

INDUSTRIAL RELATIONS ACT

No. 28 of 1990

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Queensland



ANNO TRICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

No. 28 of 1990

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

[ASSENTED TO 15TH JUNE, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART 1—PRELIMINARY

SECTION 1.1 SHORT TITLE

1.1 Short title. This Act may be cited as the *Industrial Relations Act 1990*.

SECTION 1.2 COMMENCEMENT

1.2 Commencement. (1) Section 1.1 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.

The day so appointed is, in this Act, referred to as “the commencement of this Act”.

SECTION 1.3 OBJECTS

1.3 Objects. 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;
- (b) 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;
- (c) to ensure that agreements made between employers, or industrial organizations of employers, and employees, or industrial organizations of employees, in relation to industrial matters and decisions made or given by a tribunal constituted for the purposes of this Act are respected;
- (d) to recognise and encourage the formation of organizations representative of employers and organizations representative of employees to provide adequate and competent representation for their members in respect of industrial matters;

ABBREVIATIONS. Abbreviations used in references to other Acts in Notes appearing at the beginning of Sections have the following meanings:—

Cwth.—*Industrial Relations Act 1988* (Commonwealth)

Qd.—*Industrial Conciliation and Arbitration Act 1961-1989* (Queensland)

Wa.—*Wages Act 1918-1983* (Queensland)

- (e) to encourage the democratic control of industrial organizations, and the participation by their members in the affairs of industrial organizations;
- (f) to encourage the efficient management of industrial organizations.

SECTION 1.4 REPEALS

1.4 Repeals. (1) The enactments specified in the following Table are repealed to the extent indicated in the Table.

TABLE

Enactments Repealed	Extent of Repeal
<i>Essential Services Act 1979-1989</i>	the whole
<i>The Industrial Conciliation and Arbitration Act of 1961</i>	the whole
<i>The Industrial Conciliation and Arbitration Act Amendment Act of 1963</i>	the whole
<i>The Industrial Conciliation and Arbitration Acts Amendment Act of 1964</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1973</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1974</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1974 (No. 2)</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1975</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1976</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1976 (No.2)</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1980</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1982</i>	the whole
<i>Industrial Conciliation and Arbitration Act and Another Act Amendment Act 1983</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1985</i>	the whole

TABLE—continued

Enactments Repealed	Extent of Repeal
<i>Industrial Conciliation and Arbitration Act Amendment Act 1986</i>	the whole
<i>Industrial Conciliation and Arbitration Act and Another Act Amendment Act 1987</i>	the whole
<i>Industrial Conciliation and Arbitration Act Amendment Act 1989</i>	the whole
<i>Industrial (Commercial Practices) Act 1984</i>	the whole
<i>Industrial (Commercial Practices) Act Amendment Act 1985</i>	the whole
<i>Industrial (Commercial Practices) Act and Another Act Amendment Act 1987</i>	the whole
<i>The Wages Act of 1918</i>	the whole
<i>The Wages Act Amendment Act of 1937</i>	the whole
<i>The Wages Acts Amendment Act of 1954</i>	the whole
<i>Factories and Shops Act 1960-1988</i>	ss.43, 44 and 50

(2) The *Factories and Shops Act 1960-1988* is amended by repealing the whole of Part IV thereof.

(3) The *Factories and Shops Act 1960-1988* as amended by any provision of this Act may be cited as the *Factories and Shops Act 1960-1990*.

(4) The Acts and the provisions of Acts repealed by subsection (1) or subsection (2) are, in this Act, referred to as the Repealed Acts.

(5) The repeal of the Repealed Acts does not affect—

- (a) the continuity of identity or registration of an industrial union registered as such under any Act in force at any time before the commencement of this Act;
- (b) an exemption, granted under, or affirmed by, any of the Repealed Acts, of any person or class of person from the operation of the provisions of any award or industrial agreement.

(6) The repeal of the Repealed Acts does not render defective any action or proceedings commenced by or against an industrial union registered under any of the Repealed Acts, or commenced under or for the purposes of any of the Repealed Acts, before the date of the repeal, or cause any such action or proceedings to abate or to be discontinued.

(7) The repeal of the Repealed Acts does not affect the continued operation of any enactment, the operation of which was declared by any of the Repealed Acts to be preserved.

SECTION 1.5 SAVINGS

1.5 Savings. (1) A person who immediately before the commencement of this Act holds an office under or for the purposes of any of the Repealed Acts continues to hold the office under or for the purposes of this Act in accordance with the terms of the person's appointment to the office until the person ceases to hold the office according to law.

(2) Every person of a description of person prescribed by or under any Act to be, or to be deemed to be, an employee within the meaning of the Repealed Acts continues to be, or to be taken to be, an employee within the meaning of this Act.

(3) 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.

Every such Proclamation, Order in Council, regulation or rule, while it so continues in force, is to be read and construed 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 actions or 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.

If the action or proceedings is one in which the person or entity before whom it was instituted had jurisdiction under the *Industrial Conciliation and Arbitration Act 1961-1989* but has not jurisdiction under this Act, then—

- (a) if the action or proceedings 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;

- (b) if the action or proceedings does not stand part heard at the commencement of this Act, it is to be completed before the person or entity who has jurisdiction therein under this Act, as if it had been instituted before that person or entity under this Act in the first instance.

An action or proceedings is taken to be part heard after commencement of the hearing until the decision therein is pronounced.

(6) Every voluntary employment agreement that at the commencement of this Act has force and effect in accordance with the *Industrial Conciliation and Arbitration Act 1961-1989* continues to have force and effect until 30 September 1990, and no later, or until an earlier date on which the agreement is terminated according to law.

The provisions of the *Industrial Conciliation and Arbitration Act 1961-1989* being provisions relevant to ascertainment, identification or enforcement of rights or obligations arising under a voluntary employment agreement (including evidentiary provisions), are taken to continue in force until 30 September 1991 and no later.

SECTION 1.6 APPLICATION

1.6 Application. (1) The Governor in Council may, by Order in Council, declare that the provisions of this Act, or such of them as are specified therein, do not apply to any person or class of person specified in the order, absolutely or subject to such conditions as are specified in the order.

While such an order continues in force and all conditions (if any) specified therein are complied with, the provisions of this Act as specified in the order do not apply to the person or class of person specified therein.

(2) 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.

(3) 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 corresponding provision of any of the Repealed Acts.

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

- (a) the entitlement of a person to an office in an industrial organization, 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 organization, 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 organization being conducted in accordance with law at the commencement of this Act.

PART 2—INTERPRETATION

SECTION 2.1 MEANING OF TERMS

2.1 Meaning of terms. (1) In this Act, except where a contrary intention appears—

- “accounting records”, in relation to an industrial organization, 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 organization are made up;
- “apprentice” means a person who has entered into an arrangement with an employer to become an apprentice and is registered as an apprentice pursuant to the *Employment, Vocational Education and Training Act 1988* or pursuant to any Act replaced by that Act;
- “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 or industrial agreement;
- “branch”, in relation to an industrial organization, means any section, division, chapter, or other group within the industrial organization (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;
- “chief executive”, in relation to a department of government of the State, means the person who is the chief executive thereof pursuant to the *Public Service Management and Employment Act 1988-1990*, and includes any person for the time being performing the duties of the chief executive;
- “Chief Industrial Inspector” means the person for the time being holding the appointment, Chief Industrial Inspector, under this Act, and includes any person for the time being performing the duties of that appointment;
- “committee of management”, in relation to an industrial organization or association of persons, or a branch thereof, means the body of persons (however called) that manages the affairs of the industrial organization, association or branch;
- “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, or varied for the time being, by the Commission and includes any variation of such an agreement;

“demarcation dispute” means—

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

or

(b) a dispute arising between employers and employees, or between members of different industrial organizations, as to the demarcation of functions of employees or classes 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 1988-1990*;

“eligible employee” means an employee who, within the meaning of any relevant award or industrial agreement, is an eligible employee for the purposes of entitlement to occupational superannuation benefits;

“eligibility rules”, in relation to an industrial organization or association of persons, means the rules of the industrial organization or association that declare the conditions of eligibility for membership thereof;

“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 one 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, one 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;

“financial year”, in relation to an industrial organization, means—

- (a) the period of 12 months commencing on 1 July in any year;
or
- (b) if the rules of the industrial organization provide for another period of 12 months as its financial year, that other period;

“guaranteed minimum wage” means the wage for adults declared as such for the time being by a Full Bench of the Industrial Commission;

“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 pursuant to section 12.4 or section 40(2) of the *Industrial Conciliation and Arbitration Act 1961-1989*;

“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 of the Commonwealth to exercise powers of conciliation or arbitration in relation to industrial matters or industrial disputes;

“industrial cause” or “cause” includes an industrial matter and an industrial dispute;

“Industrial Commission” or “Commission” means the commission preserved, continued in existence and constituted under this Act under the name The Industrial Relations Commission;

“Industrial Commissioner” or “Commissioner” means a person holding for the time being an appointment as Chief Industrial

Commissioner or as an Industrial Commissioner, and includes a person holding for the time being an appointment as Acting Industrial Commissioner;

“Industrial Court” or “Court” means the Industrial Court preserved, continued in existence and constituted under this Act;

“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 Gazette” means the Queensland Government Industrial Gazette;

“Industrial Inspector” means the Chief Industrial Inspector and any other Industrial Inspector appointed or taken to be appointed for the purposes of this Act, and includes an acting Industrial Inspector;

“industrial organization” 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;

“Industrial Registrar” means the person for the time being holding the appointment, Industrial Registrar, for the purposes of this Act, and includes any person for the time being authorized as prescribed to exercise the powers and perform the duties of the Industrial Registrar;

“joint session” means proceedings in which any Industrial Commissioners sit with any members of any industrial authority or authorities;

“lock-out” 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 lock-out;

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;

“Minister” includes a Minister of the Crown who for the time being is performing the duties of the Minister;

“office”, in relation to an industrial organization, or branch of an industrial organization, 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 organization or branch;

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

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

- (iv) the enforcement of rules of the industrial organization 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 organization 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 organization or branch;

or

- (ii) decisions concerning the industrial organization or branch;

or

- (d) an office the holder of which is, under the rules of the industrial organization 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 organization or branch;

or

- (ii) in which the industrial organization or branch has a beneficial interest;

- “officer”, in relation to an industrial organization, or branch of an industrial organization, means a person who holds an office in the industrial organization or branch;
- “party”, in relation to any award, industrial agreement or permit, includes any person bound by the award, agreement or permit;
- “peak council”, in relation to industrial organizations, means an association that is effectively representative of a significant number of industrial organizations 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 and includes any person for the time being acting as President;
- “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;
- “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 customarily performed;
or
 - (c) the adoption of a practice or stragem 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;

“the department” means the department of government within which this Act is for the time being administered;

“trainee” means a person registered as a trainee pursuant to the provisions of the *Employment, Vocational Education and Training Act 1988*;

“wages” means moneys (whether called wages or salary) payable to an employee in respect of—

- work performed, or to be performed, by the employee;
- any public holiday;
- any leave to which the employee has an entitlement;

and includes moneys payable from wages, with the employee’s consent in writing, 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 *Employment, Vocational Education and Training Act 1988*, who receives a lower wage, price or rate than that fixed by an award or industrial agreement for adult employees in the calling.

(2) In this Act, except where a contrary intention appears, a reference to an office in an industrial organization, or association of persons, includes reference to an office in a branch of the industrial organization or association.

(3) In this Act—

- (a) a reference to a person making a statement that is, to the person's knowledge, false or misleading in a material particular includes reference to a person making a statement, where the person is reckless as to whether the statement is false or misleading in a material particular;
- (b) a reference to engaging in conduct includes reference to being, directly or indirectly, a party to or concerned in the conduct.

SECTION 2.2 INDUSTRIAL MATTER

2.2 Industrial matter. Qd.s.5. (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, lock-out, 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 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.

SECTION 2.3 CONSTRUCTION OF ACT, ETC.

2.3 Construction of Act, etc. Qd.s.3. This Act and every Proclamation, Order in Council, regulation and Rule of Court made under this Act and every decision is to be read and construed so as not to exceed the legislative power of the State, to the intent that where any enactment of this Act or any provision of such Proclamation, Order in Council, regulation, Rule of Court or decision would, but for this section, have been construed as being in excess of that power, it is nevertheless a valid enactment, provision or decision to the extent to which it is not in excess of that power.

PART 3—INDUSTRIAL COURT

SECTION 3.1 PRESERVATION OF COURT

3.1 Preservation of Court. Qd.s.7. (1) The Industrial Court preserved, continued in existence and constituted under *The Industrial Conciliation and Arbitration Act of 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.

SECTION 3.2 MEMBERSHIP OF COURT

3.2 Membership of Court. Qd.s.7. (1) The Industrial Court is constituted by a single judge called the President of the Industrial Court.

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

(2) 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.

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

(4) 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.

SECTION 3.3 EXERCISE OF COURT'S JURISDICTION

3.3 Exercise of Court's jurisdiction. Qd.s.7. (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.

SECTION 3.4 PRESIDENT'S TENURE OF OFFICE

3.4 President's tenure of office. Qd.s.7. (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 re-appointed 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 re-appointing 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 authorized 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.

SECTION 3.5 ACTING PRESIDENT

3.5 Acting President. Qd.s.7. (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.

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.

(4) 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).

SECTION 3.6 JURISDICTION OF COURT

3.6 Jurisdiction of Court. Qd.ss.8,22. (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—
 - offences against this Act;
 - recovery of damages, or other moneys, under this Act or under any award, industrial 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 organization;
- (vi) proceedings for offences defined in any of the following sections—

18.4	18.11	18.16	18.23
18.7	18.13	18.18	18.24
18.8	18.15	18.22	

- (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 means of prerogative writ 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 paragraph (iv), (v) or (vi) of subsection (1) 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 *Employment, Vocational Education and Training Act 1988*.

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

SECTION 3.7 COURT'S JURISDICTION EXCLUSIVE

3.7 Court's jurisdiction exclusive. Qd.s.8. (1) Except as is prescribed by section 9.1, 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 writ of prohibition cannot be issued, and an injunction or *mandamus* cannot be granted, in respect of or to restrain proceedings in the Court that relate to matters within the Court's jurisdiction.

SECTION 3.8 BINDING NATURE OF COURT'S DECISIONS

3.8 Binding nature of Court's decisions. Qd.s.8. An interpretation of any provision of this Act or of an award, industrial agreement or permit by the Industrial Court in exercise of its jurisdiction under this Act is final and conclusive and binding on—

- the Industrial Commission;
and
- all Industrial Magistrates;
and
- all industrial organizations and persons who are subject to this Act, or bound by the award, agreement or permit.

SECTION 3.9 COURT MAY REFUSE TO PROCEED

3.9 Court may refuse to proceed. Qd.s.8. The Industrial Court may refuse to proceed to hear and determine proceedings before it relating to an award or industrial 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.

SECTION 3.10 PROCEEDINGS IN FULL INDUSTRIAL COURT

3.10 Proceedings in Full Industrial Court. Qd.s.8. 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—
 - the Court's jurisdiction;
 - the interpretation of any provision of this, or any other, Act, law, award, industrial 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.

SECTION 3.11 PRESIDENT'S ANNUAL REPORT

3.11 President's annual report. Qd.s.8. 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.

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

SECTION 4.1 PRESERVATION OF COMMISSION

4.1 Preservation of Commission. Qd.s.9. (1) The Industrial Conciliation and Arbitration Commission established by *The Industrial Conciliation and Arbitration Act of 1961* is preserved, continued in existence and constituted under this Act under the name The Industrial Relations Commission.

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

SECTION 4.2 MEMBERSHIP OF COMMISSION

4.2 Membership of Commission. Qd.s.9. (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.

This subsection does not apply in relation to an appointment of any person as an Acting Industrial Commissioner.

(3) An Industrial Commissioner who becomes—

- a member of the Legislative Assembly;
- or
- 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.

(4) 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.

SECTION 4.3 EXERCISE OF COMMISSION'S JURISDICTION

4.3 Exercise of Commission's jurisdiction. Qd.s.9. (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.

SECTION 4.4 DECISION OF FULL BENCH

4.4 Decision of Full Bench. Qd.s.9. 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.

SECTION 4.5 CONTROL OF COMMISSION'S AFFAIRS

4.5 Control of Commission's affairs. Qd.s.9. (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) organizing 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—

- the administration of the Industrial Commission;
- the organization and allocation of work of the Commission;

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

(4) In organizing 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 one or more of the Industrial Commissioners to a Commission constituted—

- by the same Commissioner or Commissioners together with another Commissioner or other Commissioners;

or

- 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.

SECTION 4.6 REPLACEMENT FOR CHIEF COMMISSIONER

4.6 Replacement for Chief Commissioner. If the Chief Industrial Commissioner is temporarily unable to discharge the functions of office under section 4.5, those functions are to be discharged by one of the other Industrial Commissioners nominated by the President.

SECTION 4.7 TERM OF APPOINTMENT OF COMMISSIONERS

4.7 Term of appointment of Commissioners. Qd.s.9. (1) The first appointment of a person as Industrial Commissioner is for a term of 7 years.

This subsection does not apply in relation to an appointment as Acting Industrial Commissioner.

(2) An Industrial Commissioner is eligible for re-appointment from time to time for a term not exceeding 7 years.

(3) 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.

(4) 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.

(5) Subject to subsection (4), 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.

SECTION 4.8 CONTINUANCE IN COMMISSIONER'S OFFICE FOR LIMITED PURPOSE

4.8 Continuance in Commissioner's office for limited purpose. Qd.s.9. 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 re-appointing 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.

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.

SECTION 4.9 ACTING COMMISSIONERS

4.9 Acting Commissioners. (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.

SECTION 4.10 REMUNERATION OF COMMISSIONERS

4.10 Remuneration of Commissioners. Qd.s.9. (1) The Chief Industrial Commissioner is entitled to be paid salary at a rate that is 105 per centum of the rate applicable for the time being to the salary of a Judge of District Courts.

(2) An Industrial Commissioner, other than the Chief Industrial Commissioner, is entitled to be paid salary at the rate applicable for the time being to the salary of a Judge of District Courts.

(3) Industrial Commissioners are entitled to be paid a general allowance at the rate of general allowance for the time being payable to a Judge of District Courts.

(4) The Consolidated Revenue Fund is hereby appropriated to the extent necessary to satisfy subsections (1), (2) and (3).

SECTION 4.11 PENSION BENEFITS OF COMMISSIONERS

4.11 Pension benefits of Commissioners. Qd.ss.10A,10B. (1) In this section—

“Fund” means the State Service Superannuation Fund preserved, continued in existence and established under the *State Service Superannuation Act 1972-1989*;

“1958 Act” means the *Public Service Superannuation Act 1958-1989* as amended and in force for the time being, and includes any Act passed in substitution therefor;

“1972 Act” means the *State Service Superannuation Act 1972-1989* as amended and in force for the time being, and includes any Act passed in substitution therefor.

(2) Except as is prescribed by subsection (3), the provisions of the *Judges’ Pensions Act 1957-1984*, other than sections 2(2), 14, 15 and 16, apply *mutatis mutandis* to each Industrial Commissioner and to any relict or child of a Commissioner as they apply to a Judge of the Supreme Court, and to any widow or child of a Judge, and for this

purpose those applicable provisions are to be read and construed as if—

- (a) reference to the *Judges' Retirement Act of 1921* did not appear therein;
- (b) the words "Industrial Commissioner within the meaning of the *Industrial Relations Act 1990*" were substituted for the word "Judge" wherever it occurs therein, except in the definition "Judge" in section 2(1) thereof.

In computing length of service of a person as a Commissioner for the purposes of this subsection 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.

(3) Subsection (2) does not confer entitlement to pension benefits on an Industrial Commissioner, or on any relict or child of a Commissioner 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 1961-1989* 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 at the date of appointment and duly elects under this subsection to continue to contribute to the Fund.

Every election under this subsection must be made within 3 months after the first appointment as a Commissioner of the person whose election it is, and must be in writing in duplicate, of which one copy is to be given to the State Service Superannuation Board and the other copy is to be given to the chief executive of the department.

(4) 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 relict 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 relict 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.

(5) If an Industrial Commissioner does not duly elect under subsection (3) 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.

SECTION 4.12 LEAVE OF ABSENCE TO COMMISSIONERS

4.12 Leave of absence to Commissioners. Qd.ss.10,10B. (1) The provisions of section 15(1) of the *Judges' Pensions Act 1957-1984* apply *mutatis mutandis* to every Industrial Commissioner as they apply to a Judge of the Supreme Court and for this purpose those provisions are to be read and construed as if the words "Industrial Commissioner within the meaning of the *Industrial Relations Act 1990*" were substituted for the expression "Judge of the Supreme Court" and the word "Judge" wherever either that expression or that word occurs therein, and in particular—

- (a) a reference therein to the *Judges' Salaries and Pensions Act of 1967* is to be read and construed as a reference to the *Industrial Conciliation and Arbitration Act 1974 (No. 2)*;
- and
- (b) the proviso to that section 15(1) is to be read and construed as if the words "but who was not in office at the time of the passing of this Act" did not appear therein.

(2) 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.

Division 2—Jurisdiction of Commission

SECTION 4.13 GENERAL JURISDICTION OF COMMISSION

4.13 General jurisdiction of Commission. Qd.ss.11,33. (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 organization, an employer, or twenty employees (not being members of an industrial organization 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 organization or an employer, or by direction of the Minister, to consolidate into one 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 organization 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 one 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 authorized 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 one 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.

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.

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

SECTION 4.14 COMMISSION MAY REFUSE TO PROCEED

4.14 Commission may refuse to proceed. Qd.s.11. The Industrial Commission may refuse to proceed to hear and determine proceedings before it relating to an award or industrial 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.

SECTION 4.15 COMMISSION'S JURISDICTION RE AWARDS

4.15 Commission's jurisdiction re awards. Qd.s.12. 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 cognizance 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.

SECTION 4.16 PROVISIONS AFFECTING EXERCISE OF AWARD JURISDICTION

4.16 Provisions affecting exercise of award jurisdiction. Qd.ss.12, 22, 23, 26. (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 one calling, and one 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 *Employment, Vocational Education and Training Act 1988*.

(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 *Employment, Vocational Education and Training Act 1988*, 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.

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.

SECTION 4.17 BONUS PAYMENTS

4.17 Bonus payments. Qd.s.12. (1) The payment of bonus payments is a matter for negotiation between employer and employee or an industrial organization 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).

SECTION 4.18 GENERAL RULINGS

4.18 General rulings. Qd.s.13. (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 (in this section referred to as 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 remains unaltered;
 - (b) may exclude from the operation of any of its provisions any class of employer or employee, or any award, industrial agreement or part of an award or industrial 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.

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.

(6) 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 or industrial 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 or industrial agreement.

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 or industrial agreement taken to be varied pursuant to the preceding paragraph as the registrar considers necessary or desirable, to accord with a general ruling declared.

The action of the registrar pursuant to the preceding paragraph is subject to appeal to the Industrial Commission.

SECTION 4.19 STATEMENT OF POLICY

4.19 Statement of policy. (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 or industrial 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 authorized by the Commission, which directions are binding on all persons concerned.

SECTION 4.20 JURISDICTION OF COMMISSION EXCLUSIVE

4.20 Jurisdiction of Commission exclusive. Qd.s.28. 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

SECTION 4.21 POWER TO VARY OR VOID CONTRACTS

4.21 Power to vary or void contracts. Qd.s.123A. (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 or industrial 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 or industrial agreement;

or

(b) the work, being work not subject to an award or industrial 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—

• unfair;

or

- harsh or unconscionable;
or
- against the public interest;
or
- 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 connexion 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.

SECTION 4.22 POWER TO ORDER SUPERANNUATION CONTRIBUTION TO PARTICULAR FUND

4.22 Power to order superannuation contribution to particular fund.

(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 or industrial 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—

- of its own motion;
or
- on the application of an Industrial Inspector, industrial organization 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 or industrial agreement, relating to employers' contribution to an occupational superannuation scheme or fund on behalf of eligible employees.

SECTION 4.23 POWER TO GRANT INJUNCTIONS

4.23 Power to grant injunctions. Qd.s.102. (1) The Industrial Commission, on the application of a party to any award or industrial 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, industrial agreement or this Act or to restrain a breach or continuance of a breach of an award, industrial agreement or this Act.

An application by an industrial organization for the exercise of the Commission's jurisdiction under this subsection must be under the seal of the industrial organization and signed by the president and secretary of the industrial organization.

(2) 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 organization, or branch of an industrial organization, generally and without further description;

or

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

or

(c) to any particular employer or employers.

(3) 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 or industrial agreement or of any person affected by the order.

(4) 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.

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.

(5) If the members of an industrial organization, or branch of an industrial organization, 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 organization 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 organization or branch, or the officer took all reasonable steps to ensure that the members concerned complied with the order.

SECTION 4.24 DIRECTION OR ORDER OF COMMISSION IN RELATION TO STRIKE OR LOCK-OUT

4.24 Direction or order of Commission in relation to strike or lock-out. Qd.s.36A. The Industrial Commission may at any time issue such directions or make such orders as it thinks fit in relation to a strike or lock-out, whether actual, threatened, or apprehended.

SECTION 4.25 DEALING WITH DEMARCATION DISPUTES

4.25 Dealing with demarcation disputes. Cwth.s.118. (1) In this section the expression "nominated Commissioner" means the Chief Industrial Commissioner, or another Industrial Commissioner nominated by the Chief Industrial Commissioner.

(2) Without limiting the Industrial Commission's powers, a Full Bench of the Commission, for the purpose of dealing with an industrial matter before it that relates to a demarcation dispute, may order—

- (a) that a particular industrial organization has the right, to the exclusion of any other industrial organization, or all other industrial organizations, to represent for the purposes of this Act the industrial interests of a particular class or group of employees, being employees eligible for membership of the particular industrial organization;
- (b) that an industrial organization that hitherto did not have the right to represent for the purposes of this Act the industrial interests of a particular class or group of employees does have that right;
- (c) that an industrial organization does not have the right to represent for the purposes of this Act a particular class or group of employees eligible for membership of the industrial organization.

An order made under this subsection may be of general application, or be subject to such conditions or limitations as are specified therein.

(3) In considering whether to make an order under subsection (2) the Industrial Commission is to have regard to any agreement, of which it is aware, that relates to the right of an industrial organization concerned to represent for the purposes of this Act the industrial interests of a particular class or group of employees.

(4) The Industrial Commission may seek the views of—

- the peak council or peak councils, with which industrial organizations, party to the industrial dispute, are affiliated;

• any industrial organization or industrial organizations;
as to the timing of the exercise of the Commission's powers in relation to a demarcation dispute.

(5) If an order is made in relation to a demarcation dispute, unless the Industrial Commission is of the opinion that no alteration of the rules of any industrial organization concerned is necessary, the Commission is to refer the matter to the nominated Commissioner.

The nominated Commissioner, after giving each industrial organization concerned an opportunity, as prescribed, to be heard, is to determine the alterations (if any) of the rules of the industrial organizations concerned that are necessary to reflect the order of the Industrial Commission.

(6) An alteration of rules of an industrial organization determined by the nominated Commissioner takes effect on the day on which the determination is made.

SECTION 4.26 PROCEDURES FOR RE-OPENING

4.26 Procedures for re-opening. Qd.ss.32,33. (1) The Industrial Commission, on application made as prescribed by subsection (3), may re-open any proceedings.

Proceedings taken before a Full Bench of the Commission may be re-opened only by a Full Bench of the Commission.

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

(3) Application to the Industrial Commission for re-opening of proceedings may be made by—

- (a) the Minister;
- (b) a party to the proceedings to which the application relates;
- (c) an industrial organization 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 organization.

(4) 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—

- to cancel the action taken on the recommendation;
- to vary such action;

to accord with the Commission's rescission or variation.

(5) 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 re-opening of proceedings.

If the Commission grants such an application for re-opening, it may give such retrospective operation to its decision made in the re-opened proceedings as it considers just and fair, to the extent prescribed.

SECTION 4.27 REFERENCES TO FULL BENCH

4.27 References to Full Bench. Qd.s.33. (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.

SECTION 4.28 CASE STATED TO COURT

4.28 Case stated to Court. Qd.s.35. (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.

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

SECTION 4.29 REMISSION TO INDUSTRIAL MAGISTRATE

4.29 Remission to Industrial Magistrate. Qd.s.25. The Industrial Commission may, by its order, remit to an Industrial Magistrate for—

- investigation and report to the Commission;
- or
- taking of evidence;
- or
- hearing and determination;

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

SECTION 4.30 POWER TO ENTER AND INSPECT

4.30 Power to enter and inspect. Qd.s.130. (1) An Industrial Commissioner, or any officer of the Industrial Commission or other person authorized in writing in either case by a Commissioner, is authorized—

- (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 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.

PART 5—INDUSTRIAL MAGISTRATES

SECTION 5.1 OFFICE OF INDUSTRIAL MAGISTRATE

5.1 Office of Industrial Magistrate. Qd.s.42. Each of the following persons is an Industrial Magistrate:—

- a Stipendiary Magistrate;
- a person holding an appointment to temporarily act as Stipendiary Magistrate.

SECTION 5.2 INDUSTRIAL MAGISTRATES COURT

5.2 Industrial Magistrates Court. Qd.s.42. (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.

SECTION 5.3 JURISDICTION OF INDUSTRIAL MAGISTRATE

5.3 Jurisdiction of Industrial Magistrate. Qd.ss.24,25. 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 maximum penalty not exceeding 40 penalty units is prescribed, except any such offence in respect of which this Act prescribes otherwise;
- 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 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—

- wages are payable at a price or rate that is not fixed by any relevant award, industrial agreement or permit;
- or

- wages are payable at a price or rate that exceeds the price or rate fixed by any relevant award, industrial 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 Division 1 of Part 17;
- (v) claims for damages for breach of an agreement made under an award or industrial 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 organization 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—
 - investigate and report on;
 - take evidence concerning;
 - hear and determine;
 any industrial matter, or any aspect thereof, or any matter or question that arises in connexion therewith, remitted to an Industrial Magistrate by the Industrial Commission, as required by the relevant order of the Commission.

