WORKPLACE RELATIONS BILL1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The principal objective of the legislation is to provide a framework for cooperative workplace relations that promotes economic prosperity and welfare by:

- encouraging, through higher productivity and a flexible and fair labour market, the pursuit of high employment, improved living standards, low inflation, and national and international competitiveness;
- ensuring the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level;
- enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Bill;
- providing the means for:
  - wages and employment conditions to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level;
  - ensuring an effective safety net of fair and enforceable minimum wages and employment conditions is maintained;
- providing a framework of rights and responsibilities for employers and employees, and their organisations, that support fair and effective agreement making and ensure they abide by awards and agreements applying to them;

- enabling the Queensland Industrial Relations Commission (the commission) to:
  - establish an award safety net based on simplified awards to increase flexibility at the workplace or enterprise level;
  - assist in the making of collective and individual agreements that are relevant to the needs of individual workplaces and enterprises;
  - prevent and settle industrial disputes as far as possible by conciliation and, if appropriate and within specified limits, by arbitration;
- helping employees balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers;
- respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination;
- assisting in giving effect to Australia's international obligations in relation to labour standards.

Consequential amendments are being made to the *Acts Interpretation Act 1954*, *Public Service Act 1996*, and the *Vocational Education, Training and Employment Act 1991* to reflect the objectives of this legislation and to standardise certain meanings and terms common to those Acts and this Bill.

In so far as the *Trading (Allowable Hours) Act 1990* is concerned, the principal objectives of the amendments are to:

- provide more flexible trading hours for small retail traders;
- require the commission to take into account the business interests of the various sized retail operators as well as the interests of consumers and public interest in determining trading hours;
- empower the commission to determine trading hours outside the core trading hours;
- allow occupiers of retail shops to trade on Labour Day irrespective of whether or not employees are employed in the shop on that day.

The primary objective of the amendments to the *Workplace Health and Safety Act 1995* is to clarify who can appeal against a decision of an

industrial magistrate, for example, any persons other than the defendant, such as the complainant.

The object of the amendment to the *Anzac Day Act 1995* is to correct an error in the drafting of the original Act.

The *Brisbane of City Garbage Act 1985* is repealed since the need for its introduction no longer exists.

Reasons for the Bill

This legislation is directed at supporting a cooperative workplace culture based on employers and employees taking more direct responsibility for their employment relationship and at allowing for more flexibility in working arrangements.

The Bill is based on the following principles:

- a commitment to freedom of choice to allow employers, employees and unions to enter into workplace arrangements best suited to their needs;
- an emphasis on collective and individual agreements that are fair and underpinned by a no-disadvantage test;
- a simplified but effective award safety net so that those who choose to remain on the award system will have the benefit of enforceable minimum wages and employment conditions;
- an unfair dismissal regime that will ensure a 'fair go all round' and restore business confidence in engaging employees;
- a system that is harmonised with Commonwealth reforms, but which enhances a strong and effective State system.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles in that it has sufficient regard for the rights and liberties of individuals and the institution of Parliament. The amendments made to the other Acts do not adversely affect fundamental legislative principles.

Estimated cost for government implementation

Funds are available to maintain and provide for the offices, institutions and functions maintained or established by this Bill.

Consultation

Extensive consultation has taken place with key participants in the Queensland industrial relations system in the preparation of the Bill. More than 60 major employee and employer associations and employers were invited to provide submissions on the reformation of the industrial relations system. Many of the recommendations contained in these submissions were taken into account during the drafting of the legislation.

NOTES ON PROVISIONS

CHAPTER 1— PRELIMINARY

Short title

Clause 1 provides a short title for the legislation.

Commencement

Clause 2 provides that the Act (including amendments to the *Acts Interpretation Act 1954, Trading (Allowable Hours) Act 1990, Vocational Education, Training and Employment Act 1991,* and the *Workplace Health and Safety Act 1995*) will commence on a day fixed by proclamation. However, the amendment of the *Anzac Day Act 1995* will be backdated to 3 March 1995 in order to correct an error in that legislation.

Principal object of this Bill

Clause 3 sets out the principal objects of the Bill. As indicated in the General Outline above, this Act will facilitate cooperative workplace

relations by providing a framework which allows employees and employers to decide on the most appropriate arrangements that meet their particular circumstances at the workplace level.

The Bill will ensure that an effective safety net of fair and enforceable minimum wages and employment conditions is maintained whilst providing a framework of rights and responsibilities for employers and employees, and their organisations, that supports fair and effective agreement making.

Definitions—the dictionary

Clause 4 provides for a dictionary in schedule 5 at the back of this Act. It defines particular words used in the Bill.

References to making false or misleading statements

Clause 5 provides that a person being reckless about whether a statement is false or misleading is included in any reference to a 'person making a statement knowing that it is false or misleading'.

References to engaging in conduct

Clause 6 provides that a reference to being a party to or concerned in conduct is included in any reference to 'engaging in conduct'.

Who is an employee

Clause 7 defines an 'employee' for the purposes of the Act.

Who is an employer

Clause 8 defines an 'employer' for the purposes of the Bill.

What is an industrial matter

Clause 9 defines an 'industrial matter'. It sets out all matters that are an 'industrial matter' for the purposes of this Bill.

CHAPTER 2—AGREEMENTS

PART 1—CERTIFIED AGREEMENTS

Division 1—Preliminary

Object

Clause 10 provides that the object of Part 1 is to facilitate the making, certifying by the commission, and operation, of certain agreements (particularly at the level of a single business or part of a single business).

Commission's functions

Clause 11 provides that the commission must, as far as practicable, perform its functions in a way which furthers the objects of the Act, and in particular the object of this part. Clause 335 (4) of the Act in relation to the commission's requirement to consider the public interest in making a decision does not apply to its functions under this part unless specifically required to do so by a provision of this part.

Single business and employers taken to be 1 employer

Clause 12 defines 'single business' for the purposes of this part and provides that where two or more employers carry on a business as a joint venture or common enterprise, they are deemed to be the one employer. This includes two or more corporations which are related to each other in terms of the Corporations Law and each carrying on a single business. In such cases, the corporations may be treated as one employer and the single businesses may be treated as one single business.

Additional operation of part

Clause 13 extends the operation of Part 1 to allow for multiple- business agreements. It provides that only a full bench may certify a multiple-business agreement but the full bench must not certify a

multiple-business agreement unless it is satisfied that to do so is in the public interest, and that the matters covered by the agreement cannot be more appropriately dealt with by a certified agreement other than a multiple-business agreement.

Nominal expiry date

Clause 14 defines the 'nominal expiry date' of a certified agreement.

Valid majority

Clause 15 provides that an employer must give all persons employed a reasonable opportunity to decide whether they want to make the agreement or give the approval. A majority of the persons must genuinely decide that they want to make the agreement or give the approval. A valid majority is necessary for the extension of the nominal expiry date or amendment or termination of the agreement.

Working day

Clause 16 provides that, for the purposes of this part, a 'working day', in relation to a single business or part, is defined to be a day on which employees normally perform work in the business or part.

Division 2—Making agreements

What this division covers

Clause 17 provides that Division 2 sets out the requirements to be satisfied for certain agreements between employers and employee organisations or employees.

Nature of agreement

Subclause 18(1) requires that for an application to be made to the commission, there must be an agreement in writing about matters

pertaining to the relationship between the employer and all employees employed in the single business to which the agreement relates.

Subclause 18(2) provides that an agreement must be made in one of three ways: in accordance with Clause 19 (agreements with employee organisations), Clause 20 (agreements directly between an employer and employees), or Clause 22 (greenfields agreements in relation to new businesses).

Agreement with employee organisations

Clause 19 allows an employer to make an agreement with one or more employee organisations if, at the time the agreement is made, each organisation has at least one member employed in the single business and is entitled to represent that member's industrial interests.

The agreement can only be approved by a valid majority of the employees after they have had 14 days access to the proposed agreement and the employer has taken steps to ensure that its terms have been explained to employees having regard to their particular circumstances and needs, for example women, young persons and persons from a non-English speaking background.

Agreement with employees

Clause 20 sets out the requirements for agreements to be made between employers and relevant employees.

Subclause 20(1) provides that an employer may make an agreement directly with a valid majority of the relevant employees employed when the agreement is made.

Subclause 20(2) provides that the employer must take reasonable steps to ensure that every relevant employee is given 14 days notice of intention to make the agreement.

Subclause 20(3) prohibits the agreement being made before the 14 days have passed.

Subclause 20(4) provides that the employer must take reasonable steps to ensure that all relevant employees have the proposed written agreement at or before the time when the notice is given.

Subclause 20(5) provides that the notice of intention must advise employees that they may request an organisation of which they are a member to represent them in meeting and conferring with the employer about the agreement.

Subclause 20(6) provides that if an organisation is requested by a member to represent him or her, the employer must give the organisation a reasonable opportunity to meet and confer with the employer about the agreement before it is made.

Subclause 20(7) provides that the right to have the organisation represent the employee ceases to apply if, at any time, the request is withdrawn, the employee ceases to be a member, or if the organisation ceases to be have coverage of the work of the member to be covered by the agreement.

Subclause 20(8) provides that the employer must take reasonable steps to fully explain the terms of the agreement to all relevant employees before the agreement is made.

Subclause 20(9) provides that if a proposed agreement is varied for any reason, the steps in Subclauses (2), (3), (4), (6) and (8) must again be taken in relation to the proposed amended agreement.

Subclause 20(10) provides that if the agreement is to be amended only for formal or clerical reasons or in a way that does not adversely affect an employee's interests, the steps to be repeated as required in Subclause (9) do not apply.

Certificate as to requested representation

Subclause 21(1)(a) provides that in relation to an application by an employee organisation, the registrar, if satisfied that an employee has made a request under Subclause 20(5) for the organisation to represent him or her in meeting and conferring with an employer about a proposed agreement, may issue a certificate to that effect.

Subclause 21(1)(b) provides that in relation to an application made by an employer, the registrar, if satisfied that the requirement in Subclause 20(6) for the employer to give a reasonable opportunity to the organisation to meet and confer about the proposed agreement (which would result from an employee's request under Subclause 20(5)) has, because of Subclause 20(7) ceased to apply to the employer, may issue a certificate to that effect.

Subclause 21(2) provides that, the certificate is not to identify any employees, but must identify the representing organisation, the employer and the proposed agreement.

Subclause 21(3) provides that, for all purposes of the Act, the certificate is evidence that an employee made the request or alternatively the requirement to confer with the organisation ceased to apply.

Greenfields agreement

Clause 22 allows certified agreements to be made between an employer establishing a new business and one or more organisations of employees in circumstances in which no employees have yet been engaged. The employer can only make such an agreement if an organisation is entitled to represent the industrial interests of one or more of the persons whose employment is likely to be subject to the agreement.

Time for applying for certification

Clause 23 requires that an application for certification must be made within 21 days after:

- the day on which the agreement is approved for an agreement made under Clause 19 (with employee organisations); or
- the day on which the agreement is made in respect of agreements made under Clause 20 (with employees) or 22 (greenfields agreements).

Division 3—Certifying agreements

Certain employee organisations not to be heard

Clause 24 provides that in an application for certification of an agreement, the commission must give leave to hear from an employee organisation that was requested to represent a person under Clause 20 if the request has not been withdrawn or the conditions in Paragraphs (a) and (b) of Subclause 20(5) continue to be met.

The clause further provides that apart from the organisation that was asked to represent a person under Clause 20, the commission must not hear from an employee organisation other than an organisation proposed to be bound by the agreement.

Certifying an agreement

Subclause 25(1) provides that the commission must certify an agreement on application if satisfied that all requirements of this clause are met. It is prohibited from certifying the agreement if such requirements are not met.

Subclause 25(2) provides that the agreement must pass the no-disadvantage test.

Subclause 25(3) provides that if the failure to meet the no-disadvantage test was the only reason why the commission must refuse certification, and providing that it is satisfied that it is not contrary to the public interest to certify the agreement, the agreement is taken to have passed the no-disadvantage test. An example of the public interest consideration would be where making the agreement is part of a reasonable strategy to deal with a short term crisis in, and to assist the revival of, the single business or part.

Subclause 25(4) provides that a valid majority of relevant employees must have:

- genuinely approved the agreement if made under Clause 19 (with employee organisations); or
- genuinely made the agreement if made under Clause 20 (with employees).

Subclause 25(5) provides that consideration must be given to a person's particular circumstances and needs when explaining the terms of the agreement in accordance with Subclause 19(3)(b) or Subclause 20(8). Examples of persons with particular circumstances are young persons, women and persons from a non-English speaking background.

Subclause 25(6) requires the agreement to contain dispute prevention and settlement procedures.

Subclause 25(7) prohibits the employer from coercing an employee into not making a request for union representation under Clause 20(5) or to withdraw the request if the agreement is to be made directly with employees under Clause 20.

Subclause 25(8) provides that the agreement must specify a nominal expiry date which is to be a maximum of three years after the date of operation of the agreement.

Subclause 25(9) provides that the agreement must also contain, or be accompanied by, any information that may be prescribed under a regulation.

Subclause 25(10) defines 'relevant employee' for the purposes of this clause.

When commission to refuse to certify an agreement

Clause 26(1) provides that the commission must refuse to certify an agreement if it considers that a provision of the agreement is inconsistent with:

- a provision of Chapter 4, Parts 1 and 2, relating to minimum wages and equal remuneration for work of equal value, respectively;
- a provision of Chapter 5, relating to unlawful dismissals;
- an order by the commission under the provisions;
- an injunction granted by the commission under the provisions; or
- Part 14 of the *Industrial Organisations Act 1996* dealing with the freedom of association of employees.

Subclause 26(2) provides that the commission must refuse to certify an agreement if it is satisfied that:

- the employer has contravened Clause 60 (discriminating between unionist and non-unionist) or Part 14 (freedom of association) of the *Industrial Organisations Act 1996;* or
- the employer has caused an entity to engage in conduct that, had the employer engaged in such conduct, would be contravention of Clause 60 or Part 14 of the *Industrial Organisations Act 1996*; or
- an entity has acted on behalf of the employer and engaged in the prohibited conduct or caused another entity to do so.

Subclause 26(3) provides that Subclause (2) does not apply if the commission is satisfied that any contravention and its effects have been fully rectified.

Subclause 26(4) provides that the commission must refuse to certify an agreement if it considers that the agreement discriminates against an employee for reasons including race, sex, age, religion, physical disability etc.

Subclause 26(5) details additional circumstances in which the commission must refuse to certify an agreement. These are:

- when the agreement applies only to a part of a single business that is neither a geographically distinct part of the business, nor a distinct operational or organisational unit within the business; and
- such agreement is considered by the commission to define the part of a business in a way that results in excluding employment of employees which would reasonably be subject to the agreement, having regard to the nature of the work of those employees and the organisational and operational relationships between the part and the rest of the single business; and
- the commission considers it unfair that the employment of such employees is not subject to the agreement.

Subclause 26(6) states that this clause applies despite Clause 25 (certifying an agreement).

Other options open to commission instead of refusing to certify an agreement

Subclause 27(1) provides that, if the commission has grounds to refuse certification, it may accept an undertaking about the operation of the agreement from one or more of the persons who made the agreement; and, if satisfied that its concerns are met, the commission may certify the agreement. Alternatively, before refusing to certify the agreement, the commission must give the parties an opportunity to take whatever action is necessary to make the agreement certifiable.

Subclause 27(2) provides that, if there is a failure to comply with an undertaking, the commission, after hearing the parties, may order one or more persons who gave the undertaking to comply with it or terminate the agreement.

Subclause 27(3) allows the commission to conciliate if, after doing things required under this clause, it is still required to refuse to certify the

agreement because of the provisions of Subclause 26(1). The conciliation is to be conducted with a view to making the agreement certifiable.

Procedures for preventing and settling disputes

Clause 28 provides that procedures in an agreement for preventing and settling disputes between the parties may, subject to the commission's approval, authorise the commission to settle disputes over the application of the agreement.

Division 4—Effect of certified agreements

When a certified agreement is in operation

Clause 29 provides that a certified agreement starts operating upon certification and that it stops operating if its nominal expiry date has passed and it is replaced by another certified agreement or if it is terminated under specified clauses of the Act.

Effect of a certified agreement in relation to awards and other agreements

Subclause 30(1) provides that, while a certified agreement operates, it prevails over an award or industrial agreement to the extent of any inconsistency and has no effect to the extent it is inconsistent with another agreement certified before it, the nominal expiry date of which has not passed.

Subclause 30(2) provides that an exceptional matters order made by the commission under Clause 130 prevails, to the extent of any inconsistency, over a certified agreement that was certified before the order was made.

Division 5—Persons bound by certified agreements

Persons bound

Subclause 31(1) provides that certified agreements bind an employer; employees whose employment is covered by the agreement; and, if the

agreement is made with one or more employee organisations under Clauses 19 or 22, those organisations.

Subclause 31(2) provides that the commission must determine that a certified agreement binds an employee organisation if:

- a valid majority of persons made the agreement with the employer under the provisions of Clause 20; and
- before the agreement is certified, the organisation notifies the commission and the employer that it wishes to be bound by the agreement; and
- the commission is satisfied that the organisation has at least one member whose employment will be subject to the agreement, whose industrial interests the organisation is entitled to represent in relation to that work, and who requested the organisation to notify its intention to become bound by the agreement.

Successor employers bound

Clause 32 applies the provisions of this clause to the situation where an employer becomes a successor of the whole or part of a business covered by a certified agreement.

The clause defines ‘successor’ to include assignee and transmittee.

Division 6—Extending, amending or terminating certified agreements

Extending the nominal expiry date

Clause 33 specifies that the nominal expiry date of a certified agreement may be extended by application to the commission from the employer and the organisations bound by the agreement or, in the case of agreements between employers and employees, by the employer. The application has to be made on or before the nominal expiry date and an agreement may not be extended beyond three years from its original operative date.

The commission must approve the extension if satisfied that a valid majority of the employees covered by the agreement at the time genuinely approved of the extension.

Clause 33 does not apply, however, to greenfield agreements made under Clause 22, or to an agreement made in circumstances described in Subclause 25(3) where, for example, an agreement is part of a reasonable strategy to deal with a short-term crises in, and to assist in the revival of, the single business or part.

Amending a certified agreement

Subclause 34(1) provides that only the employer may apply to the commission to amend an agreement unless one or more organisations are also bound, in which case the employer and such organisations may apply to the commission to amend the agreement.

Subclause 34(2) ensures that the commission must approve the amendment; otherwise it has no effect.

Subclause 34(3) provides that the commission must approve the amendment if satisfied that:

- a valid majority of employees genuinely approve the amendment; and
- if the amended agreement had been a new agreement it would have required certification.

Subclause 34(4) provides that, in considering whether it would be required to certify the agreement as amended if it were a new agreement, the commission is to:

- take the requirement about a majority of persons making or approving the agreement to be satisfied; and
- disregard Clause 27 (other options open to commission instead of refusing to certify an agreement).

Subclause 34(5) provides that the amendment is effective from the date on which the commission's approval takes effect.

Subclause 34(6) sets out limited circumstances where an agreement may be varied upon application by any person bound by the agreement.

Subclause 34(7) provides that a certified agreement can not be amended except under this Clause, including as it applies under Clause 35 (amendment if discrimination between unionists and non-unionists); or Clause 33 (extension of the period of operation of an agreement); or Clause

36 (other options instead of refusing amendment which deals with undertakings).

Amendment if discrimination between unionists and non-unionists

Clause 35 provides that if one or more employees whose employment is not subject to the agreement (but would be, depending on their membership or non-membership of an employee organisation) ask the employer to amend the agreement to cover their employment and seek commission approval for the amendment, the employer must comply with their request, provided that the amendment would not cause the agreement to become a multiple-business agreement.

