Sch 2

Appeal to Industrial Court
s 118 amd 1994 No. 55 s 2 Sch

Appeals to Industrial Commission
s 120 amd 1992 No. 62 s 38 Sch; 1994 No. 12 s 2 Sch; 1994 No. 55 s 4

Decisions on appeal that are final
s 122 sub 1994 No. 55 s 5

Appeals to both Court and Commission
s 123 sub 1994 No. 55 s 5

Transitional appeals
s 126A ins 1994 No. 55 s 2 Sch
exp 4 May 1995 (see s 126A(2))

Division 1—The award system
Div hdg prev Div 1 hdg renum as Sdiv 2 hdg 1994 No. 12 s 10(2)
pres Div 1 hdg ins 1994 No. 12 s 10(1)

Subdivision 1—Objects of Division
Sdiv hdg ins 1994 No. 12 s 10(1)

Objects of Division
s 127 ins 1994 No. 12 s 10(1)

Subdivision 2—Awards
Sdiv hdg (prev Div 1 hdg) renum 1994 No. 12 s 10(2)

Division 2—Certified agreements
Div hdg ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Objects of Division
s 108 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Subdivision 3—Paid rates awards
Sdiv hdg ins 1994 No. 12 s 10(3)

Objects of Subdivision
s 131 ins 1994 No. 12 s 10(3)

Making or amending paid rates awards
s 132 ins 1994 No. 12 s 10(3)

Commission to maintain existing paid rates awards
s 133 ins 1994 No. 12 s 10(3)

Party acting inconsistently with award's status as a paid rates award
s 134 ins 1994 No. 12 s 10(3)

Statement identifying paid rates award
s 135 ins 1994 No. 12 s 10(3)

Definitions
s 109 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Agreements may be made about industrial matters
s 110 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Minister may intervene in certain cases
s 111 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Certification of agreements under this Division
s 112 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

When Commission may refuse to certify agreements
s 113 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Other options open to Commission
s 114 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Procedures for preventing and settling disputes
s 115 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Operation of certified agreements
s 116 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Party may retire from a certified agreement
s 117 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Extension of certified agreements
s 118 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Effect of certified agreements
s 119 ins 1992 No. 62 s 12
om 1994 No. 12 s 10(3)

Certified agreements may be varied or terminated by Full Bench
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8 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS
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9 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERRORS
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11 Table of comparative legislation

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Cwlth	**=**	**Industrial Relations Act 1988 (Commonwealth)**
Qd	**=**	**Industrial Conciliation and Arbitration Act 1961 (Queensland)**
Wa	**=**	**Wages Act 1918–1983 (Queensland)**

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s 373	s 136 Qd
s 374	s 127 Qd
s 375	s 128A Qd
s 376	s 128B Qd
s 378	s 110 Qd; s 31Wa
s 379	s 41 Qd
s 380	s 137 Qd
s 381	s 138A Qd
s 382	s 139 Qd
s 383	s 140 Qd
s 384	s 141 Qd

s 392	s 4 Wa
s 393	s 5 Wa
s 394	s 6 Wa
s 395	s 7 Wa
s 396	s 7 Wa
s 397	ss 8, 10 Wa
s 398	s 9 Wa
s 399	s 11 Wa
s 400	s 13 Wa
s 401	s 14 Wa
s 402	s 16 Wa
s 403	s 18 Wa
s 406	s 97 Qd; ss 19, 20, 23-25A Wa
s 407	ss 19, 20 Wa
s 408	s 21 Wa
s 409	s 97 Qd
s 410	ss 17, 97 Qd; s 20 Wa
s 411	s 97 Qd
s 412	s 25B Wa
s 414	s 39 Wa
s 416	s 36 Wa
s 417	s 36 Wa
s 418	s 36 Wa
s 419	s 37 Wa
s 420	s 37 Wa
s 421	s 103 Qd
s 422	s 113 Qd
s 423	s 130 Qd
s 424	s 107 Qd
s 425	s 104 Qd
s 426	s 105 Qd
s 427	s 106 Qd
s 428	s 121 Qd
s 429	ss 14, 17 Qd
s 430	s 19 Qd
s 431	s 39 Qd
s 432	s 99 Qd
s 433	s 50 Qd
s 434	s 60 Qd
s 435	s 77 Qd
s 436	s 82 Qd
s 437	s 85 Qd
s 438	s 86 Qd
s 439	s 88 Qd
s 440	s 47 Qd
s 441	s 60B Qd
s 442	s 56 Qd
s 443	s 318 Cwlth
s 444	s 60 Qd

s 445	ss 323, 324, 325 Cwlth
s 446	s 326 Cwlth
s 447	s 327 Cwlth
s 448	s 327 Cwlth
s 449	s 328 Cwlth
s 450	s 329 Cwlth
s 451	s 330 Cwlth
s 452	s 331 Cwlth
s 453	s 61 Qd
s 454	s 322 Cwlth
s 455	ss 47A, 60A, 101B Qd
s 456	s 134 Qd
s 457	s 132 Qd
s 458	ss 108, 126 Qd
s 459	s 57 Qd
s 460	s 136 Qd
s 461	s 110 Qd, s 31 Wa
s 462	s 97 Qd; s 34 Wa
s 464	s 113 Qd
s 465	s 109 Qd
s 467	s 113 Qd
s 468	s 113 Qd
s 469	s 111 Qd
s 470	s 112 Qd
s 471	s 111 Qd
s 472	s 116 Qd
s 473	s 116 Qd
s 474	s 115 Qd