SECTION 5.4 POWER OF INDUSTRIAL MAGISTRATE CONCERNING UNPAID SUPERANNUATION CONTRIBUTION

5.4 Power of Industrial Magistrate concerning unpaid superannuation contribution. (1) An Industrial Magistrate, on application made by—

- an Industrial Inspector;
or
- an employee who is an eligible employee on whose behalf contribution to an approved occupational superannuation scheme or fund is required by any award or industrial agreement to be paid by an employer;
or
- an industrial organization 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 or industrial agreement to pay—

- (a) the amount of contribution that is unpaid;
and
- (b) 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) Subject to subsection (3), an order under subsection (1) requires payment of the sum specified therein to an approved occupational superannuation scheme or fund in accordance with the relevant award or industrial agreement.

(3) If an order under subsection (1) relates to payment of contribution on behalf of a person who is no longer an employee of the person required to make payment under the order—

- (a) if the sum ordered to be paid on behalf of the former employee is less than the amount of total benefits that may revert to the former employee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth (or that Act as amended and in force for the time being), the order may require the person liable thereunder to pay the sum to the former employee, or to a superannuation scheme or fund nominated by the former employee;
- (b) if the sum ordered to be paid on behalf of the former employee equals, or is more than, the amount of total benefits that may revert to the former employee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth (or that Act as amended and in force for the time being), the order may require the person liable thereunder to pay the sum to a superannuation scheme or fund nominated by the former employee.

(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.

SECTION 5.5 INDUSTRIAL MAGISTRATE'S POWERS ON REMISSION

5.5 Industrial Magistrate's powers on remission. Qd.s.25. 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.

SECTION 5.6 EXCLUSIVE NATURE OF INDUSTRIAL MAGISTRATES' JURISDICTION

5.6 Exclusive nature of Industrial Magistrates' jurisdiction. Qd.s.24.

(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 5.3(a)(iii) is not exclusive of jurisdiction had by any other court.

PART 6—INDUSTRIAL REGISTRAR'S OFFICE

SECTION 6.1 ESTABLISHMENT AND ROLE OF OFFICE

6.1 Establishment and role of office. (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.

SECTION 6.2 INDUSTRIAL REGISTRAR AND STAFF

6.2 Industrial Registrar and staff. (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 1988-1990*.

(2) From time to time there is to be appointed, under and subject to the *Public Service Management and Employment Act 1988-1990*—

- such number of Assistant Industrial Registrars as is necessary for the effectual administration of this Act;
- 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.

SECTION 6.3 FUNCTIONS, ETC., OF INDUSTRIAL REGISTRAR

6.3 Functions, etc., of Industrial Registrar. (1) The Industrial Registrar—

- (a) administers the Industrial Registrar's Office;
- (b) is to maintain a register of industrial organizations;
- (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.

SECTION 6.4 FUNCTIONS, ETC., OF ASSISTANT INDUSTRIAL REGISTRAR

6.4 Functions, etc., of Assistant Industrial Registrar. (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 one Assistant Industrial Registrar, reference therein to an Assistant Industrial Registrar is a reference to that one 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 authorized to exercise those powers, and to perform those duties.

PART 7—ARRANGEMENTS WITH OTHER INDUSTRIAL AUTHORITIES

SECTION 7.1 COMMISSIONER MAY HOLD OTHER APPOINTMENT

7.1 Commissioner may hold other appointment. 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.

SECTION 7.2 APPOINTMENT OF COMMONWEALTH OFFICIAL AS COMMISSIONER

7.2 Appointment of Commonwealth official as Commissioner. (1) The Governor in Council may appoint a member of the Australian Industrial Relations Commission to be an Industrial Commissioner.

Sections 4.7 and 4.10 do not apply in relation to an appointment under this subsection or to an Industrial Commissioner so appointed.

(2) 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.

(3) 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.

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

- (a) becomes—
 - a member of the Executive Council or Legislative Assembly; or
 - a person such as is referred to in section 4.2(2)(b); or
- (b) ceases to be a member of the Australian Industrial Relations Commission;

the person ceases to be an Industrial Commissioner.

SECTION 7.3 ROLE OF APPOINTEE UNDER S.7.2

7.3 Role of appointee under s.7.2. Cwlth.s.14. (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 7.2 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—
 - powers that the person has in relation to the matter as a Commissioner;

and

- 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 7.2.

SECTION 7.4 REFERENCE OF MATTER TO COMMONWEALTH OFFICIAL

7.4 Reference of matter to Commonwealth official. Qd.s.9A. (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.

SECTION 7.5 CO-ORDINATION AND JOINT SESSIONS OF AUTHORITIES

7.5 Co-ordination and joint sessions of authorities. Qd.ss.11A,12.

(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 co-ordinating 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.

SECTION 7.6 RESTRICTION ON CHIEF COMMISSIONER'S AUTHORITY

7.6 Restriction on Chief Commissioner's authority. In exercising authority conferred by section 7.4 or 7.5 the Chief Industrial Commissioner is to act in consultation with the President.

SECTION 7.7 POWERS, ETC., VESTED IN COMMISSION BY OTHER JURISDICTIONS

7.7 Powers, etc., vested in Commission by other jurisdictions. (1) Subject to this Act, the Industrial Commission is authorized to exercise and perform such powers and duties as are conferred on it by or under the *Industrial Relations Act 1988* of the Commonwealth (or that Act as amended and in force for the time being) 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

SECTION 8.1 INITIATION OF PROCEEDINGS; EXERCISE OF POWERS

8.1 Initiation of proceedings; exercise of powers. Qd.Sch.1.cll.1,7.

(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—
 - an industrial organization or an officer or member of an industrial organization;
 - the Minister;

- an Industrial Inspector;
 - an employer;
 - 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—
 - a party to the proceedings in which the power is to be exercised;
 - an industrial organization.
- (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 one proceedings.

SECTION 8.2 GENERAL POWERS

8.2 General powers. Qd.Sch.1.cll.2,5,6,8,9. (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—
 - naming and joinder of parties;
 - persons to be served with notice of proceedings;

- summoning of persons to attend in proceedings;
 - particulars of the claims of the parties;
 - the issues to be submitted to the Court or Commission;
 - admissions, discovery, interrogatories or inspection of documents or of property;
 - examination of witnesses;
 - costs of the interlocutory proceedings;
 - 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 authorized 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.

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.

(4) 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—

- summon persons to attend before the registrar;
- examine parties and witnesses.

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

- summoning witnesses;
- requiring production of records.

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

- the Industrial Court;
- the Industrial Commission;
- 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 authorize the administering of, any oath, or may take, or authorize the taking of, an affirmation or statutory declaration.

SECTION 8.3 PROTECTION OF PROCEEDINGS

8.3 Protection of proceedings. (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 connexion 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.

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

SECTION 8.4 BASIS OF PROCEDURES AND DECISIONS OF THE COMMISSION AND INDUSTRIAL MAGISTRATES

8.4 Basis of procedures and decisions of the Commission and Industrial Magistrates. Qd.ss.13,14,120. (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—

- the state of the economy;
- 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.

SECTION 8.5 PROCEEDINGS OF COMMISSION OR INDUSTRIAL MAGISTRATE NOT TO BE QUESTIONED

8.5 Proceedings of Commission or Industrial Magistrate not to be questioned. Qd.s.8. (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 writ of prohibition 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.

SECTION 8.6 POWERS INCIDENTAL TO EXERCISE OF JURISDICTION

8.6 Powers incidental to exercise of jurisdiction. Qd.Sch.1.cl.2. 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—
 - who are the parties to the proceedings;
 - by whom the parties may be represented;
 - persons to be summoned to attend the proceedings, if they have not been summoned and it appears that they should attend the proceedings;
 - parties to be joined or struck out;
- (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.

SECTION 8.7 POWER TO OBTAIN DATA AND EXPERT EVIDENCE

8.7 Power to obtain data and expert evidence. Qd.Sch.1.cl.2. (1) If the Industrial Commission wants expert evidence based on facts or figures, for the purpose of determining any cause it may—

- (a) order—
 - any industrial organization that is, or any of whose members are, party to the proceedings;
 - 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) authorize 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—

- relevant to the cause;
- or
- 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 organization 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 one year's operations of any industry or business.

SECTION 8.8 COMPETENCE AND COMPELLABILITY OF WITNESSES

8.8 Competence and compellability of witnesses. Qd.Sch.1.cl.6. 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.

SECTION 8.9 SERVICE OF PROCESS

8.9 Service of process. Qd.s.129. (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—

- an order for substituted service, including by advertisement in an appropriate newspaper;
- 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 organization 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.

SECTION 8.10 EVIDENTIARY PROVISIONS AFFECTING PROCEEDINGS UNDER ACT

8.10 Evidentiary provisions affecting proceedings under Act. Qd.ss.86,135. (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 13.41 in relation to—

- (a) an industrial organization, or branch of an industrial organization to which section 13.48 applies;
- (b) an industrial organization, or branch of an industrial organization, in respect of which a certificate of exemption under section 13.49 is in force;

the copy of the register of members of the industrial organization to which section 13.48 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 13.48, or, as the case may be, the register of members maintained by the industrial organization or branch exempted under section 13.49 showing the members of the industrial organization or branch as at the date on which the request is made, is *prima facie* evidence that each person shown in—

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

as a member of the industrial organization or branch was, at the making of the request, a member of the industrial organization 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 lock-out, or of a proposed strike or lock-out, may be taken, if the tribunal concerned is of the opinion that the existence of the strike or lock-out, or the proposal therefor, is so well known as to require no proof of the fact;
- (f) a list of officers of an industrial organization last lodged in the Industrial Registrar's Office, on behalf of the industrial organization, 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 organization and has continued to be that officer;

- (g) a copy of the rules of an industrial organization, 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.

SECTION 8.11 CONFIDENTIAL MATERIAL TENDERED IN EVIDENCE

8.11 Confidential material tendered in evidence. Qd.s.121. (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.

This subsection 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 to which the proceedings relate.

(2) 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.

(3) 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—

- evidence given;
- records tendered;
- 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.

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.

SECTION 8.12 EVIDENTIARY VALUE AT LARGE OF OFFICIAL RECORDS

8.12 Evidentiary value at large of official records. Qd.ss.13,90,128.

(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—
- a declaration of a general ruling published pursuant to section 4.18;
 - a variation of any award or industrial 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;
- (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;
- (c) 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;
- (d) 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;
- (e) a certificate purporting to be that of the Industrial Registrar relating to the registration of an industrial organization is

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

- (f) 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 organization specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

SECTION 8.13 PROOF OF CERTAIN FACTS BY AVERMENT

8.13 Proof of certain facts by averment. Qd.ss.16,17,135A. 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 organization;
- (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 or industrial agreement;

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

SECTION 8.14 EVIDENTIARY VALUE OF CERTIFICATE OF TRUSTEE OF OCCUPATIONAL SUPERANNUATION SCHEME

8.14 Evidentiary value of certificate of trustee of occupational superannuation scheme. 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.

SECTION 8.15 CERTIFICATE EVIDENCE IN PROCEEDINGS CONCERNING HOLDING OF OFFICE IN INDUSTRIAL ORGANIZATION

8.15 Certificate evidence in proceedings concerning holding of office in industrial organization. Cwlth.s.227. In proceedings on an application under section 13.26, 13.27 or 13.28 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 of the Commonwealth 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 13.26, 13.27 or 13.28 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.

SECTION 8.16 CROWN EMPLOYEE TO FURNISH INFORMATION

8.16 Crown employee to furnish information. Qd.s.122. (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 authorizes, 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.

SECTION 8.17 REPRESENTATION OF PARTIES

8.17 Representation of parties. Qd.ss.80,125. (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) if the proceedings are in the Industrial Court, with the consent of all parties to the proceedings, or with the leave of the Court;
- (b) if the proceedings are for leave of the President under section 9.4(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;
- (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;

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

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

or

(ii) with the leave of the Commission, if—

- the proceedings relate to the rules of an industrial organization, or an association seeking registration as an industrial organization;

and

- the Commission considers representation by counsel or solicitor to be desirable for the effective conduct of the proceedings;

(e) if the proceedings are—

- in an Industrial Magistrates Court;

or

- 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 organization may be represented by any officer or member of the industrial organization.

(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.

SECTION 8.18 COSTS

8.18 Costs. Qd.Sch.1.cl.3. 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.

SECTION 8.19 INTERVENTION

8.19 Intervention. Qd.ss.124,124A. (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—
 - the jurisdiction or powers of the Industrial Court, Industrial Commission, an Industrial Magistrate or the Industrial Registrar;
 - or
 - any matter in relation to which such jurisdiction or powers may be exercised;
 - or
 - the interpretation of this Act.

Upon intervention, the Crown becomes a party to the proceedings.

(2) 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.

Upon intervention, the Minister becomes a party to the proceedings.

SECTION 8.20 ADJOURNMENT BY INDUSTRIAL REGISTRAR

8.20 Adjournment by Industrial Registrar. Qd.Sch.1.cl.11. 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.

SECTION 8.21 RESERVED DECISIONS

8.21 Reserved decisions. Qd.Sch.1.cl.10. (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.

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.

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

SECTION 8.22 EXTENT OF DECISIONS AND THEIR EXECUTION

8.22 Extent of decisions and their execution. Qd.Sch.1.cl.4; Ord.iv.r.26. (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 authorized 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.

For the effectual operation of this subsection 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.

(3) 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.

SECTION 8.23 ENFORCEMENT OF COMMISSION'S ORDERS

8.23 Enforcement of Commission's orders. (1) If the Industrial Commission makes an order directed to—

- (a) an industrial organization, or a person in a capacity as an officer or agent of an industrial organization;

or

(b) any other person;

it is to—

(c) specify a time within which the industrial organization or person must comply with the order;

(d) direct—

- the industrial organization or person;

and

- the party (if any) to the proceedings in which the order is made who sought the order;

and

- any other party to the proceedings that the Commission considers appropriate;

to file an affidavit with the Industrial Registrar within a specified time as to whether there has been compliance with the order and, in default of compliance, what steps (if any) have been taken to comply with the order.

The Industrial Commission may extend a time specified under paragraph (c) or (d) and the time so extended is taken to be the time specified under the paragraph.

(2) At the end of the time specified for filing an affidavit under subsection (1), or of that time as extended by the Industrial Commission, the Industrial Registrar—

(a) is to examine all affidavits filed;

(b) where the registrar considers it necessary, is to make such further enquiries as the registrar thinks fit;

and determine whether, there has been substantial compliance with the order of the Commission.

(3) If the Industrial Registrar is not satisfied that there has been substantial compliance with the order, the registrar is to cause to be issued—

- to the industrial organization to which, or to whose officer or agent, the order was directed;

or

- to the person (other than such officer or agent) to whom the order was directed;

a notice in accordance with the Rules of Court, calling on the industrial organization or person, as the case may be, to show cause to the Full Industrial Court on a day and at a time specified in the notice why the industrial organization or person should not be dealt with under section 8.24.

SECTION 8.24 REMEDIES ON SHOW CAUSE

8.24 Remedies on show cause. (1) If, on the day and at the time specified in the notice to show cause under section 8.23(3), or on a day and at a time to which the proceedings are adjourned, the industrial organization 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 organization a fine not exceeding 1000 penalty units;
- (b) vary an award or industrial agreement to which the industrial organization is a party;
- (c) suspend the date of operation of any wage increase that would otherwise be payable to members of the industrial organization or to any class of such members;
- (d) alter the rules of the industrial organization 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 organization, or any branch thereof;
 - (ii) controlling the property of the industrial organization, or any branch thereof, with a view to ensuring observance of such restrictions;
- (f) suspend the registration of the industrial organization for a specified period;
- (g) cancel the registration of the industrial organization;
- (h) make such other order as it thinks fit with a view to securing the industrial organization's compliance with the Industrial Commission's order or punishing the industrial organization for its failure to comply with the Commission's order;
- (i) order the industrial organization 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 8.23(3), 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—
 - in the case of a corporation, 200 penalty units;
 - 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).

SECTION 8.25 FILING INDUSTRIAL MAGISTRATE'S DECISION

8.25 Filing Industrial Magistrate's decision. Qd.s.25. 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.

SECTION 8.26 RECOVERY OF MONEYS UNDER ORDERS

8.26 Recovery of moneys under orders. Qd.Sch.1.cl.12. (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—

- the amount payable;
- 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.

SECTION 8.27 RULES OF COURT

8.27 Rules of Court. Qd.Sch.1.cl.16. (1) The President, with the concurrence of any two 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 connexion with or for the purposes of proceedings in the Industrial Court or Industrial Commission and before the Industrial Registrar, and in or in connexion 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 organizations and other organizations 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—
 - the full and effectual exercise of jurisdiction and powers of the Court, Commission and registrar;
 - 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) Every Rule of Court duly made is to be published in the Industrial Gazette and thereupon is to be judicially noticed and, unless it is disallowed by the Legislative Assembly, has the force of law.

(3) Section 28A (Tabling of Regulations) of the *Acts Interpretation Act 1954-1989* applies in relation to rules made under subsection (1) as if such rules were regulations.

SECTION 8.28 DIRECTIONS AS TO PRACTICE

8.28 Directions as to practice. Qd.Sch.1.cl.16. (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

SECTION 9.1 APPEAL TO SUPREME COURT FROM INDUSTRIAL COURT

9.1 Appeal to Supreme Court from Industrial Court. Qd.s.8. (1) A person aggrieved as defendant by—

- a decision of the Full Industrial Court, in proceedings referred to in paragraph (iv), (v) or (vi) of section 3.6(1)(b);
- a decision of the Industrial Court in proceedings referred to in section 3.6(1)(c);

may appeal against the decision to the Supreme Court sitting as a Full Court.

(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.

SECTION 9.2 APPEAL TO INDUSTRIAL COURT

9.2 Appeal to Industrial Court. Qd.ss.27, 34, 46. (1) A person aggrieved by a decision of the Industrial Commission on—

- an application for registration of an industrial organization;
- 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, may appeal against the decision to the Industrial Court on the ground of—

- error of law;
- 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 5.3 in relation to—

- the matters specified in paragraph (a) or (c) of that section;
- the powers provided for in section 5.4;

may appeal against the decision to the Industrial Court.

(4) An industrial organization, or branch of an industrial organization, aggrieved by a decision of the Certifying Barrister to refuse to certify the rules, or an alteration to the rules, of the organization, or branch, may appeal against the decision to the Industrial Court.

(5) 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, Industrial Registrar, or, as the case may be, Certifying Barrister, to proceed according to law;

as the Court considers appropriate.

SECTION 9.3 COURT'S DISCRETION ON PENALTY ON APPEAL

9.3 Court's discretion on penalty on appeal. Qd.s.27. If the Industrial Court, on appeal, affirms a conviction of a person for an offence it may—

- increase the penalty, but so as not to exceed the maximum penalty prescribed for the offence;

or

- reduce the penalty;

as the Court considers just.

SECTION 9.4 APPEALS TO INDUSTRIAL COMMISSION

9.4 Appeals to Industrial Commission. Qd.s.27; Sch.1.cl.15. (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—

- error of law;
- excess, or want, of jurisdiction.

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.

(2) Except if an appeal may be brought under subsection (3) or under section 9.2(3), a person aggrieved by a decision of an Industrial

Magistrate made in exercise of jurisdiction conferred by section 5.3 may appeal against the decision to a Full Bench of the Industrial Commission.

(3) A person aggrieved by a decision of an Industrial Magistrate made on an application under section 11.8 for a permit may, subject to this subsection, appeal against the decision to the Industrial Commission.

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.

(4) A person aggrieved by a decision of the Industrial Registrar—

- under section 4.18(6)—varying terms of an award or industrial agreement;
- under section 11.7—on application for a permit;

may appeal against the decision to the Industrial Commission.

(5) 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 9.5, and remit the cause, with or without directions, to the Industrial Commissioner, the Industrial Magistrate or, as the case may be, the Industrial Registrar—

- for report to the Commission as constituted for the purposes of the appeal;

or

- to proceed according to law;

as the Commission considers appropriate.

SECTION 9.5 PRESIDENT MAY STAY DECISIONS WHEN LEAVE SOUGHT

9.5 President may stay decisions when leave sought. 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 9.4(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.

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.

SECTION 9.6 DECISION ON APPEAL AGAINST SINGLE COMMISSIONER FINAL

9.6 Decision on appeal against single Commissioner final. A decision of a Full Bench of the Industrial Commission on an appeal against a decision of a single Industrial Commissioner is final and conclusive.

SECTION 9.7 APPEAL AGAINST SINGLE COMMISSIONER REQUIRES APPELLANT'S ELECTION

9.7 Appeal against single Commissioner requires appellant's election.

(1) If a person who wants to appeal against a decision of the Industrial Commission constituted by a single Commissioner and who claims to be entitled under this Part—

- (a) to institute with the leave of the President, an appeal against the decision to a Full Bench of the Commission;
- and
- (b) to institute an appeal against the decision to the Industrial Court;

commences to exercise one such entitlement by filing in the Industrial Registrar's Office an initiating document, that person is not entitled to commence to exercise the other such entitlement by filing in such office an initiating document, unless the first-mentioned initiating document is withdrawn before the President begins to deal with the application for leave or, as the case may be, the Court begins to hear the appeal.

(2) If a person referred to in subsection (1) makes an application for the President's leave to appeal against a decision to a Full Bench of the Industrial Commission, and that leave is either granted or refused, that person is not entitled to institute an appeal against the decision to the Industrial Court.

In this subsection the expression "appeal against the decision" includes application for a prerogative writ in respect of a decision.

SECTION 9.8 APPEAL TO COMMISSION AGAINST STAND-DOWNS

9.8 Appeal to Commission against stand-downs. Qd.s.21A. (1) An employee stood down by an employer under authority conferred by section 11.5, may appeal against the stand-down to the Industrial Commission.

If the employee is a member of an industrial organization of employees, the organization in its registered name may institute and conduct the appeal on the employee's behalf.

(2) 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.

(3) If the Industrial Commission makes an order under subsection (2)(b)(i) the Commission may include therein default provisions with a view to its enforcement, otherwise than by imprisonment, as if—

- the Commission were an Industrial Magistrates Court;
- the Industrial Commissioner who makes the order were an Industrial Magistrate.

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.

SECTION 9.9 NATURE OF APPEAL

9.9 Nature of appeal. Qd.s.27. 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.

SECTION 9.10 TIME LIMITED FOR APPEAL

9.10 Time limited for appeal. 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.

PART 10—AWARDS AND INDUSTRIAL AGREEMENTS

Division 1—Awards

SECTION 10.1 FORM, EFFECT AND TERM OF AWARD

10.1 Form, effect and term of award. Qd.s.29. (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—

- in a specified locality;
- for a specified period;
- in relation to one or more specified employers;
- in relation to one or more named establishments or operations of one 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.

SECTION 10.2 PERSONS BOUND BY AWARD

10.2 Persons bound by award. Qd.s.31. Subject to—

- all exemptions ordered by the Industrial Commission under section 10.3;
- and
- sections 8.24 and 13.79;

an award is binding on—

- (a) all parties to the industrial cause in which the award is made who appear or are represented therein before the Commission;
- (b) 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;
- (c) all industrial organizations concerned with the calling or calling to which the award applies;
- (d) all members of industrial organizations bound by the award;
- (e) 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;

- (f) 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.

SECTION 10.3 EXEMPTIONS

10.3 Exemptions. Qd.s.12. (1) The Industrial Commission, of its own motion or on the application of an industrial organization 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.

Division 2—Industrial Agreements

SECTION 10.4 PROCEDURE FOR MAKING AGREEMENT

10.4 Procedure for making agreement. Qd.s.89. (1) An industrial organization of employees may make an agreement in writing with an industrial organization, or association, of employers, or with any particular employer or employers in relation to any industrial matter.

Such an agreement, when made, is to be forthwith filed in the Industrial Registrar's Office.

The Industrial Registrar is to refer every such agreement so filed to the Chief Industrial Commissioner.

(2) 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.

In any other case the Chief Industrial Commissioner is to allocate the agreement to the Industrial Commission.

(3) Subject to subsection (4), the Industrial Commission or a Full Bench of the Commission may—

- (a) approve an agreement referred to it under subsection (2);
- (b) after hearing the parties to the agreement, approve an agreement referred to it under subsection (2) with such exclusions therefrom or variations therein as it considers necessary;
- (c) refuse to approve an agreement referred to it under subsection (2) if the Commission is of opinion that—
 - (i) the agreement contains any term or terms that the Commission is not authorized to include in an award;
 - or
 - (ii) it is not in the public interest that the agreement be approved.

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.

(4) The powers conferred on the Industrial Commission by subsection (3) 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.

(5) The Industrial Commission may approve an agreement referred to it under subsection (2)—

- of its own motion;
- without a hearing;

if—

- (a) the agreement does not contain terms considered to be inconsistent with general Full Bench Principles;
- and
- (b) the Commission thinks fit to do so;

except as is otherwise prescribed by subsection (3).

(6) 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.

SECTION 10.5 AGREEMENT SUBJECTED TO CONDITIONS

10.5 Agreement subjected to conditions. Qd.s.89. If the Industrial Commission, of its own motion or on the application of—

- the Crown;

or

- the Industrial Registrar;

or

- a person bound by an award;

or

- a person aggrieved by the industrial agreement in question;

considers it advisable (in the public interest, or for other reason) to do so—

- (a) it may impose such conditions in relation to an industrial agreement as it considers just and equitable;
- (b) it may prohibit an industrial organization of employees, or an employer or industrial organization, 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.

SECTION 10.6 REGISTRATION OF AGREEMENT

10.6 Registration of agreement. Qd.s.90. The Industrial Registrar is to register in the Industrial Registrar's Office every industrial agreement approved by the Industrial Commission.

SECTION 10.7 REQUIREMENTS OF AGREEMENT

10.7 Requirements of agreement. Qd.s.89. (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.

SECTION 10.8 CONTINUANCE OF AGREEMENT

10.8 Continuance of agreement. Qd.s.89. At the end of its term, an industrial agreement continues in force, and to be binding on—

- all parties thereto, except any party who has retired from the agreement as permitted by section 10.10;
- all other persons on whom the agreement is binding pursuant to section 10.9, subject to any relevant award.

SECTION 10.9 PERSONS BOUND BY AGREEMENT

10.9 Persons bound by agreement. Qd.s.92. Upon its registration, an industrial agreement extends to and is binding on—

- all parties to the agreement;
- all members of an industrial organization that is a party to the agreement engaged in the calling or callings to which the agreement relates;
- all employees of an employer on whom the agreement is binding;
- all members of an association of employers that is a party to the agreement;

subject to sections 8.24 and 13.79.

SECTION 10.10 RETIREMENT OF PARTIES FROM AGREEMENT

10.10 Retirement of parties from agreement. Qd.s.89. 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.

Upon the termination of such specified period, the party that has filed the notice ceases to be a party to the industrial agreement.

SECTION 10.11 ADDITION OF PARTIES TO AGREEMENT

10.11 Addition of parties to agreement. Qd.s.91. At any time when an industrial agreement is in force, any industrial organization or employer, subject to the consent thereto of—

- the Industrial Commission;
- and
- 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

SECTION 10.12 POWERS OF COMMISSION RE AWARDS

10.12 Powers of Commission re awards. Qd.s.29. (1) The Industrial Commission may, of its own motion, or on application made as prescribed by subsection (2)—

- vary any award;

- otherwise deal with any award as the Commission considers just;
- terminate any award;
- 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 organization;
- (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 organization.

(3) An award as varied becomes and is the award in place of the award as it existed before the variation.

SECTION 10.13 POWERS OF COMMISSION RE AGREEMENTS.

10.13 Powers of Commission re agreements. Qd.s.32. (1) The Industrial Commission may, of its own motion, or on application made as prescribed by subsection (2)—

- vary an industrial agreement;
- 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 organization 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 organization.

(3) An industrial agreement as varied becomes and is the agreement in place of the agreement as it existed before the variation.

SECTION 10.14 AGREEMENT MAY BE DECLARED A COMMON RULE

10.14 Agreement may be declared a common rule. Qd.s.94. (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 organization) 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.

SECTION 10.15 AGREEMENT MAY BE RENEWED, VARIED, ETC.

10.15 Agreement may be renewed, varied, etc. Qd.s.93. (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 10.14(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

SECTION 10.16 COMPONENTS OF WAGE RATES

10.16 Components of wage rates. Qd.s.29. (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.

SECTION 10.17 PRESERVATION OF PERCENTAGE RATE VALUES

10.17 Preservation of percentage rate values. Qd.s.29. 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.

SECTION 10.18 ENFORCEABILITY OF AWARDS AND AGREEMENTS

10.18 Enforceability of awards and agreements. 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.

SECTION 10.19 EFFECT OF APPEAL DECISIONS ON AWARDS OR AGREEMENTS

10.19 Effect of appeal decisions on awards or agreements. Qd.s.29. If a decision of the Industrial Court—

- on appeal from a decision of the Industrial Commission;
- or
- 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.

SECTION 10.20 INCONSISTENCY BETWEEN AWARDS, AGREEMENTS AND CONTRACTS

10.20 Inconsistency between awards, agreements and contracts. Qd.s.123. (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.

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.

(2) 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—GENERAL CONDITIONS OF EMPLOYMENT

Division 1—Conditions Other Than Leave Conditions

SECTION 11.1 HOURS OF WORK

11.1 Hours of work. Qd.ss.14, 21, 96. (1) Except if an industrial organization, or association, of employers, or an employer, and an industrial organization of employees otherwise agree in respect of a particular award or industrial agreement, or the Industrial Commission otherwise determines, every award or industrial 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 recognized times for starting or finishing work on any day in a calling is—

- not less than double time in a calling in or in connexion with which more than one shift per day is worked;
- not less than time and a half in any other calling.