When considering an application arising out of this clause to approve an amendment to the agreement, the commission must disregard the requirement of Subclause 34(3)(a) about being satisfied that a valid majority of employees subject to the agreement genuinely approved the amendment.

Other options open to commission instead of refusing to approve amendment of an agreement

Clause 36 provides that if the commission has grounds to refuse to approve an amendment under Clause 34, it may accept an undertaking about the operation of the agreement as amended from one or more of the persons who amended the agreement. If satisfied that its concerns are met, the commission may approve the variation. Before refusing to approve the amendment, the commission must give the persons who amended the agreement an opportunity to take whatever action is necessary to allow the amendment to be approved.

If an undertaking is breached, the commission may, after giving the persons who made the agreement an opportunity to be heard, order compliance, amend or terminate the agreement.

Terminating a certified agreement on or before its nominal expiry date

Subclause 37(1) allows the employer and one or more organisations bound by the agreement to terminate it by notice on or before its nominal expiry date. If there are no organisations party to the agreement, only the employer can terminate it by notice.

Subclause 37(2) provides that unless the commission approves the termination it has no effect.

Subclause 37(3) provides that the commission must approve the termination if, and must not approve the termination unless, it is satisfied that a valid majority of employees genuinely approve.

Subclause 37(4) provides that the termination takes effect when the commission's approval takes effect.

Terminating a certified agreement after its nominal expiry date

Subclause 38(1) allows the employer, or employee organisation, or a majority of the employees, after the nominal expiry date of an agreement, to give notice to all employees and persons bound by the agreement, and to the commission, stating that the agreement terminates from a specified day.

Subclause 38(2) prescribes that the specified day must be at least 28 days after the day on which the notice is given. If notice is given to different persons on different days, the specified day must be at least 28 days after the day on which the notice was last given.

Subclause 38(3) provides that the agreement terminates on the specified day.

Terminating an agreement in a way provided under agreement after nominal expiry date

Clause 39 provides that the employer, employee, or an employee organisation bound by the agreement may apply to the commission to approve the termination of the agreement if certain predetermined conditions are met after the nominal expiry date has passed.

If satisfied that there is compliance with Subclause (1), the commission must approve the termination and, if it does so, the agreement terminates from the date when the approval takes effect.

Division 7—Negotiations for certified agreements etc.

Initiation of bargaining period

Subclause 40(1) provides for a bargaining period to be initiated prior to the negotiation of a certified agreement in relation to employees in a single business. A bargaining period may be started by an initiating party, i.e. any of the persons who may make an agreement under this part. These are an employer, an organisation of employees or an employee acting not only on their own behalf but also on behalf of other employees.

Subclause 40(2) provides that a bargaining period is commenced by the initiating party giving notice to each of the other negotiating parties and to the commission.

Subclause 40(3) defines a 'negotiating party' for the purposes of the division.

Particulars to accompany notice

Clause 41 provides that a notice of a bargaining period is to be accompanied by particulars which include details of to whom and for how long the proposed agreement would apply, its suggested content and any other matters prescribed by regulation.

When bargaining period begins

Clause 42 provides that a bargaining period begins at the end of seven days after the day on which notice was given. Where there is more than one negotiating party, and each was given notice on different days, the bargaining period begins at the end of seven days after the last notification.

Protected action

Clause 43 details when industrial action or a lockout is to be regarded as protected action with immunity under Clause 51. To be taken as protected, such action must take place during the bargaining period and must either:

- be for the purpose of supporting or advancing claims made (by either side) in respect of the proposed agreement; or

- in the case of industrial action, be taken in response to a lockout, or in the case of a lockout, be taken in response to industrial action.

Under the clause, a lockout occurs if the employer prevents employees from performing work under their employment contracts without terminating the contracts. Where this occurs, the employer does not have to pay for the period of the lockout but the lockout is only permissible if the employees' continuity of service is not affected.

Industrial action must not involve secondary boycott

Clause 44 prescribes that industrial action which amounts to a secondary boycott is not protected. This is achieved by restricting protection of industrial action only to that engaged in by 'protected persons' as defined in the clause.

Industrial action etc. must not be taken until after nominal expiry date of certain agreements and awards

Clause 45 prohibits the organising or taking of industrial action by an employee, an organisation of employees bound by a certified agreement, or an officer or employee of such an organisation either on, or before, the nominal expiry date of the certified agreement or an award under Clause 55(4). The nominal expiry date of an agreement is the date specified in it as its nominal expiry date, or that date as extended

Any such action taken is not protected action. Similarly, a lockout is not protected if taken before the nominal expiry date.

Under Subclause (6), industrial action taken by a party to a Queensland workplace agreement (QWA) in pursuit of a certified agreement during the period of the QWA's operation is not protected action. This reflects the intention that industrial action and lockouts must not be taken once an agreement has been made and until after its nominal expiry date.

Notice of action to be given

Clause 46 provides that at least three working days notice must be given of proposed protected action, unless that industrial action or lockout is taken in response to industrial action by the other negotiating party. The notice is

to be given to the person concerned but, in the case of an intended lockout, other reasonable steps to notify may suffice, e.g. where all of the employees in a business are to be locked out, notices in a newspaper or announcements on the radio may be appropriate steps.

The notice must state the nature of the intended action and the day it will begin but it may be given before the start of the bargaining period (i.e. before the seven days notice of the bargaining period has expired.)

Negotiation must precede industrial action

Clause 47 makes genuine attempts to reach agreement a prerequisite for industrial action or a lockout to be protected. In addition, any orders made by the commission in relation to the negotiations must have been complied with.

Secret ballot for bargaining period

Clause 48 applies if the commission considers that industrial action relating to a bargaining period is being taken or threatened and that establishing the attitudes of employees whose employment will be subject to the proposed agreement might help stop or prevent the industrial action or settle the matters giving rise to it.

This clause provides that the commission may order a secret ballot of employees where industrial action is being taken or is threatened, impending or probable and, where it does make an order, the industrial action will only be protected action if it is agreed to by a majority of the valid votes cast in the ballot.

Provision is also made for the commission to revoke the order for the secret ballot if, after the order is made but before the vote is taken, it has satisfied itself that the matters giving rise to the industrial action have been, or are about to be, settled or that the action has stopped.

Industrial action must be properly authorised

Clause 49 provides that the engaging in of industrial action by members of an employee organisation that is a negotiating party is only protected action if it is properly authorised. The clause sets out what is required for authorisation and provides that a technical breach arising out of an act done

in good faith does not legally invalidate the authorisation. Notice of such authorisation is to be given to the registrar. Any legal challenge to the validity of such authorisation is to be brought within six months of notice of the authorisation having been given to the registrar.

What happens if application to certify agreement is not made within 21 days

Clause 50 provides that once an agreement has been made, if an application for its certification is not made within 21 days, any industrial action or lockout which occurred for the purposes of making the agreement will not be protected action.

Immunity provisions

Subclause 51(1) provides that protected industrial action is shielded from action under a law unless the industrial action has involved, or is likely to involve, personal injury or wilful or reckless destruction or damage to property or the unlawful taking or use of property.

Subclause 51(2) provides that the protection does not extend to defamation actions brought in respect to anything that happened during industrial action.

Subclause 51(3) defines 'law' to mean a written or unwritten law excluding the *State Transport Act 1938*.

Employer not to dismiss employee etc. for engaging in protected action

Subclause 52(1) provides that an employer must not take or threaten to take the following actions:

- dismiss an employee; or
- injure an employee in his or her employment; or
- change an employee's position to the employee's prejudice

wholly or partly because the employee is proposing to engage, is engaging, or has engaged, in protected action.

Subclause 52(2) provides that these prohibitions do not apply to the standing down of an employee, a refusal by the employer to pay an

employee who has not performed work as directed, or where the employer has engaged in protected action, e.g. a lockout.

Subclause 52(3) provides that in a proceeding for contravention of Subclause (1) it is presumed, unless the employer proves otherwise, that the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to engage, was engaging, or had engaged, in protected action.

When bargaining period ends

Clause 53 provides that the bargaining period ends when the employer or one or more of the negotiating parties have made a certified agreement, or when the initiating party tells each of the other negotiating parties it no longer wishes to reach a certified agreement, or when the commission terminates the bargaining period.

Power of commission to suspend or terminate bargaining period

Subclause 54(1) provides that the commission may suspend or terminate the bargaining period if, after giving an opportunity to be heard to the negotiating parties, it is satisfied that any of the circumstances in Subclauses (2) to (7) exists or existed.

Subclause 54(2) provides that the required circumstances exist where a negotiating party that, before or during the bargaining period, has organised or taken industrial action to support or advance claims in relation to the proposed agreement:

- did not genuinely try to reach, or is not genuinely trying to reach, an agreement with the other negotiating parties; or
- has not complied with the commission's recommendations under Clause 241 (recommendations by consent in an industrial dispute) or directions relating to the proposed agreement or matters that arose during negotiations.

Subclause 54(3) provides that the required circumstances exist where industrial action, being taken to support or advance claims in relation to the agreement, is threatening to endanger the life, personal safety, health or welfare of the population or of part of it, or is threatening to cause significant damage to the economy or an important part of it.

Subclause 54(4) provides that the required circumstances exist where industrial action is being organised or taken by:

- an organisation that is a negotiating party; or
- a member of the organisation that is employed by the employer; or
- an officer or employee of the organisation acting in that capacity

against an employer to support or advance claims relating to employees whose employment will be subject to the agreement, and who are neither members, nor eligible to become members, of the organisation.

Subclause 54(5) provides that the required circumstances exist where action that is being organised or taken by an organisation that is a negotiating party relates or contravenes a commission order that relates, to a significant extent, to a demarcation dispute.

Subclause 54(6) provides that the required circumstances exist where, for a bargaining period relating to a part of a single business, the initiating party is not complying with an award, order, direction of the commission, or a certified agreement in relation to another part of the single business.

Subclause 54(7) provides that the required circumstances exist where:

- immediately before the commencement of this clause, the wages and conditions of the type of employees whose employment will be subject to the agreement were determined by a paid rates award or would have been so determined if a certified agreement or enterprise flexibility agreement had not prevailed over the award; and
- as far as the wages and conditions of the type of employees whose employment will be subject to the agreement were, before the comencement of this clause, customarily determined by an award, they were determined by a paid rates award; and
- there is no reasonable prospect of the negotiating parties reaching a certified agreement during the bargaining period.

Subclause 54(8) provides that the commission may suspend or terminate the bargaining period in circumstances outlined in Subclauses (2), (4), (5), (6) and (7) only on application of a negotiating party. For circumstances outlined in Subclause (3) the commission may suspend or terminate the

bargaining period on its own initiative or on application by a negotiating party or the Minister.

Subclause 54(9) provides that anything done by a negotiating party or other person in relation to the proposed agreement during the suspension of a bargaining period is not protected action.

Subclause 54(10) provides that when terminating the bargaining period, if the commission considers it to be in the public interest, it may declare that, during a specified period, a negotiating party or employee of the employer is not allowed to initiate a new bargaining period in relation to specified matters dealt with in the proposed agreement or may only initiate the bargaining period on specified conditions.

Subclause 54(11) defines a 'paid rates award' for the purposes of this section.

What happens if commission terminates a bargaining period under s 54(3) or (7)

Clause 55, Subclauses(1), (2) and (3) provide that for bargaining periods terminated for circumstances outlined in Subclauses 54(3) or (7), the commission must, as soon as practicable, begin to exercise conciliation powers under Clause 56 to facilitate the making of a certified agreement, or otherwise to settle any matter that could be covered by the agreement.

Subclause 55(4) provides that if, after conciliation powers have been exercised, the full bench of the commission is satisfied that the negotiating parties have not settled matters at issue, and it is not likely that further conciliation will result in matters being settled in a reasonable time, then the full bench may exercise arbitration powers under Clause 56 to make an award that deals with the matters.

Clause 55, Subclauses (5), (6) and (7) provide that the arbitration powers referred to may be exercised only by a full bench.

Powers of commission and full bench when s 55 applies

Subclause 56(1) provides that the commission has the conciliation powers for the matters referred to in Subclause 55(2) that it would have under Clause 240 if that clause applied to conciliation of the matters instead of industrial disputes.

Subclause 56(2) provides that a full bench has the arbitration powers for matters in Subclause 55(4) that it would have under Clause 240 if that clause applied to arbitration of the matters instead of industrial disputes by a full bench.

Awards under s 55

Clause 57, Subclauses (1), (2) and *(3)* provide that an award made under Subclause 55(4) must specify a nominal expiry date; operate at all times after its commencement subject to this clause; and has effect subject to any conditions specified in it.

Subclause 57(4) provides that a full bench must not revoke an award before its nominal expiry date unless it is satisfied that the employer and one or more of the organisations or a majority of employees who are bound by the award have agreed to the revocation (e.g. because they wish to negotiate a certified agreement). The full bench must also be satisfied that revocation would not be against the public interest.

Subclause 57(5) provides that after the award's nominal expiry date, the employer or an organisation bound by it, or a majority of employees to whom it applies, may give notice to all of the employees and other persons bound by the award, and to the commission, stating that the award is revoked from a specified day.

Subclause 57(6) provides that the specified day is to be at least 28 days after the day on which the notice is given or, if it is given to different persons on different days, the day on which it was last given.

Subclause 57(7) provides that the award is revoked on the specified day.

Subclause 57(8) provides that the award may be amended only to remove ambiguity or to include, omit or amend a term that authorises an employer to stand down an employee.

Subclause 57(9) provides that before the award's nominal expiry date has passed, no bargaining period may be initiated for negotiating an agreement in relation to the employees dealt with in the award.

Commission not to arbitrate during bargaining period

Clause 58 provides that the commission must not exercise arbitration

powers under Clause 240 (Action on industrial dispute) during a bargaining period for matters at issue between the negotiating parties.

Conciliation for agreements

Subclause 59(1) provides that the commission has the conciliation power for a matter under this part that it would have under Clause 240 as if that clause applied to conciliation of the matters rather than industrial disputes.

Subclause 59(2) provides that, for conciliating matters, the commission may order that two or more employee organisations involved in negotiations or proposed negotiations be represented by a person or group of persons that the organisations have authorised to represent them.

Subclause 59(3) says that Subclause (2) does not, by implication, limit Subclause (1).

Employers not to discriminate between unionist and non-unionist

Clause 60 provides that in negotiating a certified agreement an employer must not discriminate between the employer's employees because some are members of an employee organisation while others are not, or because some are members of a particular employee organisation while some are not members of the organisation or are members of another organisation.

Division 8—Prohibition of coercion in relation to agreements

Coercion of persons to make, amend or terminate certified agreements etc.

Clause 61 prohibits coercion in relation to making, varying, extending or terminating an agreement but does not prohibit industrial action that is protected action during the bargaining period.

The clause also prohibits an employer from coercing or attempting to coerce an employee from making (or withdrawing) a request that he or she be represented by an industrial organisation of which they are a member in relation to an agreement the employer proposes to make.

Division 9—Enforcement and remedies

Penalty provisions

Clause 62 prescribes a number of clauses as penalty provisions, viz.:

- Clause 35—Amendment if discrimination between unionists and non- unionists;
- Clause 45—Industrial action etc. must not be taken until after nominal expiry date of certain agreements and awards;
- Clause 52—Employer not to dismiss employee etc. for engaging in protected action;
- Clause 60—Employers not to discriminate between unionist and non- unionist;
- Clause 61—Coercion of persons to make, amend or terminate certified agreements.

Penalties for contravening penalty provisions

Clause 63, Subclauses (1) and (2) provide that contravention of a penalty provision is not an offence but penalties may be imposed by a magistrate.

Subclause 63(3) sets a maximum penalty of 135 penalty units for a corporation and 27 penalty units otherwise.

Clause 63, Subclauses (4),(5),(6),(7) and (8) provide the method of making application for a contravention order.

Clause 63, Subclauses (9),(10) and (11) relate to the method of payment of penalties as ordered by the magistrate.

Reinstatement and compensation if employer contravenes s 52

Clause 64 provides that the commission may order reinstatement if an employer contravenes Clause 52 by dismissing an employee who engaged in protected action. The order may include compensation for loss suffered by the dismissed employee.

In any case where the contravention was constituted by injuring an

employee in his or her employment or prejudicing the employee in their employment, payment for loss suffered through such conduct may be ordered.

The right of reinstatement conferred on an employee by this clause does not limit any other rights of the employee.

Division 10—General

Secret ballot on valid majority

Clause 65 provides that if the commission is not satisfied that the valid majority of employees covered or to be covered by a certified agreement have genuinely made or terminated the agreement or given approval, it may order a secret ballot. A majority vote will satisfy the commission of the requirement.

The commission may revoke an order for a secret ballot if it is satisfied, before the vote is taken, that the majority of employees affected support the proposal.

Complementary laws

Clause 66 provides that, to enable Commonwealth powers and functions to be exercised by the Australian Industrial Relations Commission (Australian commission), the Commonwealth provisions relating to certified agreements apply as a law of the State with amendments required and allowed under a regulation.

PART 2—QUEENSLAND WORKPLACE AGREEMENTS

Division 1—Preliminary

Object

Clause 67 provides that the object of this part is to facilitate the making, approving by an enterprise commissioner, and operation, of Queensland

workplace agreements (QWAs) between a single employer and a single employee.

Definitions

Clause 68 defines a range of terms used in this part.

Proposed QWAs and ancillary documents—interpretation

Subclause 69(1) provides that a reference to a QWA or an ancillary document includes a proposed QWA or ancillary document ('ancillary documents' are agreements to vary, extend or terminate a QWA).

Subclause 69(2) provides that in relation to a proposed QWA or ancillary document, a reference to the employer or employee is a reference to the person who will be the employer or employee when the QWA or ancillary document starts to operate.

Functions and powers of enterprise commissioner

Clause 70 provides that the enterprise commissioner may, in performing the functions of that office, exercise the powers of a commissioner that are necessary to facilitate the approval, or operation, of a QWA or ancillary document.

The enterprise commissioner must, as far as practicable, perform the functions in a way that furthers the objects of the Act and, in particular, the object of Part 2, without undue delay and in an informal way. The public interest considerations prescribed by Subclause 335(4) do not apply to the performance of the enterprise commissioner's functions under this part.

In carrying out the functions, the enterprise commissioner may call on the assistance of the employment advocate.

Protocol regarding employment advocate's functions

Clause 71 provides that as soon as practicable after this part commences, the president and chief executive are to establish a protocol about the employment advocate's functions under this part. In exercising functions under this part, the employment advocate must apply the protocol. An objective of the protocol is the timely processing and approval of QWAs.

Division 2—General rules about QWAs and ancillary documents

QWAs and ancillary documents only have effect as provided by this part

Clause 72 provides that a QWA and ancillary documents only have effect as provided for in this part. In particular, a QWA for a new employee has no effect before a filing receipt is issued for it, and for an existing employee a QWA has no effect before an approval notice is issued.

Collective QWAs

Clause 73 allows two or more agreements which have been negotiated collectively to be included in the same document if the same employer is a party to all the agreements. The agreements need not be in the same terms.

The clause also provides that a QWA for a new employee cannot be included in the same document as a QWA for an existing employee.

Division 3—Making, amending or terminating a QWA

Employer and employee may make a QWA

Clause 74 provides that a single employer and a single employee, other than an employer and employee excepted below, may make a QWA that deals with matters relating to the relationship between an employer and employee. The clause permits a QWA to be made before an employee commences employment.