If the employee is paid a rate of wages in excess of the minimum rate thereof provided for by any award or industrial agreement binding on the employee, the rate referred to in the preceding paragraph 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.

This subsection does 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.

(4) Compensation, in respect of overtime worked, for an employee to whom subsection (3) does not apply is in the discretion of the chief executive of the department of government in which the employee is employed.

(5) 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.

Such rest pause (or pauses, if more than one)—

- (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 one) as does not interfere with continuity of work, if continuity is necessary.

(6) 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 1925-1989*, is not to exceed 6 hours per day unless—
 - a temperature less than 28.3 degrees celsius, using a wet bulb, is maintained for at least three-quarters of the period of the working shift in the working place where the employee is occupied; or
 - 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).

SECTION 11.2 TWO OR MORE CLASSES OF WORK

11.2 Two or more classes of work. Qd.s.14. Except if an industrial organization, or association, of employers, or an employer, and an

industrial organization of employees otherwise agree in respect of a particular award or industrial agreement, or the Industrial Commission otherwise determines, an employee who on any one day performs 2 or more classes of work to which are applicable different rates fixed by any award or industrial agreement—

- (a) if the employee is employed for more than 4 hours on the class or classes of work carrying a higher rate, is to be paid in respect of the whole time during which the employee works on that day at the same rate, which must be at the highest rate fixed by such award or industrial agreement in respect of any of such classes of work;
- or
- (b) if the employee is employed for 4 hours or less on the class or classes of work carrying a higher rate, is to be paid at such highest rate for 4 hours.

This section ceases to be in force on 30 June 1991.

SECTION 11.3 PUBLIC HOLIDAYS

11.3 Public holidays. Qd.s.14. (1) Except if an industrial organization, or association, of employers, or an employer, and an industrial organization of employees otherwise agree in respect of a particular award or industrial agreement, or the Industrial Commission otherwise determines, every award or industrial agreement is taken to make provision to the effect of each of the subsections of this section.

The exceptions provided for by this subsection do not apply in respect of Labour Day (the first Monday in May) or any day appointed under the *Holidays Act 1983-1990* to be a holiday in substitution for that day.

- (2) 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 1983-1990* 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.

(3) 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 1983-1990* 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.

(4) Subsection (3) 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 one occasion in each calendar year.

(5) For the purposes of subsection (2) or (3), if a rate of wages is a weekly rate, the expression "double time and a half" means one and one half days' wages in addition to the weekly rate provided for by the relevant award or industrial agreement, and pro rata if there be more or less than a day.

(6) All time worked on a holiday for which the employee is entitled to be paid at a rate prescribed by subsection (2) or (3) outside the period between the ordinary starting and ordinary finishing times provided for by the relevant award or industrial 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.

(7) 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 (2) or (3).

(8) An employee, other than a casual employee, in a calling governed by the relevant award or industrial 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 1983-1990* 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 or industrial agreement, notwithstanding that work is not performed on that day.

SECTION 11.4 EMPLOYEE STOOD DOWN IN DECEMBER, RE-EMPLOYED IN JANUARY

11.4 Employee stood down in December, re-employed in January.
Qd.s.14. An employee, other than a casual employee within the meaning of the relevant award or industrial 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 two 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.

SECTION 11.5 STAND-DOWN OF EMPLOYEE

11.5 Stand-down of employee. Qd.s.21A. Notwithstanding any provision of this Act or of any award or industrial 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.

SECTION 11.6 EMPLOYEES WORKING BOTH IN AND OUTSIDE STATE

11.6 Employees working both in and outside State. Qd.s.30. 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 of the Commonwealth, any award or industrial 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.

SECTION 11.7 UNIVERSITY OR COLLEGE OF ADVANCED EDUCATION STUDENTS

11.7 University or college of advanced education students. Qd.sch.1.cl.14. (1) Notwithstanding the provisions of any award or industrial agreement, the Industrial Registrar, on application made therefor, and, on appeal from the registrar, the Industrial Commission, may grant to a student of a university or college of advanced education, who furnishes satisfactory proof that a period of technical training in a calling is required to enable the student to complete the student's course at the university or college, a permit to work in such calling for such period and at such rate of wage, as the registrar or, as the case may be, Commission thinks fit and specifies in the permit.

(2) Upon the grant of a permit under subsection (1) the Industrial Registrar is to forthwith notify the secretary of the industrial organization of employees in the calling in which the holder of the permit is thereby permitted to be employed of the grant of the permit and the conditions specified therein.

SECTION 11.8 AGED OR INFIRM PERSONS

11.8 Aged or infirm persons. Qd.sch.1.cl.15. (1) An aged or infirm person alleged to be unable to earn the minimum wage provided for by any award or industrial 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.

Subject to this Act, an Industrial Magistrate has jurisdiction to determine whether, and on what conditions, such a permit should be granted.

(2) 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 organization 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.

At the time so appointed, or at any time to which the matter is adjourned, the Industrial Magistrate is to hear objections from any authorized representative of such industrial organization of employees.

(3) At any time after the grant of a permit on an application made under subsection (1) the industrial organization 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.

An Industrial Magistrate has jurisdiction to revoke or cancel any such permit.

SECTION 11.9 PREFERENCE

11.9 Preference. Qd.s.12. (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 organization of employees, the preference is to be granted subject to—

- (a) the conditions prescribed by subsection (2);
- and
- (b) such other conditions as the Commission thinks fit.

(2) The prescribed conditions on which preference is to be granted are—

- (a) an employer is required to give preference to a member of an industrial organization over another person only when all factors relevant to the particular case are otherwise equal;
- (b) an employer is not required to give preference to a member of an industrial organization over a person in respect of whom there is in force a certificate under section 13.53;
- (c) preference means preference at the point of engagement and preference at the point of retrenchment.

SECTION 11.10 GRIEVANCE OR DISPUTE SETTLING PROCEDURES

11.10 Grievance or dispute settling procedures. Qd.s.12A. (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 (4), 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.

Notification of the period so nominated must be published in the Industrial Gazette.

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.

(4) 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 12.1.

SECTION 11.11 REINSTATEMENT AND RE-EMPLOYMENT

11.11 Reinstatement and re-employment. (1) An employee dismissed from employment by an employer may apply to the Industrial Commission for relief under this section within 21 days, or such extended period as the Commission may, in special circumstances, permit, following the dismissal taking effect.

An application cannot be made under this section if the employee's dismissal is subject to appeal or review under some other Act or law.

(2) On an application made under subsection (1), if the Industrial Commission is of the opinion that in all the circumstances the applicant should be reinstated or re-employed, the Commission—

- (a) may order that the applicant be reinstated by the employer in the applicant's former position without prejudice to the former conditions of employment;
- (b) if it is impracticable for the employer to reinstate the applicant to comply with an order under paragraph (a), or it appears to the Commission that for some other reason such reinstatement would not be appropriate relief, may order that the applicant be re-employed by the employer in some other position, if one be available, on conditions (if any) determined by the Commission;
- (c) if, after considering whether to make an order under paragraph (a) or (b), the Commission considers that reinstatement or re-employment of the applicant by the employer in any position would not be appropriate relief, may order the employer to either reinstate or re-employ the applicant or to pay to the applicant an amount of compensation determined by the Commission, as the employer elects.

(3) In exercise of its jurisdiction under this section the Industrial Commission may order reinstatement or re-employment on and from such date as the Commission considers just.

(4) The amount of compensation determined under subsection (2)(c) must not exceed an amount calculated by multiplying the employee's average monthly wages over the period of the employment by the employer, or over the period of 12 months immediately preceding the date on which the employee's dismissal took effect, whichever period is less, by the number of years during which the employee has been employed by the employer.

Where the employee has been employed by the employer for less than one year the multiplier for the purposes of this subsection is 1.

(5) If the Industrial Commission makes an order under subsection (2) it may also order the employer to pay remuneration for lost wages between the date on which the employee's dismissal took effect and the date on which the Commission's order is complied with, in such amount as the Commission thinks fit.

Such remuneration must not exceed the actual amount of loss to the employee, by reason of not receiving wages from the employer, after taking into account any unemployment benefits or other wages received by the employee during the period for which remuneration is being assessed.

(6) If the Industrial Commission makes an order under subsection (2), the interruption to the employee's continuity of service caused by the dismissal is to be disregarded for the purpose of determining the employee's entitlement to sick leave, annual leave or long service leave.

(7) If the Industrial Commission makes an order under subsection (2), it may also order the repayment by the employee of any sums paid to the employee by or on account of the employer upon termination of the employee's employment.

(8) Before an application under this section is heard by the Industrial Commission, a conference of the parties to the application is to be held for the purpose of exploring the possibility of resolving the matters at issue by conciliation and of ensuring that the parties are fully informed of the possible consequences of further proceedings on the application.

(9) If, in the Industrial Commission's opinion, an application under this section is frivolous or vexatious, costs that may be ordered against the applicant include costs in respect of representation by counsel, solicitor or agent notwithstanding that the Commission has not certified as prescribed by section 8.18.

(10) Without prejudice to any other provision of this Act, if an employer wilfully fails to comply with an order made against the employer under this section, the Industrial Commission may further order the employer to pay to the employee a sum not exceeding the monetary value of 50 penalty units together with a further sum as remuneration for lost wages, and may make such further order from time to time until the first-mentioned order is complied with.

Division 2—Conditions for Sick and Annual Leave

SECTION 11.12 SICK LEAVE

11.12 Sick leave. Qd.s.16. (1) Except if an industrial organization, or association, of employers, or an employer, and an industrial organization of employees otherwise agree in respect of a particular award or industrial agreement, or the Industrial Commission otherwise determines, every award or industrial 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 one week's sick leave for each completed year of the employee's employment with an employer.

For each completed period of employment with an employer less than one year every employee is entitled to one day's sick leave for each completed 2 months of the period.

(3) 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.

(4) A failure to comply with subsection (3)(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.

(5) 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.

SECTION 11.13 SICK LEAVE ACCUMULATED DURING APPRENTICESHIP OR TRAINEESHIP

11.13 Sick leave accumulated during apprenticeship or traineeship.
Qd.s.16. (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 11.12 for time absent from work through illness during the continued employment.

This subsection does not prejudice the operation of section 11.12(5).

(2) 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 *Employment, Vocational Education and Training Act 1988* or any Act repealed by that 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.

SECTION 11.14 CALCULATION OF SICK LEAVE

11.14 Calculation of sick leave. Qd.s.16. (1) For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 11.12 or pursuant to any award or industrial 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 11.12 or pursuant to any award or industrial 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 one 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 one 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) the term “transmission” includes, without limiting the generality of its meaning, transfer, assurance, conveyance, assignment and succession, and a derivative of the term has a corresponding meaning.

(4) For the purpose of calculating an employee’s entitlement to sick leave, pursuant to section 11.12 or pursuant to any award or industrial 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 one 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.

SECTION 11.15 ANNUAL LEAVE

11.15 Annual leave. Qd.s.15. (1) Except as is otherwise determined by the Industrial Commission, every award or industrial agreement must make provision to the effect of the provisions of this section.

(2) Every employee bound by an award or industrial agreement, other than an employee engaged at piece-work 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.

Annual leave is exclusive of any public holiday that occurs during the period of the leave.

(3) 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.

(4) 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.

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.

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.

(5) If in respect of any award or industrial 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 of 1961* as amended and in force for the time being.

(6) 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.

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.

SECTION 11.16 LEAVE ACCUMULATED DURING APPRENTICESHIP OR TRAINEESHIP

11.16 Leave accumulated during apprenticeship or traineeship.
Qd.s.15. (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 *Employment, Vocational Education and Training Act 1988* is to be taken into account;
- and
- (b) any limitation imposed by the relevant award or industrial 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.

SECTION 11.17 PAYMENT FOR ANNUAL LEAVE

11.17 Payment for annual leave. Qd.s.15. Annual leave is to be paid for by the employer in advance—

- (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 or industrial 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 or industrial agreement immediately before such leave is taken.

SECTION 11.18 PAYMENT IN LIEU OF ANNUAL LEAVE

11.18 Payment in lieu of annual leave. Qd.s.15. If the employment of an employee who has become entitled to annual leave provided for by sections 11.15 and 11.16 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.

SECTION 11.19 PRO RATA ANNUAL LEAVE

11.19 Pro rata annual leave. Qd.s.15. Every award or industrial 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 one year, if the employment of an employee by an employer is terminated.

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 11.15 and 11.16, from the date on which the employee last became entitled to such leave.

Division 3—Conditions for Long Service Leave

SECTION 11.20 SOURCE OF LONG SERVICE LEAVE ENTITLEMENT

11.20 Source of long service leave entitlement. (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 or industrial 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 11.21, or under an industrial agreement duly approved by the Commission under *The Industrial Conciliation and Arbitration Act of 1961* as amended and in force at the time of such approval, 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—

- under an Order in Council made pursuant to section 11.33;
or
- under section 11.34;

is as is prescribed by the order or, as the case may be, section 11.34.

SECTION 11.21 COMMISSION'S JURISDICTION TO APPROVE CONDITIONS FOR LONG SERVICE LEAVE

11.21 Commission's jurisdiction to approve conditions for long service leave. Qd.s.17. (1) On application therefor, the Industrial Commission is to insert in any award or industrial 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.

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.

(2) The Industrial Commission may approve as an industrial 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).

(3) The Industrial Commission is not to exercise its jurisdiction under subsection (2) 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.

(4) If the Industrial Commission duly exercises its jurisdiction under subsection (2), 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.

SECTION 11.22 ENTITLEMENT TO LONG SERVICE LEAVE

11.22 Entitlement to long service leave. Qd.s.17. 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, 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—
- by the employee's death;
 - by the employee;
 - 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—

- by the employee's death;
- by the employee;
- 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.

Long service leave is exclusive of any public holiday that occurs during a period of such leave taken.

SECTION 11.23 CONTINUITY OF SERVICE GENERALLY

11.23 Continuity of service generally. Qd.s.17. (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—
 - service with one or more of the former partners on dissolution of the partnership;
 - and
 - 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—
 - the employee is re-employed by the same employer;
 - and
 - 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 or an industrial 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 paragraph 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 one 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) the term "transmission" includes, without limiting the generality of its meaning, transfer, assurance, conveyance, assignment and succession, and a derivative of the term has a corresponding meaning.

SECTION 11.24 DETERMINATION OF LENGTH OF CONTINUOUS SERVICE

11.24 Determination of length of continuous service. Qd.s.17. (1) Where an employee's entitlement to long service leave is referable to employment by an employer before the commencement of this Act—

- the determination of the length of the employee's continuous service before such commencement;
- and
- 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 1961-1989*, (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—

- section 11.23(1)(c)(ii);
- or
- provision B. or C. of section 11.23(1)(c)(iv);

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 (referred to as "the first employer") to another employer (referred to as "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 (referred to as "the first employer") to another employer (referred to as "the second employer") the period of service had by the employee with each of the employers, which service would be continuous service if the two employers were the same employer, is taken to be service had by the employee with the second employer.

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.

(5) 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.

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.

For the purposes of this subsection, 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.

SECTION 11.25 SERVICE PERFORMED IN APPRENTICESHIP OR TRAINEESHIP

11.25 Service performed in apprenticeship or traineeship. Qd.s.17. 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.

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.

SECTION 11.26 SERVICE IN DEFENCE FORCES

11.26 Service in Defence Forces. Qd.s.17. (1) For the purpose of calculating an employee's entitlement to long service leave under this Division, service by that person as a member of the Defence Forces of the Commonwealth is taken to be continuous service by that person with the employer by whom that person was employed immediately before that person commenced service with those Forces.

(2) For the purposes of subsection (1), service as a member of the Defence Forces of the Commonwealth means service as a member of the Naval, Military or Air Forces of the Commonwealth, other than a permanent such Force.

SECTION 11.27 CONTINUOUS SERVICE OF CASUAL EMPLOYEES

11.27 Continuous service of casual employees. (1) For the purpose of calculating an employee's entitlement to long service leave under this Division, service of an employee who is regularly employed by the same employer for 32 ordinary hours at least in each consecutive period of 4 weeks constitutes continuous service with that employer notwithstanding that—

- (a) any of the employment is not full time employment;
or
- (b) the employee is employed by that employer under 2 or more contracts of employment entered into separately;
or
- (c) the employee would be regarded as engaged in casual employment, apart from this subsection;
or
- (d) the employee has engaged in other employment during any such period.

(2) For the purpose of determining the length of continuous service of an employee such as is referred to in subsection (1), service by the employee before the commencement of this Act is not to be taken into account.

SECTION 11.28 TIME AND MANNER OF TAKING LONG SERVICE LEAVE

11.28 Time and manner of taking long service leave. Qd.s.17. (1) Subject to section 11.22, the Industrial Commission may insert in any

award or industrial 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).

Every such provision operates and is to be given effect as if it were prescribed by this Division.

(2) Subject to the award or industrial 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 organization of employees of which such employees are members and the employer.

(3) If the relevant award or industrial agreement does not provide as to—

- the time when;
- or
- the manner in which;

long service leave may be given and taken, and if an employee (or an industrial organization 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.

SECTION 11.29 PAYMENT FOR LONG SERVICE LEAVE

11.29 Payment for long service leave. Qd.s.17. (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 or industrial 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: Provided that—

- (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 the foregoing provisions of this subsection, 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 the foregoing provisions of this subsection 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.

(3) 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 or industrial 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 lastmentioned rate for ordinary time worked immediately before the employee commenced the period of long service leave.

(4) The amount of payment for long service leave taken by an employee such as is referred to in section 11.27(1) is to be calculated in accordance with the formula—

$$A = y \times \frac{13}{15} \times hw \times hr$$

where—

“A” represents the total sum payable for the long service leave;

“y” represents the number of years of employment of the employee by the employer;

“hw” represents the average number of hours of ordinary time worked by the employee in each week during the period of 12 months preceding the date on which the employee becomes entitled to the long service leave;

“hr” represents the hourly rate for ordinary time payable to the employee on the date the employee commences the long service leave.

(5) In the event of a dispute between an employee who is paid at piece-work 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.

(6) 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.

- (7) 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 11.30 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.

SECTION 11.30 PAYMENT IN LIEU OF LONG SERVICE LEAVE

11.30 Payment in lieu of long service leave. Qd.s.17. (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—

- before taking such leave;
- or
- 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 11.29 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 11.29 has not been made.

Without prejudice to any other mode of recovery, the employee's legal personal representative may recover the sum payable under this subsection, and unpaid, as unpaid wages due and owing to the employee by the employer, and may make application therefor under section 17.20(1) and (2).

SECTION 11.31 INQUIRY UPON RE-EMPLOYMENT OF EMPLOYEE DURING LONG SERVICE LEAVE

11.31 Inquiry upon re-employment of employee during long service leave. Qd.s.17. (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 organization 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.

SECTION 11.32 LONG SERVICE LEAVE IN MEAT WORKS AND SUGAR INDUSTRY

11.32 Long service leave in meat works and sugar industry. Qd.s.18.

(1) For the purposes of this section the term "season" means a period (whether falling wholly in one calendar year or partly in one calendar year and partly in the next following calendar year) during which—

- (a) sugar cane is taken delivery of and crushed at a sugar mill;

or

- (b) harvesting of sugar cane, or farm work, is performed in the sugar industry;

or

(c) stock are taken delivery of and slaughtered at a meat works; and the term "seasonal" means related to a season.

(2) When the Industrial Commission, in exercise of its jurisdiction under section 11.21, has conferred an entitlement to long service leave on full pay on—

- employees employed in seasonal employment in the sugar industry;

or

- employees employed in or about meat works in seasonal employment by the owners thereof;

the following provisions of this subsection apply in relation to the entitlement—

- (a) the continuity of an 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) for the purpose of determining the length of continuous service of an employee engaged in a calling referred to in subsection (1)(b), service had by the employee before the commencement of this Act is not to be taken into account;
 - (c) 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;
 - (d) 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.
- (3) In subsection (2)—

“owners”, in relation to 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 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.

SECTION 11.33 LONG SERVICE LEAVE FOR OTHER SEASONAL WORKERS

11.33 Long service leave for other seasonal workers. Qd.s.20. (1) The Governor in Council, by Order in Council, may from time to time declare that the provisions of—

- sections 11.22 to 11.31, inclusive;
- and
- section 11.32(2) and (3);

or those provisions as modified or affected by the Order in Council, apply in relation to employees of a description specified in the order in any calling, whose employment with the same employer—

- (a) is seasonal or of another periodic nature;
and
- (b) is not defined as casual by a relevant award or industrial agreement.

(2) The power to make an Order in Council under subsection (1) in respect of any employees includes power to make more than one such order in respect of those employees, as the Governor in Council thinks fit, at the one time or at different times.

(3) An Order in Council under subsection (1)—

- (a) may specify employees by reference to callings, duties, employers, places of employment or in other manner sufficient to identify them;
- (b) may modify or affect, as the Governor in Council considers necessary or expedient, the provisions of this Division declared by the order for the purpose of the application thereof to employees in relation to whom the provisions are declared by an order under the subsection to apply;
- (c) may define terms, as the Governor in Council thinks fit, for the purpose of the application of provisions of this Division as declared by an order under the subsection.

SECTION 11.34 LONG SERVICE LEAVE FOR EMPLOYEES NOT GOVERNED BY AWARDS, ETC.

11.34 Long service leave for employees not governed by awards, etc. Qd.s.19. (1) This section applies in relation to employees who, in their employment, are not bound by—

- (a) any award or industrial 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—

- sections 11.22 to 11.31, inclusive;
- and

- this section.

(3) In respect of an employee in relation to whom this section applies a reference in any of the provisions of sections 11.22 to 11.31, inclusive, to any award or industrial 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.

Without limiting the jurisdiction of the Commission conferred by this subsection, that jurisdiction extends to the declaration of general rulings by a Full Bench of the Industrial Commission.

(5) 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 11.32, 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.

(6) In subsection (5)—

“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.

SECTION 11.35 RECOGNITION OF CERTAIN EXEMPTIONS

11.35 Recognition of certain exemptions. Qd.ss.17,19. (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 of 1961*, as amended and in force for the time being, has granted an exemption from the application of—

- any award or industrial agreement;
- or
- 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.

SECTION 11.36 PERSON MAY BE “EMPLOYER” AND “EMPLOYEE”

11.36 Person may be “employer” and “employee”. Qd.s.5. 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.

PART 12—PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES

SECTION 12.1 ACTION ON INDUSTRIAL DISPUTE ON NOTIFICATION OR IN PUBLIC INTEREST

12.1 Action on industrial dispute on notification or in public interest. Qd.s.36. (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 (6);

or

- (b) the Commissioner is of the opinion that taking such action is in the public interest.

(2) If an industrial dispute exists between—

- an industrial organization of employers, or employer, of the one part;
- and
- an industrial organization 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—

- (a) to the Industrial Registrar, if the dispute exists within the area of the City of Brisbane;

or

- (b) the Industrial Registrar or the nearest Industrial Magistrate, if the dispute exists outside of the City of Brisbane.

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.

(3) An Industrial Commissioner who proposes taking action under this section, having first ascertained (in a case where notification under subsection (2) or (6) 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.

Without limiting the Commissioner's powers under this subsection, 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 4.23, 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*.

(4) 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.

(5) 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.

(6) 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 12.3;

(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.

(7) 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.

(8) This section is to be construed so as not to affect the operation of provisions of any award or industrial 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.

SECTION 12.2 MEDIATION BY COMMISSIONER OR INDUSTRIAL MAGISTRATE

12.2 Mediation by Commissioner or Industrial Magistrate. Qd.s.38. 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.

SECTION 12.3 COMPULSORY CONFERENCE

12.3 Compulsory conference. Qd.s.39. (1) An Industrial Commissioner or Industrial Magistrate who is duly taking action under section 12.1 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.

SECTION 12.4 CONCILIATION BY COMMISSIONER OR INDUSTRIAL MAGISTRATE

12.4 Conciliation by Commissioner or Industrial Magistrate. Qd.s.40. (1) In the course of the hearing of, or inquiry or investigation into an industrial cause, (including any compulsory conference summoned pursuant to section 12.3) the Industrial Commissioner or Industrial

Magistrate is to make all such suggestions and do all such things as appear to be right and proper for dealing with the cause or bringing about settlement of the cause by amicable agreement.

- (2) If an agreement is arrived at—
 - (a) its terms may be recorded in writing;
and
 - (b) the record is to be approved by the Industrial Commissioner or Industrial Magistrate unless the Commissioner or, as the case may be, magistrate considers the terms of the agreement not to be in the public interest.
- (3) The record of agreement, if approved as prescribed—
 - (a) must be filed in the Industrial Registrar's Office;
 - (b) unless otherwise ordered by the Industrial Commission and subject to all directions of the Commission, has, as between the parties thereto the effect of an award, and to that extent is taken to be an award.
- (4) An agreement recorded, approved and filed as prescribed—
 - is in force for a term specified therein;
 - is limited in its effect to the locality and persons specified therein.

SECTION 12.5 SECRET BALLOT ON STRIKE ACTION

12.5 Secret ballot on strike action. Qd.s.98. (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 organization of employers;
or
 - (iii) on application made to it by or on behalf of 5 per centum 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 organization 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 organization 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 organizations 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 of Queensland 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.

SECTION 12.6 CONSEQUENCE OF BALLOT ADVERSE TO STRIKE

12.6 Consequence of ballot adverse to strike. Qd.s.98. (1) If a secret ballot conducted pursuant to a direction of the Industrial Commission given under section 12.5(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 one month following the publication under section 12.5(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 seven days after the date of publication thereof, on or before which the employees, or members of an industrial organization of employees, who are on strike, are required to discontinue the strike.

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 12.5(4).

(2) Every employee, or member of an industrial organization 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).

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.

For the purposes of this subsection, 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.

SECTION 12.7 NON-PARTICIPATION IN STRIKE OR LOCK-OUT

12.7 Non-participation in strike or lock-out. Qd.s.60C. (1) Any industrial organization of employees or other person (whether or not any officer, employee or member of an industrial organization) 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 organization of employees, because the employee, or member, has refused or failed to participate in a strike.

(2) Any industrial organization of employers or other person (whether or not any officer, employee or member of an industrial organization) 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 lock-out;

or

(b) to impose or threaten to impose a penalty, forfeiture or disability of any kind on any employer, or member of an industrial organization of employers, because the employer, or member, has refused or failed to participate in a lock-out.

(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 lock-out, 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.

SECTION 12.8 INDEMNITY AGAINST AGENT'S UNAUTHORIZED ACTIONS

12.8 Indemnity against agent's unauthorized actions. Qd.s.100. An industrial organization 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 connexion with a strike or lock-out by an agent thereof, if it be shown that the agent has acted therein without the knowledge of the governing body of the industrial organization or association and that the governing body could not, by the exercise of reasonable diligence have prevented the action.

PART 13—INDUSTRIAL ORGANIZATIONS

Division 1—Registration

SECTION 13.1 APPLICANTS FOR REGISTRATION

13.1 Applicants for registration. Cwlth.s.188. (1) An association that may make application for registration as an industrial organization 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 authorized by that subsection to make application unless the association is effectively representative of persons who are employers.

SECTION 13.2 APPLICATION FOR REGISTRATION

13.2 Application for registration. Qd.ss.44,45. (1) An application for registration as an industrial organization 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.

Notice of every such application must be published as prescribed.

(2) An application for registration as an industrial organization 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—
 - president;
 - secretary;
 - members of the committee of management or executive committee;
 - trustees (if any);
 - other officers, and their official designations;
- (c) two copies of the association's rules;
- (d) in the case of an association consisting of more than one 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.

(3) An application for registration as an industrial organization 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—
 - president;
 - secretary;
 - members of the committee of management or executive committee;
 - trustees (if any);
 - other officers, and their official designations;
- (c) two 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.

SECTION 13.3 CRITERIA FOR REGISTRATION

13.3 Criteria for registration. Cwlth.s.189. (1) In this section the expression "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 13.2, the Industrial Commission may approve registration of an association as an industrial organization if—

- (a) the association is an association of a description referred to in section 13.1 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 1000 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 organization;
- (c) in the case of an association of employees—
 - (i) the association has at least 1000 members who are employees;
 - or
 - (ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's registration as an industrial organization;
- (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 organization;
- (e) the association's rules make provision required by this Act to be made by the rules of an industrial organization and

the certificate of the Certifying Barrister issued pursuant to section 13.20 exists in respect of the rules;

- (f) the association's name is not the same as that of any industrial organization or so similar to that of any industrial organization as to be likely to cause confusion;
 - (g) registration of the association would further the objects of this Act;
 - (h) there is no industrial organization 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 organization under a proposed amalgamation under Division 7;
 - (b) an association previously registered as an industrial organisation whose registration has been cancelled according to law.

SECTION 13.4 CONTINUED REGISTRATION OF SMALL INDUSTRIAL ORGANIZATIONS

13.4 Continued registration of small industrial organizations.
Cwlth.s.193. (1) In this section—

“relevant period” means the period beginning 3 years after the commencement of this Act and ending 4 years after that commencement;

“small industrial organization” means an industrial organization of employees that has fewer than 1000 members who are employees.

(2) The Industrial Commission is authorized to consider, in respect of a small industrial organization, whether special circumstances exist, which justify the continued registration of the industrial organization in the public interest.

The Industrial Commission—

- (a) in exercise of its authority under this subsection, in respect of an industrial organization that is a small industrial organization at the beginning of the relevant period, is to comply with subsection (3);
 - (b) subject to subsection (4), may exercise its authority under this subsection after the end of the relevant period, whenever the Commission considers it appropriate.
- (3) If an industrial organization is a small industrial organization at the beginning of the relevant period, the Industrial Commission—
- (a) is to start to consider the justification for its continued registration during the relevant period;

and

(b) is to finish considering that matter as soon as is practicable; unless, when the Commission proposes to start considering that matter, the industrial organization is no longer a small industrial organization.