Employers who may not make a QWA with an employee are:

(a) a department of government or part of a department;

(b) a public service office or part of a public service office under the Public Service Act 1996;

(c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose;

(d) a part of an entity mentioned in paragraph (c);

(e) a registry or other administrative office of a court of the State of any jurisdiction;

(f) the parliamentary service;

(g) the Governor's official residence (known as 'Government House') and its associated administrative unit;

(h) a court of the State of any jurisdiction;

(i) the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a);

(j) another entity, or part of another entity, declared under a regulation for this section.

'Public service office' is defined for the purposes of this clause.

Matters to be included in QWA

Clause 75 prescribes matters which must be included in a QWA.

Subclause 75(1) provides that the employer has to ensure that the QWA includes the provisions relating to discrimination that are prescribed by regulation.

Subclause 75(2) provides that if the QWA does not contain the prescribed discrimination provisions, then the QWA is taken to include them.

Subclause 75(3) requires the employer to ensure that the QWA does not include any provisions which would prohibit or restrict either party to the QWA from disclosing the details of the agreement to another person.

Subclause 75(4) requires the employer to ensure that the QWA includes a dispute resolution procedure.

Subclause 75(5) provides that a model dispute resolution procedure (prescribed by regulation) is to be taken to be included in any QWA that does not already contain a dispute resolution process.

Subclause 75(6) provides that if a dispute resolution procedure in a QWA confers power on the enterprise commissioner to settle disputes between the parties to the QWA about the application or interpretation of the agreement, the enterprise commissioner may exercise those powers.

Subclause 75(7) provides that the enterprise commissioner is not to exercise arbitration powers to prevent or settle disputes between the parties to the QWA unless that power is conferred upon the commissioner.

Nominal expiry date of QWA

Subclause 76(1) provides that a QWA may specify a nominal expiry date.

Subclause 76(2) specifies that the nominal date can not be more than three years after the day on which the QWA was signed.

Subclause 76(3) provides that if no date is specified, then the nominal expiry date is the third anniversary of the date of signing.

Subclause 76(4) enables the parties to a QWA to extend the nominal expiry date by written agreement.

Subclause 76(5) provides that the date so extended can not be more than three years after the day on which the QWA was signed.

Subclause 76(6) provides that an agreement to extend the nominal expiry date has no effect unless a filing receipt is issued for the extension agreement at least 21 days before the nominal expiry date that is to be extended.

Subclause 76(7) specifies that an extension agreement takes effect on the day after an approval notice is issued for the extension agreement.

Period of operation of QWA

Subclause 77(1) provides that a QWA for a new employee starts operating on the later of the following days:

- the day after the filing receipt is issued for the QWA;
- the day specified in the QWA as the starting day; or
- the day the employment commences.

Subclause 77(2) provides that a QWA for a new employee ceases to operate at the earlier of the following times:

- the end of the day when a refusal notice is issued in relation to the QWA;

- the time when a termination under Clause 80 takes effect;
- the time when another QWA between the parties starts to operate.

Subclause 77(3) provides that for an existing employee a QWA starts operating on the later of the following days:

- the day after an approval notice is issued for the QWA;
- the day specified in the QWA as the starting day.

Subclause 77(4) provides that for an existing employee a QWA ceases to operate at the earlier of the following times:

- the time when a termination under Clause 80 takes effect; or
- the time when another QWA between the parties starts to operate.

Bargaining agents

Clause 78 provides that an employer or an employee may appoint a person to be his or her bargaining agent for the making, approval, amendment or termination of a QWA. Any such appointment is to be in writing.

The clause further provides that an employer or employee is not to refuse to recognise the bargaining agent appointed by the other party if they have been given a copy of the bargaining agent's written appointment.

Under this clause, an employer or employee must not coerce or attempt to coerce the other party to appoint or not appoint a particular person as a bargaining agent, or to terminate the appointment of a bargaining agent.

Amending a QWA

Clause 79 allows the parties to a QWA to amend it (other than to extend the nominal expiry date which is provided for in Subclause 76(4)) by written agreement. Under this clause an amendment would take effect on the later of the following days:

- the day after an approval notice is issued for the amendment agreement; or
- the day specified in the amendment agreement as the date of effect.

Requirements of Clause 75 (matters to be included in QWA) apply to the amendment agreement in the same way as it applied to the QWA.

Terminating a QWA

Subclause 80(1) allows an employer and employee to make a written agreement (termination agreement) at any time to terminate their QWA.

Subclause 80(2) provides that the termination agreement only takes effect on the later of the following times:

- the end of the day on which an approval notice is issued for the termination agreement;
- the day specified in the termination agreement as the date of effect.

Subclause 80(3) provides that after the nominal expiry date of a QWA, either party may file a notice (termination notice) to terminate the QWA.

Subclause 80(4) provides that the termination notice takes effect at the end of the 28th day after the party filing the termination notice gives notice to the other party of the termination notice being filed.

Division 4—Filing and approving QWAs and ancillary documents

Filing QWAs and ancillary documents

Subclause 81(1) provides that a QWA or ancillary document may be filed with either the registrar or employment advocate.

Subclause 81(2) provides that if the registrar or employment advocate is satisfied that the filing requirements for the document have been met, a filing receipt must be issued to the person who filed the document.

Subclause 81(3) provides that for a QWA, a filing receipt may be issued by the registrar or the employment advocate, only if it was filed within 14 days after the QWA date.

Subclause 81(4) provides that if a QWA or ancillary document is filed with the employment advocate it must immediately be given to the registrar.

Subclause 81(5) requires the registrar to keep a QWA or ancillary document in a way that maintains the confidentiality of its contents.

Filing requirements

Subclause 82(1) prescribes the filing requirements for a QWA are as follows:

- the QWA must be signed and dated by each of the parties, and the signatures must be witnessed; and
- the QWA must be accompanied by a declaration by the employer, which states:
  - the QWA complies with Clause 75 (matters to be included in a QWA); and
  - before the employee signed the QWA, the employer gave the employee a copy of an information statement prepared by the employment advocate.

Subclause 82(2) requires that the information statement prepared by the employment advocate for the the purposes of Subclause (1) must contain information about entitlements under this Act, occupational health and safety law, services provided by the employment advocate, and bargaining agents. The statement may also include other information.

Subclause 82(3) provides that the filing requirements for an amendment agreement are:

- the agreement must be signed and dated by each of the parties, and the signatures witnessed; and
- the agreement must be accompanied by a declaration by the employer stating that the QWA, as amended, complies with Clause 75.

Subclause 82(4) specifies that the filing requirement for an extension agreement is that the agreement must be signed and dated by each of the parties and the signatures witnessed.

Subclause 82(5) specifies that the filing requirement for a termination agreement is that the agreement must be signed and dated by each of the parties and the signatures witnessed.

Subclause 82(6) specifies that the filing requirement for a termination

notice is that the notice must be signed and dated by the party filing the notice, and the signature witnessed.

Subclause 82(7) prescribes that the employer must provide any other information required under a regulation.

Employer's declaration must be accurate

Clause 83 provides that an employer must not, in a declaration filed for this part, make a statement that the employer knows, or ought reasonably to know, is false or misleading.

Division 5—Approving QWAs and ancillary documents

Additional approval requirements for QWA and ancillary documents

Subclause 84(1) prescribes that the additional approval requirements for a QWA are as follows:

- the QWA must comply with Clause 75 (matters to be included in a QWA); and
- the employee received a copy of the QWA at least the required number of days (14 days for an existing employee and 5 days for a new employee) before signing it; and
- the employer explained the effect of the QWA to the employee as soon as practicable after the employee first received a copy of it; and
- the employee genuinely consented to making the QWA.

Subclause 84(2) prescribes that the additional approval requirements for an amendment agreement are as follows:

- the QWA, as amended, complies with Clause 75; and
- the employee received a copy of the amendment agreement at least 14 days before signing it; and
- the employer explained the effect of the amendment agreement to the employee as soon as practicable after the employee first received a copy of it; and

- the employee genuinely consented to making the amendment agreement.

Subclause 84(3) provides that the explanation of the effect of the QWA or amendment agreement mentioned in Subclauses (1) or (2) must be done in a way that is appropriate, having regard to the employee's circumstances and needs, e.g. the circumstances and needs of women, persons from non-English speaking backgrounds and young persons.

Subclause 84(4) provides that the additional approval requirement for an extension agreement is that the employee genuinely consented to making the extension agreement.

Subclause 84(5) provides that the additional approval requirement for a termination agreement is that the employee genuinely consented to making the termination agreement.

Subclause 84(6) defines the meaning of 'required number of days' in Subclause (1).

Approving QWA

Subclause 85(1) provides that the enterprise commissioner must approve a QWA for which a filing receipt has been issued if satisfied that the QWA passes the no-disadvantage test and meets the additional approval requirements.

Subclause 85(2) prescribes that if the enterprise commissioner has concerns about whether the QWA passes the no-disadvantage test but the concerns are resolved by a written undertaking given by the employer and accepted by the enterprise commissioner, or other action by the parties, the enterprise commissioner must approve the QWA.

Subclause 85(3) provides that if the enterprise commissioner is still not satisfied the QWA passes the no-disadvantage test but is satisfied that approving it is not contrary to the public interest, then the enterprise commissioner must approve the QWA.

Subclause 85(4) provides that the enterprise commissioner must refuse to approve the QWA if not satisfied that it meets the additional approval requirements.

Approving amendment agreement

Subclause 86(1) prescribes that the enterprise commissioner must approve an amendment agreement for which a filing receipt has been issued if satisfied that the QWA, as amended, passes the no-disadvantage test and that the agreement meets the additional approval requirements.

Subclause 86(2) provides that if the enterprise commissioner has concerns about whether the QWA, as amended, passes the no-disadvantage test but the concerns are resolved by a written undertaking given by the employer and accepted by the enteprise commissioner, or other action by the parties, the enterprise commissioner must approve the amendment agreement.

Subclause 86(3) provides that if the enterprise commissioner is still not satisfied the QWA passes the no-disadvantage test but is satisfied that approving it is not contrary to the public interest, the enterprise commissioner must approve the QWA.

Subclause 86(4) provides that the enterprise commissioner must refuse to approve the amendment agreement if not satisfied that it meets the additional approval requirements.

Approving other ancillary documents

Subclause 87(1) prescribes that this clause applies to the ancillary documents—an extension agreement, a termination agreement, and a termination notice.

Subclause 87(2) provides that the enterprise commissioner may only approve the ancillary document if satisfied it meets the additional approval requirements for the document.

Enterprise commissioner must issue approval or refusal notice

Subclause 88(1) provides that where the enterprise commissioner approves a QWA or ancillary document, the enterprise commissioner is to issue an approval notice to the employer.

Subclause 88(2) provides that where the enterprise commissioner refuses to approve a QWA or ancillary document, the enterprise commissioner is to issue a refusal notice to the employer.

Subclause 88(3) provides that in each approval or refusal notice the enterprise commissioner is to identify the relevant or designated award that applies to the QWA.

Undertakings taken to be included in QWAs

Clause 89 provides that an undertaking accepted by an enterprise commissioner under this division is taken to be included in the QWA.

Enterprise commissioner to issue copies of approved QWAs and ancillary documents

Clause 90 provides that after a QWA or ancillary document is approved by an enterprise commissioner, a copy of the QWA or ancillary document, as approved, is to be issued to the employer by the enterprise commissioner.

Division 6—Effect of a QWA

Effect of QWA on awards and agreements

Subclause 91(1) provides that during its period of operation, a QWA excludes the operation of an award that would otherwise apply to the employee's employment.

Subclause 91(2) provides that a QWA does not operate to the exclusion of an exceptional matters order, but prevails over an exceptional matters order to the extent of any inconsistency.

Subclause 91(3) provides that:

- a certified agreement that starts to operate after the QWA's nominal expiry date prevails over the QWA to the extent of any inconsistency; otherwise
- the QWA operates to the exclusion of a certified agreement that would otherwise apply to the employee's employment.

QWA binds employer's successor

Clause 92 provides that where an employer is a party to a QWA and at a later time a new employer becomes the successor of the whole or part of the business concerned, the new employer replaces the first employer as a party to the QWA and the first employer stops being a party to the QWA to the extent that it relates to the whole or part of the business.

'Successor' is defined for the purposes of this clause.

Parties must not contravene QWA

Clause 93 states that a party to an QWA must not contravene the QWA.

Conciliation for agreements

Clause 94 provides that the enterprise commissioner has the conciliation powers for a matter arising under this part that a commissioner would have under Chapter 6 (industrial disputes) if that chapter applied to conciliation of the matters instead of industrial disputes.

Industrial action by party to QWA

Clause 95 provides that while a QWA is in operation before its nominal expiry date, a party to it must not engage in industrial action in relation to the employment to which the QWA relates.

Division 7—Enforcement and remedies

Penalties for contravening this part

Clause 96 provides that a magistrate may make an order imposing a penalty on a person who contravenes a penalty provision. The penalty imposed cannot be more than 135 penalty units for a corporation or 27 penalty units otherwise.

An application for such an order relating to a QWA or ancillary document may be made by either party to the QWA or ancillary document or the employment advocate.

Clauses of Part 2 which impose penalties are listed.

Damages for contravention of QWA

Subclause 97(1) allows a party to an QWA to recover any loss or damage suffered because of a breach of the QWA by the other party in the Industrial Magistrates Court.

Subclause 97(2) provides that the action to recover must be brought within six years of the date on which the cause of action arose.

Compensation to new employee for shortfall in entitlements

Subclause 98(1) provides that if a QWA for a new employee stops operating because of a refusal notice and the amount worked out under (a) below is less than the amount worked out under (b), the employee is entitled to recover the shortfall from the employer in the Industrial Magistrates Court:

(a) the total value of the entitlements to which the employee became entitled under the QWA for the period while it was in operation;

(b) the total value of the entitlements to which the employee would have been entitled for that period under the relevent or designated award, if the QWA had not been made, in relation to the employment to which the QWA relates.

Subclause 98(2) provides that if a QWA that has been approved for a new employee includes an undertaking by an employer under Clause 85 and the amount worked out under paragraph (a) below is less than the amount worked out under (b), the employee is entitled to recover the shortfall from the employer in the Industrial Magistrates Court:

(a) the total value of the entitlements to which the employee became entitled under the QWA for the period before it was approved;

(b) the total value of the entitlements to which the employee would have been entitled for that period if the QWA as filed had included the employer's undertaking.

Injunctions

Clause 99 allows the commision, on the application of a party to a QWA, to grant an injunction requiring a person not to contravene, or to stop contravening, this part.

Division 8—Limited immunity for industrial action

Interpretation

Clause 100 defines 'QWA industrial action' for the purpose of this division, and provides that a reference in this division to taking action includes a reference to omitting to do something or bringing about a circumstance.

Limited immunity conferred

Subclause 101(1) provides that no action lies under any law in respect of QWA industrial action unless that action has involved, or is likely to involve:

- personal injury; or
- wilful or reckless destruction of, or damage to, property; or
- the unlawful taking, keeping or use of property.

Subclause 101(2) provides that Subclause (1) does not prevent an action for defamation being brought in relation to anything that happened during the industrial action.

Subclause 101(3) provides that if an employer locks out an employee, the employer may refuse to pay remuneration to the employee for the period of the lockout.

Subclause 101(4) prescribes that an employer cannot lock out an employee unless the continuity of an employee's employment, for the purposes prescribed by regulation, is not affected by the lockout.

Subclause 101(5) defines 'law' for the purposes of this clause.

Immunity conditional on giving notice

Clause 102 provides that the immunity conferred by Clause 101 does not apply unless at least three working days notice of the intention to take QWA industrial action was given to the other party.

Employer not to dismiss etc. an employee for taking QWA industrial action

Subclause 103(1) provides that an employer must not dismiss an employee, injure an employee in his or her employment or change the employee's position to the employee's prejudice (or threaten to do any of those things) because the employee is proposing to engage, is engaging or has engaged, in QWA industrial action after giving notice under Clause 102.

Subclause 103(2) provides that Subclause (1) has no application to the following action taken by an employer:

- standing down an employee;
- refusing to pay an employee because the employee has not performed work as directed, if refusal to pay is permitted under common law;
- action of the employer that is itself QWA industrial action to which Subclause 101 (limited immunity conferred) applies.

Subclause 103(3) provides that in a proceeding under Clause 96 against an employer for an alleged contravention of Subclause (1), it is to be presumed, unless the employer proves otherwise, that the conduct of the employer was wholly or partly because the employee was proposing to engage, was engaging, or had engaged, in QWA industrial action.

Division 9—General

Hindering QWA negotiations

Subclause 104(1) provides that a person who is not a party to negotiations for a QWA must not use threats or intimidation with the intention of hindering those negotiations or the making of the QWA.

Subclause 104(2) makes it clear that this clause does not apply to conduct by, or on behalf of, an employee organisation negotiating a certified agreement, if the conduct is authorised by another provision of this Act.

Subclause 104(3) defines 'party to negotiations' for the purposes of this clause.

Persons must not apply duress or make false statements in connection with QWA etc.

Subclause 105(1) provides that a person must not apply duress to an employee or employer in connection with a QWA or ancillary document.

Subclause 105(2) provides that a person must not knowingly make a false or misleading statement to another person with the intention of persuading the other person to make or not to make a QWA or ancillary document.

Employer must give copy of documents to employee

Subclause 106(1) requires an employer to give to the employee a copy of a filing receipt, approval or refusal notice, or approved QWA or ancillary document, as soon as practicable after receiving the document from an enterprise commissioner, registrar or employment advocate.

Subclause 106(2) requires the employer to give to the employee any other document prescribed by regulation within the time specified by the regulation.

Intervention not permitted

Clause 107 prescribes that a person other than a party to a QWA, the bargaining agent of a party, or the Minister must not be allowed to make submissions, or be heard, in relation to the filing, approval, amendment or termination of a QWA.

Hearings to be in private

Clause 108 requires that a hearing by an enterprise commissioner for this part is to be held in private.

Identity of QWA parties not to be disclosed

Subclause 109(1) prohibits the disclosure by a person of protected information that could reveal the identity of a party to a QWA.

Contravention of this provision may result in imprisonment.

Subclause 109(2) sets out the exceptions to the prohibition. It also includes the power to create exceptions by regulation.

Subclause 109(3) provides that for deciding the burden of proof in a proceeding for an offence against Subclause (1), the exceptions in Subclause (2) are taken to be part of the description of the offence.

Subclause 109(4) defines the term 'protected information' for the purposes of this clause.

Enterprise commissioner not to publish QWA decision or interpretation

Clause 110 prescribes that an enterprise commissioner must not publish a decision or interpretation about a QWA or ancillary document in a way that discloses the identity of either party to the QWA or document.

Reports and advice about development in making QWAs

Clause 111 provides that the chief executive, on the Minister's request, is to prepare for the minister a report about developments in the State in bargaining for the making of QWAs.

The clause provides that the registrar is to allow the chief executive or chief executive's agent access to approved QWAs and ancillary documents to enable the preparation of the report. The report is not to identify either of the parties to a QWA except with the consent of both parties.

Interpretation of QWA

Clause 112 provides that an enterprise commissioner may give an interpretation of a QWA on application by a party to it or the employment advocate.

Evidence

Subclause 113(1) allows the registrar to issue a certified copy of an approved QWA or ancillary document to a person who is or was a party to a QWA or ancillary document to which the copy relates.

Subclause 113(2) allows the registrar to issue a certificate stating one or more of the following:

- that specified QWAs or ancillary documents are the only such documents filed in relation to a specified employer and employee before a specified date; or
- a copy of a specified approved QWA or ancillary document was issued on a specified day; or
- that a filing receipt, approval notice or refusal notice was issued for a specified QWA or ancillary document on a specified day.

Subclause 113(3) provides that the certificate may only be issued to a person who is or was a party to each of the documents to which the certificate relates.