(4) The authority conferred by subsection (2) is not to be exercised in respect of a particular industrial organization more than once in any period of 3 years.

(5) 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 organization in the public interest, the Commission is to cancel the registration of the industrial organization.

SECTION 13.5 REGISTRATION OF SEVERAL INDUSTRIAL ORGANIZATIONS FOR THE SAME CALLING

13.5 Registration of several industrial organizations for the same calling. Qd.s.52. (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 organization.

(2) If an association applies for registration for a calling for which an industrial organization 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 organizations.

This subsection applies in relation to any subsequent application for registration by any other association in respect of the same calling.

(3) On receipt of an application for registration of an association for a calling in respect of which an industrial organization is registered, the Industrial Commission is to cause notice of the application to be given to the industrial organization at least 14 days before the Commission considers whether the application should be approved.

An industrial organization given notice under this subsection is entitled to be heard as prescribed before the Commission in opposition to the approval of the application.

(4) Industrial organizations, which, in respect of a calling, have had their registrations bracketed have joint rights under this Act.

In proceedings before the Industrial Court, Industrial Commission, an Industrial Magistrate, or the Industrial Registrar such industrial organizations may appear jointly or separately.

SECTION 13.6 CHANGE OF CALLINGS

13.6 Change of callings. Qd.s.64. On application therefor made by an industrial organization in the manner prescribed, the Industrial Commission may alter the calling or callings in respect of which the industrial organization is registered.

SECTION 13.7 DETERMINATION OF APPLICATION

13.7 Determination of application. Qd.ss.46,55. (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 organization.

(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 organization, the Industrial Registrar is to forthwith register the association as an industrial organization.

(4) On registration of an industrial organization, the Industrial Registrar is to issue to the industrial organization 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 organization a copy of, or a certificate as a replacement for, the certificate of registration.

SECTION 13.8 INDUSTRIAL ORGANIZATIONS CORPORATE BODIES

13.8 Industrial organizations corporate bodies. Cwlth.s.192. An industrial organization, 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.

SECTION 13.9 REGISTERED NAME OF INDUSTRIAL ORGANIZATION

13.9 Registered name of industrial organization. Qd.s.69. (1) The registered name of an industrial organization registered after the commencement of this Act—

- (a) if it is an industrial organization of employers, must include the words “industrial organization of employers” or “industrial union of employers”;
- (b) if it is an industrial organization of employees, must include the words “industrial organization 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 organization” in lieu of reference to the word “union”.

(3) The registered name of every industrial organization 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 2—Rules of Industrial Organizations

SECTION 13.10 REQUIREMENT FOR RULES

13.10 Requirement for rules. Cwlth.s.194. (1) Every industrial organization must have rules that make provision as prescribed.

(2) A rule of an industrial organization that makes provision as prescribed may be mandatory or directory.

SECTION 13.11 GENERAL REQUIREMENTS FOR RULES

13.11 General requirements for rules. Cwlth.s.196. The rules of an industrial organization—

- (a) must not fail to make provision required by this Act;
- (b) must not be contrary to—
 - this Act;
 - an award or industrial agreement;
 - law;
- (c) must not be such as to prevent or hinder members of the industrial organization from or in—
 - (i) observing the law, the provisions of an award or industrial agreement, or other decision of the Industrial Court or Industrial Commission;
 - or
 - (ii) entering into written agreements under an award or other decision of the Industrial Commission;
- (d) must not impose on applicants for membership, or on members, of the industrial organization conditions, obligations or restrictions that, having regard to the objects of this Act and the purposes of registration of industrial organizations under this Act, are oppressive, unreasonable or unjust.

SECTION 13.12 SUBJECT-MATTER OF RULES

13.12 Subject-matter of rules. Cwlth.s.195. (1) In this section the term “committee”, used in relation to an industrial organization or branch thereof, means a body of the members or officers of the industrial

organization or branch that has powers of the kind referred to in paragraph (b) of the definition "office" in section 2.1.

(2) The rules of an industrial organization—

- (a) must specify the purposes for which the industrial organization is formed, and the conditions of eligibility for membership, and may specify the industry in respect of which the industrial organization is formed;
- (b) must make provision for—
 - (i) the powers and duties of the committees of the industrial organization and of its branches, and the powers and duties of holders of office in the industrial organization and in its branches;
 - (ii) the manner of summoning meetings of members of the industrial organization and of its branches, and meetings of the committees of the industrial organization and of its branches;
 - (iii) the removal of holders of office in the industrial organization and in its branches;
 - (iv) the control of committees of the industrial organization and of its branches by the members of the industrial organization and of its branches respectively;
 - (v) the manner in which documents may be executed by or on behalf of the industrial organization;
 - (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 organization specified in the rules as authorized 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 organization is to be controlled and its funds invested;
 - (x) the conditions under which funds of the industrial organization may be spent;
 - (xi) the yearly or other more frequent audit of the industrial organization's accounts;
 - (xii) the keeping of a register of the members, arranged, if there are branches of the industrial organization, 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 organization only if the person has been found guilty, under the rules, of—
 - misappropriation of the industrial organization's funds;

- or
 - a substantial breach of the rules;
 - or
 - gross misbehaviour or gross neglect of duty;
- (d) must require the industrial organization to inform applicants for membership, in writing, of—
- the financial obligations arising from membership;
 - and
 - the circumstances and the manner in which a member may resign from the industrial organization;
- (e) may make such other provision as is not inconsistent with this Act.

SECTION 13.13 RULES TO PROVIDE FOR ELECTION OF OFFICERS

13.13 Rules to provide for election of officers. Cwlth.s.197. (1) The rules of an industrial organization—

- (a) must provide for the election of the holder of each office in the industrial organization by—
- a direct voting system;
 - or
 - a collegiate electoral system that, in the case of a full-time office, is a one-tier collegiate electoral system;
- (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 organization 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—
- the manner in which persons may become candidates for election;
 - the duties of returning officers;
 - 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—
- absent voting;

- the conduct of the ballot;
- 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 organization relating to elections for office must relate to elections for all offices in the industrial organization, including offices in the branches of the industrial organization.

(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.

SECTION 13.14 RULES TO PROVIDE FOR ELECTIONS BY SECRET POSTAL BALLOT

13.14 Rules to provide for elections by secret postal ballot.
Cwlth.s.198. (1) If the rules of an industrial organization provide for election to an office in the industrial organization 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 organization 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 organization 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 organization 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 organization;
 - and
- (b) the taking of a ballot under the rules of the industrial organization as proposed to be altered—
 - (i) is likely to result in a greater participation by members of the industrial organization 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 organization an exemption from subsection (1), and the industrial organization is so exempt accordingly while the exemption remains in force.

(4) Proposed alterations of the rules of an industrial organization referred to in subsection (2) take effect if and when the Industrial Registrar grants to the industrial organization 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 organization granted under subsection (3)—

(a) on application therefor by the industrial organization, if the Industrial Registrar is satisfied that the rules of the industrial organization comply with subsection (1);

or

(b) if the Industrial Registrar is no longer satisfied—

(i) that the rules of the industrial organization 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 organization 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 organization on a ground specified in subsection (6)(b), the registrar may, by instrument, after giving the industrial organization the opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the industrial organization 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 organization, determined under subsection (7), takes effect on the date of the instrument of determination.

SECTION 13.15 RULES TO PROVIDE FOR TERM OF OFFICE

13.15 Rules to provide for term of office. Cwlth.s.199. (1) In this section, the expression "retirement age", in relation to an office, means the retirement age applicable to the office under the rules of the industrial organization 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 organization—

(a) subject to paragraph (b) and subsection (4), must provide for terms of office for officers in the industrial organization

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 organization 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 organization may provide for the extension of a term of office in the industrial organization or its branches for a specified period, if the extension is for the purpose of synchronising elections for offices in the industrial organization or, as the case may be, a branch: Provided that a term of office as so extended will not in any case exceed 5 years.

Rules may be made to provide as permitted by this subsection so as to apply in relation to a term of office that began before the commencement of this Act.

SECTION 13.16 RULES MAY PROVIDE FOR FILLING CASUAL VACANCIES

13.16 Rules may provide for filling casual vacancies. Cwith.s.200.

(1) In this section—

“ordinary election” means an election held under rules that comply with section 13.13;

“relevant provisions”, in relation to an industrial organization, means—

- (a) the provisions of this Act (other than this section);
and

- (b) the rules of the industrial organization (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 13.15(2)(b), that has been made, but having regard to any rule, such as is permitted by section 13.15(4) that has been made) to hold the office without being re-elected.

(2) The rules of an industrial organization 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—

- 12 months;
- or
- three-quarters 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 organization 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.

SECTION 13.17 RULES TO PROVIDE CONDITIONS FOR LOANS, GRANTS AND DONATIONS

13.17 Rules to provide conditions for loans, grants and donations.
Cwlth.s.201. (1) In this section, the expression “relevant committee of management”, in relation to an industrial organization, or branch of an industrial organization, means the committee of management of the industrial organization or, as the case may be, branch.

(2) The rules of an industrial organization 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 organization 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 organization; 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 organization may provide for a person authorized by the rules to make expenditure by way of loan, grant or donation to a member of the industrial organization 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 organization;
- 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 organization to make provision of the kind referred to in that subsection in relation to payments made by the industrial organization 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 organization or branch.

SECTION 13.18 MODEL RULES, ADOPTION BY INDUSTRIAL ORGANIZATIONS

13.18 Model rules, adoption by industrial organizations. (1) Rules that accord with the requirements prescribed in relation to rules of an industrial organization may be published in the Industrial Gazette as model rules for industrial organizations.

Such published rules are referred to in this section as “the model rules”.

(2) For the purpose of complying with this section, an industrial organization may, by its resolution, adopt—

- all of the model rules, with such modifications as are necessary;
- any of the model rules, with or without modification.

On receipt by the Industrial Registrar of notification by the secretary of the industrial organization 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 organization, whereupon the model rules so adopted become, and are, the rules of the industrial organization in relation to the matters to which the adopted rules relate, in lieu of any rules of the industrial organization that immediately before such registration related to those matters.

If an industrial organization adopts model rules with modification, the case is one to be dealt with under the following provisions of this section.

(3) At any time—

- after the commencement of this Act;
- and

- 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 organization—

- (a) is to take all steps necessary to alter its rules so that they conform to the requirements of this Division;
- and
- (b) is to lodge with the Industrial Registrar a complete set of its rules as altered.

(4) If an industrial organization does not comply with subsection (3), and does not take action permitted by subsection (2), then, at the end of the time limited by subsection (3) for compliance by that industrial organization, the model rules become and are the rules of the industrial organization in relation to the matters to which the model rules relate, in lieu of any rules of the industrial organization at that time relating to those matters.

If an industrial organization 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 organization following such adoption as were eligible for membership of the industrial organization under its eligibility rules immediately before such adoption.

(5) If an industrial organization complies with subsection (3) but, on submission to the Certifying Barrister, the rules are not approved by the Certifying Barrister as conforming to the requirements of this Division, the Industrial Registrar is to require the industrial organization to lodge with the registrar, within a time specified by the registrar, a complete set of its rules, altered so as to conform to the requirements of this Division.

(6) If an industrial organization to which the Industrial Registrar's requisition under subsection (5) is directed—

- (a) does not lodge a complete set of its rules within the time specified by the registrar;
- or
- (b) lodges a complete set of its rules within the time specified by the registrar, which rules are again not approved by the Certifying Barrister as conforming to the requirements of this Division;

the model rules become and are the rules of the industrial organization in relation to the matters to which the model rules relate, in lieu of any rules of the industrial organization at that time relating to those matters, upon—

- the expiry of the time specified by the Industrial Registrar, in the case referred to in paragraph (a);

- the refusal of the Certifying Barrister's approval, in the case referred to in paragraph (b).

SECTION 13.19 CHANGE OF NAME OR ALTERATION OF ELIGIBILITY RULES OF INDUSTRIAL ORGANIZATION

13.19 Change of name or alteration of eligibility rules of industrial organization. Cwlth.s.204. (1) In this section the expression "industry-based industrial organization", means an industrial organization 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 organization that is a change or alteration—

- (a) made by the Industrial Registrar under section 13.9(2);
or
- (b) determined by the Industrial Commission under section 4.25(5) or 13.22(7);
or
- (c) proposed to be made for the purposes of an amalgamation under Division 7.

(3) A change in the name of an industrial organization, or an alteration of the eligibility rules of an industrial organization, 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 organization 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 organization.

(5) The Industrial Commission is not to consent to a change in the name of an industrial organization unless the Commission is satisfied that the proposed new name of the industrial organization—

- (a) is not the same as the name of another industrial organization;
and
- (b) is not so similar to the name of another industrial organization 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 organization 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 organization 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 organization that is an industry-based industrial organization if, because of the alteration, the industrial

organization would cease to be an industry-based industrial organization, unless the Commission is satisfied that there are special circumstances justifying the alteration.

SECTION 13.20 APPROVAL AND REGISTRATION OF RULES

13.20 Approval and registration of rules. Qd.ss.44, 45. (1) The Industrial Registrar is to submit to the Certifying Barrister—

- (a) the rules of every association that seeks registration as an industrial organization;
- (b) all proposed alterations of the rules of an industrial organization other than—
 - (i) alterations consisting in the adoption without modification of model rules referred to in section 13.18;
 - (ii) alterations ordered, directed or determined under this Act and, in any such case, prepared by—
 - the Industrial Court;
 - the Industrial Commission or an Industrial Commissioner;
 - the Industrial Registrar;
 acting in exercise of jurisdiction or authority conferred by this Act;

with a view to the Certifying Barrister's approval of such rules or alterations.

(2) If the Certifying Barrister is satisfied, in respect of rules, or proposed alterations of rules, submitted by the Industrial Registrar that—

- (a) the rules, or proposed alterations, are not contrary to this Act, or to law;
and
- (b) the proposed alterations are made in accordance with the rules of the industrial organization in question;

the Certifying Barrister is to issue to the registrar a certificate to that effect.

(3) If the Certifying Barrister is not satisfied as prescribed by subsection (2), the Certifying Barrister is to inform the Industrial Registrar, in writing, the reason for not being so satisfied.

(4) Alterations of rules of an industrial organization that are referred to in subsection (1)(b)(ii) take effect on and from the day specified for the purpose in the pronouncement of the order, direction or determination made in relation to such alterations or, failing such specification, on and from the date of such pronouncement.

Alterations of rules of an industrial organization that consist in model rules referred to in section 13.18, without modification, take

effect on and from the time prescribed by that section at which such rules become and are the rules of the industrial organization.

Except as prescribed by the preceding paragraphs proposed alterations of rules of an industrial organization take effect when they are registered by the Industrial Registrar.

(5) The Industrial Registrar is not to register rules, or proposed alterations of rules, required by this section to be submitted to the Certifying Barrister, until the registrar has received the Certifying Barrister's certificate referred to in subsection (2).

(6) Subject to the foregoing provisions of this section, all rules, and alterations of rules, of an industrial organization must be registered by the Industrial Registrar.

SECTION 13.21 CERTAIN ALTERATIONS OF RULES TO BE RECORDED

13.21 Certain alterations of rules to be recorded. Cwlth.s.206. If there has been a change in the name of an industrial organization, or an alteration of the eligibility rules of an industrial organization, under this Act, the Industrial Registrar—

- (a) is to immediately enter, in the register kept under section 6.3(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 organization produces its certificate of registration to the registrar, is to amend the certificate accordingly and return it to the industrial organization.

Division 3—Validity and Performance of Rules

SECTION 13.22 RULES CONTRAVENING S. 13.11

13.22 Rules contravening s. 13.11. Cwlth.s.208. (1) In this section “appropriate authority” means—

- (a) in relation to the eligibility rules of an industrial organization—the Industrial Commission;
- (b) in relation to the other rules of an industrial organization—the Industrial Registrar.

(2) The Chief Industrial Inspector or a member of an industrial organization may apply to the Industrial Court for an order under this section in relation to the industrial organization.

(3) An order under this section may declare that the whole or a part of a rule of an industrial organization contravenes section 13.11 or that the rules of an industrial organization contravene section 13.11 in a particular respect.

(4) An industrial organization 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 organization 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 13.11, 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 organization have not been altered in a manner that, in the opinion of the appropriate authority, brings them into conformity with section 13.11 in relation to the matters that gave rise to the order;

the appropriate authority, after giving the industrial organization 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 organization 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.

SECTION 13.23 DIRECTIONS FOR PERFORMANCE OF RULES

13.23 Directions for performance of rules. Cwlth.s.209. (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 organization 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 organization may apply to the Industrial Court for an order under this section in relation to the industrial organization.

(3) An industrial organization 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 organization.

(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 organization 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 organization 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 organization contravenes section 13.11 or that the rules of an industrial organization contravene that section in a particular respect, the Court may, by order, make a declaration to that effect.

(9) Section 13.22 (other than subsections (2) to (5) thereof inclusive) applies in relation to an order made under subsection (8) as if the order had been made under section 13.22.

SECTION 13.24 FINANCIAL ASSISTANCE FOR APPLICATION UNDER THIS DIVISION

13.24 Financial assistance for application under this Division.

Qd.s.51. (1) A member of an industrial organization who proposes to take, is taking, or has taken proceedings under section 13.22 or 13.23 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—

- there are, or were, reasonable grounds for taking the proceedings;
- and
- 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 Consolidated Revenue.

Division 4—Disqualification from Holding Office in Industrial Organization

SECTION 13.25 INTERPRETATION

13.25 Interpretation. Cwlth.s.227. (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 of the Commonwealth, 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 18.15, 18.17, 18.18, 18.19, or 18.23;
- (c) an offence in relation to the formation, registration or management of an association or industrial organization;
- (d) an offence under an Act or under a law of the Commonwealth, a State or Territory of the Commonwealth, or another country, involving the intentional—
 - use of violence towards another person;
 - causing of death or injury to any person;
 - 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.

SECTION 13.26 ELIGIBILITY FOR OFFICE IN INDUSTRIAL ORGANIZATION

13.26 Eligibility for office in industrial organization. Cwlth.s.228.

(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 organization unless—

(a) on an application made under section 13.27 or 13.28 in relation to the conviction of the person for the prescribed offence—

(i) the person was granted leave to hold office in industrial organizations;

or

(ii) the person was refused leave to hold office in industrial organizations but, under section 13.27(2)(b) or section 13.28(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 organization 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 13.27 or 13.28.

(3) If a person who holds an office in an industrial organization makes an application to the Industrial Court under section 13.27 or 13.28 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 paragraph (a) of that subsection;

or

(b) if the Industrial Court has previously extended the period under paragraph (b) of that subsection—the application for the further extension is made before the end of the period as extended.

(5) An industrial organization, a member of an industrial organization or the Industrial Registrar may apply to the Industrial Court for a declaration whether, because of the operation of this section or section 13.27 or 13.28—

- (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 organization;
- or
- (b) a person has ceased to hold an office in the industrial organization.

(6) The granting to a person, on an application made under section 13.27 or 13.28 in relation to a conviction of the person for a prescribed offence, of leave to hold office in industrial organizations does not affect the operation of this section or section 13.27 or 13.28 in relation to another conviction of the person for a prescribed offence.

SECTION 13.27 APPLICATION FOR LEAVE TO HOLD OFFICE IN INDUSTRIAL ORGANIZATION BY PROSPECTIVE CANDIDATE FOR OFFICE

13.27 Application for leave to hold office in industrial organization by prospective candidate for office. Cwlth.s.229. (1) A person who—

- (a) wants to be a candidate for election, or to be appointed, to an office in an industrial organization;
- 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 organizations.

(2) If a person makes an application under subsection (1), the Industrial Court may—

- (a) grant the person leave to hold office in industrial organizations;
 - (b) refuse the person leave to hold office in industrial organizations and specify, for the purposes of section 13.26(1), a period less than 5 years;
 - (c) refuse a person leave to hold office in industrial organizations.
- (3) A person who—
- (a) holds an office in an industrial organization;
 - 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 organizations;

ceases to hold the office in the industrial organization.

(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 13.28 in relation to the conviction.

SECTION 13.28 APPLICATION FOR LEAVE TO HOLD OFFICE IN INDUSTRIAL ORGANIZATION BY OFFICE HOLDER

13.28 Application for leave to hold office in industrial organization by office holder. Cwlth.s.230. (1) If a person who holds an office in an industrial organization 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 organizations.

(2) If a person makes an application under subsection (1), the Industrial Court may—

- (a) grant the person leave to hold office in industrial organizations;
- (b) refuse the person leave to hold office in industrial organizations and specify, for the purposes of section 13.26(1), a period less than 5 years;
- (c) refuse the person leave to hold office in industrial organizations.

(3) A person who, on an application made under subsection (1), is refused leave to hold office in industrial organizations 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 13.27 in relation to the conviction.

SECTION 13.29 COURT TO HAVE REGARD TO CERTAIN MATTERS

13.29 Court to have regard to certain matters. Cwlth.s.231. For the purposes of exercising the power under section 13.27 or 13.28 to grant or refuse leave to a person who has been convicted of a prescribed offence to hold office in industrial organizations, 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 organizations, having regard to the conviction for the prescribed offence;

- (e) any other matter that, in the Court's opinion, is relevant.

SECTION 13.30 ACTION BY COURT

13.30 Action by Court. Cwlth.s.232. (1) Notwithstanding anything in the rules of an industrial organization, the Industrial Court may make such order to give effect to a declaration made under section 13.26(5) as it considers appropriate.

(2) If an application is made to the Industrial Court under section 13.26(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 organization concerned—the industrial organization is to be given an opportunity of being heard by the Court.

(3) If an application is made to the Industrial Court under section 13.27 or 13.28, the industrial organization concerned is to be given an opportunity of being heard by the Court.

Division 5—Disputed Elections in Industrial Organization

SECTION 13.31 APPLICATION FOR ELECTION INQUIRY

13.31 Application for election inquiry. Qd.s.76. (1) If a financial member of an industrial organization, or a person who, within the preceding 12 months, has been a financial member of an industrial organization, claims that there has been an irregularity in, or in connexion with, an election for an office in the industrial organization, or in a branch of the industrial organization, 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.

SECTION 13.32 ACTION BY INDUSTRIAL REGISTRAR IN RESPECT OF ELECTION INQUIRY

13.32 Action by Industrial Registrar in respect of election inquiry.

Qd.s.77. (1) If on lodgement of an application under section 13.31 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 connexion 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 lodgement with the Industrial Registrar of an application under section 13.31 for an inquiry in connexion with an election, the Industrial Commission may authorize the Industrial Registrar—

- (a) to inspect any ballot-papers, envelopes or records that have been used in connexion 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 organization, or a branch of the industrial organization, 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.

If the Industrial Commission exercises power conferred on it by this subsection, the Industrial Registrar may act in accordance with the terms of the authority thereby conferred, or may authorize 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.

(4) Before authorizing 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.

SECTION 13.33 COMMISSION TO CONDUCT INQUIRY

13.33 Commission to conduct inquiry. Qd.s.78. (1) Upon reference of a matter to the Industrial Commission under section 13.32, 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.

SECTION 13.34 COMMISSION MAY MAKE INTERIM ORDERS

13.34 Commission may make interim orders. Qd.s.79. (1) At any time after the institution of an inquiry under section 13.32, the Industrial Commission may, if it thinks fit, make one 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 organization, or branch of the industrial organization, or would be inappropriate having regard to the nature of the inquiry, an order that a member of the industrial organization 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 organization, or branch of the industrial organization, 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 connexion 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.

SECTION 13.35 PROCEDURE AT INQUIRY INTO ELECTION

13.35 Procedure at inquiry into election. Qd.s.80. (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 connexion with an election;
- (b) may order any person to appear, or be represented, at an inquiry in connexion with an election.

(2) All persons who appear, or are represented, at an inquiry in connexion with an election, or who are ordered to appear, or be represented, at such an inquiry are taken to be parties to the proceedings.

SECTION 13.36 FUNCTIONS AND POWERS OF COMMISSION AT INQUIRY

13.36 Functions and powers of Commission at inquiry. Qd.s.81. (1) At an inquiry in connexion with an election the Industrial Commission is to inquire into and determine the question whether any irregularity has occurred in, or in connexion 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 connexion with an election.

(3) If the Industrial Commission finds that an irregularity has occurred, or is likely to occur, in connexion with the election, the Commission may, subject to subsection (4), make one or more of the following orders:—

- (a) an order directing, notwithstanding any provision of the rules of the industrial organization, or branch of the industrial organization, the taking of such safeguards as the Commission considers necessary against irregularities in or in connexion with the election;
- (b) an order declaring the election, or any step taken in connexion 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 connexion therewith the taking again of any step (including

the calling for and submission of nominations) in accordance with the rules of the industrial organization, or branch of the industrial organization, 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 organization, or branch of the industrial organization, the taking or taking again of any step (including the calling for and submission of nominations) and, in connexion therewith, the taking of such safeguards as the Commission considers necessary against irregularities;
- (g) an order appointing and authorizing a person to act as returning officer, in conjunction with the returning officer (if any) under the rules of the industrial organization, or branch of the industrial organization, in connexion 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 connexion 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.

SECTION 13.37 ENFORCEMENT OF ORDERS UNDER THIS DIVISION

13.37 Enforcement of orders under this Division. Qd.s.82. 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.

SECTION 13.38 VALIDATION OF CERTAIN ACTS

13.38 Validation of certain acts. Qd.s.83. (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 connexion 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 organization, or branch of an industrial organization, for the purpose of complying with the order of the Commission.

SECTION 13.39 INQUIRY COSTS

13.39 Inquiry costs. Qd.s.84. (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 authorize 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 authorize 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 connexion with the inquiry, the Minister may authorize 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 connexion with an inquiry.

(5) Subject to appropriation by Parliament, all costs and expenses authorized by the Minister under this section to be paid are to be paid out of Consolidated Revenue.

SECTION 13.40 BALLOT-PAPERS AND OTHER RECORDS TO BE PRESERVED

13.40 Ballot-papers and other records to be preserved. Qd.s.85. (1) Notwithstanding anything contained in the rules of an industrial organization, or branch of an industrial organization, the industrial organization and every officer of the industrial organization, or branch of the industrial organization, who is in a position to do so, is to take such steps as are necessary to ensure that all ballot-papers, envelopes and records used in connexion with, or relevant to, an election for an office in the industrial organization or branch, other than an election conducted in accordance with section 13.41, are preserved and kept at the office of the industrial organization or, as the case may be, branch, for a period of one year following the completion of the election.

(2) A person who conducts an election in accordance with section 13.41 is to take such steps as are necessary to ensure that all ballot-papers, envelopes and records used in connexion with, or relevant to,

the election are preserved and kept for a period of one year following the completion of the election.

SECTION 13.41 REGISTRAR TO CONDUCT ELECTIONS ON REQUEST

13.41 Registrar to conduct elections on request. Qd.s.86. (1) An industrial organization, or branch of an industrial organization, may, in writing, request the Industrial Registrar that an election for an office in the industrial organization 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 connexion with the election.

(2) For the purposes of subsection (1) a request by an industrial organization or branch of an industrial organization may be made—

(a) by or on behalf of the committee of management of the industrial organization or of the branch of the industrial organization, as the case may be;

or

(b) by a number, being not less than 5 per centum or 250, whichever is less, of the members of the industrial organization or of the branch of the industrial organization, 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 enquiries that the registrar considers necessary, decides that the request has been duly made—

(a) the registrar is to notify the industrial organization, or branch of the industrial organization, accordingly;

and

(b) the registrar is to do one of the following things:—

(i) conduct the election, or cause an Assistant Industrial Registrar or other officer employed in the Industrial Registrar's Office to conduct the election;

(ii) make arrangements with the Principal Electoral Officer within the meaning of the *Elections Act 1983-1989* for the conduct of the election by the Principal Electoral Officer or by a Returning Officer within the meaning of that Act.

(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 organization, or branch of the industrial organization, 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 connexion with the election or to remedy any procedural defects that appear to the person to exist in those rules.

(7) This Division does not authorize 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 organization, or branch of the industrial organization, arising from an act done under this section or in compliance with a direction given under this section.

SECTION 13.42 CONDUCT OF ELECTION OF INDUSTRIAL REGISTRAR'S OWN MOTION

13.42 Conduct of election of Industrial Registrar's own motion.
Qd.s.86A. If the Industrial Registrar is satisfied, on reasonable grounds, that there is a likelihood of irregularity in connexion with an election for an office in an industrial organization, or a branch of an industrial organization, then, notwithstanding that a request under section 13.41 has not been made, the registrar may act as prescribed by section 13.41(4) as if such a request had been made and had been found to have been duly made.

When the Industrial Registrar has given the notification prescribed by section 13.41(4)(a), the provisions of section 13.41 apply, and any election already held, which is affected by the irregularity, is void and of no effect.

SECTION 13.43 EXPENSES IN CONNEXION WITH ELECTIONS UNDER THIS DIVISION

13.43 Expenses in connexion with elections under this Division.
Qd.s.87. (1) If—

- (a) the Industrial Commission orders—
 - (i) a fresh election to be held;
or
 - (ii) any step in connexion with an election to be taken again;
or
 - (iii) any safeguards, not provided for in the rules of the industrial organization, or branch of the industrial organization, to be observed in connexion with any election or any uncompleted steps in an election;
- or

(b) an election is conducted under section 13.41 or 13.42; 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 connexion 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 organization, or branch of the industrial organization, concerned is not more than 1500, the State is to pay the whole of the expenses in connexion 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 despatch and return by post of any of those ballot-papers, envelopes and records.

(4) If the membership of the industrial organization, or branch of the industrial organization, concerned is more than 1500, the State is to pay one-half 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 Consolidated Revenue.

Division 6—Membership of Industrial Organizations

SECTION 13.44 ENTITLEMENT TO MEMBERSHIP

13.44 Entitlement to membership. Qd.s.47. 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 organization;

and

(b) has the qualifications required by the eligibility rules of the industrial organization;

and

(c) is not of general bad character;

is entitled to be admitted to membership of the industrial organization, 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 organization.