Subclause 113(4) provides that a certificate may be used in all courts and proceedings as evidence of the QWA or ancillary document and of the matters stated in it.

Subclause 113(5) provides that a document which purports to be a certificate mentioned in Subclause (4) is to be taken as such unless the contrary is proved.

Signature for corporation

Clause 114 allows for a QWA or ancillary document to be signed on behalf of a corporation by its properly authorised officer without the need to be made under the seal of the corporation.

PART 3—NO-DISADVANTAGE TEST

Definitions for part 3

Clause 115 defines a range of terms used in this part.

When does an agreement pass the no-disadvantage test

Subclause 116(1) provides that an agreement passes the no-disadvantage test if it does not disadvantage employees in relation to their employment conditions.

Subclause 116(2) provides that, subject to Clauses 117 to 119, an agreement disadvantages employees in relation to their employment conditions only if its approval or certification results, on balance, in a reduction in the overall employment conditions of employees when compared with certain benchmark awards and laws, viz a relevant or designated award, a certified agreement and any other law of the Commonwealth or State that a commissioner or an enterprise commissioner, as the case may be, considers relevant.

The test involves a global approach to the comparison of the agreement with the benchmark awards and laws. It is intended that an agreement should not fail the test merely because a particular condition of employment, or a particular kind of condition of employment, is reduced, provided that, on balance, the overall package of terms and conditions of employment is not reduced. It is also intended that an agreement which makes provision for part-time work should not fail the no-disadvantage test merely because the relevant award contains no provision for part-time work.

The operation of Subclause (2) is subject to Clauses 117, 118 and 119, which modify the application of the no-disadvantage test in respect of persons with disabilities who are employed in accordance with the supported wage system (cl.117), persons undertaking approved traineeships (cl.118) and persons undertaking approved apprenticeships (cl. 119).

Subclause 116(3) defines ‘certified agreement’ and ‘QWA provision’ for the purposes of this clause.

Special case—employee eligible for supported wage system

Clause 117 provides that if an agreement sets the wages of an employee eligible for the supported wage system at a rate not less than the rate set in accordance with that system, then the approval or certification of the agreement is not to be taken to result in a reduction of the employee’s wages.

Special case—employee undertaking approved traineeship

Clause 118 provides that if wages payable under an agreement to an employee undertaking an approved traineeship are no less than wages calculated in accordance with the clause, those wages will not be taken to reduce the employee's wages for the purpose of the no-disadvantage test. The calculation involves the identification of the rate of non-training wages that would be payable to the trainee under a relevant or designated award (called the benchmark rate) and an adjustment of that rate to reflect time spent in training.

The clause applies only to a traineeship approved by the approving authority (the Vocational Education, Training and Employment Commission) for the purposes of this clause and excludes a traineeship under the Training Wage Award—State, a Career Start traineeship, an Australian Traineeship System traineeship and the National Training Wage traineeship.

The adjustment of the benchmark rate to reflect time spent in training is effected by applying to it a percentage determined by the approving authority.

Clause 118, Subclauses (1) and (2) provide that an agreement which includes wages for an employee undertaking an approved traineeship will not be taken to reduce the employee's wages for the purposes of the no-disadvantage test, provided the wages are not less than the appropriate percentage of the rate (i.e. the benchmark wages) that would be payable under the relevant award or designated award if that award applied to the employee and he or she were not undertaking the traineeship.

Subclause 118(3) provides that the 'appropriate percentage' of the benchmark rate is the percentage of that rate determined by the approving authority in writing. In making such a determination, the approving authority must have regard to the reduction in the productive time of a trainee due to the time spent in training under the traineeship.

Subclause 118(4) provides that an agreement may adopt, as the qualification for a wage level, a criterion determined by the approving authority that differs from the criterion applying under the award. In that case, the award is taken, for the purpose of the no-disadvantage test, to have effect as if the criterion in the agreement were the criterion under the award.

It is intended that this subclause will allow an agreement to provide, for example, for progression through wage levels on criteria such as competency, in lieu of the criteria applied by the award.

Special case—employee undertaking approved apprenticeship

Clause 119 provides that if wages payable under an agreement to an employee undertaking an approved apprenticeship are no less than wages calculated in accordance with the section, those wages will not be taken to reduce the employee's wages for the purpose of the no-disadvantage test. The calculation involves the identification of the rate of wages payable to an apprentice of the same or similar trade (called the benchmark apprenticeship) under a relevant or designated award or order, and an adjustment of that rate to reflect any difference between the productive time of the apprentice and the productive time of persons undertaking the benchmark apprenticeship.

The section applies only to approved apprenticeships. An approved apprenticeship is one that is approved by the approving authority (the Vocational Education, Training and Employment Commission) for the purposes of this section.

Subclause 119(1) specifies the circumstances in which the clause applies, namely, where an agreement regulates wages for an employee undertaking an approved apprenticeship, and there is a relevant or designated award which regulates wages for an apprenticeship in the same or similar trade, occupation or kind of work (the benchmark apprenticeship).

Subclause 119(2) provides that an agreement which includes wages for a person undertaking an approved apprenticeship will be taken to reduce the employees's wages for the purposes of the no-disadvantage test only if the wage rate in the agreement is less than the rate applicable to the benchmark apprenticeship, adjusted if necessary in accordance with Subclause (3).

Subclause 119(3) provides that the rate for the benchmark apprenticeship is to be adjusted to take into account the proportionate difference (determined by the approving authority) between the productive time of an employee under the approved apprenticeship and the productive time of an employee under the benchmark apprenticeship. To the extent that the two apprenticeships affect the productive time of apprentices differently, an adjustment to the benchmark apprenticeship rate is required.

Subclause 119(4) provides that an agreement may adopt, as a qualification for a wage level, a criterion determined by the approving authority that differs from the criterion applying under the award. In that case, the award is taken, for the purposes of the no-disadvantage test to have effect as if the criterion in the agreement were the criterion in the award.

It is intended that this subclause will allow, for example, an agreement to provide for progression through wage levels on criteria such as competency, in lieu of the criteria specified in the award.

Determination of designated awards for certified agreement

Clause 120 provides that if an employer or organisation of employees proposes to make a certified agreement and there is no relevant award in relation to some or all of the persons to whom the agreement will apply, then the employer or the organisation may apply to the commission to determine an award or awards appropriate for deciding whether the agreement passes the no-disadvantage test.

Upon determination, the commission must inform the employer or organisation in writing of an award regulating the employment conditions of employees engaged in a similar kind of work to that of the persons under the agreement.

Determination of designated awards for QWA

Clause 121 provides that if an employer proposes making a QWA with a person and there is no relevant award for that person, the employer must apply to an enterprise commissioner for determination of an award which is appropriate for deciding whether the QWA passes the no-disadvantage test.

The determination must be in writing and the award is to be one regulating the employment conditions of employees engaged in a similar kind of work to that of the person under the proposed QWA.

CHAPTER 3—AWARDS

PART 1—OBJECTS

Objects

Subclause 122 sets out the objects of this chapter. Essentially the objects are to ensure that:

- a system of enforceable awards, established and maintained by the commission, protects wages and employment conditions;
- awards are simple, suited to workplaces or enterprises, and act as a safety net for fair minimum wages and conditions;
- the commission exercises its functions and powers to encourage the making of agreements between employers and employees.

PART 2—COMMISSION'S FUNCTIONS GENERALLY

Performance of commission's function under this chapter

Clause 123 provides for the commission to perform its functions in a manner that furthers the objects of the Bill and this chapter and ensures a safety net of fair minimum wages and conditions is established and kept, having regard to:

- living standards generally prevailing in the community;
- economic factors;
- the needs of low paid workers when adjusting the safety net

In addition, the commission must have regard to the need for changes to wage relativities between awards to be based on skills, responsibilities and conditions under which work is performed, and the need to:

- support training arrangements through apprentice and trainee wage provisions;

- provide a supported wage system for disabled persons;
- apply the principle of equal remuneration for work of equal value without discrimination based on sex;
- prevent and eliminate discrimination.

Provided relevant parties comply with commission principles, necessary changes may be made to keep wages and conditions at a relevant level

No automatic flow-on of certain agreements

Clause 124 prohibits the commission from including terms in an award which are based on a certified agreement unless it is satisfied that including the terms would not be inconsistent with full bench principles on wages and employment conditions and otherwise be contrary to the public interest.

PART 3—FORM AND APPLICATION

Form, effect and term of award

Clause 125 provides for an award to be in a form approved by the commission. It takes effect and has the force of law throughout Queensland for an unlimited period. However, an award can be made in particular circumstances, e.g. in a stated locality or for a stated period of time or to particular employers or establishments.

Persons bound by award

Clause 126 details the parties on whom an award is binding, including:

- parties to a particular industrial cause;
- organisations having callings to which the award applies and members of such organisations;
- employers and employees engaged in callings to which the award applies.

PART 4—COMMISSION'S POWERS

Making, amending and repealing awards

Subclauses 127 (1), (2) and (3) allow the commission, subject to Clause 128, to make, amend or repeal an award on its own initiative or on the application of various persons including the Minister, an organisation, an employer or an appropriate person.

Subclause 127(4) states that the commission can refrain from hearing or deciding an application to amend an award if it considers the parties should try to negotiate a certified agreement or QWA and a reasonable prospect exists to make the agreement.

Allowable award matters

Subclause 128(1) lists 20 matters (known as 'allowable award matters') that the commission can only deal with in making or amending an award. It is not a requirement that an award contain all of the allowable award matters. The provisions allowed in awards are outlined as follows:

- classifications of employees and skill-based career paths;
- ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
- rates of pay (including hourly rates and annual salaries), wage rates for juniors, apprentices or trainees, and wage rates for employees under the supported wage system;
- piece rates, tallies and bonuses;
- annual leave and leave loadings;
- long service leave;
- personal and carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other similar forms of leave;
- parental leave and adoption leave;
- compensation for public holidays;

- allowances;
- loadings for working overtime or for casual or shift work;
- penalty rates;
- redundancy pay;
- notice of termination;
- stand-down provisions;
- dispute resolution procedures;
- jury service;
- type of employment, including full-time employment, casual employment, regular part-time employment and shift work;
- occupational superannuation;
- wages and conditions for outworkers in certain circumstances.

Subclause 128(2) empowers the commission to make an award for an allowable award matter that revokes or amends a decision, abrogates or amends labour contracts, gives retrospective effect to the whole or part of an award or directs the employer to exhibit a copy of any award.

Subclause 128(3) allows the commission to include provisions in an award that are incidental to the 20 matters listed in Subclause (1) and necessary for the award's effective operation.

Subclause 128(4) allows the commission to include a model anti-discrimination clause in an award.

Subclause 128(5) defines 'outworker' for the purposes of Subclause (1) of this clause.

Limitation on commission's powers for awards

Subclause 129(1) states that the commission's power in dealing with an allowable award matter is restricted to making a minimum rates award.

Subclause 129(2) states that the commission's power in relation to Clause 128(1)(r) (type of employment etc.) does not include the power to:

- limit the number or proportion of employees an employer may employ; or

- set maximum or minimum hours for regular part-time employees.

Subclause 129(3) states the commission is not prevented under Subclause (2)(b) from including provisions in an award:

- setting a minimum number of consecutive hours a regular part-time employee is required to work; or
- facilitating a regular pattern in hours worked by a regular part-time employee.

Subclause 129(4) prohibits the commission from including terms in an award that contravene Part 14 (Freedom of Association) of the *Industrial Organisations Act 1996* which, in essence, ensures that employers, employees and independent contractors have a freedom of choice to join or not join an industrial association and that they are not subjected to discrimination or victimisation because they are or are not members or officers of an industrial association.

Subclause 129(5) requires that the commission must fix rates payable to employees on the basis that a man and a woman employed by the same employer must receive equal remuneration for work of equal value without discriminating on the ground of sex.

Subclauses 129(6), (7) and (8) relate to the commission's jurisdiction in connection with persons under 21 years of age.

Exceptional matters orders

Subclause 130(1) allows the commission to make an order about a matter (known as an 'exceptional matter'), despite Clause 128(1), providing the commission is satisfied with the following criteria:

- a party has made a genuine attempt to reach agreement on the exceptional matter and there is no reasonable prospect of agreement being reached by conciliation;
- it is appropriate to settle the exceptional matter by arbitration;
- the issues involved are exceptional issues and if the matter is not settled by arbitration there may be a harsh or unjust outcome.

Subclause 130(2) requires the commission to be satisfied that an

exceptional matter order made is consistent with the objects of the Bill and in the public interest.

Subclause 130(3) prohibits the commission from making an exceptional matter order that applies to more than a single business unless such order appropriately settles a dispute.

Subclause 130(4) states that, unless an exceptional matter order relates to a single business within the meaning of Clause 12, the order must be made by a full bench of the commission.

Subclause 130(5) states that an exceptional matter order must relate to a single matter only.

Subclause 130(6) states an exceptional matters order may be enforced as an award.

Subclause 130(7) states that an exceptional matter order expires two years after it is made and cannot be extended.

Subclause 130(8) states that Clause 129 applies to the commission as if the order were an award.

Allowable award matters to be dealt with by full bench

Clause 131 provides that a full bench of the commission can establish principles regarding the making or amending of awards for an allowable award matter and, upon establishing those principles, the commission's power to make or amend an award can only be exercised by a full bench unless the award contents:

- give effect to decisions of a full bench; or
- are consistent with principles established by a full bench

General rulings

Subclauses 132 (1) and (2) state that, to avoid a multiplication of inquiries into the same matter, a full bench of the commission may make general rulings about an allowable award matter providing reasonable notice has been given and interested persons have been given an opportunity to be heard on the matter.

Subclause 132(3) states that the general ruling must have a specified date

of effect and has effect as a decision of the full bench on and from that date.

Subclause 132(4) states a general ruling may exempt a class of employer or employee or an award or part of an award.

Subclauses 132(5) and (6) require the registrar to publish a notice of the general ruling and specified date in the Industrial Gazette as soon as practicable after the making of the ruling. The notice replaces a previous notice on the same subject matter.

Subclause 132(7) states that the general ruling continues in force until the date immediately before the specified date in the next general ruling on the same subject matter.

Subclause 132(8) states that, except for Subclause (4), a current award is taken to be amended and have effect as an award on and from the specified date.

Subclauses 132(9) and (10) state that the registrar on application or on the registrar's own initiative may amend an award as appropriate to accord with the general ruling. The registrar's action can be appealed to the full bench.

PART 5—OTHER REQUIREMENTS

Inclusion of enterprise flexibility provisions in awards

Subclauses 133(1) and (2) state that in making or amending an award, the commission, where it considers appropriate, is required to insert a provision establishing a process for negotiating agreements at an enterprise or workplace level to allow the enterprise or workplace to operate more efficiently according to its particular needs.

Subclause 133(3) states that the commission, where an application is made, cannot amend an award to give effect to an agreement made under Subclause (2) unless it is satisfied the amendment would:

- only relate to allowable award matters; and
- result in a minimum rates award; and

- provide for minimum wage rates consistent with Clauses 122 and 123—if an amendment to wage rates specified in the award is included.

Subclause 133(4) provides that an organisation is only entitled to be heard in relation to an application to vary an award pursuant to an agreement made under an enterprise flexibility provision if it is a party to the award and has members whose employment would be regulated by the variation.

Subclause 133(5) states that the commission must not refuse to amend the award where it considers that a refusal by an organisation to agree or consent to the amendment is unreasonable.

Some requirements about structure and content etc. of awards and orders

Subclauses 134(1) and (2) require the commission, if it makes an award or order affecting an award, to ensure the award or order does not:

- include matters more appropriately dealt with by agreement at the workplace or enterprise level;
- prescribe restrictive or hindering work practices or procedures;
- contain provisions having the effect of restricting or hindering productivity, having regard to fairness of employees.

Subclause 134(3) requires the commission to ensure that an award or order:

- contains facilitative provisions whenever possible, allowing agreement at the workplace or enterprise level between employers and employees (including individual employees) on the application of award provisions;
- contains provisions regarding employment of regular part-time employees whenever possible;
- is stated in plain English and is understandable in structure and content;
- does not contain obsolete or outdated provisions;
- provides support to training arrangements through appropriate apprentice and trainee wages and a supported wage system for disabled persons, whenever possible. (Trainee wages may also be

made by Orders under Part 3, Division 4 of the *Vocational Education, Training and Employment Act 1991*.)

- does not contain discriminatory provisions.

Dispute resolution procedures

Subclauses 135 (1), (2) and (3) state that an award must provide for a dispute resolution procedure, the form of which is to be agreed on by the parties to the award. An appropriate procedure must be inserted in the award by the commission if the parties cannot agree.

Subclause 135(4) prescribes, without limiting Subclause (1), the matters to be dealt with in a dispute resolution procedure, namely all industrial matters and other matters agreed on by the parties. In addition, the procedure must include a specific step-by-step process for dealing with the dispute and where matters cannot be resolved by the parties the dispute must be referred to the commission or magistrate as required by Clause 239.

Subclause 135(5) states that in this clause 'dispute' includes grievance.

PART 6—EXEMPTIONS

Exemptions

Clause 136 provides for the commission, on its own initiative or on application of an organisation or employer, to exempt an employer or employee (or a class thereof) and a person from the application of the award. While the exemption is in force, the award is not binding on the employer, employee, class or person as per the exemption.

PART 7—GENERAL

Enforceability of awards

Clause 137 prohibits the enforcing of an award until 21 days after the date that is published in the Industrial Gazette.

Effect of appeals on awards

Clause 138 states that, where a decision of the court or a full bench in particular circumstances affects an award, the commission must immediately amend the award to give effect to such decision.

Inconsistency between awards and contracts

Subclauses 139(1) and (2) state that, where any inconsistencies exist, an award shall prevail over a contract of service and the contract is interpreted and takes effect as if it were amended to conform to the award.

Subclause 139(3) states that it is not an inconsistency if a contract provides for more favourable employment conditions than the award does.

CHAPTER 4—GENERAL EMPLOYMENT CONDITIONS

This chapter contains provisions addressing minimum wages, the principles of equal remuneration for work of equal value, parental leave and long service leave.

PART 1—MINIMUM WAGES

Object

Clause 140 states that the object of Part 1 is to give effect to the 'Minimum Wages Convention'. This is the International Labour Organisation's (ILO's) Minimum Wage Fixing Convention 1970.

The convention requires that there be a system of minimum wages that covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. The 'competent authority'—in the Australian context, industrial conciliation and arbitration tribunals such as the commission—is to decide which groups are to be covered by such a system.

Meaning of expressions

Clause 141 specifies that expressions used in this part will have the same meaning as those contained in the Minimum Wages Convention.

Orders setting minimum wages

Clause 142, together with the next two clauses, sets the scope of the orders that the commission is to make in setting minimum wages. The commission may make an order either setting the same minimum wage for all employees in a specific group, or setting different minimum wages for different categories of employees in a specified group.

Different minimum wages for different occupations and for various degrees of occupational skill are recognised as a legitimate means of implementation of the Minimum Wages Convention by the expert bodies of the ILO.

Orders only on application

Clause 143 permits the commission to a make a minimum wages order only on application from an employee to be covered by the order or an industrial organisation entitled to represent employees to be included in the order. An 'industrial organisation' will have the meaning given it by the *Industrial Organisations Bill 1996.*

When commission may make order

Clause 144 details the circumstances and manner in which the commission is to make a minimum wages order.

Subclause 144(1) enables the commission to make an order only if it is satisfied that coverage of the 'group' of employees by a system of minimum wages is appropriate, given their terms of employment. The second requirement is that at least some of the employees are not 'ineligible' as specified in Subclause (3).