SECTION 13.45 DISPUTES CONCERNING MEMBERSHIP COGNIZABLE BY COURT

13.45 Disputes concerning membership cognizable by Court. Qd.s.47.

(1) A question or dispute—

- (a) whether a person is entitled to be, or is, a member of an industrial organization;
- (b) as to the qualifications or character of an applicant for membership of an industrial organization;
- (c) as to the reasonableness of any admission fee, subscription, fine or levy, or other requirement made of members of an industrial organization by the rules of the industrial organization;

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 organization 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 organization;
- (c) direct that the rules of an industrial organization 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 organization are taken to have been thereby altered or annulled accordingly.

SECTION 13.46 MEMBERSHIP OF PERSONS UNDER 18

13.46 Membership of persons under 18. Qd.ss.60B,66. (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 organization.

(2) A person who has not attained the age of 18 years—

- (a) may be a member of an industrial organization, unless the rules of the organization provide to the contrary;
- (b) subject to the rules of an industrial organization and this Division, may enjoy all the rights of a member of the industrial organization;
- (c) may execute all instruments and give all acquittances required by the rules of an industrial organization;

but cannot be a member of the committee of management, trustee or treasurer of an industrial organization.

SECTION 13.47 REGISTER OF MEMBERS AND OFFICERS

13.47 Register of members and officers. Qd.s.56. (1) Every industrial organization 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 organization 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.

A register required by this subsection may be kept in the form of a book or books (bound or loose leaf) or a computer print-out.

Particulars required by this subsection 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.

(2) An industrial organization 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.

SECTION 13.48 FILING OF REGISTERS WITH INDUSTRIAL REGISTRAR

13.48 Filing of registers with Industrial Registrar. Qd.s.56. (1) Unless it is duly exempted for the time being pursuant to this Division, an industrial organization, 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 organization—

- (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 organization, is to notify the registrar, in writing, of such appointment or resignation.

SECTION 13.49 EXEMPTION FROM FILING REGISTERS, ETC.

13.49 Exemption from filing registers, etc. Qd.s.56. (1) If the Industrial Registrar is satisfied that the register of members of an industrial organization is maintained as required by section 13.48, the registrar may issue to the industrial organization a certificate exempting the industrial organization wholly, or in relation to a branch thereof, from the application of section 13.48.

(2) While such certificate remains in force—

- (a) if it exempts an industrial organization wholly, section 13.48 does not apply to the industrial organization;
- (b) if it exempts an industrial organization in relation to a branch of the industrial organization, section 13.48 applies to the industrial organization 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 organization.

(3) If it appears to the Industrial Registrar—

- (a) that the register of members of an industrial organization to which a certificate of exemption relates, or of a branch of the industrial organization to which a certificate of exemption relates, is no longer maintained as required by section 13.48;
- (b) that an industrial organization 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 organization.

(4) If a certificate of exemption is revoked the industrial organization 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 organization, a true copy of the portion of such register that relates to the membership of that branch.

SECTION 13.50 REGISTERS SUBJECT TO RECTIFICATION BY COMMISSION AND ACCESS BY INDUSTRIAL REGISTRAR

13.50 Registers subject to rectification by Commission and access by Industrial Registrar. Qd.s.56. (1) The Industrial Commission may,

at any time, order such rectification of the register of members, or of officers, of an industrial organization as it considers necessary to ensure that the registers are a true record as required by section 13.48 of the persons who are members, or who are officers, of the industrial organization at the time.

Rectification is to be made of the register or registers of the industrial organization 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.

(2) An order under subsection (1) is taken to be directed to and is binding on the following persons:—

- the industrial organization to which the order is directed;
- the president of such industrial organization;
- the secretary of such industrial organization;

and, if rectification of the industrial organization'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.

(3) The register of members, or of officers, of an industrial organization and the relevant index is open to inspection by—

- the Industrial Registrar or any person authorized by the registrar in writing;
- any member of the industrial organization or any person authorized by the member in writing;

at the office of the industrial organization at all times while the office is open for transaction of business.

(4) Subject to subsection (6), the Industrial Registrar may, by notice in writing, direct an industrial organization 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 organization is to comply with the direction.

(5) A direction under subsection (4) is taken to be directed to and to be binding on, the following persons:—

- the industrial organization to which the order is directed;
- the president of such industrial organization;
- the secretary of such industrial organization;

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.

(6) A direction is not to be given under subsection (4) unless the register and index, are required—

- for the purpose of taking a ballot under this Act;

- for any other purpose, if the Industrial Court or the Industrial Commission so orders.

SECTION 13.51 INDUSTRIAL ORGANIZATION TO KEEP BUTTS OF DOCUMENTS ISSUED

13.51 Industrial organization to keep butts of documents issued. Qd.s.56. (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 organization, 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 organization is to keep a butt of every union ticket issued to a member of the industrial organization 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.

SECTION 13.52 RESIGNATION OF MEMBER OF MEMBERSHIP OF INDUSTRIAL ORGANIZATION

13.52 Resignation of member of membership of industrial organization. Qd.s.48. (1) The manner of terminating membership of an industrial organization prescribed by this section is in addition to any manner provided for by the rules of the industrial organization for terminating membership thereof.

A termination of membership of an industrial organization effected as prescribed by this section is effectual regardless of the rules of the industrial organization.

(2) Membership of an industrial organization is terminated if the member duly gives notification in writing of the member’s resignation from the industrial organization.

(3) A notification of resignation is taken to be duly given if—

- it is left at the registered office of the industrial organization;
or
- it is addressed to the industrial organization, or any officer thereof, and sent by post to the registered office of the industrial organization.

(4) If a person who wants to terminate membership of an industrial organization 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 organization terminates on the day, or at the time, as specified, and not before.

SECTION 13.53 CONSCIENTIOUS OBJECTION TO MEMBERSHIP OF INDUSTRIAL ORGANIZATION

13.53 Conscientious objection to membership of industrial organization. Qd.s.47A. (1) In this section the expression "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 organizations generally, or of a particular industrial organization.

(2) A person may make application, in writing, to—

- an Industrial Magistrate;
- or
- the Industrial Registrar;

for exemption from membership of any industrial organization 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—

- the applicant;
- and
- the industrial organization of employees that, in the magistrate's or registrar's opinion, is the appropriate industrial organization 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—

- the Industrial Magistrate or, as the case may be, Industrial Registrar;
- and
- the applicant;
- and
- one member or officer of the industrial organization notified under subsection (3);

and no other person, may attend.

The member or officer of such industrial organization 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.

(5) 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 organization notified under subsection (3) in respect of membership of the industrial organization, 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 organization of employees.

(6) No appeal lies in respect of the determination of an Industrial Magistrate or the Industrial Registrar as to a person's conscientious beliefs.

(7) A certificate issued under subsection (5) is in force for 12 months following a date specified for the purpose in the certificate.

(8) Moneys paid as required by subsection (5) are to be paid into Queensland Treasury for the Consolidated Revenue Fund.

Division 7—Amalgamation of Industrial Organizations

SECTION 13.54 INTERPRETATION

13.54 Interpretation. Cwlth.s.233. In this Division—

“alternative provisions” means a provision such as is referred to in section 13.56(4);

“amalgamated industrial organization”, in relation to a proposed amalgamation that has taken effect, means the industrial organization of which members of what were the proposed deregistering industrial organizations have become members pursuant to section 13.70(3)(d);

“deregistration”, in relation to an industrial organization, means the cancellation of its registration;

“proposed alternative amalgamation”, in relation to a scheme for a proposed amalgamation that contains an alternative provision, means an amalgamation proposed to be made under the alternative provision;

“proposed amalgamated industrial organization”, in relation to a proposed amalgamation, means the industrial organization or proposed industrial organization of which members of the proposed deregistering industrial organizations are to become members as proposed;

“proposed amalgamation” means the proposed carrying out of arrangements in respect of two or more industrial organizations under which—

- (a) any industrial organization or industrial organizations is or are to be deregistered at the request of it or them;
- (b) members of the industrial organization or of each of the industrial organizations to be deregistered are to become

members of another industrial organization, whether existing or proposed;

- (c) property of the industrial organization or of each of the industrial organizations to be deregistered is to become the property of the other industrial organization referred to in paragraph (b);
 - (d) liabilities of the deregistered industrial organization or industrial organizations are to be satisfied by the other industrial organization referred to in paragraph (b);
- “proposed deregistering industrial organization”, in relation to a proposed amalgamation, means an industrial organization that is to be deregistered under the amalgamation;
- “proposed principal amalgamation”, in relation to a scheme for a proposed amalgamation means—
- (a) if the scheme 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.

SECTION 13.55 PROCEDURE TO BE FOLLOWED FOR PROPOSED AMALGAMATION

13.55 Procedure to be followed for proposed amalgamation.
Cwlth.s.234. (1) For the purpose of implementing a proposed amalgamation, the procedure provided by this Division is to be followed.

(2) If it appears to the Industrial Commission that the performance of an action, including—

- (a) the deregistration of an industrial organization;
- (b) the registration of an industrial organization;
- (c) the giving of consent to—
 - (i) a change in the name of an industrial organization;
or
 - (ii) an alteration of the eligibility rules of an industrial organization;

is sought for the purposes of a proposed amalgamation, the Commission is not to perform the action except under this Division.

SECTION 13.56 APPLICATION FOR APPROVAL OF PROPOSED AMALGAMATION

13.56 Application for approval of proposed amalgamation.
Cwlth.s.235. (1) The existing industrial organizations concerned in a proposed amalgamation, and any association proposed to be registered as an industrial organization under the amalgamation, are to jointly lodge with the Industrial Registrar an application for the approval of the Industrial Commission for submission of the amalgamation to ballot.

(2) The application must include a scheme for the amalgamation, setting out the prescribed particulars of the amalgamation.

(3) A copy of—

- (a) the rules of any association proposed to be registered as an industrial organization;
and
- (b) any proposed alterations of the rules of the existing industrial organizations;

must be lodged with the application.

(4) If 3 or more existing industrial organizations are concerned in the amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if—

- (a) the members of one or more of the industrial organizations do not approve the amalgamation;
and
- (b) the members of 2 or more of the industrial organizations (including, where one of the industrial organizations is a party to the amalgamation otherwise than as a deregistering industrial organization, that industrial organization) approve both the amalgamation so far as it involves all the industrial organizations concerned and, in the alternative, the amalgamation so far as it involves the other industrial organization or 2 or more of the other industrial organizations;

there may be an amalgamation involving the industrial organizations the members of which give their approval.

(5) If the scheme for the amalgamation contains an alternative provision, the scheme must also set out particulars of the differences between the proposed principal amalgamation and each proposed alternative amalgamation and the differences between any rules referred to in subsection (3)(a) and any proposed alterations referred to in subsection (3)(b).

SECTION 13.57 CONSIDERATION OF FORM OF PROPOSED AMALGAMATION APPLICATION

13.57 Consideration of form of proposed amalgamation application.
Cwlth.s.236. (1) If the Industrial Commission is satisfied—

- (a) that the form of the application lodged under section 13.56 in relation to the proposed amalgamation complies with this Act and the Rules of Court;
and
- (b) that the documents, which, under this Act and the Rules of Court, are required to be lodged with the application have been lodged, and comply with this Act and the Rules of Court;

and

- (c) that the committee of management of each of the existing industrial organizations concerned in the amalgamation has passed a resolution approving the amalgamation;

and

- (d) that any proposed alterations of the rules of an existing industrial organization concerned in the amalgamation have been made under the rules of the industrial organization;

the Commission is to accept the application.

(2) If the Industrial Commission is not so satisfied, the Commission, subject to subsections (3) and (5), is to dismiss the application.

(3) If, but for this subsection, the Industrial Commission would be required to dismiss the application, the Commission may adjourn the proceedings.

(4) Subsection (3) does not limit by implication the power of the Industrial Commission to adjourn the proceedings at any stage.

(5) If, but for this subsection, the Industrial Commission would be required to dismiss the application, the Commission may—

- (a) permit the applicants to amend the application and any documents lodged with the application;

or

- (b) permit the applicants to lodge documents in relation to the application;

and, if the Commission is then satisfied as to the matters referred to in subsection (1), the Commission is to accept the application.

SECTION 13.58 NOTIFICATION OF HEARING IN RELATION TO PROPOSED AMALGAMATION

13.58 Notification of hearing in relation to proposed amalgamation. Cwlth.s.237. If the Industrial Commission accepts the application lodged under section 13.56 in relation to the proposed amalgamation, the Commission—

- (a) is to immediately fix a time and place for the hearing of submissions in relation to—

- (i) the making of a declaration under section 13.60 in relation to the application;

and

- (ii) the granting of an approval under section 13.61 in relation to the application;

and

- (b) is to ensure that all industrial organizations 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.

SECTION 13.59 SUBMISSIONS TO HEARING IN RELATION TO PROPOSED AMALGAMATION

13.59 Submissions to hearing in relation to proposed amalgamation. Cwlth.s.238. Submissions to a hearing arranged under section 13.58 in relation to the proposed amalgamation may be made—

- only with the leave of the Industrial Commission;
- and
- only in relation to a prescribed matter.

SECTION 13.60 COMMUNITY OF INTEREST DECLARATION

13.60 Community of interest declaration. Cwlth.s.239. (1) If, at the conclusion of the hearing arranged under section 13.58 in relation to the proposed amalgamation, the Industrial Commission is satisfied—

- (a) that the amalgamation would further the objects of this Act; and
- (b) that there is a community of interest between the industrial organizations concerned in the amalgamation in relation to their industrial interests;

the Commission is to declare that it is satisfied as to those matters.

(2) The Industrial Commission may be satisfied, for the purposes of subsection (1)(b), that there is a community of interest between industrial organizations of employees in relation to their industrial interests only if the Commission is satisfied that a substantial number of members of each of the industrial organizations is—

- (a) eligible to become members of the other industrial organization or each of the other industrial organizations; or
- (b) engaged in the same work, in aspects of the same work, or similar work; or
- (c) bound by the same awards; or
- (d) employed in the same or similar work by employers engaged in the same industry; or
- (e) engaged in work, or in industries, in relation to which there is a community of interest.

(3) The Industrial Commission may be satisfied, for the purposes of subsection (1)(b), that there is a community of interest between

industrial organisations of employers in relation to their industrial interests only if the Commission is satisfied that a substantial number of members of each of the industrial organizations are—

- (a) eligible to become members of the other industrial organization or each of the other industrial organizations;
or
- (b) engaged in the same industry, in aspects of the same industry, or in similar industries;
or
- (c) bound by the same awards;
or
- (d) engaged in industries in relation to which there is a community of interest.

SECTION 13.61 APPROVAL FOR SUBMISSION TO BALLOT OF AMALGAMATION NOT INVOLVING EXTENSION OF ELIGIBILITY RULES

13.61 Approval for submission to ballot of amalgamation not involving extension of eligibility rules. Cwlth.s.240. (1) If, at the conclusion of the hearing arranged under section 13.58 in relation to the proposed amalgamation, the Industrial Commission is satisfied—

- (a) that the amalgamation does not involve the registration of an association as an industrial organization;
and
- (b) that a person who is not eligible for membership of an existing industrial organization concerned in the proposed amalgamation would not be eligible for membership of the proposed amalgamated industrial organization immediately after the proposed amalgamation takes effect;
and
- (c) that any proposed alteration of the name of an existing industrial organization concerned in the amalgamation will not result in the industrial organization having a name that is the same as the name of another industrial organization or is so similar to the name of another industrial organization as to be likely to cause confusion;
and
- (d) that any proposed alterations of the rules of an existing industrial organization concerned in the amalgamation comply with this Act and are not contrary to law;
and
- (e) that any proposed deregistration of an existing industrial organization complies with this Act and is not contrary to law;

the Commission is to approve the submission of the amalgamation to ballot.

(2) If the Industrial Commission is not so satisfied, the Commission—

- (a) subject to subsections (3) and (5), is to refuse to approve, under this section, the submission of the amalgamation to ballot;
and
- (b) is to cause the Industrial Registrar to publish in the Industrial Gazette notice of the making of the application together with a copy of the proposed scheme.

(3) If, but for this subsection, the Industrial Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceedings.

(4) Subsection (3) does not limit by implication the power of the Industrial Commission to adjourn the proceedings at any stage.

(5) If, but for this subsection, the Industrial Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may—

- (a) permit the applicants to amend the scheme;
or
- (b) permit the applicants to amend any proposed alterations of the rules of the existing industrial organizations concerned in the amalgamation;

and, if it is then satisfied as to the matters referred to in subsection (1), the Commission is to approve the submission of the amalgamation to ballot.

(6) The notice under subsection (2)(b) must notify persons of the right to object to any proposed amalgamation to which the scheme relates.

SECTION 13.62 OBJECTIONS IN RELATION TO AMALGAMATION INVOLVING EXTENSION OF ELIGIBILITY RULES

13.62 Objections in relation to amalgamation involving extension of eligibility rules. Cwlth.s.241. (1) Objection to a matter involved in the proposed amalgamation may only be made to the Industrial Commission under this section.

(2) Objection may be made to the Industrial Commission in relation to the amalgamation only if the Commission has refused to approve, under section 13.61, the submission of the amalgamation to ballot.

(3) Objection may be made by any person, or industrial organization, that is interested in a proposed amalgamation on a prescribed ground and within a prescribed time.

(4) The Industrial Commission is to hear all objections duly made to the amalgamation.

SECTION 13.63 APPROVAL FOR SUBMISSION TO BALLOT OF AMALGAMATION INVOLVING EXTENSION OF ELIGIBILITY RULES

13.63 Approval for submission to ballot of amalgamation involving extension of eligibility rules. Cwlth.s.242. (1) If, after the prescribed time allowed for the making of objections under section 13.62 and after hearing any objections duly made to the proposed amalgamation, the Industrial Commission—

- (a) finds that no duly 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 organization;
 - or
 - (iii) an alteration of the rules of an association;
 - or
 - (iv) the deregistration of an industrial organization at the request of the industrial organization;
 - it complies with this Act and is not contrary to law;

the Commission is to approve the submission of the amalgamation to ballot.

(2) If the Industrial Commission is not so satisfied, the Commission, subject to subsections (3) and (5), is to refuse to approve, under this section, the submission of the amalgamation to ballot.

(3) If, but for this subsection, the Industrial Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceedings.

(4) Subsection (3) does not limit by implication the power of the Industrial Commission to adjourn the proceedings at any stage.

(5) If, but for this subsection, the Industrial Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may—

- (a) permit the applicants to amend the scheme;
 - or
- (b) permit the applicants to amend—
 - (i) the rules of any association proposed to be registered as an industrial organization;
 - or
 - (ii) any proposed alterations of the rules of the existing industrial organizations concerned in the amalgamation;

and, if it is then satisfied as to the matters referred to in subsection (1), the Commission is to approve the submission of the amalgamation to ballot.

SECTION 13.64 BALLOT OF MEMBERS IN RELATION TO PROPOSED AMALGAMATION

13.64 Ballot of members in relation to proposed amalgamation.
Cwlth.s.243. (1) If the Industrial Commission approves, under section 13.61 or 13.63 the submission of the proposed amalgamation to ballot, the Industrial Registrar is to arrange for the conduct, in relation to each of the existing industrial organizations concerned in the amalgamation, of a secret postal ballot of the members of the industrial organization on the question whether they approve the proposed principal amalgamation.

(2) If the scheme for the amalgamation contains a proposed alternative provision, the Industrial Registrar is to also arrange for the conduct, at the same time and in the same manner as the ballot under subsection (1), of a ballot of the members of each of the existing industrial organizations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each of the proposed alternative amalgamations, as the case requires.

(3) If, under subsection (2), the Industrial Registrar is required to arrange for the conduct of 2 or more ballots of the members of an industrial organization at the same time, the ballot papers for both or all ballots must be on the same piece of paper.

(4) A person conducting a ballot under subsection (2) is not to count the votes in the ballot unless the person is satisfied that the result of the ballot will be required to be known for the purposes of this Act.

(5) A copy of the scheme for the amalgamation as lodged under this Division, or, if the scheme has been amended under this Division, of the scheme as amended, must accompany the ballot paper or ballot papers sent to the persons entitled to vote at the ballot or ballots.

(6) The roll of voters for a ballot is a roll of the persons who, one month before the day fixed under section 13.65(2) as the commencing day of the ballot—

(a) have the right under the rules of the industrial organization to vote at such a ballot;

or

(b) if the rules of the industrial organization do not then provide for the right to vote at such a ballot—have the right under the rules of the industrial organization to vote at a ballot for an election for an office in the industrial organization that is conducted by a direct voting system.

(7) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

(8) If the total number of members that could be admitted to membership of the proposed amalgamated industrial organization on, and because of, the amalgamation does not exceed 5 per centum of the number of members of the industrial organization on the day on which

the application is lodged under section 13.56 in relation to the amalgamation, the industrial organization may apply to the Industrial Commission for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

(9) The Industrial Commission is to grant the exemption unless the Commission considers that, in the special circumstances of the case, the exemption should be refused.

(10) If the exemption is granted, the members of the industrial organization are taken to have approved the proposed principal amalgamation and, if the scheme for the amalgamation contains an alternative provision, to have approved each proposed alternative amalgamation.

SECTION 13.65 NOTICE OF BALLOT IN RELATION TO PROPOSED AMALGAMATION

13.65 Notice of ballot in relation to proposed amalgamation.
Cwlth.s.244. (1) In this section “relevant number”, in relation to an industrial organization, means—

- (a) 5 per centum of the total number of members of the industrial organization;
- or
- (b) 250;

whichever is less.

(2) A person conducting a ballot under section 13.64 in relation to the proposed amalgamation—

- (a) is to fix a day as the commencing day of the ballot and a day as the closing day of the ballot;
- and
- (b) not less than 3 months before the commencing day of the ballot, is to publish in the Industrial Gazette, and as otherwise prescribed, notice of the ballot and of those days.

(3) If, under section 13.64(2), the Industrial Registrar is required to arrange for the conduct of 2 or more ballots of the members of an industrial organization at the same time, one day must be fixed as the commencing day of both or all ballots and one day must be fixed as the closing day of both or all ballots.

(4) Not less than 2 months before the commencing day of the ballot or ballots—

- (a) the industrial organization concerned may lodge with the Industrial Registrar a written statement of not more than 2000 words in support of the proposed principal amalgamation and, if the scheme for the amalgamation contains an alternative provision, of each proposed alternative amalgamation;

and

- (b) at least the relevant number of members of the industrial organization may lodge with the Industrial Registrar a written statement of not more than 2000 words in opposition to the proposed principal amalgamation or, if the scheme for the amalgamation contains an alternative provision, to the proposed principal amalgamation or any proposed alternative amalgamation or any 2 or more of them;

and, subject to subsection (5), a copy of each statement must accompany the ballot paper or ballot papers sent to each person entitled to vote at the ballot or ballots.

(5) If 2 or more statements in opposition to the amalgamation are duly lodged with the Industrial Registrar—

- (a) the Industrial Commission is to prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who lodged each of the statements, a written statement of not more than 2000 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 Industrial Commission must accompany the ballot paper or ballot papers as if it had been the sole statement lodged under subsection (4)(b).

(6) The regulations may make provision for ensuring equitable presentation of argument for and against a proposed amalgamation in periodical publications of the existing industrial organizations, and the branches of the industrial organizations, concerned in the amalgamation after the notice has been published under subsection (1) in relation to the amalgamation.

SECTION 13.66 OFFICER OF INDUSTRIAL ORGANIZATION TO PROVIDE INFORMATION FOR BALLOT IN RELATION TO PROPOSED AMALGAMATION

13.66 Officer of industrial organization to provide information for ballot in relation to proposed amalgamation. Cwlth.s.245. A person conducting a ballot under section 13.64 in relation to the proposed amalgamation may, for the purposes of the ballot, require an officer or employee of the industrial organization concerned, or a branch of the industrial organization—

- (a) to provide to the person information within the knowledge or in the possession of the officer or employee;

or

- (b) to make available to the person a document in the possession of the officer or employee or to which the officer or employee has access.

SECTION 13.67 DETERMINATION OF APPROVAL OF AMALGAMATION BY MEMBERS OF INDUSTRIAL ORGANIZATIONS

13.67 Determination of approval of amalgamation by members of industrial organizations. Cwlth.s.246. (1) Where, under section 13.64(1) or (2), the question of an amalgamation (in this subsection called the “relevant amalgamation”) is submitted to a ballot of the members of an existing industrial organization concerned in the proposed amalgamation, the members of the industrial organization are taken to have approved the relevant amalgamation only if—

- (a) where a declaration has been made under section 13.60 in relation to the proposed amalgamation—more than a half of the formal votes cast in the ballot are in favour of the relevant amalgamation;
- or
- (b) in any other case—
 - (i) at least a quarter of the members on the roll of voters cast a vote in the ballot;
 - and
 - (ii) more than a half of the formal votes cast are in favour of the relevant amalgamation.

(2) If the scheme for the amalgamation contains an alternative provision, a member is not to be taken to record a formal vote in a ballot on the question of a proposed alternative amalgamation if the member does not record a formal vote in favour of the proposed principal amalgamation.

SECTION 13.68 INQUIRIES INTO DISPUTED BALLOT IN RELATION TO PROPOSED AMALGAMATION

13.68 Inquiries into disputed ballot in relation to proposed amalgamation. Cwlth.s.247. (1) At any time during the conduct of a ballot under section 13.64, or before the end of 30 days following the declaration of the result of such a ballot, application may be made to the Industrial Commission for an inquiry by the Commission into alleged irregularities in relation to the ballot.

(2) If the Industrial 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 is uncompleted—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, and give such directions, as the Commission considers necessary.

SECTION 13.69 APPROVAL OF AMALGAMATION

13.69 Approval of amalgamation. Cwlth.s.248. (1) If the members of each of the existing industrial organizations concerned in the proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is taken to be approved for the purposes of this Division.

(2) If—

- (a) the scheme for the proposed amalgamation contains an alternative provision;
and
- (b) the members of one or more of the existing industrial organizations concerned in the proposed amalgamation do not approve the proposed principal amalgamation;
and
- (c) the members of 2 or more of the industrial organizations (including, where one of the industrial organizations is a party to the amalgamation otherwise than as a deregistering industrial organization, that industrial organization) approve both the proposed principal amalgamation and a proposed alternative amalgamation;

the proposed alternative amalgamation is taken to be approved for the purposes of this Division.

SECTION 13.70 ACTION TO BE TAKEN AFTER BALLOT IN RELATION TO PROPOSED AMALGAMATION

13.70 Action to be taken after ballot in relation to proposed amalgamation. Cwlth.s.249. (1) A proposed amalgamation that is taken to be approved for the purposes of this Division takes effect in accordance with this section.

(2) If the Industrial Commission is satisfied—

- (a) that the period, or the latest of the periods, within which application may be made under section 13.68 in relation to the amalgamation has ended;
and
- (b) that any application under section 13.68 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 pending against any of the existing industrial organizations concerned in the amalgamation in relation to—
 - (i) contraventions of this Act, an Act replaced by this Act, or other law of the State;

- or
- (ii) breaches of—
- awards or industrial agreements;
- or
- orders made under this Act, an Act replaced by this Act, or other law of the State;
- and
- (d) that all penalties imposed on any of the industrial organizations under this Act or an Act replaced by this Act, or in relation to any such breaches, have been paid;
- and
- (e) that proper arrangements have been made for property of the deregistering industrial organization or industrial organizations to become the property of, and for liabilities of the deregistering industrial organization or industrial organizations to be satisfied by, the amalgamated industrial organization;

the Commission, after consultation with the industrial organizations, by notice published in the Industrial Gazette, is to fix a day as the day on which the amalgamation is to take effect.

(3) On the day fixed—

- (a) if the proposed amalgamated industrial organization is not already registered—the Industrial Registrar is to enter, in the register kept under section 6.3(1), the name and eligibility rules of the industrial organization, and the date of the entry;
- (b) any proposed alteration of the rules of an existing industrial organization concerned in the amalgamation takes effect;
- (c) the Industrial Commission is to deregister the proposed deregistering industrial organization or industrial organizations;
- (d) the persons who, immediately before that day, were members of a proposed deregistering industrial organization become, by force of this section and without payment of entrance fee, members of the proposed amalgamated industrial organization.

SECTION 13.71 EFFECT OF AMALGAMATION ON AWARDS AND ORDERS

13.71 Effect of amalgamation on awards and orders. Cwlth.s.251.
On and from the day on which the proposed amalgamation takes effect—

- (a) a decision of the Industrial Commission that was, immediately before that day, binding on a proposed deregistering industrial organization and its members

becomes, by force of this section, binding on the proposed amalgamated industrial organization and its members;
and

- (b) the decision has effect for all purposes (including the obligations of employers and industrial organizations of employers) as if references therein to the deregistering industrial organization included references to the amalgamated industrial organization.

SECTION 13.72 HOLDING OF OFFICES AFTER AMALGAMATION

13.72 Holding of offices after amalgamation. Cwlth.s.252. The rules of—

- (a) an association proposed to be registered as an industrial organization under a proposed amalgamation;
and
- (b) an industrial organization that is a proposed amalgamated industrial organization in relation to a proposed amalgamation;

may, notwithstanding section 13.13, make provision in relation to the holding of offices in an industrial organization by persons holding offices in any of the existing industrial organizations concerned in the amalgamation immediately before the amalgamation takes effect, but such rules must not permit an office in the industrial organization to be so held for more than 4 years after the amalgamation takes effect without an election being held in relation to the office.

SECTION 13.73 EXPENSES OF BALLOT IN RELATION TO PROPOSED AMALGAMATION

13.73 Expenses of ballot in relation to proposed amalgamation. The expenses of a ballot under section 13.64 are to be borne by the parties concerned.

Division 8—Cancellation of registration.