Subclause 144(2) requires an order to specify which employees are excluded from its operation because they are ineligible. This could be done, for example, by describing a category or categories of employees.

Subclause 144(3) defines the term 'ineligible'. Employees are ineligible to be covered by a minimum wages order if they already have the protection of a system of setting and adjusting minimum wages. That is, they are already covered by an industrial instrument which sets minimum wages, or proceedings have commenced in the commission for one of these instruments under Chapter 2, Parts 1 to 3 and Chapter 3. Industrial agreements and enterprise flexibility agreements have been included to ensure that these instruments are covered during the transitional period of their continued application.

Subclause 144(4) requires the commission to take account of the views of the relevant organisations of employers and employees about which group of employees should be covered by an order and whether coverage of that group by a system of minimum wages is appropriate. The organisations include employee organisations entitled to represent the employees concerned; employer organisations entitled to represent the employers of the employees; and unregistered organisations representing employers of the employees.

These provisions implement Article 1.2 of the Minimum Wages Convention, requiring full consultation with representative organisations of employers and workers as to the groups of wage earners for which coverage is appropriate. The ILO has accepted that these requirements would be met by a system where employers' and workers' representatives were given an opportunity to give evidence before a tribunal, as this subclause provides.

Subclause 144(5) provides that the relevant individual employers must also be given the opportunity to be heard by the commission before it makes an order. The term 'as prescribed' means that the way in which this opportunity is to be exercised is to be set by regulation, as is customary for arrangements for commission applications and hearings.

Matters to be considered when setting minimum wages

Clause 145 gives effect to Article 3 of the Minimum Wages Convention. This clause requires that, when setting minimum wages, the commission must consider the principles it applies in setting minimum wages under its award-making powers in Chapter 3. It must also consider the needs of workers and their families and a range of economic factors as set out in paragraphs (b) and (c).

This clause only requires the commission to 'consider' the specified matters; it does not prescribe what weight the commission should place on each factor.

Part does not limit other rights

Clause 146 makes it clear that this legislation on minimum wages does not limit any other right that a person or industrial organisation has to establish minimum wages. These provisions will not prevent access to industrial instruments.

Orders

Subclause 147(1) states that the section applies to commission orders under this part (Minimum wages).

Subclause 147(2) requires orders to be in writing.

Subclause 147(3) specifies that orders of the commission take effect only from the date they are issued or a later specified date.

Subclause 147(4) provides that compliance with orders under these provisions are enforceable in the same way as awards.

Subclause 147(5) permits the commission to amend or revoke an order made under this division only on application by:

- an employer, or employer representative, covered by the order; or
- an employee, or employee representative, covered by the order.

Inconsistent industrial instruments or orders

Clause 148 provides that any industrial instrument or order of the commission which is inconsistent with an order under this part has no effect to the extent the inconsistency detrimentally affects the rights of the employees.

PART 2—EQUAL REMUNERATION FOR WORK OF EQUAL VALUE

This part enshrines the principles of a number of international treaties into the Bill.

Object of part

Clause 149 states that the object of the part is to give effect to four international treaties (including two ILO conventions) and two ILO recommendations. The treaties are described in paragraph (a) as the 'anti-discrimination conventions'. This term is defined in Schedule 5 of the Bill as:

- the Equal Remuneration Convention;
- the Convention of the Elimination of all Forms of Discrimination against Women;
- the Discrimination (Employment and Occupation) Convention;
- Articles 3 and 7 of the International Covenant on Economic, Social and Cultural Rights.

Meaning of expressions

Subclause 150(1) defines 'equal remuneration for work of equal value' as 'equal remuneration for men and women workers for work of equal value'.

Subclause 150(2) gives the phrase the same meaning as it has in the Equal Remuneration Convention, which defines it in Article 1 as 'rates of remuneration established without discrimination based on sex'. The convention is aimed at the elimination of differences in remuneration which are based on sex, whether directly or indirectly.

The other anti-discrimination conventions and the ILO recommendations are also given effect by this part, because the central concept of 'equal remuneration for work of equal value' is expressed in certain obligations imposed by those conventions and in the measures set out in the recommendations.

Orders requiring equal remuneration

Subclause 151(1) enables the commission to make any order it considers appropriate to ensure that employees will receive equal remuneration for work of equal value.

Subclause 151(2) adds to the power of Subclause (1) by permitting the commission to order increases in rates of remuneration.

Orders only on application

Clause 152 provides that the commission can make an order under this part only on application from an employee to be covered by the order, or an industrial organisation entitled to represent the relevant employees, or the Anti-Discrimination commissioner.

When commission must and may only make order

Clause 153 specifies the circumstances in which the commission must and may only make an order for equal remuneration. An order may be made only if the employees involved do not already have equal remuneration and only if the order can reasonably be regarded as appropriate and as giving effect to one of the anti-discrimination conventions or ILO recommendations.

Immediate or progressive introduction of equal remuneration

Clause 154 gives the commission discretion to order that equal remuneration be introduced immediately or in progressive stages.

Employer not to reduce remuneration

Clause 155 prohibits an employer from reducing remuneration because an application or order has been made under this part. A reduction made for that reason is ineffective; the employee would retain a legal entitlement to the original remuneration.

Part does not limit other rights

Clause 156 makes it clear that this legislation does not limit any other right to secure equal remuneration for work of equal value for example through industrial instruments or determinations of anti-discrimination bodies.

Applications under this part

Subclauses 157(1) and (2) preclude application, under this part, for an order to secure equal remuneration for work of equal value, where alternative action has begun under another provision of this legislation or under another Act, unless that action has been discontinued or has failed for want of jurisdiction.

Subclauses 157(3) and (4) preclude application, under another provision of this legislation or under another Act, for an order to secure equal remuneration for work of equal value where action has begun under this part, unless that action has been discontinued or has failed for want of jurisdiction.

Subclause 157(5) applies the principles outlined in Subclauses (1) to (4) inclusive to applications begun under the corresponding provisions of the repealed Act.

PART 3—PARENTAL LEAVE

The intent of this part is to give effect to the ILO Family Responsibilities Convention and its associated Recommendation by providing for unpaid parental leave.

Division 1—Preliminary

Object

Clause 158 provides for the object of the division to be based on the provisions of the Family Responsibilities Convention and Recommendation.

Basic principles

Subclause 159(1) states that an employee who gives birth to a child, and the employee's spouse, are entitled to 52 weeks of shared unpaid parental leave to care for the newborn child.

Subclause 159(2) specifies that the entitlement to leave under this part is reduced by any other parental leave entitlement. The objective is for an employee to use any parental leave entitlement which exists, for example under an industrial instrument, before the proposed statutory leave is used.

Subclause 159(3) specifies that requirements relating to length of service, notice periods and the provision of information and documentation must be satisfied to obtain the parental leave provisions.

Subclause 159(4) provides that, except for one week at the time of the birth, the parents must take the leave at different times.

Subclause 159(5) prescribes that any other leave that is taken in conjunction with parental leave, such as annual leave, will reduce the period of the leave. This provision ensures that an employee will not be absent from work for a continuous period of more than 52 weeks in conjunction with parental leave.

Subclause 159(6) permits variation to the period of leave in some cases.

Subclause 159(7) states the general principle that notice of a variation must be given if the variation is foreseeable.

Subclause 159(8) specifies that an employer may only cancel leave in circumstances where the employee will not become, or stops being, the child's primary care-giver, or where there has been a mistake in the amount of leave granted.

Subclause 159(9) establishes the principle that in most cases an employee is entitled to return to his or her former job after the taking of parental leave.

Subclause 159(10) recognises that the taking of parental leave does not break continuity of service.

Definitions for pt 3

Clause 160 defines some important terms used in the division:

- 'continuous service' means service under an unbroken contract of employment and includes a period of authorised leave or absence. The definition excludes casual and seasonal workers from access to parental leave, which is consistent with existing standards, including the determination of the commission issued on 25 October 1991 and contained in the Family Leave Award—State;
- 'employee' includes a part-time employee, but excludes a casual of seasonal employee;
- 'law' includes an unwritten law;
- 'long paternity leave' means paternity leave under Part 3, or other analogous leave, to which an employee is entitled due to the birth of a child to his spouse;
- 'maternity leave' means leave granted under Part 3, or other analogous leave, to which an employee is entitled in respect of her pregnancy or the birth of her child;
- Cla'medical certificate' means a certificate signed by a doctor;
- 'parental leave' means maternity or paternity leave;
- 'part 3 long paternity leave' means paternity leave granted under Clause 173 to be the child's primary care-giver;
- 'part 3 maternity leave' means leave granted under Clause 161, which is one period of unpaid leave for the birth of the child and to be the child's primary care-giver;
- 'part 3 short paternity leave' means leave granted under Clause 173 to an employee in respect of the birth of the child of his spouse;
- 'paternity leave' means short paternity leave or long paternity leave;
- 'short paternity leave' means leave granted under Subclause 173(a), or other analogous leave, that is granted to an employee in respect of the birth of a child to his spouse.

Division 2—Maternity leave

Entitlement to maternity leave

Clause 161 states that an employee who becomes pregnant is entitled to a single period of unpaid leave.

Conditions of entitlement to maternity leave

Subclause 162(1) prescribes the notification and documentation which an employee must provide for the employer to be required to grant the leave. The notice requirements include:

- 10 weeks notice of the estimated date of birth;
- an application for the leave four weeks before the first day of the leave.

Paragraphs (c), (d), (e), (f) and (g) prescribe that the application must:

- state the first and last days of the leave; and
- be accompanied by a medical certificate which states either that the employee is pregnant and the estimated date of birth, or that the employee has given birth on a specified day; and
- include a statutory declaration stating:
- any period of paternity leave her spouse has applied for or intends to apply for and any other paid leave her spouse intends to take in conjunction with the paternity leave; and
- that she will be the child's primary care-giver throughout the maternity leave; and
- that she will not engage in conduct inconsistent with her contract of employment while on maternity leave.

Paragraph (g) also states that it must be reasonable to expect that the employee will have completed at least one year's continuous service on the day before the estimated date of birth.

Subclause 162(2) provides that the 10 week notice period does not apply if, for a compelling reason, such as the premature birth of the child, it was not reasonable for the employee to give notice. Notice must still be given as soon as reasonably practicable.

This subclause also prescribes that a woman does not lose her entitlement to the leave if she fails to complete one year's continuous service only because of a premature birth.

Subclause 162(3) states that the requirement that an employee apply for leave at least four weeks before the estimated date of birth will not apply when there are compelling reasons preventing compliance. The employee will still be required to submit the application as soon as is practical.

Subclause 162(4) limits the application of Subclause (1)(d) where Subclause (3)(c) applies.

Subclause 162(5) provides for a reduction of the one year continuity requirement where a child is born prematurely.

Subclause 162(6) provides for the granting of a substituted period of maternity leave. This provision could apply if, during the pregnancy, it became apparent that the estimated date of birth was incorrect and the leave arrangements need to be altered.

Period of maternity leave

Clause 163 deals with the duration of the maternity leave.

Subclause 163(1) provides in Paragraphs (a) and (b) for the leave to commence on the child's estimated or actual date of birth, or a later date specified in the application. Any leave must not extend beyond the anniversary of the estimated date of birth or the child's first birthday.

The same subclause provides in Paragraphs (c) and (d) that the leave must not overlap with any period of paternity leave (other than short paternity leave), and must be taken in a continuous period.

Subclause 163(2) provides that the period of maternity leave is 52 weeks less:

- any period of unpaid leave or paid sick leave granted in respect of the same pregnancy; and
- any period of annual or long service leave that the employee has applied for instead of, or in conjunction with, the maternity leave; and
- each period of paternity or related leave as specified in the statutory declaration.

Entitlement reduced by other maternity leave available to employee

Clause 164 requires an employee to take any period of maternity leave that is available to her from another source before the maternity leave available under Division 2 is taken. One reason for requiring that alternative maternity leave be taken before the Division 2 leave is that many sources of alternative leave provide for a period of leave before the birth. The parental leave provided for in Division 2 provides only for leave after the birth of the child.

Subclause 164(1) states that the clause applies where an employee could have applied for maternity leave from another source and access to such leave would have been a legally enforceable right.

Subclause 164(2) provides that, if the period of leave from the alternative source is at least as long as the Division 2 leave the employer must not grant maternity leave under Division 2. The employee should use the alternative leave instead.

Subclause 164(3) states that, if the period of alternative leave is less than the 52 weeks available under Division 2, the employer must grant the difference between the alternative entitlement and the 52 weeks. In this situation the leave under the division must be taken immediately after the period of alternative leave to ensure that the leave is taken in a continuous period.

There is an assumption that both periods of leave will be applied for at the same time, and a composite period of leave will be taken.

Subclause 164(4) defines a number of terms.

Taking annual or long service leave instead of, or in conjunction with, maternity leave

Clause 165 requires the employer to grant a period of long service leave or annual leave that is applied for instead of, or in conjunction with, the maternity leave if:

- the employer would have been obliged to grant the leave if not for Part 3; or
- the total period of maternity, paternity, and associated leave does not exceed 52 weeks.

Extending maternity leave

Subclause 166(1) states that the employee may apply for an extension of maternity leave.

Subclause 166(2) requires the employer to grant one request for the extension of maternity leave provided that appropriate notice is given, and that the total period of relevant leave granted will not exceed 52 weeks.

Subclause 166(3) makes any further extension a matter of agreement between the employer and employee.

Shortening maternity leave

Clause 167 permits the employee to request, and the employer to grant, an application to shorten the maternity leave granted.

Effect on maternity leave of failure to complete one year of continuous service

Clause 168 allows the employer to cancel leave which was granted on the expectation that the employee would complete one year's continuous service if the employee does not complete the continuous service.

Effect on maternity leave if pregnancy terminates or child dies

Subclause 169(1) states that Clause 169 applies where an employee has been granted maternity leave and the pregnancy terminates other than by the birth of a living child or where the employee gives birth to a living child who later dies.

Subclause 169(2) provides that if the leave has not commenced the employer may cancel the leave.

Subclauses 169(3), (4), (5), (6) and (7) provide that where the leave has begun, it may be cancelled on the provision of four weeks notice by either party as the employee will no longer be engaged in caring for the child.

Subclause 169(8) requires the employer to cancel the rest of the maternity leave if the employee returns to work.

Effect on maternity leave of ceasing to be the primary care-giver

Subclauses 170(1), (2) and (3) provide for the cancellation of maternity leave on the provision of four weeks notice by the employer if the employee:

- is not the child's primary care-giver for a substantial period; and
- it is reasonable to expect that the employee will not resume being the primary care-giver within a reasonable period.

Subclause 170(4) provides for the employer to cancel the rest of the maternity leave if the employee returns to work.

Return to work after maternity leave

Subclause 171(1) states that Clause 171 applies when an employee returns to work after a period of maternity leave.

Subclause 171(2) requires an employer, as a general principle, to employ a person in the substantive position she held immediately before a period of maternity leave, transfer to safe duties or commencement of part-time duties as appropriate.

Subclause 171(3) states that, if that position no longer exists, the employer must employ her in another position for which she is qualified and that is nearest in status and remuneration to her former position.

Transfer to safe duties because of pregnancy

Clause 172 provides that, where in the opinion of a doctor it is inadvisable for an employee to continue with existing duties, the employer may assign the employee other duties that she can efficiently perform and that are nearest in status and remuneration to her existing position. Under Paragraph (d) an employee can be directed to take leave for the period which a doctor considers necessary.

Division 3—Paternity leave

Entitlement to paternity leave

Clause 173 states that an employee whose spouse gives birth to a child is entitled to unpaid:

- short paternity leave for one week, starting on the child's date of birth; and
- long paternity leave, which is granted in order that the employee may be the child's primary care-giver.

Conditions of entitlement to short paternity leave

Subclause 174(1) requires the granting of short paternity leave if the following conditions are met:

- Written notice is given 10 weeks before the date of birth which:
  - states the intention to apply for the leave; and
  - supplies a medical certificate naming the pregnant spouse and stating the estimated date of birth.
- An application is lodged, as soon as practical after the first day of the leave, which:
  - states the first and last days of the period of the leave; and
  - is accompanied by a medical certificate which specifies the actual date of birth, unless that date is the date estimated in the earlier notice.

The period of leave must not exceed one week and it must be reasonable to expect that the employee had completed at least one year's continuous service on the actual date of birth.

Subclause 174(2) exempts an employee from the notification, and continuity of service criteria do not apply if the child was premature, or some other compelling reason intervened. It is still necessary to provide the notification as soon as possible. It must also be reasonable to expect that the employee would have completed at least one year's continuous service by the estimated date of birth if the premature birth had not occurred.

Conditions of entitlement to long paternity leave

Subclause 175(1) makes it mandatory for an employer to grant long paternity leave if:

- an employee applies for the leave specifying the first and last days of the leave; and
- the application is submitted 10 weeks before the first day of the leave and is accompanied by a medical certificate which names the employee's spouse and states either that she:
  - is pregnant, and gives the estimated date of birth, or
  - has given birth on a specified day.

The application must also include a statutory declaration which sets out:

- any period of maternity leave his spouse has applied for or intends to apply for, and any other unpaid leave or paid sick leave (for the pregnancy) his spouse intends to take or has taken in conjunction with the maternity leave; and
- that he will be the child's primary care-giver throughout the paternity leave; and
- that he will not engage in conduct inconsistent with his contract of employment while on paternity leave.

Paragraph (e) also provides that it must be reasonable to expect that the employee will have completed at lease one year's continuous service on the day before the leave is due to begin.

Subclause 175(2) provides that the 10 week notice period does not apply if, for a compelling reason, such as the premature birth of the child, it was not reasonable for the employee to give the notice. Notice must still be given as soon as reasonably practicable.

Period of long paternity leave

Subclause 176(1) states that the leave must begin on the child's estimated or actual date of birth, or a later date specified in the application, and must not extend beyond the child's first birthday, or the anniversary of the child's estimated date of birth.

Subclause 176(1), Paragraphs (c) and (d), provides that the leave must not overlap with any period of maternity leave and must be taken in a continuous period.

Subclause 176(2) provides that the period of long paternity leave is 52 weeks less:

- any period of short paternity leave which is taken; and
- annual or long service leave that the employee has applied for instead of, or in conjunction with, the paternity leave; and
- the spouse's maternity or related leave as specified in the statutory declaration.

Entitlement reduced by other paternity leave available to employee

Clause 177 requires an employee to take any period of paternity leave that is available to him from another source before the long paternity leave available under Division 3 of Part 3 is taken.

Subclause 177(1) states that the clause applies where an employee could have applied for paternity leave from another source and access to such leave would have been a legally enforceable right.

Subclause 177(2) provides that, if the period of leave from the alternative source is at least as long as the Division 3 leave the employer must not grant paternity leave under the division. The employee should use the alternative leave instead.

Subclause 177(3) states that, if the period of alternative leave is less than the 52 weeks available under Division 3, the employer must grant the difference between the alternative entitlement and the 52 weeks. In this situation the leave under the division must be taken immediately after the period of alternative leave to ensure that the leave is taken in a continuous period.

There is an assumption that both periods of leave will be applied for at the same time, and a composite period of leave will be taken.

Subclause 177(4) defines certain terms.

Taking annual or long service leave instead of, or in conjunction with, paternity leave

Clause 178 provides that the employer must grant a period of long service leave or annual leave that is applied for instead of, or in conjunction with, the paternity leave if:

- the employer would have been obliged to grant the leave if not for Part 3; or
- the total period of paternity, maternity, and associated leave does not exceed 52 weeks.

Extending long paternity leave

Subclause 179(1) states that the employee may apply for an extension of long paternity leave.