SECTION 13.74 CANCELLATION OF REGISTRATION FOR INDUSTRIAL CONDUCT

13.74 Cancellation of registration for industrial conduct. Qd.s.73; Cwlth.s.294. (1) Any industrial organization, person interested, the Industrial Registrar, or the Minister, may apply to the Full Industrial Court for an order cancelling the registration of an industrial organization on the ground that—

- (a) the conduct of—
 - (i) the industrial organization (in relation to its continued breach of any award, order of the Industrial Commission or industrial 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 organization, or of a section or class of members of the industrial organization (in relation to their continued breach of any award, order of the Industrial Commission or industrial agreement, or in any other respect);

has prevented or hindered the achievement of any of the objects of this Act;

or

- (b) the industrial organization, or a substantial number of the members of the industrial organization, or of a section or class of members of the industrial organization, 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 organization, or a substantial number of the members of the industrial organization, or of a section or class of members of the industrial organization, 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 organization 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 organization in relation to the matters;

the Court, subject to subsection (4) and section 13.75, is to cancel the registration of the industrial organization.

(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 organization;

the Court may, if it considers it just to do so, instead of cancelling the registration of the industrial organization under subsection (3), by order—

- (c) determine alterations of the eligibility rules of the industrial organization so as to exclude from eligibility for membership of the industrial organization persons belonging to the section or class;
- or
- (d) exclude any person from membership of the industrial organization.

(5) If the Full Industrial Court cancels the registration of an industrial organization, the Court may direct that an application by the former industrial organization to be registered as an industrial organization is not to be dealt with under this Act before the end of a specified period.

SECTION 13.75 ORDERS WHERE CANCELLATION OF REGISTRATION DEFERRED

13.75 Orders where cancellation of registration deferred. Cwlth.s.295.

(1) If the Full Industrial Court finds that a ground of an application under section 13.74 has been established, the Court may, if it considers it just to do so, instead of cancelling the registration of the industrial organization concerned under that section, or making an order under that section, exercise one 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 organization, or of all or any of its members, as such members, under this Act or under awards, orders made under this Act, or industrial 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 organization, or a branch of the industrial organization, 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 organization 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 organization.

(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.

SECTION 13.76 CANCELLATION OF REGISTRATION ON OTHER GROUNDS

13.76 Cancellation of registration on other grounds. Qd.ss.73,74.
The Full Industrial Court may cancel the registration of an industrial organization—

- (a) upon the happening of any event declared by the industrial organization's rules to be the termination of the industrial organization;
- (b) on application by any industrial organization or person interested, or the Minister, if the Full Industrial Court is satisfied that—
 - (i) the industrial organization was registered by mistake;
 - or
 - (ii) the rules of an industrial organization—
 - do not provide for admission of members to the industrial organization with reasonable facility;
 - or
 - impose unreasonable conditions on continuance of any person's membership of the industrial organization;
 - 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 organization consent to the cancellation of the registration of the industrial organization;

or

- (c) on the motion of the Industrial Registrar, if the Full Industrial Court is satisfied that the industrial organization is defunct.

SECTION 13.77 DIRECTIONS AS TO CANCELLATION

13.77 Directions as to cancellation. If the Full Industrial Court cancels the registration of an industrial organization pursuant to the provisions of section 8.24, 13.74 or 13.76, it may give such directions to give effect to the cancellation as it thinks fit.

SECTION 13.78 CANCELLATION TO BE RECORDED

13.78 Cancellation to be recorded. Cwlth.s.297. Where the registration of an industrial organization is cancelled, the Industrial Registrar is to enter the cancellation, and the date of cancellation, in the register kept under section 6.3(1).

SECTION 13.79 CONSEQUENCES OF CANCELLATION OF REGISTRATION

13.79 Consequences of cancellation of registration. Cwlth.s.298. The cancellation of the registration of an industrial organization has the following consequences:—

- (a) the industrial organization ceases to be an industrial organization 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 organization 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, or industrial agreement that was binding on the association, as an industrial organization, and on its members;
- (d) the Industrial Commission may, on application by an industrial organization or person interested, make such order as the Commission considers appropriate about the other effects (if any) of an award, order of the Commission, or industrial 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 organization, 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 organization out of the property of the association;
- (g) the property of the industrial organization 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 organization so far as they can still be carried out or observed.

Division 9—Accounts and audit

SECTION 13.80 APPLICATION OF DIVISION

13.80 Application of Division. (1) Every industrial organization 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 organization, a true copy of the industrial organization's—

- annual report;
- annual accounts;
- auditor's report;

for the preceding financial year of the industrial organization.

(2) Except as is prescribed by subsection (1), this Division applies to all industrial organizations, other than industrial organizations to which the *Companies (Queensland) Code* applies.

SECTION 13.81 INTERPRETATION OF DIVISION

13.81 Interpretation of Division. Cwlth.s.270. (1) If the rules of an industrial organization change the period that is the financial year of the industrial organization, 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 organization.

(2) This Division does not apply, in relation to an association that becomes registered as an industrial organization, in relation to any financial year before the first financial year of the industrial organization that begins after the date of registration.

SECTION 13.82 APPLICATION OF THIS DIVISION TO INDUSTRIAL ORGANIZATIONS WITH BRANCHES

13.82 Application of this Division to industrial organizations with branches. Cwlth.s.271. (1) This Division, other than this section and

sections 13.91(5) and 13.94, applies in relation to an industrial organization, and to every branch of the industrial organization, as if—

- (a) the financial affairs (including transactions) of a branch did not form part of the financial affairs of the industrial organization;
- and
- (b) the branch were an industrial organization.

(2) For the purposes of the application of this Division, in accordance with subsection (1)(b), in relation to a branch of an industrial organization—

- (a) the members of the industrial organization constituting the branch are to be taken to be members of the branch;
- (b) employees of the industrial organization 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 organization is taken to be a journal published by the branch.

(3) On application by an industrial organization that has branches, if the Industrial Registrar is satisfied—

- (a) that the committee of management of the industrial organization has, by the rules of the industrial organization or established practice not inconsistent with the rules, the management and control of the assets of the industrial organization (including assets of the branches of the industrial organization) or otherwise has effective control over the financial management of the industrial organization;
- and
- (b) that, if subsections (1) and (2) did not apply in relation to the industrial organization, it would be able to comply with the requirements of this Division;

the Industrial Registrar may issue to the industrial organization 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 organization.

(4) The Industrial Registrar may at any time, by notice in writing, revoke a certificate issued to an industrial organization under subsection (3) if the registrar is no longer satisfied, in relation to the industrial organization, of the matters referred to in that subsection.

SECTION 13.83 INDUSTRIAL ORGANIZATION TO KEEP PROPER ACCOUNTING RECORDS

13.83 Industrial organization to keep proper accounting records.
Cwlth.s.272. (1) An industrial organization—

- (a) is to keep such accounting records as correctly record and explain the transactions and financial position of the

industrial organization, 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 13.84;
and
- (c) is to keep its accounting records in such a manner as will enable the accounts of the industrial organization to be conveniently and properly audited under this Division.

(2) Accounting records of an industrial organization may, so far as they relate to the income and expenditure of the industrial organization, be kept on a cash basis or accrual basis, at the option of the industrial organization.

(3) If an industrial organization 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 organization 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.

SECTION 13.84 INDUSTRIAL ORGANIZATION TO PREPARE ACCOUNTS

13.84 Industrial organization to prepare accounts. Cwlth.s.273. (1)
As soon as is practicable after the end of each financial year of the industrial organization, an industrial organization—

- (a) is to cause to be prepared from the accounting records kept by it under section 13.83(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 organization to which this Division applies) the relevant figures from the accounts prepared by the industrial organization, 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).

SECTION 13.85 INFORMATION TO BE PROVIDED TO MEMBERS

13.85 Information to be provided to members. Cwlth.s.274. (1)
Application may be made to an industrial organization by—

- a member of the industrial organization;

- the Industrial Registrar, at the request of a member of the industrial organization;

for such prescribed information in relation to the industrial organization as is specified in the application.

(2) On application made under subsection (1) an industrial organization 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 13.84 must include a notice drawing attention to subsections (1), (2) and (3) and setting out those subsections.

SECTION 13.86 DUTIES OF OFFICERS OF INDUSTRIAL ORGANIZATION

13.86 Duties of officers of industrial organization. Qd.s.60. (1) An officer of an industrial organization is to furnish to the Industrial Registrar such information with respect to the funds and accounts of the industrial organization as the registrar requires of the officer and is to comply with the requirements of the registrar in relation to—

- the books and forms of account kept, or to be kept;
- the entries made, or to be made, therein;
- 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 organization to produce to the registrar, or to an auditor or auditors appointed by the registrar, any books of the industrial organization and such officer is to comply with the registrar's requisition.

SECTION 13.87 AUDITORS OF INDUSTRIAL ORGANIZATIONS

13.87 Auditors of industrial organizations. Cwlth.s.275. (1) In this section the expression "competent person" means—

- (a) for the purpose of an audit, and report thereon, in relation to an industrial organization whose income for the financial year immediately preceding the financial year for which the audit is to be carried out exceeded \$10 000, a person—
 - (i) who is duly registered under the *Public Accountants Registration Act 1946-1988*, or under a law of another State or a Territory of the Commonwealth that provides for registration of public accountants;
 - or
 - (ii) who is duly licensed or registered as an auditor under the *Companies (Queensland) Code* or under a law of another

State or a Territory of the Commonwealth relating to companies;

and who is not an officer or a member of the industrial organization and who is not employed for the purposes of the industrial organization in any capacity other than that of auditor;

(b) for the purpose of an audit, and report thereon, in relation to any other industrial organization, a person—

(i) who is of a description referred to in (i) or (ii) of paragraph (a);

or

(ii) who is a person in respect of whom the Industrial Registrar has issued a certificate that the person has had sufficient experience in keeping or auditing accounts;

and who is not an officer or a member of the industrial organization.

(2) An industrial organization is to ensure that there is an auditor of the industrial organization at any time when an auditor is required for the purposes of the operation of this Division in relation to the industrial organization.

(3) An industrial organization is to ensure that the person who actually performs the audit of the industrial organization's accounts and financial statements, and prepares the report thereon, for the purposes of this Division, is a competent person.

(4) A person—

- is not to accept;

or

- continue in;

an appointment to actually perform the audit of an industrial organization'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 organization is to comply with the provisions of this Act that are applicable to the person in the capacity of auditor.

SECTION 13.88 POWERS AND DUTIES OF AUDITORS

13.88 Powers and duties of auditors. Cwlth.s.276. (1) An auditor of an industrial organization is to inspect and audit the accounting records kept by the industrial organization 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 organization in accordance with this section.

(2) An auditor, or a person authorized 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 organization relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the industrial organization;
and
- (b) entitled to seek from any officer or employee of the industrial organization such information and explanations as the auditor or authorised person wants for the purposes of the audit.

(3) Where an auditor authorizes a person for the purposes of subsection (2), the auditor is to serve on the industrial organization 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 organization in relation to the year satisfactory accounting records, including—
 - records of the sources and nature of the income of the industrial organization (including income from members);
and
 - records of the nature and purposes of the expenditure of the industrial organization;
and
 - (ii) the accounts and statements prepared under section 13.84 in relation to the year were properly drawn up so as to give a true and fair view of—
 - the financial affairs of the industrial organization as at the end of the year;
and
 - the income and expenditure, and any surplus or deficit, of the industrial organization for the year;
and
- (b) whether all the information and explanations that, under subsection (2), officers or employees of the industrial organization 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 organization, 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.

SECTION 13.89 FEES AND EXPENSES OF AUDITORS

13.89 Fees and expenses of auditors. Cwlth.s.277. An industrial organization is to pay the reasonable fees and expenses of an auditor of the industrial organization.

SECTION 13.90 REMOVAL OF AN AUDITOR FROM OFFICE

13.90 Removal of an auditor from office. Cwlth.s.278. An auditor of an industrial organization 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 organization—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 organization—by resolution passed at a general meeting by a majority of the members of the industrial organization voting at the meeting.

SECTION 13.91 COPIES OF REPORT AND AUDITED ACCOUNTS TO BE PROVIDED TO MEMBERS AND PRESENTED TO MEETINGS

13.91 Copies of report and audited accounts to be provided to members and presented to meetings. Cwlth.s.279. (1) An industrial organization 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 organization in relation to a financial year;
- and
- (b) a copy of the accounts and statements prepared under section 13.84 to which the report relates.

(2) If, under the rules of the industrial organization, the committee of management of the industrial organization resolves to provide to the members of the industrial organization a summary of the report, accounts and statements, the industrial organization may comply with subsection (1) by providing free of charge to its members a copy of the summary if—

- (a) the industrial organization 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 organization 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 13.88(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 organization of the report concerned.

(4) If an industrial organization publishes a journal of the industrial organization that is available to the members of the industrial organization free of charge, the industrial organization 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 organization publishes a journal of the branch that is available to the members of the branch free of charge, the industrial organization 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 organization 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 organization, or a meeting of the committee of management of the industrial organization, 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 13.88(4);
- and
- (b) neither a general meeting of the members of the industrial organization nor a meeting of the committee of management of the industrial organization is due to be held within the relevant period;

the industrial organization, 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.

SECTION 13.92 REPORTS TO BE LODGED WITH INDUSTRIAL REGISTRAR

13.92 Reports to be lodged with Industrial Registrar. Cwlth.s.280.

(1) An industrial organization, within 14 days (or such longer period as the Industrial Registrar allows) after the relevant meeting referred to in section 13.91(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 organization 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 matter referred to in section 13.88(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 organization concerned has kept accounting records for its membership subscriptions separately on a cash basis as provided in section 13.83(3);

or

(b) after consultation with the industrial organization 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 organization 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—

- at least 250 members of the industrial organization concerned, if the industrial organization has more than 5000 members;
- at least 5 per centum of the members of the industrial organization concerned, in any other case;

to investigate the finances and the financial administration of the industrial organization.

(6) On receipt of a request under subsection (5), the Industrial Registrar is to investigate the finances and the financial administration of the industrial organization 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 organization 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 organization 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 organization relating to the finances or financial administration of the industrial organization;

the registrar is to notify the industrial organization accordingly, and include in the notification a request that the industrial organization take specified action, within a specified period, to rectify the matter.

(9) If the Industrial Registrar has given a notification to an industrial organization under subsection (8), the registrar is not to take proceedings under this Act against the industrial organization in relation to a matter to which the notification relates unless the industrial organization has refused or failed to comply with the request made in the notification.

SECTION 13.93 EXAMINATION AND AUDIT BY INDUSTRIAL REGISTRAR'S AUDITOR

13.93 Examination and audit by Industrial Registrar's auditor.

Qd.s.58. (1) If the Industrial Registrar is dissatisfied with—

- the manner in which an inspection and audit of the accounting records of an industrial organization have been made;

or

- the report, accounts and statements presented to a relevant meeting in accordance with section 13.91(6) or (7);

the registrar may engage the services of an auditor to examine the accounting records of the industrial organization.

(2) The Industrial Registrar is to provide to each person engaged under subsection (1) a notification in writing that—

- evidences the engagement of the person as auditor for the purposes of this section;

and

- specifies the industrial organization whose accounting records are to be examined by the person.

(3) An auditor who examines the accounting records of an industrial organization 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 organization concerned does not keep accounting records as required by section 13.83;

or

- (b) in respect of the industrial organization concerned there is a deficiency, failure or shortcoming in relation to any matter referred to in section 13.88(4);

or

- (c) property of the industrial organization concerned has been misappropriated or otherwise improperly applied;

or

- (d) the industrial organization concerned, or an officer of the industrial organization, has committed an offence in relation to the property of the industrial organization;

the registrar may authorize the auditor in writing to conduct an audit of the accounts, accounting records and affairs of the industrial organization 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 authorized 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 13.88 for an auditor, or, as the case may be, such authorized 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 organization concerned and any person having custody of any records relating to the affairs of the industrial organization is to furnish to the auditor, or a person authorized 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 organization.

(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 organization concerned.

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 organization concerned, as a debt due and owing to the registrar by the industrial organization and unpaid.

SECTION 13.94 INDUSTRIAL ORGANIZATION MAY LODGE ACCOUNTS OF ALL BRANCHES

13.94 Industrial organization may lodge accounts of all branches.
Cwlth.s.281. (1) In this section—

“relevant branch”, in relation to a relevant industrial organization, means each part of an industrial organization to which this Division (other than this section, section 13.82 and section 13.91(5)) applies under section 13.82(1) (a) or (b), other than, in relation to a particular financial year, a part of the industrial organization in relation to which a certificate has been issued under section 13.98(1) in relation to the year;

“relevant day”, in relation to a relevant industrial organization, means the day on which relevant documents in relation to a relevant branch of the industrial organization 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 13.91(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 organization;

“relevant documents”, in relation to a relevant branch, means the report, accounts and statements referred to in section 13.91(1);

“relevant industrial organization” means an industrial organization that has branches, other than an industrial organization in relation to which a certificate issued by the Industrial Registrar under section 13.82(3) is in force.

(2) The rules of a relevant branch of a relevant industrial organization 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 organization 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 organization;
- and
- (b) subsection 13.92(1) does not apply to a relevant branch of the industrial organization.

(4) The industrial organization, 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 organization that were presented to a meeting of the committee of management, or general meeting of members, of the branch under section 13.91(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 organization fails to comply with subsection (4), each relevant branch of the industrial organization, 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 13.91(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 13.92(2) to (9) apply in relation to a relevant branch of the industrial organization as if the references therein to documents lodged with the Industrial Registrar under section 13.92(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 organization 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.

SECTION 13.95 INDUSTRIAL ORGANIZATION TO FORWARD NOTICES TO AUDITOR

13.95 Industrial organization to forward notices to auditor. Cwlth.s.282. An industrial organization is to forward to the auditor of the industrial organization a notice of, and any other communication relating to, a meeting of the industrial organization, or the committee of management of the industrial organization, 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 organization, or the committee of management of the industrial organization, as the case may be, would be entitled to receive.

SECTION 13.96 AUDITOR ENTITLED TO ATTEND MEETINGS

13.96 Auditor entitled to attend meetings. Cwlth.s.283. (1) An auditor, or a person authorized 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 organization, or the committee of management of an industrial organization, 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 organization a notification that sets out the name and address of the person.

SECTION 13.97 AUDITORS AND OTHER PERSONS TO ENJOY QUALIFIED PRIVILEGE IN CERTAIN CIRCUMSTANCES

13.97 Auditors and other persons to enjoy qualified privilege in certain circumstances. Cwlth.s.284. (1) It is lawful for—

- an auditor of an industrial organization; or
- an auditor engaged by the Industrial Registrar under section 13.93;

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—

- an auditor of an industrial organization; or
- an auditor engaged by the Industrial Registrar under section 13.93;

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.

SECTION 13.98 ACCOUNTS AND AUDIT WHERE INCOME OF INDUSTRIAL ORGANIZATION LESS THAN CERTAIN AMOUNT

13.98 Accounts and audit where income of industrial organization less than certain amount. Cwlth.s.285. (1) If, on the application of an industrial organization made after the end of a financial year, the Industrial Registrar is satisfied that the income of the industrial

organization for the year did not exceed \$10 000 or, in the case of a financial year that, because of section 13.81(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 organization a certificate to that effect.

(2) If a certificate is issued under subsection (1) in relation to an industrial organization in relation to a financial year—

- (a) the following provisions of this section apply in relation to the industrial organization in relation to the year;
and
- (b) except as provided in paragraph (c), this Division continues to apply in relation to the industrial organization in relation to the year;
and
- (c) sections 13.84, 13.91 and 13.92(1) do not apply in relation to the industrial organization in relation to the year.

(3) This Division (other than this section) applies to the industrial organization in relation to the year as if—

- (a) a reference to accounts and statements prepared or to be prepared under section 13.84 were a reference to accounts and statements prepared under subsection (5) of this section;
and
- (b) the reference in section 13.85(4) to accounts prepared under section 13.84 were a reference to accounts prepared under subsection (5) of this section;
and
- (c) the reference in section 13.92(2) and (5) to section 13.92(1) were a reference to subsection (9) of this section.

(4) Section 18.27 (other than subsection (1)) and section 18.28 apply to the industrial organization in relation to the financial year as if—

- (a) a reference in section 18.27(3) and (4) to section 13.91(6) and (7) were a reference to subsection (7) of this section;
and
- (b) the reference in section 18.28 to section 13.91(1) were a reference to subsection (7) of this section;
and
- (c) there were omitted from section 18.28 the words “or in a summary of the kind referred to in section 13.91(2)”.

(5) As soon as is practicable after the issue of the certificate under subsection (1), the industrial organization—

- (a) is to cause to be prepared, from the accounting records kept under section 13.83(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 organization to which this Division applies) the relevant figures from the accounts prepared by the industrial organization, under this subsection or section 13.84(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 organization of the report of the auditor under section 13.88 in relation to the auditor's inspection and audit of the accounting records kept by the industrial organization in relation to the year, and before the end of the financial year immediately following the year, the industrial organization 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 organization.

(8) If a member of an industrial organization requests the industrial organization to provide to the member a copy of the report, accounts and statements referred to in subsection (7), the industrial organization 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 organization, within 90 days (or such longer period as the Industrial Registrar allows) following the making to the industrial organization of the report under section 13.88, 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 organization that the information contained in the accounts and statements is correct.

Division 10—Presumed Validity of Industrial Organizations' Actions

SECTION 13.99 INTERPRETATION

13.99 Interpretation. Cwlth.s.254. In this Division—

“collective body”, in relation to—

- (a) an industrial organization, means the committee of management or a conference, council, committee, panel or other body of, or within, the industrial organization;
- (b) a branch of an industrial organization, 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 organization, or of a

branch of an industrial organization, or purporting to hold an office in an industrial organization, or branch of an industrial organization—

(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 organization 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 organization, or branch of an industrial organization, as an officer, a voter or otherwise.

SECTION 13.100 VALIDATION OF ACTION TAKEN IN GOOD FAITH

13.100 Validation of action taken in good faith. Cwlth.s.255. (1) Subject to this section, all actions done in good faith by persons purporting to act as a collective body of an industrial organization, or of a branch of an industrial organization, are valid notwithstanding any invalidity discovered later in—

- the election or appointment of the collective body, or of any of the persons purporting to act as the collective body;

or

- the making of a rule, or an alteration to the rules, of the industrial organization or branch.

(2) Subject to this section, all actions done in good faith by a person purporting to hold an office in an industrial organization, or in a branch of an industrial organization, are valid notwithstanding any invalidity discovered later in—

- the election or appointment of the person;

- the making of a rule, or an alteration to the rules, of the industrial organization 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 organization unless the person has, in good faith,

- purported to be, and has been treated by officers or members of the industrial organization 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 organization 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 organization, or of a branch of an industrial organization, 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—
- the election or appointment of a collective body of a branch of an industrial organization, or of any person who purports to be a member of such a collective body; or
 - the election or appointment of a person who purports to hold an office in a branch of an industrial organization; or
 - the making, or alteration, of a rule of a branch of an industrial organization;
- 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 organization.
- (5) This section—
- (a) does not affect the operation of Division 4;
- (b) does not validate the expulsion or suspension of, or the imposition of a fine or other penalty on, a member of an

industrial organization 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 organization.

SECTION 13.101 VALIDATION OF ACTION AFTER 4 YEARS

13.101 Validation of action after 4 years. Cwlth.s.256. (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 organization, or of a branch of an industrial organization and purporting to exercise power conferred by or under the rules of the industrial organization or branch;
- (b) the doing of an action by a person purporting to hold an office in an industrial organization, or in a branch of an industrial organization, and purporting to exercise power conferred by or under the rules of the industrial organization or branch;
- (c) the alleged election or alleged appointment of a person to an office in an industrial organization, or in a branch of an industrial organization;
- (d) the alleged making, or alleged alteration, of a rule of an industrial organization, or of a branch of an industrial organization;

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 organization 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 organization.

Division 11—Miscellaneous

SECTION 13.102 REGISTERED OFFICE OF INDUSTRIAL ORGANIZATION

13.102 Registered office of industrial organization. Qd.s.61. (1) Every industrial organization 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 organization is taken to have not complied with this section.

SECTION 13.103 DOCUMENTS OPEN TO INSPECTION

13.103 Documents open to inspection. Qd.s.62. (1) The list of members and officers, and the rules of an industrial organization 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 organization, or a branch of an industrial organization, to every person, on request and payment of a sum not exceeding an amount determined from time to time by Order in Council.

SECTION 13.104 INDUSTRIAL ORGANIZATIONS TO NOTIFY PARTICULARS OF LOANS, GRANTS AND DONATIONS

13.104 Industrial organizations to notify particulars of loans, grants and donations. Cwlth.s.269. (1) As soon as is practicable after the end of each financial year, an industrial organization 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 organization 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 organization.

(3) A statement lodged with the Industrial Registrar under subsection (1) may be inspected, during office hours, by a member of the industrial organization concerned.

(4) The relevant particulars, in relation to a loan made by an industrial organization, are—

- the amount of the loan;
- the purpose for which the loan was required;
- the security given in relation to the loan;
- except where the loan was made to relieve a member of the industrial organization, or a dependant of a member of the industrial organization, 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 organization, are—

- the amount of the grant or donation;
- the purpose for which the grant or donation was made;
- except where the grant or donation was made to relieve a member of the industrial organization, or a dependant of a

member of the industrial organization, from severe financial hardship—the name and address of the person to whom the grant or donation was made.

(6) If an industrial organization has branches—

- (a) this section applies in relation to the industrial organization as if expenditure, by way of loan, grant or donation, made by a branch of the industrial organization were not made by the industrial organization;
- (b) this section applies in relation to each of the branches as if the branch were an industrial organization.

(7) For the purposes of the application of this section in accordance with subsection (6) in relation to a branch of an industrial organization, the members of the industrial organization constituting the branch are taken to be members of the branch.

SECTION 13.105 NOMINATION

13.105 Nomination. Qd.s.138. A member of an industrial organization may, by writing delivered at or sent by post to the registered office of the industrial organization, nominate any person, not being an officer or employee of the industrial organization (unless such officer or employee of the industrial organization 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.

On receiving satisfactory proof of the death of a nominator the industrial organization is to pay to the nominee the amount due and payable in the event of the nominator's death.

SECTION 13.106 RECOVERY OF MONEYS DUE TO INDUSTRIAL ORGANIZATION

13.106 Recovery of moneys due to industrial organization. Qd.s.118.

(1) Subject to this section, all subscriptions, fees, dues, fines, levies and other moneys payable to an industrial organization under its rules by a member, or former member, of the industrial organization may be sued for and recovered in an Industrial Magistrates Court, and not otherwise.

(2) When membership of an industrial organization—

- is terminated as prescribed by section 13.52;
- or
- has been terminated as prescribed by section 48 of the *Industrial Conciliation and Arbitration Act 1961-1989*;

the former member—

- (a) 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;

- (b) 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 organization 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 one 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.

SECTION 13:107 PREJUDICE OF EMPLOYEE BY REASON OF MEMBERSHIP OF INDUSTRIAL ORGANIZATION

13.107 Prejudice of employee by reason of membership of industrial organization. Qd.s.101. (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 organization, or of an association that has applied to be registered as an industrial organization;
- (b) is a Health and Safety Representative appointed under the *Workplace Health and Safety Act 1989*;
- (c) is entitled to, or has claimed, the benefit of any award or industrial agreement;
- (d) has appeared as a witness, or has given evidence, in proceedings under this Act or under the Repealed Acts;
- (e) being a member of an industrial organization that is seeking better industrial conditions, is dissatisfied with employees' conditions;
- (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 organization; and
 - (ii) application for leave was made before such absence and leave was unreasonably refused or withheld.

(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 organization, or of an association that has applied to be registered as an industrial organization, 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.

(3) 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 organization.

SECTION 13.108 PREJUDICE OF EMPLOYEE BY REASON OF NON-MEMBERSHIP OF INDUSTRIAL ORGANIZATION

13.108 Prejudice of employee by reason of non-membership of industrial organization. Qd.s.101A. (1) Except where membership of an industrial organization 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 organization or intends to terminate membership of an industrial organization.

(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 organization;
or

(b) to demand from another person who is not a member of an industrial organization, 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 organization or of a person acting on behalf of an industrial organization.

(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 or industrial agreement that requires an employee to be a member of an industrial organization.

SECTION 13.109 CONDUCT IN RELATION TO HOLDER OF CONSCIENTIOUS OBJECTOR'S CERTIFICATE

13.109 Conduct in relation to holder of conscientious objector's certificate. Qd.s.47A. (1) This section applies in relation to a person or employee who is the holder of a current certificate issued under section 13.53, and so applies notwithstanding any other provision of this Division, any Act, award or industrial 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 organization;
- (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 organization;

(c) to threaten—

- to dismiss an employee to whom this section applies;
- to injure such an employee in employment;
- 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 organization.

(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 organization.

(4) An industrial organization 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 organization.

SECTION 13.110 PREJUDICE OF EMPLOYER BY REASON OF MEMBERSHIP OF INDUSTRIAL ORGANIZATION

13.110 Prejudice of employer by reason of membership of industrial organization. Cwlth.s.334. An industrial organization 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 organization or an association that has applied to be registered as an industrial organization.

SECTION 13.111 CONDUCT IN RELATION TO INDEPENDENT CONTRACTORS

13.111 Conduct in relation to independent contractors. Cwlth.s.336.

(1) In this section—

“eligible person” means a person who—

- engages in a calling or an industry otherwise than as an employee;
- and
- because of so engaging would be eligible, if the person were an employee, to become a member of an industrial organization of employees;

“discriminatory action against an eligible person” means—

- refusal to use, or to agree to use, a service offered by the eligible person;
- or
- refusal to supply, or to agree to supply, goods or services to the eligible person.

(2) An industrial organization 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 organization;
- 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 organization;
- 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 organization.

SECTION 13.112 WHEN CONDUCT PRESUMED THAT OF INDUSTRIAL ORGANIZATION

13.112 When conduct presumed that of industrial organization. For the purposes of sections 13.109, 13.110 and 13.111, action, or a threat of action—

- by or at the instigation of the committee of management of an industrial organization or of a branch of an industrial organization;
- by an officer, employee or agent of an industrial organization, or of a branch of an industrial organization, acting in that capacity;
- by a group of members of an industrial organization;
- by a member of an industrial organization who performs a function of dealing with an employer on behalf of—
members of the industrial organization;
or
that member;
acting in that capacity;

is taken to be action taken, or threat made, by the industrial organization, and the intent of the person or persons who—

- takes, take or instigate the action;
or
- makes, make or instigate the threat;

is taken to be the intent of the industrial organization.

PART 14—INDUSTRIAL INSPECTORS

SECTION 14.1 APPOINTMENT OF INDUSTRIAL INSPECTORS

14.1 Appointment of Industrial Inspectors. Qd.s.131. (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 1988-1990*.

(2) From time to time there may be appointed under and subject to the *Public Service Management and Employment Act 1988-1990* 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—

- the *Trading Hours Act 1990*;
- the *Factories and Shops Act 1960-1990*;
- the *Pastoral Workers Accommodation Act 1980*;
- the *Workers' Accommodation Act 1952-1980*;

for as long as the inspector holds the appointment.

SECTION 14.2 EVIDENCE OF APPOINTMENT

14.2 Evidence of appointment. Qd.s.131. (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.

SECTION 14.3 EXTENT OF INDUSTRIAL INSPECTOR'S JURISDICTION

14.3 Extent of Industrial Inspector's jurisdiction. Qd.s.131. 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.

SECTION 14.4 VALIDITY OF INDUSTRIAL INSPECTOR'S CONDUCT DESPITE ADMINISTRATIVE BREACH

14.4 Validity of Industrial Inspector's conduct despite administrative breach. Qd.s.131. (1) Failure of an Industrial Inspector to observe the requirement of section 14.2(3) or the administrative arrangement prescribed by section 14.3(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.

SECTION 14.5 DUTY OF INDUSTRIAL INSPECTOR

14.5 Duty of Industrial Inspector. Qd.s.132. It is the duty of an Industrial Inspector to ensure, as far as possible, that the provisions of awards, industrial agreements, permits and orders of the Industrial Commission are duly observed.

SECTION 14.6 POWERS OF INDUSTRIAL INSPECTOR

14.6 Powers of Industrial Inspector. Qd.s.132. (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 enquiry as is necessary to ascertain whether the provisions of this Act, any relevant award, industrial 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, 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, 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 authorized to take) as to the truth of the answers;
- (f) require a person whom the inspector is authorized 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, 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 connexion with such use of the premises, unless there is carried on in the premises or the land some calling in which at least one employee is employed.

(4) If proceedings in the Industrial Commission for interpretation of an award, industrial 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.

SECTION 14.7 OBSTRUCTION OF INDUSTRIAL INSPECTOR

14.7 Obstruction of Industrial Inspector. Qd.s.134. (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 connexion 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 14.6(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.

SECTION 14.8 CONFIDENTIALITY OF INFORMATION

14.8 Confidentiality of information. Qd.s.132. 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.

SECTION 14.9 PROTECTION FROM LIABILITY

14.9 Protection from liability. 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—

- done or made by the inspector or person pursuant to this Act;
- or
- done or made, in good faith and without negligence, by the inspector or person purporting to act pursuant to this Act.

SECTION 14.10 ASSISTANCE IN EXERCISE OF INDUSTRIAL INSPECTOR'S POWERS

14.10 Assistance in exercise of Industrial Inspector's powers. Qd.s.133. A person being—

- an owner or a person entitled to immediate possession of any place in or on which a calling is carried on;
- or
- 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.

SECTION 14.11 PAYMENT OF EMPLOYEE'S WAGES, ETC., TO INDUSTRIAL INSPECTOR

14.11 Payment of employee's wages, etc., to Industrial Inspector.

Qd.s.97. (1) A demand such as is referred to in this section may be made in respect of—

- an employee of an employer;
- 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 to the inspector—

- (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 or industrial 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) 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 17.20;
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.

SECTION 14.12 INDUSTRIAL INSPECTOR'S OBLIGATION FOR MONEYS PAID ON DEMAND

14.12 Industrial Inspector's obligation for moneys paid on demand.

Qd.s.97. (1) In this section the expression “employee” includes a former employee.

(2) An Industrial Inspector to whom moneys are paid on demand under section 14.11 is to give to the payer a receipt therefor, forthwith upon payment.

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.

(3) Subject to subsections (4) and (5), an Industrial Inspector to whom moneys are paid on demand under section 14.11 is to account for the moneys as follows:—

(a) if the moneys are in respect of—

- an employer's contribution to an approved occupational superannuation scheme or fund to the credit of an eligible employee, which was unpaid;

or

- an amount such as is referred to in section 14.11(2)(b) (ii);

they are to be paid to—

- (i) an approved occupational superannuation scheme or fund under any award or industrial agreement relevant to the employee's employment as an eligible person;

or

- (ii) in a case to which subsection (5)(b) applies, to a superannuation scheme or fund nominated by 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.

(4) If at the end of 30 days following receipt of moneys paid on demand under section 14.11 an Industrial Inspector has not accounted for the moneys as prescribed by subsection (3), the inspector is to pay the moneys forthwith to the department to the credit of the approved occupational superannuation scheme or fund or, as the case may be, the employee.

(5) Notwithstanding subsection (3), if an employee to whose credit moneys, such as are referred to in paragraph (a) of that subsection, are paid to an Industrial Inspector is no longer in employment with the employer upon whom the demand was made, the inspector is to account for such moneys as follows:—

(a) if the amount thereof is less than the amount of total benefits that may revert to the employee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth (or that Act as amended and in force for the time being), the moneys are to be paid—

- to the employee;

or

- to a superannuation scheme or fund nominated by the employee;

(b) if the amount thereof equals, or is more than, the amount of total benefits that may revert to the employee in accordance

with the *Occupational Superannuation Standards Act 1987* of the Commonwealth (or that Act as amended and in force for the time being), the moneys are to be paid to a superannuation scheme or fund nominated by the employee.

(6) If at the end of 30 days following receipt of moneys such as are referred to in subsection (3)(a), in a case to which subsection (5) applies, an Industrial Inspector has not accounted for the moneys as prescribed by subsection (5), the inspector is to pay the moneys forthwith to the department to be disposed of as prescribed by subsection (5).

PART 15—FACILITATION OF ADMINISTRATION

Division 1—Maintenance and Inspection of Employers' Records

SECTION 15.1 INTERPRETATION

15.1 Interpretation. Qd.ss.126,136. In this Division—

“authorized industrial officer” means an officer or employee of an industrial organization, or branch of an industrial organization, who is the holder for the time being of an authority issued under section 15.2 that is in force, or issued under section 136 of the *Industrial Conciliation and Arbitration Act 1961-1989* 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.

SECTION 15.2 ISSUE OF AUTHORIZATION

15.2 Issue of authorization. (1) An industrial organization that wants a person to be, or to continue as, an authorized industrial officer is to make application to the Industrial Registrar for an authorization under this section to be issued to the person nominated in the application.

On application for an authorization under this section, the Industrial Registrar may issue the authorization if the registrar is satisfied that the applicant is a person of a description of person defined in section 15.1 as one who may be an authorized industrial officer.

(2) An authorization 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—
 - at the end of its term;

- upon its revocation;
- upon its suspension, for the period of suspension;
- upon its holder ceasing to be an officer or, as the case may be, employee of the industrial organization that made application for the authorization or ceasing to be an authorized industrial officer acceptable to the industrial organization.

(3) At the end of 6 months following the commencement of this Act every authorization issued for the purposes of section 136 of the *Industrial Conciliation and Arbitration Act 1961-1989* ceases to be in force.

(4) When an authorization under this section ceases to be in force the industrial organization that made application for the authorization—

- (a) is to notify the Industrial Registrar thereof within 14 days following the authorization's so ceasing;
- (b) upon request of the registrar, surrender to the registrar the authorization issued on the application.

SECTION 15.3 TIME AND WAGES RECORD OF AWARD EMPLOYEES

15.3 Time and wages record of award employees. Qd.s.126. (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 authorized industrial officer, and as required by section 15.12, a time and wages book or similar record that accords with subsection (2) in respect of all persons who—

- (a) are for the time being in the employer's employment and working under any award, industrial agreement or permit;
or
- (b) were in the employer's employment and working under any award, industrial agreement or permit at any time within 6 years before the date of an inspection of such book or record.

Notwithstanding paragraph (b), this subsection 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.

(2) Subject to subsection (3), 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 or industrial 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 (3), 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 or permit provides for—
 - 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
 - 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) details of sick leave credited or granted, and sick leave payments to each employee;
 - (e) the date on which each employee commenced employment with the employer and, where appropriate, the date of termination of such employment;
 - (f) 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 or permit are being complied with in every particular.

(3) If an award or industrial 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 (2)(c)(ii), unless the award or agreement requires an employer to record such particulars.

(4) If an employer keeps in the one book or record particulars that an authorized industrial officer is authorized by section 15.10(2) to inspect and other particulars, the employer is not required to make available for inspection by that officer those other particulars.

(5) An authorized 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.

SECTION 15.4 WAGES RECORD OF NON-AWARD EMPLOYEES

15.4 Wages record of non-award employees. Qd.s.126. (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 15.12, a wages book or similar record that accords with subsection (2) 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 or permit;
- or
- (b) were in the employer's employment and working otherwise than under any award, industrial agreement or permit at any time within 6 years before the date of an inspection of such book or similar record.

Notwithstanding paragraph (b), this subsection 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.

(2) A 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 that subsection to be kept, the following particulars in relation to each pay period:—

- (i) the employee's designation;
- (ii) the employee's rate of wages;
- (iii) the gross amount of wages payable to or on account of the employee;
- (iv) the amount of deductions made from the employee's wages;
- (v) the net amount of wages payable to or on account of the employee.

SECTION 15.5 REGISTER OF EMPLOYEES

15.5 Register of employees. Qd.s.57. (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 authorized 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.

All such particulars are to be entered in the register opposite and relative to the name of the employee to which they relate.

(2) 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 authorized 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.

(3) 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.

(4) 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.

(5) If an employer carries on business at more than one place this section requires the employer to keep a register of employees and, as prescribed by subsection (2), an index in respect of each such place.

SECTION 15.6 RECORDS TO BE KEPT IN ENGLISH

15.6 Records to be kept in English. Qd.s.126. Particulars required by sections 15.3, 15.4 and 15.5 to be recorded must be recorded, and an index required by section 15.5 to be kept must be kept, in the English language.

SECTION 15.7 FAILURE TO KEEP RECORDS A COMPOSITE OFFENCE

15.7 Failure to keep records a composite offence. Qd.s.126. A complaint for an offence consisting in a failure to comply with section 15.3, 15.4 or 15.5 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.

SECTION 15.8 NOTATION OF WAGES DETAILS

15.8 Notation of wages details. Qd.s.108. (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—
 - ordinary rate of pay;
 - 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.

SECTION 15.9 INSPECTION OF EMPLOYER'S RECORD BY INDUSTRIAL INSPECTOR

15.9 Inspection of employer's record by Industrial Inspector.
Qd.s.126A. (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 15.3 or 15.4.

(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 15.3 or, as the case may be, section 15.4.

- (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.

SECTION 15.10 INSPECTION BY AUTHORIZED INDUSTRIAL OFFICER

15.10 Inspection by authorized industrial officer. Qd.s.136. (1) An authorized 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 organization of which the authorized industrial officer is an officer or employee.

(2) The authorized 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 15.3.

This subsection is subject to subsection (3).

(3) A person who is an authorized industrial officer is not authorized 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 organization, or branch of an industrial organization, 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).

(4) An authorized 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 authorization if required.

An authorized industrial officer who is present in or on any place for the purposes of this Act without having given notice or produced the written authorization as prescribed by the preceding paragraph is a trespasser and may be ejected and proceeded against accordingly.

This subsection is subject to subsection (5).

- (5) Subsection (4) does not apply in a case where—
- (a) due to the remoteness of any place it is impracticable for the authorized 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 authorized industrial officer discovers that neither the employer nor any employer's representative having charge of the place is present.

SECTION 15.11 INSPECTION BY INDUSTRIAL REGISTRAR

15.11 Inspection by Industrial Registrar. Qd.s.57. (1) The register of employees, and index (if any), required by section 15.5 to be kept is open to inspection by the Industrial Registrar or a person authorized, 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.

SECTION 15.12 INSPECTION BY EMPLOYEES

15.12 Inspection by employees. (1) Subject to this section, any employee is entitled—

- to inspect;
or
- 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 15.3 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.

SECTION 15.13 REVOCATION AND SUSPENSION OF INDUSTRIAL OFFICER'S AUTHORIZATION

15.13 Revocation and suspension of industrial officer's authorization.

Qd.s.136. If, upon application by an employer, it is proved to the Industrial Commission that an authorized industrial officer has—

- (a) in a case to which section 15.10(4) 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 authorized industrial officer;

the Commission may—

- (d) revoke the officer's authorization;
- or
- (e) suspend the officer's authorization for such period as it thinks fit;
- or
- (f) attach such conditions to the officer's authorization as it thinks fit.

Division 2—Other Facilitating Provisions

SECTION 15.14 COPY OF AWARD AND INDUSTRIAL AGREEMENT TO BE DISPLAYED

15.14 Copy of award and industrial agreement to be displayed.

Qd.s.127. 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 or industrial agreement has application, in such a position as to be easily read by the employees therein, a true copy of the award or industrial agreement.

SECTION 15.15 INCORPORATION OF VARIATIONS IN REPRINT OF AWARD OR INDUSTRIAL AGREEMENT

15.15 Incorporation of variations in reprint of award or industrial agreement. Qd.s.128A. If an award or industrial 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 or industrial agreement in a form certified as correct by the registrar.

SECTION 15.16 OBSOLETE AWARD OR INDUSTRIAL AGREEMENT

15.16 Obsolete award or industrial agreement. Qd.s.128B. (1) The Industrial Registrar, after such enquiry 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.

SECTION 15.17 CERTIFICATE OF EMPLOYMENT ON TERMINATION

15.17 Certificate of employment on termination. 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.

SECTION 15.18 FALSE PRETENCES RELATING TO EMPLOYMENT

15.18 False pretences relating to employment. Qd.s.110; Wa.s.31. (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 or industrial 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—

- when seeking employment in that calling;
- or
- 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.

SECTION 15.19 CERTIFYING BARRISTER

15.19 Certifying Barrister. Qd.s.41. The Governor in Council may appoint a barrister of the Supreme Court to be the Certifying Barrister under this Act.

SECTION 15.20 STAMP DUTY

15.20 Stamp duty. Qd.s.137. 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 organization to the industrial organization, 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.

SECTION 15.21 PAYMENTS TO FINANCIALLY DISTRESSED

15.21 Payments to financially distressed. Qd.s.138A. (1) The Governor in Council may, on the recommendation of the Minister,

authorize 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.

SECTION 15.22 REGULATIONS

15.22 Regulations. Qd.s.139. (1) The Governor in Council may make regulations not inconsistent with this Act, with respect to all matters that are required or permitted by this Act to be prescribed and in respect of which no other manner of prescription is specified, or with respect to all matters that are necessary or expedient to be prescribed for the proper administration of this Act or for achieving the objects and purposes of this Act.

(2) A regulation may impose a penalty for any breach of that or another regulation, including different penalties for successive breaches, but no such penalty is to exceed 20 penalty units.

SECTION 15.23 PARLIAMENTARY SUPERVISION OF ORDERS IN COUNCIL

15.23 Parliamentary supervision of Orders in Council. Qd.s.140. Section 28A (tabling of regulations) of the *Acts Interpretation Act 1954-1989* applies in relation to Orders in Council made under this Act as if such orders were regulations.

SECTION 15.24 INACCURATE DESCRIPTIONS

15.24 Inaccurate descriptions. Qd.s.141. No misnomer, inaccurate description or omission in or from any Proclamation, Order in Council, regulation, rule, award, industrial 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 16—EMPLOYEES IN EMPLOYMENT OF STATE

SECTION 16.1 APPLICATION OF ACT TO CROWN

16.1 Application of Act to Crown. (1) This Act other than Part 14 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.

(2) In no case is the Crown liable to prosecution in respect of an offence against this Act.

SECTION 16.2 CONFLICT BETWEEN AWARD, ETC., AND STATUTORY DETERMINATION

16.2 Conflict between award, etc., and statutory determination. If an award, industrial 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—

- prescribes a means by which that matter must, or may, be determined;
- and
- does not prescribe to the effect that in determining that matter any relevant award or decision of the Commission or industrial 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

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.

SECTION 16.3 PROTECTION OF PUBLIC PROPERTY AND OFFICERS

16.3 Protection of public property and officers. (1) In no case is execution or attachment, or process in the nature thereof, to be issued against property or revenues of—

- the Crown;
- any department of government;

to enforce an award or industrial 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 or industrial agreement or in respect of any breach thereof.

SECTION 16.4 AMBIT OF REFERENCE TO CROWN

16.4 Ambit of reference to Crown. (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—

- to be, or to represent, the Crown;
- or

• 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 16.1 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 16.3 to the Crown does not include reference to an instrumentality or body such as is referred to in subsection (1).

SECTION 16.5 REPRESENTATION OF PUBLIC SECTOR UNITS

16.5 Representation of public sector units. (1) In this section, and in section 16.6, the expression “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 one of the following persons, or where this Act

so permits, by counsel, solicitor or agent on behalf of one 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.

SECTION 16.6 INDUSTRIAL CAUSE AFFECTING DIVERSE EMPLOYEES

16.6 Industrial cause affecting diverse employees. (1) If the Minister determines an industrial cause to be one that affects, or is likely to affect, employees in more than one 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—

- agreement made by the chief executive of the department as employer pursuant to subsection (1);
- or
- 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 17—WAGES

Division 1—Protection for Wages

SECTION 17.1 INTERPRETATION

17.1 Interpretation. (1) In this Division, except where a contrary intention appears—

“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.

SECTION 17.2 WAGES ARE FIRST CHARGE ON MONEYS DUE TO EMPLOYER

17.2 Wages are first charge on moneys due to employer. Wa.s.4. (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 17.5, 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.

SECTION 17.3 ASSIGNMENT, ETC., OF MONEYS DUE AND PAYABLE INEFFECTUAL AGAINST CLAIMS FOR WAGES

17.3 Assignment, etc., of moneys due and payable ineffectual against claims for wages. Wa.s.5. (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.

SECTION 17.4 MONEYS DUE TO OR RECEIVED BY EMPLOYER TO BE APPLIED IN PAYMENT OF WAGES DUE OR TO BECOME DUE

17.4 Moneys due to or received by employer to be applied in payment of wages due or to become due. Wa.s.6. (1) Moneys—

- due and payable to an employer by a prime contractor;
or
- 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.

SECTION 17.5 NOTICE OF ATTACHMENT

17.5 Notice of attachment. Wa.s.7. 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.

SECTION 17.6 CONSEQUENCES OF NOTICE OF ATTACHMENT

17.6 Consequences of notice of attachment. Wa.s.7. (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—

- the order of an Industrial Magistrate;
- or
- the withdrawal as prescribed of the notice of attachment.

Payment under this subsection—

- (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.

(3) Moneys paid to a Clerk of the Magistrates Court under subsection (2) are not to be paid out except—

- on the order of an Industrial Magistrate;
- or
- on withdrawal as prescribed of the relevant notice of attachment.

(4) 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.

(5) 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.

SECTION 17.7 ORDERS FOR PAYMENT BY PRIME CONTRACTOR OR CLERK OF THE COURT

17.7 Orders for payment by prime contractor or clerk of the court.

Wa.ss.8,10. (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 17.6(2).

Payment required by the preceding paragraph 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.

(4) 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—

- the determination of the appeal and any proceedings consequent thereon;

or

- the withdrawal or discontinuance of the appeal;

whichever event occurs.

(5) 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—

- at the time of service of such order or orders;
- or
- at the time of payment under the order or orders;

whichever is the greater.

SECTION 17.8 EMPLOYEES TO BE PAID ACCORDING TO TIME AT WHICH NOTICES OF ATTACHMENT ARE SERVED

17.8 Employees to be paid according to time at which notices of attachment are served. Wa.s.9. (1) Subject to sections 17.5 to 17.7 inclusive 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.

SECTION 17.9 EMPLOYEE MAY SUE PRIME CONTRACTOR

17.9 Employee may sue prime contractor. Wa.s.11. If a prime contractor is served with a copy of the Industrial Magistrate's order duly made under section 17.7 (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—

- had there been no attachment of moneys under this Part;
- and
- had the moneys required by the attachment under section 17.5 to be retained been due and payable to the employer and unpaid.

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.

(2) 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 17.2 (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.

SECTION 17.10 CESSATION OF ATTACHMENT NOT TO PREJUDICE PRIME CONTRACTOR

17.10 Cessation of attachment not to prejudice prime contractor.

Wa.s.13. If an attachment of moneys under section 17.5 in connexion with an employee's claim for wages to which an order under section 17.7 relates ceases to operate by reason of—

- satisfaction of the employee's claim;
or
- 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.

SECTION 17.11 DISCHARGE BY EMPLOYEE FOR PAYMENT RECEIVED

17.11 Discharge by employee for payment received. Wa.s.14. An employee who receives payment of an amount on account of a claim for wages to which an order under section 17.7 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.

SECTION 17.12 REMEDY OF EMPLOYEES OF SUBCONTRACTOR

17.12 Remedy of employees of subcontractor. Wa.s.16. (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 17.1 and this section) the term "employer" is substituted for the term "prime contractor" and the term "subcontractor" is substituted for the term "employer".

SECTION 17.13 PRIME CONTRACTOR'S RIGHT TO REIMBURSEMENT

17.13 Prime contractor's right to reimbursement. Wa.s.18. 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.

This section applies in the case referred to in paragraph (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.

SECTION 17.14 MODE OF SERVICE

17.14 Mode of service. A notice of attachment or a copy of an Industrial Magistrate's order under section 17.7 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.

SECTION 17.15 INDUSTRIAL MAGISTRATE MAY HEAR CLAIM FOR WAGES EX PARTE

17.15 Industrial Magistrate may hear claim for wages ex parte. 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

SECTION 17.16 PAYMENT OF WAGES

17.16 Payment of wages. Qd.s.97; Wa.ss.19,20,23 to 25A. (1) An employer who employs an employee to perform work for a price or

rate as fixed by any award, industrial 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 authorized 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 or permit;

or

(b) the price or rate so agreed exceeds the price or rate fixed by any relevant award, industrial 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 authorized 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 1918-1983*.

(4) Wages payable to an employee must be paid—

- to the employee in Australian units of currency and parts thereof, or as authorized by subsection (5);

- at least monthly.

(5) 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 (6), 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 or industrial agreement.

(6) 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.

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.

(7) 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 authorized 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 17.19 applies;
- or
- (b) the employer has complied with an Industrial Inspector's demand made under section 14.11 in respect of such wages.

(8) 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.

SECTION 17.17 PROVISION FOR PAYMENT OF WAGES CONTRARY TO S.17.16 VOID

17.17 Provision for payment of wages contrary to s.17.16 void. Wa.ss.19,20. 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 17.16;
- or
- (b) for the making of any deduction from wages in contravention of section 17.16;

is void.

SECTION 17.18 CONTRACT NOT TO STIPULATE MODE OF EXPENDING WAGES

17.18 Contract not to stipulate mode of expending wages. Wa. s. 21. (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.

SECTION 17.19 PAYMENT OF UNPAID WAGES, ETC., WHERE EMPLOYEE'S WHEREABOUTS UNKNOWN

17.19 Payment of unpaid wages, etc., where employee's whereabouts unknown. Qd.s.97. (1) If an employer is unable to comply with section 17.16 (7) 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 14.11 in respect of such wages.

SECTION 17.20 RECOVERY OF WAGES, ETC.

17.20 Recovery of wages, etc. Qd.ss.17,97; Wa.s.20. (1) An employee, or on the employee's behalf—

- an industrial organization of employees of which the employee is a member;
- or
- a person authorized by the employee for the purpose;
- or
- an Industrial Inspector;

may make application to an Industrial Magistrate for an order for payment of wages due and payable to the employee, or payable on account of the employee, and unpaid.

(2) 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.

(3) 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.

(4) Notwithstanding subsection (3) 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.

(5) 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 authorized 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.

SECTION 17.21 ENFORCEMENT OF INDUSTRIAL MAGISTRATE'S ORDER

17.21 Enforcement of Industrial Magistrate's order. Qd.s.97. (1) An order of an Industrial Magistrate—

- for payment by an employer of wages found to be due and payable;
- for payment by an employer of costs in proceedings relating to wages unpaid;

is enforceable as an order for payment of money made by justices under the *Justices Act 1886-1988*, the provisions of which apply and extend accordingly.

(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 1921-1982*;
- (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.

SECTION 17.22 RECOVERY FROM EMPLOYEE OF AMOUNTS OVERPAID

17.22 Recovery from employee of amounts overpaid. Wa.s.25B. (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 (3).

Deductions duly commenced may extend over a period of 6 years following the payment of the amount in question.

(3) 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, two-thirds 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 one-third of the employee's gross wages for the period, whichever is the greater.

SECTION 17.23 DEDUCTION IN DEFAULT OF NOTICE OF TERMINATION

17.23 Deduction in default of notice of termination. If a contract of employment is governed by an award or industrial 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.

SECTION 17.24 MINOR MAY SUE

17.24 Minor may sue. Wa.s.39. 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

SECTION 17.25 INTERPRETATION

17.25 Interpretation. 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.

SECTION 17.26 WAGES RECOVERABLE AGAINST MORTGAGEE WHERE MORTGAGOR DEFAULTS

17.26 Wages recoverable against mortgagee where mortgagor defaults. *Wa.s.36.* (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 connexion with a crop that is subject to a lien;
- or
- (c) in connexion 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 connexion 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 authorized 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.

SECTION 17.27 DISTRESS WARRANT LEVIED ON PROPERTY OF MORTGAGOR OR MORTGAGEE

17.27 Distress warrant levied on property of mortgagor or mortgagee.

Wa.s.36. (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 connexion with property referred to in section 17.26(1), so far as such land (and fixtures thereon), crop, machinery or stock is concerned—

- (a) authorizes 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 mortgagor under the security.

SECTION 17.28 APPLICATION OF SS.17.26 AND 17.27 TO MINES

17.28 Application of ss.17.26 and 17.27 to mines. Wa.s.36. (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 connexion 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 17.26 and 17.27 apply in relation to the case, with any necessary adaptation.

(2) A mortgagee is not liable, pursuant to the application of sections 17.26 and 17.27 as prescribed by subsection (1), for wages or earnings of the employee that have become due and payable—

- (a) more than one month before the employee first applies to the mortgagee for payment of the wages or earnings;

or

- (b) more than one month before the mortgagee takes possession of, or sells, the mine, machinery or apparatus;

whichever period is earlier.

SECTION 17.29 PRIORITY IN PAYMENT OF WAGES ETC. EARNED IN MINE

17.29 Priority in payment of wages etc. earned in mine. Wa.s.37.

(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.

This subsection applies only to the extent that a law of the State may validly apply to the distribution of assets in a winding-up.

SECTION 17.30 PROVISIONS CONCERNING APPLICATION OF SS.17.28 AND 17.29

17.30 Provisions concerning application of ss.17.28 and 17.29. **Wa.s.37.** (1) In sections 17.28 and 17.29 the term “mine” means a mine within the meaning of the *Mines Regulation Act 1964-1983*.

(2) Where a first charge exists in accordance with section 17.29(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 17.29(1) or that are to be paid in priority to all other debts in a winding-up in accordance with section 17.29(2) rank equally among themselves and, if necessary, abate in equal proportions among themselves.

PART 18—OFFENCES

SECTION 18.1 CONTEMPT OF COURT

18.1 Contempt of Court. Qd.s.103. (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.

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.

(4) 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.

SECTION 18.2 OFFENCE TO DISOBEY CERTAIN ORDERS

18.2 Offence to disobey certain orders. Qd.s.113. 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.

SECTION 18.3 OBSTRUCTION OF POWER OF ENTRY ETC.

18.3 Obstruction of power of entry etc. Qd.s.130. If an Industrial Commissioner, or an officer of the Industrial Commission or other person, authorized as prescribed by section 4.30, is seeking to exercise a power conferred by section 4.30, 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.

Penalty: 40 penalty units or 12 months imprisonment or both.

SECTION 18.4 OBSTRUCTION OR HINDRANCE OF OFFICERS GENERALLY

18.4 Obstruction or hindrance of officers generally. Qd.s.107. (1) In this section the expression “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.

Penalty: 40 penalty units.

(3) Subsection (2) does not apply in a case provided for by section 18.3.

SECTION 18.5 IMPROPER CONDUCT TOWARDS INDUSTRIAL COMMISSIONER, INDUSTRIAL MAGISTRATE OR INDUSTRIAL REGISTRAR

18.5 Improper conduct towards Industrial Commissioner, Industrial Magistrate or Industrial Registrar. Qd.s.104. (1) In this section—

“prescribed person” means an Industrial Commissioner, an Industrial Magistrate or the Industrial Registrar;

“industrial authority” means the Industrial Commission, or an Industrial Magistrates Court, or the Industrial Registrar acting in the official capacity as 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.

Penalty: (a) if the offender is an industrial organization or other corporation, 200 penalty units;

(b) if the offender is an individual, 20 penalty units or imprisonment for 12 months, or both.

(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.

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.

SECTION 18.6 DISTURBANCES NEAR TRIBUNALS

18.6 Disturbances near tribunals. Qd.s.105. 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.

Penalty: 40 penalty units or 12 months imprisonment or both.