Subclause 179(2) requires the employer to grant one request for the extension of paternity leave provided that appropriate notice is given, and that the total period of relevant leave granted will not exceed 52 weeks.

Subclause 179(3) makes any further extension a matter of agreement between the employer and employee.

Shortening paternity leave

Clause 180 permits the employee to request, and the employer to grant, an application to shorten the period of long paternity leave granted.

Effect on long paternity leave of failure to complete one year of continuous service

Clause 181 allows the employer to cancel leave that has been granted on the expectation that the employee would complete one year's continuous service on a particular day, where the employee does not complete that service.

Effect on long paternity leave if pregnancy terminates or child dies

Subclause 182(1) states that clause 182 applies where an employee has been granted long paternity leave and his spouse's pregnancy terminates

other than by the birth of a living child or where the employee's spouse gives birth to a living child who later dies.

Subclause 182(2) provides that where the leave has not begun, it may be cancelled by the employer before it begins.

Subclauses 182(3), (4), (5), (6) and (7) provide that where the leave has begun, it may be cancelled on the provision of four weeks notice by either party as the employee will no longer be engaged in caring for the child.

Subclause 182(8) requires the employer to cancel the rest of the leave if the employee returns to work.

Effect on paternity leave of ceasing to be the primary care-giver

Subclauses 183(1), (2) and (3) provide for the cancellation of paternity leave on the provision of four weeks' notice by the employer if the employee:

- is not the child's primary care-giver for a substantial period; and
- it is reasonable to expect that the employee will not resume being the primary care-giver within a reasonable period.

Subclause 183(4) provides for the employer to cancel the rest of the paternity leave if the employee returns to work.

Return to work after paternity leave

Subclause 184(1) provides that Clause 184 applies when an employee returns to work after a period of long paternity leave.

Subclause 184(2) requires an employer, as a general principle, to employ a person in the substantive position he held immediately before the period of paternity leave.

Subclause 184(3) states that, if that position no longer exists, the employer must employ him in another position for which he is qualified and that is nearest in status and remuneration to his former position.

Division 4—General

Employee's duty if excessive leave approved or if maternity leave and paternity leave overlap

Subclause 185(1) states that Clause 185 applies if:

- the total period of parental leave granted in relation to the birth of a child, and the total of annual leave, long service leave or paid sick leave granted in conjunction with or instead of that parental leave, exceed 52 weeks;
- leave granted the employee and the employee's spouse overlap.

Subclauses 185(2) and (3) require the employee to give the employer, and the spouse's employer, a written notice which specifies the amount of any excess or the overlapping leave. The notice must also specify how the leave should be varied or cancelled to avoid the excess or overlap, or how the spouse's leave is being varied or cancelled.

Subclause 185(4) states that the variations or cancellations must remove the excess or overlap.

Subclause 185(5) provides that an employer who receives the notice referred to may vary or cancel the leave as suggested in the notice, or as otherwise agreed.

Employer to warn replacement employee that employment is only temporary

Clause 186 requires the employer to warn any person engaged to replace an employee who is on parental leave that the employment is temporary, and about the rights of the employee who is on parental leave.

Parental leave and continuity of service

Clause 187 provides that parental leave:

- does not break an employee's continuity of service; but,
- does not count as service except for the purpose of determining an entitlement to a later period of parental leave, or as expressly provided in this Bill or in an industrial instrument or order.

Effect of part on other laws

Subclause 188(1) provides that Part 3 has effect despite conflicting laws of the State, and industrial instruments or orders.

Subclause 188(2) permits the operation of any other entitlement that can operate concurrently.

Regulations for adoption leave

Clause 189 gives authority for the making of a regulation to provide for the granting of unpaid adoption leave. Such a regulation would give further effect to international obligations concerning workers with family responsibilities.

PART 4—LONG SERVICE LEAVE

This part provides for the granting of long service leave for employees. It contains provisions relating to full-time, part-time, casual and seasonal employees. It addresses quantum of leave, continuity of service and payment of entitlements in the case of termination of service.

Definitions for pt 4

Clause 190 defines various terms which relate to the whole of Part 4. These include:

- 'Continuous service'
- 'Industrial authority'
- 'Owner'
- 'Period between seasons'
- 'Season'
- 'Seasonal employment'.

Source of long service leave entitlement

Clause 191 provides that employees are entitled to long service leave:

- in accordance with any other Act if so prescribed in such Act;
- in accordance with a regulation declared in accordance with Clause 195 if the employee is a seasonal worker;
- in accordance with Clause 196 if the employee is one not covered by an industrial instrument, a Commonwealth award that provides for long service leave, or another Act, or law of the Commonwealth, that provides for long service leave; or
- in accordance with this part.

Approval of long service leave conditions

Subclause 192(1) prescribes the jurisdiction of the commission to insert long service leave provisions into awards.

Subclause 192(2) authorises an industrial authority to approve the inclusion of conditions, not less favourable than those prescribed in this part, into a certified agreement or QWA.

Subclause 192(3) requires the industrial authority to approve the agreement if satisfied that the employer concurs with the provisions to confer long service leave and if the community in general will not be prejudiced by conferring the benefits.

Entitlement to long service leave

Subclause 193(1) provides that Part 4 does not apply where conditions at least as favourable are provided under another law, industrial instrument or other agreement.

Subclause 193(2) prescribes the entitlement of employees to long service leave.

Subclause 193(3) provides that long service leave is exclusive of public holidays falling during the period of leave.

Subclause 193(4) provides for adjustments to be made to the long service leave entitlements of seasonal and casual employees under Subclauses 194, 195 and 200.

Subclause 193(5) defines 'terminated' for the purposes of this section as terminated by the employee's death, or by the employee or by the employer for a cause other than serious misconduct.

Long service leave in meat works and sugar industry

Clause 194 prescribes the long service leave provisions applying to seasonal workers in meat works and the sugar industry.

Long service leave for other seasonal employees

Clause 195 provides that a regulation may declare that long service leave provisions apply to certain other seasonal employees.

Long service leave for employees not governed by awards etc.

Clause 196 prescribes the long service leave provisions applying to employees not governed by an industrial instrument, a Commonwealth award, or other Acts of the State or Commonwealth.

Continuity of service generally

Clause 197 makes general provision for the determination of an employee's period of continuous service with an employer for long service leave purposes.

Determining length of continuous service

Clause 198 provides for the determination of the length of continuous service of an employee for long service leave purposes.

Service in Defence Force

Clause 199 provides for the continuity of service for long service leave purposes of members of Defence Force.

Service of casual employees

Clause 200 provides for the long service leave entitlements of casual employees.

Taking of long service leave

Clause 201 provides for:

- the time when
- the manner in which
- the conditions on which

long service leave may be taken.

Taking long service leave— casual employees

Clause 202 permits an employer and a casual employee to agree to the taking of long service leave in the form of its full-time equivalent, subject to any provision contained in an industrial instrument.

Payment for long service leave

Clause 203 provides for employees to be paid long service leave at the rate of wages being received immediately before taking such leave. It also contains a formula by which the payment to a casual employee is to be calculated.

Payment for long service leave—casual employees

Subclause 204(1) provides that payment for long service leave for casual employees shall be based upon the number of hours multiplied by the hourly rate.

Subclause 204(2) establishes the formula for calculating the long service leave entitlement for casual employees.

Subclause 204(3) gives authority to the commission to determine disputes about rates payable to pieceworkers for long service leave.

Subclause 204(4) provides for mutual agreement between the employer and employee about timing and method for payment for long service leave

to casual employees.

Subclause 204(5) authorises the commission to determine matters relating to payment for long service leave to casual employees in the absence of agreement.

Subclause 204(6) states that long service leave becomes payable to a casual employee as agreed or as determined by the commission.

Subclause 204(7) defines terms relevant to the calculation and determination of a casual employee's long service leave.

Payment instead of long service leave

Clause 205 provides that, except in the case of the termination of employment or the death of an employee, payment cannot be made in lieu of long service leave.

Inquiry on re-employment of employee during long service leave

Clause 206 provides that, in certain circumstances, an Industrial Magistrate may inquire into the matter of an employer paying and employee receiving payment in lieu of long service leave.

Recognition of certain exemptions

Clause 207 continues any exemption from long service leave provisions awarded by the commission under provisions of the repealed legislation, but allows for exemptions to be revoked by the commission on application by the employer.

Person may be 'employer' and 'employee'

Clause 208 provides that a person who is an employee is entitled to long service leave notwithstanding that the person may fit the description of 'employer' as defined in the legislation.

Service in apprenticeship or traineeship

Clause 209 provides that the period served as an apprentice or trainee by a person who is continued in employment or is re-employed within three

months by the employer after having completed the apprenticeship or traineeship is to be taken into account when assessing the employee's length of service with the employer for long service leave purposes.

PART 5—OTHER LEAVE

Annual leave accrued during apprenticeship or traineeship

Clause 210 provides that an apprentice or trainee who is continued in employment by an employer after having completed a period of apprenticeship or traineeship retains, as an entitlement in that continued employment, any annual leave which accumulated during the apprenticeship or traineeship. Unless the commission otherwise determines, any limitation imposed by the *Vocational Education, Training and Employment Act 1991* must be taken into account but a limitation imposed by the relevant industrial instrument must not be taken into account.

Sick leave accrued during apprenticeship or traineeship

Clause 211 provides that an apprentice or trainee who is continued in employment or re-employed within three months by an employer after having completed a period of apprenticeship or traineeship retains, as an entitlement in that continued employment, any sick leave which accumulated during the apprenticeship or traineeship.

Continuity of employment for sick leave

Clause 212 allows for the portability of an employee's sick leave entitlements where:

- the employer's business is sold and the employee takes up employment with the new owner; or
- an employee continues in employment with a partner of a partnership which has been dissolved and by which the employee had been employed; or
- employment is with a corporation or its subsidiary.

This clause also provides that continuity is not broken where an employee is dismissed within one month prior to transfer or on transfer and is re-employed within three months.

CHAPTER 5—DISMISSALS

PART 1—OBJECTS AND INTERPRETATION

The object of this part is to introduce a new unlawful dismissal process which provides employees with access to a fair and simple process of appeal against unlawful dismissal (based on the principle of a 'fair go all round'); is fair to both employee and employer; ensures costs are minimised; discourages applications which are frivolous, vexatious or without reasonable cause; and helps to give effect to named International Conventions.

Objects

Clause 213 sets out the objects of Part 5 which are:

- to establish procedures, in relation to claims of unlawful dismissal, for deciding the circumstances in which dismissal is unlawful;
- to provide for appropriate remedies and sanctions if the dismissal is found to be unlawful;
- by those procedures, remedies and sanctions, to help give effect to ILO 158, ILO 111 and ILO 156.

A further object is to ensure, by these procedures and remedies, that both the employer and the employee are provided with a 'fair go all round' in the consideration of applications relating to dismissals.

Meaning of expressions

Clause 214 provides that expressions used in Chapter 5 have the same meaning as in the Termination of Employment Convention. This

convention is set out in Schedule 3.

Complementary laws

Subclause 215(1)(a) allows provisions (Subdivision B of Division 3 of Part VIA) of the Commonwealth *Workplace Relations Act 1996* relating to the dismissal of a federal award employee (as defined in Section 170CD of that Act) to operate, as if they were a law of this State in place of Chapter 5. This is to enable the federal powers and functions to be exercised by the Australian commission in relation to federal award employees who may be beyond the reach of the conciliation and arbitration power (placitum 51(xxxv) of the Commonwealth Constitution), the corporations power (placitum 51(xx) of the Commonwealth Constitution) or the external affairs power (placitum 51(xxix) of the Commonwealth Constitution).

*Subclause 215(1)(b)*extends these functions and powers to the Federal Court of Australia in connection with orders made by the Australian commission under the powers and functions conferred.

These clauses complement Section 5 of the federal Commonwealth Workplace Relations Act which provides a mechanism for the Australian commission and the Federal Court of Australia to perform powers and functions, related to the dismissal of federal award employees, conferred on them by a State law. The federal law (Sections 5(8)(a) and 5(9)(b)) also ensures that such a state law will not be overridden by the Commonwealth Workplace Relations Act.

These clauses are intended to ensure that the Commonwealth will be able to provide a proper process in federal institutions for all federal award employees to have claims about harsh, unjust or unreasonable termination determined and remedied where appropriate.

Subclause 215(2) provides that 'Commonwealth provisions' means Part VIA of Division 3 of Subdivision B of the Commonwealth Workplace Relations Act, and 'federal award employee' means an employee whose terms and conditions of employment are governed by a federal award, a federal certified agreement or an Australian workplace agreement (AWA). An employee is taken to be employed under federal award conditions if both wages and conditions of employment are regulated by a federal award, a federal certified agreement or an AWA.

Exclusion of employees from part

Subclause 216(1) provides that Chapter 5 does not apply to an apprentice or trainee.

Subclause 216(2) provides that casual employees, apart from those who are excluded by regulation, will be eligible to make an application under the provisions of Part 2, which refers to unlawful dismissals.

Subclause 216(3) provides that casual employees and employees engaged by the hour or day, or for a specific period or task, are excluded from the protection of the notice, redundancy and severance provisions in Part 3.

Subclause 216(4) provides that employees with less than one year of continuous service are also excluded from the provisions of Clauses 227, 228 and 229 which make provision for:

- orders giving effect to articles 12 and 13 of the Termination of Employment Convention;
- orders where an employer fails to consult about proposed dismissals; and
- the employer to notify the Commonwealth Employment Service of proposed dismissals.

These provisions only relate to cases where 15 or more employees are to be terminated.

Subclause 216(5) provides for the exclusion, by regulation, of particular employees from the operation of particular provisions of Chapter 5.

PART 2—UNLAWFUL DISMISSALS

When dismissal is unlawful

Clause 217 defines the circumstances when a dismissal is unlawful.

A dismissal is unlawful if it is harsh, unjust or unreasonable or if it is for any of the invalid reasons set out in that clause. The clause lists unacceptable reasons for the dismissal of an employee. This gives effect to the Termination of Employment Convention, the Workers with Family

Responsibilities Convention and the Discrimination (Employment and Occupation) Convention.

Subclause 217(xi) ensures that consideration to matters relating to anti-discrimination under this part are the same as that applicable under the *Anti-Discrimination Act 1991*.

Application to remedy unlawful dismissal

Subclause 218(1) provides that a dismissed employee may apply to the commission under Part 2. The dismissal must have taken effect when an application is made. There is no scope under this clause for applying for a remedy during a notice period before the employment has ended.

Subclause 218(2) provides that an application to the commission may be made either by the person who has been dismissed or by an organisation, provided the organisation's rules entitle it to represent the employee and the organisation has the consent of the employee.

Subclause 218(3) provides that an application must be made within 21 days after the dismissal takes effect, unless the commission allows a longer period.

Conciliation before application heard

Subclause 219(1) provides that the commission must attempt to have all applications settled by conciliation between the parties.

Subclause 219(2) provides the commission with authority to summons parties to a conciliation conference.

Subclause 219(3) provides that if the commission is satisfied that the matter is unlikely to settle by conciliation, it must inform the parties of this fact and of the possible consequences of proceeding further. The parties to the conciliation may be informed in any manner that the commission would consider appropriate. The commission may also recommend that the application be discontinued, with or without further recommendations on resolving the matter.

Subclause 219(4) provides that the application lapses if the applicant has not, within six months after being informed under Subclause 219(3), discontinued any action or taken any other action in relation to the application.

Subclause 219(5) provides that a matter may be conciliated or settled at any time, even after arbitration has commenced, before the commission makes an order under Section 222.

Subclause 219(6) provides for the chief commissioner to delegate the holding of a conciliation conference to the registrar or an assistant registrar. This provision is to assist the commission deal in an efficient and timely manner with applications.

What to consider in deciding if dismissal is harsh, unjust or unreasonable

Subclause 220 sets out the matters that the commission must have regard to in determining whether a termination was harsh, unjust or unreasonable. These matters are:

- whether the employee was notified of the reason for the dismissal; and
- whether the dismissal was validly related to:
  - the operational requirements of the employer's undertaking, establishment or service; or
  - the conduct, capacity or performance of the employee; and
- whether the employee had been warned about the unsatisfactory conduct, capacity or performance; or
- whether the employee was given the opportunity of responding to the allegation about the employee's conduct, capacity or performance; and
- any other matters the commission considers relevant.

Affording employees procedural fairness in relation to a dismissal will be relevant in establishing whether or not a dismissal is harsh, unjust or unreasonable. However, as procedural fairness is to be only one factor to be considered along with other relevant factors, the intention is that undue weight will not be given to procedural defects in a dismissal.

Onus of proof

Subclause 221(1)(a) places the onus of proof on the employee where an application alleges the dismissal was harsh, unjust or unreasonable.

Subclause 221(1)(b) places the onus of proof on the employer to show that the dismissal was not for an invalid reason where the application alleges that the dismissal was for one of the invalid reasons mentioned in Clause 217(1)(b).

Remedies and sanctions for unlawful dismissal

Clause 222 sets out the kind of remedies and sanctions which may be ordered by the commission where it is satisfied a dismissal was unlawful, and the matters which must be considered before making any orders.

Subclause 222(1)(a) provides for the reinstatement of employees in appropriate circumstances.

Subclause 222(1)(b) establishes that payment in lieu of reinstatement is only available where the commission considers reinstatement is inappropriate, and where it considers such payment appropriate in all the circumstances of the case.

Subclauses 222(2)(a) and (b) provide that, in association with a reinstatement order, the commission may also make orders concerning continuity of employment, and the payment of lost remuneration because of the dismissal while taking into account any employment benefits or wages received by the employee since the dismissal.

Subclause 222(2)(c) allows the commission to order the employee to repay amounts received from the employer on dismissal.

Subclause 222(3) provides that the amount of any compensation under Subclause (1)(b) is limited to the total amount of remuneration the employee would receive for a period of six months at the rate the employee was receiving immediately before the dismissal.

Subclause 222(4) provides that the commission, before making any orders under Subclause (1) or (2), must be satisfied that the remedy ordered is appropriate in all the circumstances of the case. This includes, if the matter is raised by the employer, the viability of the employer's undertaking, establishment or service if the order was made (Subclause (8)).

This provision is intended to ensure that before orders are made, the commission considers the effect of orders on employers, who may have a limited capacity to pay large amounts or reinstate employees.

Subclause 222(5) provides that if the commission is satisfied that the dismissal was for any of the invalid reasons set out in Clause 217(b) then it may (in addition to any other order under this clause) impose a sanction of not more than 135 penalty points ($10,125) on the employer.

Subclause 222(6) provides that neither this clause nor Clause 296 limits the commission's powers to make interim or interlocutory orders in an application for unlawful dismissal under Clause 218. This would not allow the commission to make an order, in the form of an injunction, to stop an employee being dismissed. Applications concerning dismissals are not to be made to the commission before a dismissal has taken effect.

This provision would not preclude action by an aggrieved party under any other clause, including Clause 240.

Subclause 222(7) makes provision for orders of the commission under Subclauses (1)(b), (2)(b) or (c), or (5) to allow employers and employees to make required payments by instalments.

This provision will assist employees and employers as payments may be ordered to be made over a period of time rather than all at once.

Further orders if employer fails to reinstate

Subclause 223(1) provides that if the employer wilfully fails to comply with an order of the commission to reinstate an employee, the commission may further order that the employer pay the employee an amount of not more than the value of 50 penalty units ($3,750) and an amount as remuneration for lost wages. Further orders may be made until the employer complies with the relief order.

Subclause 223(2) provides that the clause does not affect any other provisions of the Bill allowing proceedings to be taken against the employer.