SECTION 18.7 CONTEMPT BY WITNESS

18.7 Contempt by witness. Qd.s.106. (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.

Penalty: 40 penalty units.

SECTION 18.8 DISCLOSURE OF CONFIDENTIAL MATERIAL TENDERED IN EVIDENCE

18.8 Disclosure of confidential material tendered in evidence. Qd.s.121. A person who—

- (a) gives as evidence;
or
- (b) publishes;

any material in contravention of section 8.11 or of any direction given under that section commits an offence against this Act.

Penalty: 16 penalty units.

SECTION 18.9 AVOIDING ACT'S OBLIGATIONS

18.9 Avoiding Act's obligations. Qd.ss.14,17. (1) An employer who dismisses or stands down an employee with intent to avoid any obligations imposed on the employer by this Act, any award or industrial agreement in respect of payment to or on account of the employee for any public holiday, or leave due or accruing to the employee by way of annual leave, sick leave or long service leave, commits an offence against this Act.

Penalty: 40 penalty units.

(2) The court that convicts a defendant of the offence defined in subsection (1) 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.

(3) A person who enters into arrangements referred to in section 11.31 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.

SECTION 18.10 OFFENCE RE LONG SERVICE LEAVE FOR EMPLOYEES NOT GOVERNED BY AWARDS, ETC.

18.10 Offence re long service leave for employees not governed by awards, etc. Qd.s.19. A person who fails to comply with any determination or general ruling made or declared by the Industrial Commission under section 11.34, commits an offence against this Act.

Penalty: 16 penalty units.

SECTION 18.11 OFFENCE RE COMPULSORY CONFERENCE

18.11 Offence re compulsory conference. Qd.s.39. A person who fails to comply with any provision of section 12.3 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.12 OFFENCE RE SECRET BALLOT

18.12 Offence re secret ballot. Qd.s.99. (1) In subsection (2) the expression "secret ballot" means a secret ballot conducted pursuant to section 12.5.

(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 authorized 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

authorized 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 authorized 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.

Penalty: 40 penalty units.

A police officer may arrest without warrant a person found by the officer committing any offence specified in paragraph (a), (b), (c) or (d) and may institute a prosecution in respect of such offence.

(3) 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.

SECTION 18.13 FAILURE TO COMPLY WITH DIRECTION FOR PERFORMANCE OF RULES OF INDUSTRIAL ORGANIZATION

18.13 Failure to comply with direction for performance of rules of industrial organization. Qd.s.50. A person who fails to comply with an order of the Industrial Court made under section 13.23 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.14 OFFENCE RE PROPERTY OF INDUSTRIAL ORGANIZATION

18.14 Offence re property of industrial organization. Qd.s.60.

- (1) A person who—
 - (a) by any false representation, or any imposition, obtains possession of moneys, securities, records or effects of an industrial organization;
 - 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 organization;

commits an offence against this Act.

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—

- to deliver up as directed by the order all moneys, securities, records or effects to which the conviction relates;
- 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.

SECTION 18.15 OFFENCES RE ACTION BY INDUSTRIAL REGISTRAR IN RESPECT OF ELECTION INQUIRY

18.15 Offences re action by Industrial Registrar in respect of election inquiry. Qd.s.77. A person who—

- (a) refuses or fails to comply with a requirement under section 13.32;
- or
- (b) obstructs or hinders the Industrial Registrar or any other person in the exercise of powers under section 13.32;

commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.16 OFFENCES RE ENFORCEMENT OF ORDERS CONCERNING DISPUTED ELECTIONS IN INDUSTRIAL ORGANIZATION

18.16 Offences re enforcement of orders concerning disputed elections in industrial organization. Qd.s.82. A person who obstructs or hinders the carrying out of an order of the Industrial Commission under Division 5 of Part 13 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.17 OFFENCES RE BALLOT PAPERS AND OTHER RECORDS

18.17 Offences re ballot papers and other records. Qd.s.85. A person who fails to comply with section 13.40 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.18 OFFENCES RE ELECTIONS

18.18 Offences re elections. Qd.s.86. A person who—

- (a) refuses or fails to comply with a direction given under section 13.41;
or
- (b) obstructs or hinders—
 - (i) a person in the conduct of an election under section 13.41;
or
 - (ii) a person conducting an election under section 13.42 in taking action under section 13.41(6);
or
 - (iii) a person in carrying out a direction under section 13.41(6);
or
 - (iv) a person conducting an election pursuant to an arrangement under section 13.64;

commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.19 OFFENCE RE TAKING OF BALLOT FOR OFFICE IN INDUSTRIAL ORGANIZATION

18.19 Offence re taking of ballot for office in industrial organization. Qd.s.88. (1) A person who, in respect of an election for an office in an industrial organization or a branch of an industrial organization—

- (a) impersonates another with a view to obtaining a ballot paper to which the person is not entitled;
- (b) impersonates another with a view to voting in the election;
- (c) destroys, defaces, alters, takes or interferes with a nomination paper, ballot paper or envelope;
- (d) puts a ballot paper, or other paper touching the election into a ballot box or other receptacle in use for ballot purposes;
- (e) delivers, or puts in the post for delivery, to a person receiving ballot papers for the election a ballot paper, or other paper touching the election;
- (f) records a vote having no entitlement to do so;
- (g) records more than one vote;
- (h) forges a nomination paper, ballot paper or envelope, or

utters a nomination paper, ballot paper or envelope knowing it to be forged;

- (i) provides a ballot paper to another;
- (j) obtains, or has possession of, a ballot paper;
- (k) destroys, opens, takes or interferes with a ballot box or other receptacle in use for ballot purposes;

commits an offence against this Act, unless in any such case the person has lawful authority or excuse for doing so.

(2) A person who, in respect of an election for an office in an industrial organization or a branch of an industrial organization—

- threatens, offers or suggests;
- uses, inflicts, causes or procures;

violence, injury, punishment, damage, loss or disadvantage because of, or to induce—

- a candidature, or withdrawal of a candidature in the election;
- a vote, or an omission to vote, in the election;
- support for, or opposition to, a candidate in the election;
- a promise of a vote, omission to vote, support or opposition for or to a candidate or cause in the election;

commits an offence against this Act.

(3) A person who in respect of an election for an office in an industrial organization or a branch of an industrial organization—

(a) requests, requires or induces another—

- to show a ballot paper to the person;
- to permit the person to see a ballot paper;

in such a manner that the person can see the vote recorded therein, while the paper is being marked or after it has been marked;

or

(b) being a person performing duties for the purposes of the election, shows to another, or permits another access to, a ballot paper used in the election otherwise than in the performance of those duties;

commits an offence against this Act, unless in any such case the person has lawful authority or excuse for doing so.

(4) A person who uses, inflicts, causes or procures violence, injury, punishment, damage, loss or disadvantage to another because that other has made an application under section 13.31 commits an offence against this Act.

(5) A person who commits an offence defined in subsection (1), (2), (3) or (4) is liable to a penalty of 40 penalty units.

SECTION 18.20 OFFENCES RE MEMBERSHIP OF INDUSTRIAL ORGANIZATION
18.20 Offences re membership of industrial organization. Qd.s.47.

(1) In this section the expression “union ticket” means a receipt, document or writing acknowledging that the person named therein is a member, or has renewed membership of the industrial organization or that the person has complied with the rules of the industrial organization relating to the obtaining or renewal of membership thereof.

(2) An industrial organization that—

(a) fails to admit to its membership a person who is entitled to be admitted to membership of the industrial organization pursuant to section 13.44—

- within 3 months following the date of the person’s application in that behalf;

or

- if a question or dispute within the application of section 13.45 has within that period of 3 months been referred to the Industrial Court for determination, within one 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 organization, or to remain a member thereof, pursuant to the provisions of section 13.44;

and

(ii) has complied with the rules of the industrial organization that relate to obtaining membership thereof or to a renewal of such membership;

with a union ticket in respect of such compliance within one month following the date of such compliance;

commits an offence against this Act.

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 one complaint from time to time in respect of a period.

SECTION 18.21 OFFENCE RE YOUNG PERSON’S MEMBERSHIP

18.21 Offence re young person’s membership. Qd.s.60B. A person who contravenes the provisions of section 13.46 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.22 OFFENCES RE REGISTER OF MEMBERS AND OF OFFICERS OF INDUSTRIAL ORGANIZATION

18.22 Offences re register of members and of officers of industrial organization. Qd.s.56. If default is made in complying with a provision of section 13.47, 13.48 or 13.49, or with a direction of the Industrial Registrar under section 13.50, each of them—the industrial organization that is in default and the president and secretary of the industrial organization—commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.23 FAILURE TO PROVIDE INFORMATION RE AMALGAMATION BALLOT

18.23 Failure to provide information re amalgamation ballot. Cwlth.s.318. An officer or employee of an industrial organization, or of a branch of an industrial organization, who fails to comply with a requisition directed to the officer or employee under section 13.66 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.24 OFFENCE RE DUTY OF OFFICER OF INDUSTRIAL ORGANIZATION

18.24 Offence re duty of officer of industrial organization. Qd.s.60. An officer of an industrial organization who fails to comply with section 13.86 commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.25 FAILURE TO KEEP ACCOUNTS; OFFENCES RE AUDITOR

18.25 Failure to keep accounts; offences re auditor. Cwlth.ss.323,324,325. (1) An industrial organization that fails to comply with section 13.83, 13.84, 13.85 or 13.87(2) or (3) commits an offence against this Act.

Penalty: 40 penalty units.

(2) A person who contravenes or fails to comply with section 13.87(4) or (5) commits an offence against this Act.

Penalty: 40 penalty units.

(3) An auditor of an industrial organization who—

- (a) makes in a report referred to in section 13.88(1) a statement that to the auditor's knowledge is false or misleading in a material particular;

or

(b) fails to comply with section 13.88(5);

commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.26 OBSTRUCTION OR HINDRANCE OF AUDITOR

18.26 Obstruction or hindrance of auditor. Cwlth.s.326. (1) In this section "auditor" includes—

- (a) in subsection (2) (a) and (b), a person authorized by the auditor for the purposes of section 13.88(2) or 13.93;
- (b) in subsection (2) (c) and in subsection (4), a person authorized by the auditor for the purposes of section 13.96.

(2) An officer, employee or member of an industrial organization who—

- (a) obstructs or hinders the auditor of the industrial organization, or of the Industrial Registrar, in exercising the entitlement under section 13.88(2) (a);
- (b) refuses or fails to produce to the auditor of the industrial organization, 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 13.88(2) (a);
- (c) obstructs or hinders the auditor of the industrial organization in attending a part of a meeting that the auditor is entitled under section 13.96 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 organization that fails to comply with section 13.95 commits an offence against this Act.

(4) Where the auditor of an industrial organization—

- (a) attends a part of a meeting that the auditor is entitled under section 13.96 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.

A presiding officer who fails to comply with the preceding paragraph commits an offence against this Act.

(5) A person who commits an offence defined in this section is liable to a penalty of 40 penalty units.

(6) 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 organization or, as the case may be a person authorized by such auditor.

SECTION 18.27 FAILURE TO PROVIDE AND PRESENT REPORTS OF INDUSTRIAL ORGANIZATION

18.27 Failure to provide and present reports of industrial organization. Cwlth.s.327. (1) An industrial organization that fails to comply with section 13.91(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 organization that fails to provide a copy of a report, accounts or statements of a kind referred to in section 13.91(1) to a member of the industrial organization, in accordance with a statement of a kind referred to in section 13.91(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 organization that fails to comply with section 13.91(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 organization that fails to comply with section 13.91(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 one complaint, from time to time, in respect of a period.

SECTION 18.28 OFFENCE RE FALSE OR MISLEADING STATEMENT IN S.13.91 REPORT, ACCOUNTS OR STATEMENT

18.28 Offence re false or misleading statement in s.13.91 report, accounts or statement. Cwlth.s.327. If a member of the committee of management of an industrial organization—

- (a) provides to members of the industrial organization;
- or
- (b) publishes in a journal of the industrial organization or a branch of the industrial organization;

or

- (c) presents to a general meeting of the members of the industrial organization, or a meeting of the committee of management of the industrial organization;

comments on a matter dealt with in any report, accounts or statements of a kind referred to in section 13.91(1), or in a summary of the kind referred to in section 13.91(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.

Penalty: 40 penalty units.

SECTION 18.29 FAILURE TO LODGE ACCOUNTS WITH INDUSTRIAL REGISTRAR

18.29 Failure to lodge accounts with Industrial Registrar. Cwlth.s.328.
An industrial organization that fails to comply with section 13.92(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.

The offence defined in this section, being a continuing offence, may be charged in one complaint, from time to time, in respect of a period.

SECTION 18.30 OFFENCE RE INVESTIGATION BY INDUSTRIAL REGISTRAR

18.30 Offence re investigation by Industrial Registrar. Cwlth.s.329.

(1) A person who—

(a) refuses or fails—

- to attend before the Industrial Registrar in accordance with a requisition under section 13.92(7);
- or
- to provide information, or produce records, that the person is required to provide, or to produce under section 13.92(7);

(b) while purporting to comply with a requisition under section 13.92(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 13.92(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.

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 13.92(7) includes reference to that section as it applies under section 13.94(6).

SECTION 18.31 OFFENCES RE LODGING ACCOUNTS

18.31 Offences re lodging accounts. Cwlth.s.330. If a branch of an industrial organization fails to comply with section 13.94(5), the industrial organization 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.

The offence defined in this section, being a continuing offence, may be charged in one complaint, from time to time, in respect of a period.

SECTION 18.32 OFFENCE RE ACCOUNTS OF LOW INCOME INDUSTRIAL ORGANIZATION

18.32 Offence re accounts of low income industrial organization. Cwlth.s.331. An industrial organization that fails to comply with section 13.98(5),(7),(8) or (9) commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.33 FAILURE TO HAVE REGISTERED OFFICE OF INDUSTRIAL ORGANIZATION

18.33 Failure to have registered office of industrial organization. Qd.s.61. If an industrial organization has been established for a period of 7 days and has not complied with section 13.102, the industrial organization, 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.

The offence defined in this section, being a continuing offence, may be charged in one complaint, from time to time, in respect of a period.

SECTION 18.34 OFFENCES RE PARTICULARS OF LOANS, GRANTS AND DONATIONS

18.34 Offences re particulars of loans, grants and donations. Cwlth.s.322. An industrial organization that—

- (a) does not comply with section 13.104(1);
- or
- (b) lodges under section 13.104(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.

Penalty: 40 penalty units.

SECTION 18.35 OFFENCES RE PREJUDICE OF PERSON BECAUSE OF MEMBERSHIP OR NON-MEMBERSHIP OF INDUSTRIAL ORGANIZATION

18.35 Offences re prejudice of person because of membership or non-membership of industrial organization. Qd.ss.47A, 60A, 101B. (1) A person who contravenes section 13.107, 13.108, 13.109, 13.110 or 13.111 commits an offence against this Act.

- 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 one 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 13.107 or 13.108, 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 13.111(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 organization in question.

(5) If two 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 organization in question.

SECTION 18.36 OFFENCE OF OBSTRUCTION OF INDUSTRIAL INSPECTOR

18.36 Offence of obstruction of Industrial Inspector. Qd.s.134. A person who contravenes section 14.7 commits an offence against this Act.

Penalty: 16 penalty units.

SECTION 18.37 OFFENCE OF DISCLOSURE OF INFORMATION

18.37 Offence of disclosure of information. Qd.s.132. An Industrial Inspector, or other officer appointed for the purposes of this Act, who contravenes section 14.8 commits an offence against this Act.

Penalty: 16 penalty units.

SECTION 18.38 OFFENCES RE RECORDS OF TIME AND WAGES

18.38 Offences re records of time and wages. Qd.ss.108,126. (1) An employer who—

- (a) fails to keep and have available, in accordance with sections 15.3 and 15.6, a time and wages book or similar record required by section 15.3 to be kept;
- (b) fails to keep and have available, in accordance with sections 15.4 and 15.6, a wages book or similar record required by section 15.4 to be kept;
- (c) fails to indicate to an employee as required by section 15.8 in relation to payment of wages;
- (d) makes, causes to be made, or permits to be made—
 - an entry in a book or record referred to in paragraph (a) or (b);
 - an indication to an employee referred to in paragraph (c); that is false in a material particular;

commits an offence against this Act.

Penalty: 40 penalty units.

SECTION 18.39 OFFENCES RE REGISTER OF EMPLOYEES

18.39 Offences re register of employees. Qd.s.57. (1) An employer who—

- (a) fails to keep and have available, in accordance with sections 15.5 and 15.6, a register of employees required by section 15.5 to be kept and an index, if so required by section 15.5;
- (b) fails to comply with a direction given by the Industrial Registrar under section 15.11 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.

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.

SECTION 18.40 OFFENCES RE INSPECTIONS BY AUTHORIZED INDUSTRIAL OFFICERS

18.40 Offences re inspections by authorized industrial officers. Qd.s.136. (1) In this section the expression “authorized industrial officer” has the meaning assigned to the expression by section 15.1.

(2) A person who resists, obstructs or hinders an authorized industrial officer in the exercise of the officer’s entitlements under section 15.10 commits an offence against this Act.

Penalty: 16 penalty units.

(3) An authorized industrial officer who contravenes, or fails to comply with, any provision of section 15.10 commits an offence against this Act.

Penalty: 16 penalty units.

(4) A person who exercises the entitlements conferred on an authorized industrial officer under section 15.10 commits an offence against this Act unless the person is the holder of an authorization issued under section 15.2 or under section 136 of the *Industrial Conciliation and Arbitration Act 1961-1989* and such authorization is in force, and the person has exercised the entitlements in accordance with all conditions attached to the authorization.

Penalty: 16 penalty units.

SECTION 18.41 OFFENCE RE FALSE PRETENCES

18.41 Offence re false pretences. Qd.s.110; Wa.s.31. (1) A person who contravenes section 15.18(1) or (2) commits an offence against this Act.

Penalty: 40 penalty units.

(2) A person who contravenes section 15.18(3) commits an offence against this Act.

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: Provided

that the person is not to be dealt with under both this Act and *The Criminal Code* in respect of the same conduct.

SECTION 18.42 NON-PAYMENT OF WAGES

18.42 Non-payment of wages. Qd.s.97; Wa.s.34. (1) A person who fails to pay wages due and payable to an employee under any relevant award, industrial agreement or permit commits an offence against this Act.

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 or permit in accordance with the consent in writing of the employee relating to payment of such moneys commits an offence against this Act.

Penalty: 200 penalty units.

(3) An offence defined in subsection (1) or (2) is a continuing offence, which may be charged in one complaint, from time to time, in respect of a period, subject to this section.

Jurisdiction is hereby conferred on every Industrial Magistrate to hear and determine complaints for such an offence.

(4) 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.

(5) 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.

(6) Notwithstanding subsection (5)—

- (a) in respect of wages—
 - due and payable to;
 - or

- 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—

- due and payable to;

or

- 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.

(7) 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.

(8) A court may make an order such as is referred to in subsection (7)—

- notwithstanding any express or implied provision of any agreement to the contrary;
- on such terms as the court considers just.

SECTION 18.43 OFFENCE OF FAILURE TO MAKE OCCUPATIONAL SUPERANNUATION CONTRIBUTION

18.43 Offence of failure to make occupational superannuation contribution. (1) An employer who fails to make contribution on behalf of eligible employees to an approved occupational superannuation scheme or fund—

- at a level required by any relevant award or industrial agreement;
- and
- in accordance with such award or agreement;

commits an offence against this Act.

Penalty: 40 penalty units.

(2) The offence defined in subsection (1) is a continuing offence, which may be charged in one 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 or industrial 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 4.22(1) in relation to an approved occupational superannuation scheme or fund as the one to which an award or industrial 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 authorized by section 5.4 to make on an application made under that section, and the provisions of that section apply and extend accordingly.

SECTION 18.44 OFFENCE TO AGREE TO ACCEPT REDUCED WAGES

18.44 Offence to agree to accept reduced wages. Qd.s.113. (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 or permit commits an offence against this Act.

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 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 or permit.

SECTION 18.45 PUBLICATION OF STATEMENT RE EMPLOYMENT AT LESS THAN LAWFUL RATES

18.45 Publication of statement re employment at less than lawful rates. Qd.s.109. (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 or industrial 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.

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 an offence defined in subsection (1) is not to be commenced against—

- the printer or proprietor of a newspaper;
- the distributor or seller of a newspaper;
- the printer, maker, operator or proprietor of an advertising device or advertising medium;
- the printer of a document uttered for advertising purposes;
- any person acting under the authority of any of such persons;

unless—

- (a) 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
- (b) that person has published, or caused the publication of, the statement after receipt of such warning;
and
- (c) 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.

SECTION 18.46 OFFENCE TO OFFER OR ACCEPT PREMIUMS

18.46 Offence to offer or accept premiums. (1) A person who—

- offers;
- demands;
- requests;
- accepts or agrees to accept;

any consideration, premium, gift, allowance or forbearance in connexion with the employment of any person commits an offence against this Act.

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.

SECTION 18.47 BREACHES OF AWARDS, ETC., GENERALLY

18.47 Breaches of awards, etc., generally. Qd.s.113. (1) A person who breaches a relevant award, industrial agreement or permit commits an offence against this Act.

Penalty:

- (a) for a first offence—
 - (i) if the defendant is an employer or industrial organization, 20 penalty units;
 - (ii) if the defendant is an employee, 4 penalty units;
- (b) for a second or subsequent offence consisting in a breach of the same provision of the award, agreement or permit—
 - (i) if the defendant is an employer or industrial organization, 40 penalty units;
 - (ii) if the defendant 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 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 or permit—

- the employee is taken to have received;
- and
- 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.

SECTION 18.48 INJUNCTION RESTRAINING BREACHES

18.48 Injunction restraining breaches. Qd.s.113. (1) If a person has been convicted of an offence consisting in a breach of an award, industrial 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.

Penalty: 200 penalty units.

SECTION 18.49 PERSONS CONSIDERED PARTIES TO OFFENCES

18.49 Persons considered parties to offences. Qd.s.111. (1) Without prejudice to the operation of section 7 of *The Criminal Code*, every industrial organization 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 18.42 or 18.43 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:—

- the members of the governing body of the corporation, by whatever name called;
- 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.

SECTION 18.50 GENERAL PENALTY

18.50 General penalty. Qd.s.112. (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.

This subsection 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 or permit, or payable at a level greater than that provided for by an award, industrial 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.

(2) 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.

(3) 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 organization or other corporation, to a penalty of 40 penalty units;
- (b) if the offender is an individual, to a penalty of 4 penalty units.

(4) The whole of all penalties recovered under this Act are to be paid into the Consolidated Revenue Fund.

SECTION 18.51 ATTEMPT TO COMMIT OFFENCE

18.51 Attempt to commit offence. Qd.s.111. (1) A person who attempts to commit an offence—

- defined in this Act;

or

- 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*.

SECTION 18.52 PROCEEDINGS GENERALLY

18.52 Proceedings generally. Qd.s.116. (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 1886-1988* 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 1886-1988*) the Industrial Magistrate at that particular place is authorized 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.

SECTION 18.53 RECOVERY OF MONEYS BY INDUSTRIAL ORGANIZATION

18.53 Recovery of moneys by industrial organization. Qd.s.116. 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 or permits;
- (b) offences against this Act;
- (c) recovery of moneys due to an employee;

may be taken by an industrial organization in its registered name.

SECTION 18.54 RECOVERY OF MONEYS FROM INDUSTRIAL ORGANIZATION

18.54 Recovery of moneys from industrial organization. Qd.s.115. For the recovery of—

- (a) any penalty imposed under this Act on an industrial organization;
- (b) any sum ordered under this Act to be paid by an industrial organization;

process may be issued and executed against property of which the industrial organization has legal title, or property in which the industrial organization 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 organization, as if the industrial organization, as a body corporate, were the absolute owner of such property or interest.

PART 19—INDUSTRIAL RELATIONS CONSULTATIVE COMMITTEE

SECTION 19.1 ESTABLISHMENT OF COMMITTEE

19.1 Establishment of committee. 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”.

Such committee is referred to in this Part as “the Committee”.

SECTION 19.2 MEMBERSHIP

19.2 Membership. (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 organizations of employers nominated by all or any of those industrial organizations 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 organizations of employees nominated by all or any of those industrial organizations 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, one being representative of employers and one being representative of employees, nominated by the Minister;
- (g) one person representative of the Queensland Employment, Vocational Education and Training Board constituted under the *Employment, Vocational Education and Training Act 1988*, 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.

SECTION 19.3 APPOINTMENT OF MEMBERS

19.3 Appointment of members. 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.

SECTION 19.4 RECOMMENDATION OF MEMBERS IN ABSENCE OF NOMINATION BY INDUSTRIAL ORGANIZATIONS

19.4 Recommendation of members in absence of nomination by industrial organizations. If upon request of the Minister made of them on any occasion, the industrial organizations 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 one or more persons, as required, representative of the industrial organizations in default without further reference on that occasion to any of the industrial organizations in default.

The person or persons so recommended are taken to have been duly nominated as prescribed.

SECTION 19.5 TERM OF OFFICE

19.5 Term of office. (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 re-appointment 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.

SECTION 19.6 DEPUTIES OF MEMBERS

19.6 Deputies of members. (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.

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.

(2) The provisions of this Part that provide for nomination by industrial organizations 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.

SECTION 19.7 EMOLUMENTS OF COMMITTEE MEMBERS

19.7 Emoluments of Committee members. Members of the Committee, other than the members thereof who are officers of the Public Service of Queensland, are entitled to such fees and allowances as are approved for the time being by the Governor in Council.

SECTION 19.8 PROCEEDINGS OF COMMITTEE

19.8 Proceedings of Committee. (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.

Business must not be conducted at a meeting of the Committee unless a quorum is present.

(4) 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.

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.

In the event of an equality of votes on any item of business the presiding officer has a second or casting vote.

(5) 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.

Records of the Committee are in the custody of the presiding officer.

SECTION 19.9 FUNCTIONS OF COMMITTEE

19.9 Functions of Committee. (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 organization 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 20—ELECTRICITY INDUSTRY PROVISIONS

SECTION 20.1 REPEALS

20.1 Repeals. The following Acts are repealed—

- *Electricity Authorities Industrial Causes Act 1985*;
- *Electricity Authorities Industrial Causes Act Amendment Act 1988*;
- *Electricity (Continuity of Supply) Act 1985*;
- *Electricity (Industrial Causes and Continuity of Supply) Acts Amendment Act 1985*.

SECTION 20.2 TERMINATION OF TRIBUNAL AND APPOINTMENTS

20.2 Termination of tribunal and appointments. (1) Upon the commencement of this Act, the tribunal called the "Electricity Authorities Industrial Causes Tribunal" ceases to exist.

(2) Upon the commencement of this Act—

- (a) every commission issued whereby a person was appointed to be a member of the tribunal referred to in subsection (1)

- ceases to be of any force or effect and the appointment of such person as such member terminates;
- (b) every appointment of a person to constitute the tribunal referred to in subsection (1) during the illness, absence or unavailability of a member of such tribunal, or for the purpose of disposing of pending industrial causes, terminates.

SECTION 20.3 ADJUSTMENT OF JURISDICTIONS

20.3 Adjustment of jurisdictions. Upon the commencement of this Act—

- (a) it is legally competent to the Industrial Commission to exercise the jurisdiction had by it under law, and which was denied to it by section 10 of the *Electricity Authorities Industrial Causes Act 1985-1988*;
- (b) it is legally competent to the Industrial Court to exercise the jurisdiction had by it under law, and which was denied to it by section 18(1) of the *Electricity Authorities Industrial Causes Act 1985-1988*;
- (c) the jurisdiction conferred by section 18(2) of the *Electricity Authorities Industrial Causes Act 1985-1988* on the Supreme Court is withdrawn.

SECTION 20.4 LIMITED CONTINUANCE OF CONTRACTS

20.4 Limited continuance of contracts. (1) Every contract of employment made pursuant to authority conferred by section 32(1) of the *Electricity Authorities Industrial Causes Act 1985*, or that Act as amended at a material time, and every contract of service deemed under section 32(5) of the *Electricity Authorities Industrial Causes Act 1985-1988* to have been made under section 32(1) of that Act, which contract is in force at the commencement of this Act, continues to have force and effect until 30 September 1990, and no longer, or until a date on which the contract is terminated according to law, whichever period is shorter.

(2) Notwithstanding the termination of a contract as prescribed by subsection (1), a claim arising under the contract in respect of a time before such termination may be heard and determined in accordance with this Act until 30 September 1991, and not thereafter, as if such termination had not occurred.

SECTION 20.5 SAVING OF DECISIONS, ETC., OF TRIBUNAL

20.5 Saving of decisions, etc., of tribunal. (1) This Part does not affect the continued operation and binding effect of any decision, determination, order, recommendation or action made or done by the tribunal referred to in section 20.2(1) having force and effect at the commencement of this Act: Provided that if such decision, determination, order, recommendation or action relates to a matter arising under a

contract referred to in section 20.4 its continuance is subject to the continuance in force of the contract.

(2) A decision of the tribunal referred to in section 20.2(1) in the nature of an award, and an agreement approved by that tribunal in the nature of an industrial agreement, having force and effect at the commencement of this Act, will continue to bind the persons on whom it purports to be binding, to the exclusion of any award of, or industrial agreement approved by, the Industrial Commission that, but for this provision, would be binding on those persons until—

- it is varied by a decision of the Commission;
- or
- an award of or industrial agreement approved by, the Commission is substituted for it.

SECTION 20.6 CONTINUANCE OF EXISTING PROCEEDINGS

20.6 Continuance of existing proceedings. Proceedings that at the commencement of this Act are pending before the tribunal referred to in section 20.2(1)—

- (a) are to be taken as duly commenced in and to be pending before the Industrial Commission;
- and
- (b) are to be continued and completed before the Commission, which has and may exercise therein all or any of the powers of the Commission as prescribed.