Effect of order on leave

Clause 224 provides that an order under Clause 222(2)(a) negates the effect of any break in continuity of service, caused by the dismissal, for the purposes of calculating an employee's entitlement to sick, annual or long service leave.

Costs

Clause 225 is intended to discourage the improper use of commission proceedings in relation to dismissal.

Subclause 225(1)(a) provides for an order for costs to be made against an employee if the commission is satisfied that the application was initiated frivolously, vexatiously or without reasonable cause. This provision is intended to discourage applicants from making applications which are without any reasonable foundation.

Subclause 225(1)(b) provides for an order for costs to be made against an employer or an employee if the commission is satisfied that an unreasonable act or omission by the party caused costs to be incurred, in connection with the proceedings, by the other party. For example, where a party acted unreasonably in a conciliation conference or on arbitration, by failing to discontinue a matter or failing to agree to terms of settlement, then the commission may make an order for costs against the party.

Subclause 225(2) provides that an application for such an order must be made within 21 days after the commission determines the initial application; otherwise it is discontinued or lapses under Clause 219(4). This type of order may be made against an employer or an employee.

Subclause 225(3) defines 'costs' to include legal and professional costs and disbursements, whether or not they are certified by the commission, and witness expenses. Under Clause 350 of the Bill, the commission is required to certify that it is, or was, in the interests of justice that counsel, solicitor or agent, should be or was heard.

PART 3—REQUIREMENTS FOR DISMISSAL

Notice of dismissal or compensation

Subclauses 226(1)(a) and (b) provide for specific periods of notice or compensation which must be given by an employer to an employee, unless the employee engages in misconduct which would make such notice unreasonable. For example, if an employee was stealing from his or her employer, such a circumstance would ordinarily be considered to be misconduct of the type which would negate the requirement to give the

required period of notice or compensation in lieu.

Subclause 226(2) sets out the relevant periods of notice which are extended by one week in the case of an employee who is over 45 years of age and who has completed at least two years of continuous service with the employer.

Subclause 226(3) allows regulations to treat breaks in service as not interrupting continuity of service. The regulations are to do this by specifying the events or other matters that must be disregarded when calculating the employee's continuous service.

Subclauses 226(4) and (5) specify the minimum amount of compensation that must be paid in lieu of notice of dismissal. This is the amount to which the particular employee would have been entitled had the employment continued during the period for which notice would otherwise have been given.

Subclause 226(6) gives the commission, on an application for unlawful dismissal, and magistrates the power to order the payment of compensation in lieu of notice in circumstances where the appropriate notice or compensation has not been given.

Subclause 226(7) allows an application before a magistrate under Subclause (6)(b) to be made by the employee dismissed or, with the employee's consent, an organisation which represents the industrial interests of the employee or an inspector.

Subclause 226(8) provides that an application for an order to obtain compensation for failing to give the required notice of payment in lieu may be made within six years of the date of dismissal. This subclause brings the requirements of this section in line with proposals for recovery of wages generally, as provided in Subclause 423(3).

Subclause 226(9) provides for the making of regulations which may exclude dismissals which occur in specific circumstances when an employer's business is transferred from the requirement to give or pay the required notice.

Orders giving effect to articles 12 and 13 of Convention

Subclauses 227(1) and (2) provide for the commission to make certain orders about:

- severance allowance or other separation benefits (this is dealt with in article 12 of the ILO's Termination of Employment Convention); or
- consultation of workers' representatives by an employer who decides to dismiss at least 15 employees for reasons of an economic, technological, structural or similar nature (this is dealt with in article 13 of the Convention).

Subclause 227(3) provides that where the commission has made an order under Clause 227(1), an employer must not dismiss an employee in contravention of that order.

Subclause 227(4) contains the consequences of contravening an order given under Subclause 227(1). They include any of the orders available to the commission under Clause 222 for an unlawful dismissal and in addition, a penalty of not more than the value of 135 penalty units ($10,125).

Subclause 227(5) provides that an application can only be made under this clause by an employee or an organisation which represents the industrial interests of the employee. The commission may only make an order on application.

Subclause 227(6) provides that an application under Subclause (4) must be made within 21 days after the dismissal takes effect unless the commission allows a longer period.

Orders if employer does not consult about proposed dismissals

Clause 228(1) gives further effect to Article 13 of the Termination of Employment Convention. If an employer decides to dismiss 15 or more employees, for reasons of an economic, technological, structural or similar nature, he or she must provide each employee organisation to which any employees belong with the information set out in Subclause 228(1)(a), and give them an opportunity to consult on ways to minimise the dismissals and the adverse effects of the dismissals.

Subclause 228(2) provides that if the appropriate notification is not given or consultation does not occur, the employees or the employee organisation concerned may apply to the commission for an appropriate remedy. The commission is to exercise this jurisdiction only on application (Subclause (4)).

Subclause 228(3) provides that this clause does not apply if the employer could not reasonably have known that an employee organisation's rules entitled it to represent the employees.

Subclause 228(5) provides that an application under this clause must be made within 21 days after the dismissal takes effect or within such further time as the commission allows.

Employer must notify Commonwealth employment service of proposed dismissals

Subclauses 229(1) and (2) provide that an employer is required to give the Commonwealth employment service notice, as prescribed, when the employer decides to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature.

Subclause 229(3) provides that failure to comply with this obligation can lead to a penalty of not more than 16 penalty points ($1,200) or an order declaring the dismissal ineffective until the employer complies with Subclause 229(2).

Subclause 229(4) provides that an application for an order under this clause may be made by a dismissed employee, an organisation whose rules allow it to represent the employee's industrial interests or an inspector.

Subclause 229(5) provides that an application under Clause 229 must be made within 21 days after the dismissal takes effect or such further time as the commission allows.

Subclauses 229(6), (7) and (8) provide for payment of a penalty to the person making the application for an order for wrongful dismissal where there has been a failure to notify the Commonwealth employment service in terms of Subclause 229(2). The provisions include a requirement that any part of a penalty ordered to be paid to a person must first be paid and the remainder then paid to consolidated revenue. These provisions do not apply to a person who is an employee of the State or an officer of the public service.

Subclause 229(9) states that contravention of Subsection (2), which requires notification of the Commonwealth Employment Service as soon as practicable of a decision to dismiss 15 or more employees, is not an offence.

Subclause 229(10) defines the Commonwealth employment service as the Commonwealth department or agency responsible for helping the unemployed find work.

PART 4—OTHER DISMISSALS

Employee dismissed in December, re-employed in January

Subclauses 230(1) and (2) provide for employees, other than casual employees, who are dismissed in December and re-employed before the end of the following January to be paid for certain public holidays (Christmas Day, Boxing Day and New Year's Day) occurring during such period.

Subclause 230(3) defines 'dismiss' to include stand-down.

Permissible stand-down of employee

Subclause 231(1) defines the circumstances in which employees may be stood down without pay.

Subclause 231(2) provides that this clause applies despite any other provisions in the Act or an award, certified agreement or QWA.

Subclause 231(3) excludes an apprentice or trainee from the application of this clause.

PART 5—PROTECTION OF INJURED EMPLOYEES

This part relates to the protection of employees who are injured within the meaning of the Workers' Compensation Act.

Definitions for pt 5

Clause 232 provides definitions, for the purposes of this part, as follows:

- 'dismiss' in relation to an injured worker includes a situation where an employer imposes unreasonable conditions on an employee which have the effect of making the employee leave the employment and the employee does leave the employment;
- 'injured employee' means an employee who receives an injury within the meaning of the *Workers' Compensation Act 1990*.

Wages to be paid for the day employee injured

Clause 233 provides that, despite the terms of any award, certified agreement, QWA or employment contract, an injured worker is entitled to be paid a full day's wages for the day an injury occurred, which resulted in the employee being absent from work on workers' compensation.

Reinstatement of injured employees

Subclauses 234(1), (2) and (3) provide that if an injured employee is dismissed for unfitness because of the injury he or she may, within 21 days after the dismissal, provide the employer with a doctor's certificate of fitness to undertake the former position and apply to be reinstated.

Subclause 234(4) provides that if the employer, on application by the employee, does not immediately reinstate the employee, the employee or an employee organisation (with the consent of the employee) of which the employee is a member, may apply to the commission for reinstatement.

Subclause 234(5) provides that if satisfied the employee is fit for the former position, the commission may order reinstatement.

Subclause 234(6) permits an order to specify any other terms of reinstatement including the date of effect.

Subclause 234(7) gives the commission the power, if it considers it appropriate in the circumstances, to make the order even if the employee applied to the employer for reinstatement after the 21-day period.

Subclause 234(8) defines 'former position' for the purposes of this clause to mean (at the option of the employee) the position the employee occupied at the time of the dismissal, or if the employee had been moved to

a less favourable position before the dismissal, then the position held by the employee at the time he or she became unfit.

Dismissal an offence in certain cases

Subclause 235(1) imposes a penalty of 40 penalty points ($3,000) on an employer who dismisses an injured employee within three months after the employee becomes unfit, if the sole or main reason for the dismissal is that the employee is not fit for employment in a position as a result of the injury.

Subclause 235(2) provides that Clause 235 applies to a dismissal after the commencement of that clause even if the employee became unfit before the commencement of the clause.

Preservation of employee's rights

Clause 236 protects the rights of a dismissed employee which may exist under any legislation and provides that the provisions of the part are still operative despite any contract or agreement that may exist.

PART 6—GENERAL

Chapter does not limit other rights

Clause 237 makes it clear that Chapter 5 does not limit any other rights to appeal against a dismissal or to obtain awards, certified agreements, QWAs or orders about a dismissal.

Inconsistent instruments and orders

Clause 238 provides that an award, certified agreement, QWA or order of the commission which is inconsistent with an order made under this chapter does not apply to the extent that it detrimentally affects the rights of the employees.

CHAPTER 6—INDUSTRIAL DISPUTES

PART 1—NOTICE OF INDUSTRIAL DISPUTE

Notice of industrial dispute

Subclauses 239(1) and (2) state that where an industrial dispute exists between:

- an employer organisation or an employer; and
- an employee organisation or an employee

and remains unresolved after the parties have genuinely attempted to settle the dispute, each party is required to notify the registrar or nearest magistrate.

Subclause 239(3) specifies the information required in the notification and states that the notice may be given to the registrar or magistrate by letter, telex, fax or electronic mail, or other means of written communication.

Subclause 239(4) allows the Minister to notify a commissioner or the registrar of the dispute if the Minister is aware that an industrial dispute exists.

PART 2—ACTION FOR SETTLING INDUSTRIAL DISPUTES

Action on industrial dispute

Subclauses 240(1) and (2) allow the commission (whether or not a notification is given under Clause 239) to take appropriate action for the prevention or prompt settlement of the dispute, firstly by conciliation and then by arbitration if the commission considers conciliation has failed and the parties are unlikely to resolve the dispute.

Subclause 240(3), whilst not restricting the commissioner's powers under Subclause (2), specifies a number of avenues open to the

commission to deal with the dispute.

Subclause 240(4) outlines the procedures to be followed by a magistrate who has received a dispute notification under Subclause 239(2).

Subclause 240(5) specifies the requirements of a magistrate to whom a matter has been remitted by a commissioner.

Subclause 240(6) specifies that, where a dispute exists, the commissioner or magistrate may nominate one of the parties to the dispute as having the carriage of proceedings in the matter and, where this is determined, the named party has the carriage of proceedings accordingly.

Subclause 240(7) specifies that Clause 240 does not affect the operation of an industrial instrument where the instrument imposes a duty on a party or confers or imposes a power on a magistrate.

Recommendation by consent

Subclause 241(1) applies in a particular instance namely where:

- the commission is exercising powers of conciliation for a particular dispute; and
- all the parties ask the commission to conduct a hearing and make recommendations about particular aspects of the dispute on which they are unable to reach agreement (which may be all aspects of the dispute); and
- the commission is satisfied that all parties have made a genuine attempt to agree about those aspects of the dispute; and have agreed to comply with the commission's recommendation.

Subclauses 241(2) and (3) require the commission to conduct a hearing and make recommendations but the commission is not prevented from making recommendations in other circumstances.

Mediation by commissioner or magistrate

Subclause 242 allows a commissioner or magistrate to act as a mediator in an industrial cause, whether or not it is in their jurisdiction, upon the request of the parties directly involved in the cause or if, in the public interest, it appears mediation is desirable.

Compulsory conference

Subclause 243(1) applies where a commissioner or magistrate considers that the holding of a conference is desirable for the prevention or prompt settlement of a dispute and institutes action under Clause 240.

Subclauses 243(2) and (3) give the authority to the commissioner or magistrate to summons a person to attend a conference at a stated place and time. Even though a person may not be directly involved in a dispute, but the commissioner or magistrate considers the person's presence would assist in the prevention or prompt settlement of the dispute, then that person may be summoned to attend the conference.

Subclause 243(4) requires that the person must attend the conference as summoned and continue to attend as directed by the presiding commissioner or magistrate. The maximum penalty for not complying with the direction is 40 penalty units.

Subclause 243(5) states that where the commissioner or magistrate certifies an amount as reasonable compensation for a person's expenses and loss of time in attending the conference the person is entitled to be paid that amount by the State.

Subclause 243(6) allows a commissioner or magistrate to hold a conference in private or open to the public or partly in public and partly in private.

PART 3—BALLOTS

Secret ballot on strike action

Clause 244 states that, if a strike happens or if the commission, or a person who has applied to the commission, considers that a strike is likely to happen, the commission can direct the registrar or magistrate to ascertain the number of employees or members of an employee organisation who are in favour of the strike by conducting a secret ballot of the employees or the members.

Effect of ballot adverse to strike

Clause 245 provides that where a majority of employees or members are not in favour of a strike, the strike must be discontinued on or before a date

advertised by the registrar or magistrate in a newspaper circulating in the locality concerned. Certain consequences apply where an employee or member does not discontinue the strike.

PART 4—INDUSTRIAL ACTION

Non-participation in industrial action

Clause 246 aims to prevent the prejudice of persons for failing to participate in a strike or lockout. A maximum of 40 penalty units applies.

Indemnity against agent's unauthorised actions

Clause 247 allows for the indemnification of an organisation or association of persons against the unauthorised actions of an agent during or in connection with industrial action.

Payments for strikes

Subclauses 248(1) and (2) prohibit an employer from making a payment to an employee or an employee from accepting a payment from the employer for a period when the employee engages in a strike.

Subclause 248(3) prohibits an employee from claiming against the employer for payment for a period when the employee engages in a strike or from taking action to coerce the employer to make a payment.

Subclause 248(4) prohibits an employee organisation, or an officer, member or employee of the organisation, from claiming against the employer for payment to an employee for a period when the employee engages in a strike. The subclause also prohibits action by the organisation intended to coerce the employer to make the payment.

Subclause 248(5) specifies, for the purpose of Subclause (4), that an action taken to have been done by the management committee or other persons specified in this subclause is taken to be an act of the organisation.

Subclause 248(6) states that Subclauses (5)(c) and (d) do not apply if the management committee or a person authorised by the committee or an officer of the organisation have taken reasonable steps to prevent the action.

Subclause 248(7) states that it is not an offence if Subclauses (3) and (4) are contravened.

Orders the commission may make

Subclauses 249(1), (2) and (3) provide that an application may be made by specified persons to the commission for orders under this clause for a contravention of Clause 248.

Subclause 249(4) specifies the commission may make one or more orders as follows:

- for contravention of Clause 248—a penalty of not more than 135 penalty units;
- for contravention of Clause 248 (3) or (4)—a compensation payment to the employer of an amount considered appropriate by the commission;
- an injunction and any other order considered necessary by the commission to stop the contravention or remedy its effects;
- another consequential order.

Subclause 249(5) prohibits the commission from making an order requiring compensation to be paid to an employer who has contravened Clause 248(1).

Commission not to deal with claims for payments for strikes

Clause 250 prohibits the commission from dealing with an applicable claim for payment to employees for a period when the employees engage in a strike.

Right to refuse to work if imminent health or safety risk

Clause 251 specifies an employee can refuse to perform work if a reasonable concern exists about an imminent risk to the employee's health or safety and if the employee did not unreasonably contravene a direction of the employer to perform other available work that was safe and appropriate to perform.

CHAPTER 7—INDUSTRIAL TRIBUNALS AND REGISTRAR

PART 1—INDUSTRIAL COURT

Division 1—Industrial Court continued

Continuance

Clause 252 preserves the existence of the Industrial Court under this Act as a superior court of record.

Division 2—President

Appointment of president

Clause 253 outlines the qualifications for and method and term of appointment of the president and states that the president has administrative control in addition to judicial functions.

When president holds office

Clause 254 outlines the conditions for holding office of president and provides contingency plans if the president is hearing a matter when tenure or eligibility to hold office expires.

Acting president

Clause 255 provides that a suitably qualified person may be appointed as acting president and be remunerated where appropriate. While acting as president the nominated person can attend sittings and give a decision or otherwise complete a proceeding. A decision given is taken to be a decision of the president.

Division 3—Jurisdiction and powers of the court

Constitution of court

Clause 256 provides for the constitution of the Industrial Court as the president sitting alone and the full Industrial Court as the president sitting with two or more commissioners.

President's jurisdiction

Clause 257 provides that the president sitting alone can exercise all the jurisdiction and powers of the court unless otherwise determined by this Bill or any Act.

Court's jurisdiction

Clause 258 outlines the jurisdiction of the court and full court and the matters that may be heard and determined. This clause also prescribes that exercise of the court's jurisdiction for persons under 21 years is subject to the *Vocational Education, Training and Employment Act 1991*.

Court's jurisdiction is exclusive

Clause 259 provides that, subject to certain appeals, decisions of the court are final and conclusive. The jurisdiction of the court is exclusive of the jurisdiction of another court.

Binding nature of court's interpretation

Clause 260 states that interpretations of this Bill, an industrial instrument or a permit made by the court are binding on the commission, magistrates, and relevant organisations and persons.

Court may refuse to proceed

Clause 261 outlines the conditions under which the court may refuse to hear and determine a proceeding.

Decision of full Industrial Court

Clause 262 provides that in a proceeding, the decision of the majority of members will be the court's decision unless, under specified circumstances, the decision of the president prevails.

Division 4—President's annual report

President's annual report

Clause 263 provides for the production of a report to the Minister on the operation of the Bill, the working of the court, commission and registrar's office each financial year.

A copy of the report is to be tabled in the Legislative Assembly within a given time.

Division 5—President's advisory council

Establishment of advisory council

Clause 264 provides for the establishment and appointment of the president's advisory council which consists of no more than nine members being:

- the president;
- chief commissioner;
- chief executive;
- employers, or officers or employees of employer organisations;
- employees, or officers or employees of employee organisations;
- persons with knowledge or experience in industrial relations.

The members, other than the president, chief commissioner and chief executive, are appointed by the Minister in consultation with the president.

Term of office

Clause 265 provides for the term of appointment of a member to the advisory council and the resignation from the appointment.

Remuneration of appointed members

Clause 266 states that an appointed member is entitled to allowances and reasonable expenses approved by the Minister.

Functions of advisory council

Clause 267 states that the functions of the advisory council are to discuss and advise the president on matters relating to the efficiency and effectiveness of the commission.

Meetings of advisory council

Clause 268 provides for the calling and holding of meetings of the advisory council.

PART 2—INDUSTRIAL RELATIONS COMMISSION

Division 1—Continuance, composition and constitution

Continuance

Clause 269 preserves the existence of the Queensland Industrial Relations Commission as a court of record.

Composition

Clause 270 provides that the commission shall consist of at least six industrial commissioners (one being the chief commissioner) and at least one enterprise commissioner. Its existence or jurisdiction is not affected by a vacancy in an office.

Constitution

Clause 271 determines how the commission is constituted, i.e. as a commissioner sitting alone or as a full bench of the commission.

Division 2—Members of the commission

Appointment of members

Subclause 272(1) provides for the appointment by the Governor in Council of a person:

- as a commissioner: by commission; or
- as an enterprise commissioner:
  - if the person is not already a commissioner—by commission; or
  - if the person is already a commissioner—by gazette notice.

Subclause 272(2) provides that the appointment of a person by commission is for a term of seven years in the first instance and then for further terms of not more than seven years. A person who is appointed by gazette notice is appointed for a term not longer than the remainder of the term of the commission appointment.

When member holds office

Clause 273 outlines the conditions for holding office of a commission member and provides contingency plans if the commissioner is hearing or investigating a matter when tenure or eligibility to hold office expires.

Acting chief commissioner

Clause 274 provides that where the chief commissioner is temporarily unable to discharge the required functions, the president can nominate another commissioner as a replacement.

Acting members

Clause 275 provides for the appointment of an acting member of the commission which can include an enterprise commissioner.

Restrictions etc. on appointment

Clause 276 provides for conditions under which a person cannot be appointed as a member of the commission.

Removal of members from office

Clause 277 provides for the removal from office of a member for incapacity or misbehaviour and the ending of appointment where the member has been appointed by gazette notice.

Administrative responsibilities of chief commissioner

Clause 278 provides that the chief commissioner must administer the commission and organise and allocate the work of the commission, subject to the president's overall administrative control. In this regard, the chief commissioner is required, in consultation with the president, to ensure the expeditious resolution of matters and to consider enhancements to the efficiencies and effectiveness of the commission, the users' needs and the provision of quality customer service. A commission member is required to comply with any directions of the president or chief commissioner.

Division 3—The commission

Commission's jurisdiction

Clause 279 prescribes the general jurisdiction of the commission including:

- to hear and decide matters;
- to regulate the conditions of a calling by an award;
- to hold an inquiry about an industrial matter;

- to consolidate awards.

Commission to take account of Anti-Discrimination Act

Clause 280 requires the commission to consider the *Anti-Discrimination Act 1991* regarding discrimination in employment when exercising its jurisdiction.

Commission's jurisdiction is exclusive

Clause 281 provides for the exclusive nature of the jurisdiction of the commission, unless otherwise prescribed under this Bill.

Commission may refuse to proceed

Clause 282 enables the commission to refuse to hear and decide a matter relating to an industrial instrument that exists or is sought where any of the employees bound by that instrument are involved in an industrial dispute or are contravening this Bill, a decision, or a recommendation under Clause 241 or the *Industrial Organisations Act 1996* regardless of whether or not the employees are affected by the decision on the matter.

Chief commissioner to consider efficiencies that may be achieved by allocating matters to dual commissioners

Clause 283 requires the chief commissioner, when performing administrative responsibilities to consider the improved:

- efficiency of the commission; and
- cooperation between the commission and Australian commission

that may be achieved by a matter being handled by a dual commissioner.

Reallocation of commission's work

Clause 284 allows the chief commissioner to re-allocate a matter.

Commission may continue to hear re-allocated work without rehearing evidence

Clause 285 allows a matter to be heard and decided by a re-allocated commissioner without rehearing evidence given before the re-allocation.

Decision of full bench

Clause 286 provides for a decision of a full bench of the commission, where the members are not unanimous, to be decided according to the majority of members.

Division 4—Commission's functions

Commission's functions

Clause 287 outlines specific functions of the commission.

Performance of commission's functions

Clause 288 requires the commission to perform its functions in a way that:

- avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings;
- furthers the objects of the Bill.

With the exception of Chapter 2, Part 2 (QWAs), a reference in this Bill to the commission performing a function does not include a reference to the commission constituted by an enterprise commissioner.

Division 5—Powers of commission

General powers

Clause 289 outlines the general powers of the commission.

Power to amend or void contracts

Clause 290 empowers the commission to vary or void a contract where it considers the contract to be harsh, unconscionable or unfair if it is a contract of services not covered by an industrial instrument or is a contract for services that avoids, or is designed to avoid, the provisions of an industrial instrument.

Jurisdiction is vested in the commission to order payment of money in relation to such contract where appropriate.

Power to grant injunctions

Clause 291 permits the commission to grant injunctions to compel compliance with, or restrain a breach of, an industrial instrument, permit or an industrial Act.

Power to direct or order in relation to industrial action

Clause 292 deals with the powers of the commission in relation to a strike or a lockout whether it is actual, threatened or apprehended. The commission can direct the industrial action to stop or not happen or give other directions or make orders considered appropriate. Any person or organisation to whom an order applies is required to comply with the order.

Orders about representation rights of employee organisations

Clause 293 enables a full bench of the commission, upon application, to order that an employee organisation has the right or does not have the right to represent a particular group of employees. Subclauses (2),(3), (4) and (5) require the full bench, in considering the application, to take certain considerations into account. Subclauses (6) and (7) require the organisation to comply with the order and allow the commission to take further action to ensure compliance.

Procedures for reopening

Clause 294 permits the commission to reopen a proceeding and, in dealing with such reopening, it may revoke or amend any decision or recommendation and make a further decision or recommendation which it

considers appropriate and give retrospective operation to its decision. The clause specifies who is eligible to make an application for a reopening.

References to full bench

Clause 295 allows a commissioner, with the approval of the chief commissioner, to refer the matter of any proceeding before the commissioner to a full bench. Provision is also made for a party to a proceeding to apply to the chief commissioner for a matter to be referred to a full bench prior to the matter being heard before a commissioner.

Case stated to court

Clause 296 allows the commission to state a case in writing for the opinion of the industrial court on a question of law. The commission is required to give effect to the court's opinion.

Remission to magistrate

Clause 297 permits a commissioner to remit an industrial matter to an industrial magistrate for investigation and report, taking of evidence or hearing and deciding.

Power to enter and inspect

Clause 298 empowers the commission or officers of the commission or a person authorised by the commission to enter a workplace, conduct inspections and question persons in relation to specified industrial issues. This power can be exercised only during working hours at the relevant workplace.

Interpretation of awards, certified agreements and orders

Clause 299 provides that a commissioner may give an interpretation of an award or certified agreement upon application by specified persons.

Statement of policy

Clause 300 enables a full bench of the commission to make a statement

of policy about an industrial matter at any time.

Conducting a secret ballot

Clause 301 provides that the commission may specify when, where and how a secret ballot is to be conducted. The registrar or magistrate is required to conduct the ballot in accordance with the direction and as provided for in the rules of the court. The result is advertised in a newspaper circulating in the locality concerned.

This clause also prohibits any obstruction or intimidation by any person to anyone involved in the conduct of, or voting in, a secret ballot.

Other powers

Clause 302 provides that the commission's other powers under this Bill or any Act are not limited by this division.

Division 6—Member's conditions of appointment

Remuneration

Clause 303 provides for the payment of salary and allowances to commissioners.

Pension benefits—*Judges (Pensions and Long Leave) Act 1957*

Clause 304 provides for the pension benefits of commissioners.

Pension benefits—Superannuation Acts

Clause 305 provides for superannuation benefits for commissioners. A commissioner contributing to a superannuation scheme is not entitled to pension benefits under Section 304.

Leave of absence

Clause 306 provides for leave of absence for commissioners.

PART 3—INDUSTRIAL MAGISTRATES

Division 1—Industrial Magistrates Court

Industrial Magistrates Court

Clause 307 provides that an Industrial Magistrates Court is a court of record.

Division 2—Industrial Magistrates

Office of Industrial Magistrate

Clause 308 creates the position of industrial magistrate.

Division 3—Constitution and jurisdiction of Industrial Magistrates Court

Constitution of Industrial Magistrates Court

Clause 309 provides that an Industrial Magistrates Court is constituted by a magistrate sitting alone.

Magistrate's jurisdiction

Clause 310 outlines the jurisdiction of a magistrate. This includes the exercising of powers or jurisdiction conferred by this Bill or any Act and the hearing and determining of proceedings about:

- specific offences against the Bill;
- claims for wages payable under an industrial instrument or permit;
- claims for wages payable under an agreement at a rate that is not fixed, or a rate in excess of that fixed by an industrial instrument or permit;
- claims for compensation by an employee dismissed by an

employer under Clause 226.

A magistrate also has jurisdiction in relation to an industrial matter remitted by a commissioner to the magistrate to:

- investigate and report;
- take evidence;
- hear and decide.

Magistrates' jurisdiction is exclusive

Clause 311 provides that, except where otherwise stated, the jurisdiction conferred on industrial magistrates by this Bill or any Act is exclusive. Jurisdiction under Subclause 310(2)(a)(ii) and (iii) in relation to claims for wages payable under an industrial instrument or permit, or claims for wages payable at a rate not fixed by or a rate in excess of that fixed by an industrial instrument or permit, is not exclusive of another court's jurisdiction.

Division 4—Powers of industrial magistrates

Magistrate's powers on remission

Clause 312 allows magistrates to whom matters have been remitted by the commission to exercise the jurisdiction and powers of an industrial commissioner when dealing with such matters.

PART 4—INDUSTRIAL REGISTRAR

Division 1—Industrial registrar's office continued

Continuance

Clause 313 continues in existence the industrial registrar's office as formerly established.

Division 2—Role of industrial registrar's office

Role of office

Clause 314 prescribes the role of the industrial registrar's office which include providing administrative support for and acting as the registry for the court and commission.

Division 3—Industrial registrar and staff

Industrial registrar and staff

Clause 315 provides for the appointment of an industrial registrar, assistant registrars and staff of the registrar's office. It also provides that each of those officers are officers of the court and commission.

Functions and powers of registrar

Clause 316 prescribes the functions and powers of the registrar which include:

- administering the registry;
- for the court and commission—performing functions and exercising powers under a regulation or rules of court;
- any other function prescribed under this Bill or any Act.

In the exercise of the functions for the court and/or commission, the registrar must comply with a direction given by the president or commission member.

Functions of assistant registrar

Clause 317 provides that the assistant registrar is to assist the registrar in performing the registrar's functions.

Delegation by registrar

Clause 318 enables the registrar to delegate a power of the registrar to the assistant registrar or an appropriately qualified person.

PART 5—ARRANGEMENTS WITH OTHER AUTHORITIES

Division 1—Commissioner may also be member of Australian commission

Commissioner may hold other appointment

Clause 319 enables a commissioner to hold a dual appointment as a member of the Australian Industrial Relations Commission. The provision accords with similar provisions in the Commonwealth Act.

Division 2—Dual commissioners

Appointment of Commonwealth official as commissioner

Clause 320 enables the appointment of a member of the Australian Industrial Relations Commission to the Queensland Industrial Relations Commission.

The clause also provides that, for the term of such appointment, a person so appointed is not entitled to extra remuneration but is entitled to reasonable expenses incurred, and states when such appointment ceases.

The provision accords with similar provisions in the Commonwealth Act.

Role of dual commissioner

Clause 321 provides that a member of the Australian Industrial Relations

Commission appointed under Clause 320 may exercise dual powers as both an industrial commissioner and a member of the Australian commission. This provision accords with similar provisions in the Commonwealth Act.

Division 3—References to Commonwealth official

Reference of matter to Commonwealth official

Clause 322 authorises the chief commissioner, in consultation with the president of the court, to refer an industrial matter to a member of the Australian Industrial Relations Commission nominated by the president of that commission.

The federal commissioner's powers are those of a single commissioner of the state commission and any decision made by the federal commissioner under this clause is taken to be a decision of the state commission.

The referral of a matter to a federal commissioner does not prevent the state commission from dealing with the matter.

Division 4—Conferences and joint sessions with industrial authorities

Conferences with industrial authorities

Clause 323 enables the commission to confer with any state or federal industrial authority to secure coordination of decisions between the jurisdictions.

Joint sessions with industrial authorities

Clause 324 enables a joint session with another industrial authority to be initiated at the discretion of the chief commissioner and if the other authority agrees.

Similar matters before a full bench and industrial authority

Clause 325 provides that where a federal or state industrial authority is dealing with a matter similar to a matter before a full bench of the commission, and the other authority agrees, the chief commissioner may delegate a member of the full bench to participate in joint sessions and report back.

Commissioner's powers in joint session

Clause 326 provides that, whilst participating in a joint session, the commissioner retains the powers and functions of a single commissioner under the Bill.

Chief commissioner may decide matter not to be dealt with in joint session

Clause 327 enables the chief commissioner to terminate participation in a joint session.

Restriction on chief commissioner's authority

Clause 328 requires the chief commissioner to consult with the president in regard to conferences and joint sessions with industrial authorities.

Division 5—Other functions etc. and arrangements

Functions and powers vested in commission by other jurisdictions

Clause 329 authorises the commission to exercise powers and duties conferred on it by the *Workplace Relations Act 1996* (Cwlth) and enactments of other States.

Arrangements with Commonwealth public service

Clause 330 provides that arrangements may be made for officers of the Commonwealth public service to carry out the duties which Queensland public service officers may be required to perform under the Bill. Provision

is also made for officers of the Queensland public service to perform the duties and exercise the powers of officers of the Commonwealth public service under the federal Act.

For example, an officer of the Commonwealth public service can be appointed as an inspector under this Bill and exercise the powers and perform the functions of that officer.

PART 6—PROCEEDINGS OF COURT, COMMISSION, MAGISTRATES AND REGISTRAR

Division 1—Definitions

Definitions for Part 6

Clause 331 defines certain terms used for the purposes of this part.

Division 2—Starting proceedings and service of process

Starting proceedings

Clause 332 prescribes who may initiate proceedings before the court, commission or the registrar by application. Provision is also made for the commission to commence proceedings on its own initiative.

Service of process

Clause 333 provides for the service of documents with regard to proceedings before the Industrial Court and commission where personal service cannot be effected promptly or under the rules of court.

Division 3—Conduct of proceedings

Representation of parties

Subclause 334(1)(a) provides that a lawyer may appear in proceedings before the court only if the proceedings are for prosecution for an offence under this Bill or any Act, or if all parties to the proceedings consent, or by leave of the court.

Subclause 334(1)(b) makes reference to proceedings in relation to appeals from single commissioners. In such cases, legal representation is allowed with the consent of all parties, or with leave of the president.

Subclause 334(1)(c) provides that legal representation in interlocutory proceedings before the registrar is allowed with the consent of all parties to the proceedings, or by leave of the registrar.

Subclause 334(1)(d) allows parties appearing before the commission to be represented by a lawyer if all parties, consent or by leave of the commission.

Subclause 334(1)(e) provides that in proceedings before the Industrial Magistrates Court or before the registrar, except in interlocutory proceedings, legal representation is allowed if all parties to the proceedings consent.

Subclause 334(2) places restrictions on the commission in giving leave to appear under Subclause (1)(d)(ii).

Subclause 334(3) allows a party to be represented in a proceeding by an appointed agent and an organisation to be represented by an officer or member.

Subclause 334(4) retains the rights of civil litigants in an Industrial Magistrates Court to have legal representation where proceedings are brought personally by an employee, e.g. a claim for wages not prescribed by an industrial instrument.

Subclause 334(5) allows parties to proceedings for a prosecution in an Industrial Magistrates Court to have legal representation, but by Subclause (4) neither of the parties can claim costs of the representation.

Subclause 334(6) defines 'lawyer' for the purpose of this section.

Basis of procedures and decisions of the commission and magistrates

Clause 335 allows the commission and industrial magistrates to deal

with matters (except proceedings for the recovery of amounts or offences against an industrial Act) in an informal way with decisions governed by equity, good conscience and the merits of the case.

It also ensures that in making any decision the commission is to consider the public interest having regard to the objects of the industrial Acts, the state of the economy and the likely effects of the decision on the economy, industry generally and a particular industry concerned.

Competence and compellability of witnesses

Clause 336 provides that any party to proceedings before the court or commission is competent and can be required to give evidence as a witness.

Intervention by State or Minister

Clause 337 provides for intervention by the State and the Minister in proceedings involving the Industrial Court, Queensland Industrial Relations Commission, Industrial Magistrates Court or Industrial Registrar.

Adjournment by registrar

Clause 338 permits the registrar to adjourn a proceeding of the court or commission when the president or a commissioner is unable to attend at the time appointed.

State employee to give information

Clause 339 deals with the furnishing of information by employees of the State in proceedings before the court or commission.

Division—4 Powers

Exercise of commission's powers

Clause 340 provides that the commission may exercise its powers of its own initiative, or on the application of a party to proceedings or an organisation.

The commission may also, of its own initiative, join two or more matters

to be heard whether those matters arose under this Bill or any Act. In so doing, the matters can be heard and decided in one proceeding.

Interlocutory proceedings and chamber matters

Clause 341 prescribes the powers of the president, a commissioner and the registrar in relation to an interlocutory proceeding before the hearing of an industrial cause. It also provides that orders may be made or directions given in matters that, under the rules of court, may be dealt with in chambers.

Power to order inquiry or taking of evidence

Clause 342 provides that the commission may direct the registrar to conduct an inquiry into a matter about which the commission requires information for the exercise of its jurisdiction. It also provides that the commission may direct an appropriately qualified person to take evidence for the commission about an industrial cause. Relevant powers are included.

Power to administer oath

Clause 343 provides that a person constituting the Industrial Court, Queensland Industrial Relations Commission, Industrial Magistrates Court or Industrial Registrar, or a person who has been directed by the commission to take evidence for the commission, is empowered to administer an oath or take a statutory declaration.

Powers incidental to exercise of jurisdiction

Clause 344 provides for certain powers incidental to the exercise of the jurisdiction of the court, commission and registrar.

Power to obtain data and expert evidence

Clause 345 allows the commission to obtain certain data and receive expert evidence.

Division 5—Decisions and enforcement

Decisions generally

Clause 346 states that the court or commission may:

- make a decision it considers just, including provisions that will prevent or settle the dispute or deal with the industrial matter;
- dismiss or refrain from hearing, further hearing or deciding the cause on the basis that it is trivial or further proceedings are not in the public interest;
- order a party to a cause to pay another party appropriate expenses.

Reserved decisions

Subclauses 347(1) and (2) provide that the court or commission may reserve its decisions and pronounce them at a continuation or resumption of the proceedings or at a subsequent sitting. Alternatively a written decision may be given to the registrar.

Subclauses 347(3) and (4) provide that a written decision must be filed in the registrar's office, whereupon it has the effect as if it were announced by the court or commission. Copies of the written decision must also be given to each of the immediate parties to the industrial cause.

Commission decisions to be in plain English

Clause 348 requires the commission to ensure its decisions are in plain English and, as far as the subject allows, are easy to understand.

Extent of decisions and their execution

Subclause 349(1) provides that the court or commission may make and pronounce necessary decisions, enforce its own decisions and direct the issue of writs or processes or impose and enforce a penalty under this Bill or any Act in the same way as a Supreme Court judgment is enforced.

Subclauses 349(2) and (3) specify that decisions must be drawn up and verified and may be executed, recovered on, and otherwise enforced as a judgment or order of a Supreme Court Judge. The Rules of the Supreme Court apply and must be complied with in respect of such action.

Subclause 349(4) provides that officers of the Supreme Court and

Magistrates Court are taken to be officers of the Industrial Court and commission for:

- executing, recovering on and enforcing decisions of the Industrial Court or commission; or
- performing functions and exercising powers imposed or conferred by the rules of court.

Costs

Clause 350 provides for the awarding of costs by the court or commission in proceedings before them and specifies that unless this Bill otherwise permits, costs must not be allowed for a lawyer or agent in commission proceedings unless the commission certifies the lawyer or agent was heard in the interests of justice.

Enforcing commission's orders

Subclauses 351(1) and (2) provide that the commission's order about a dispute may be directed to an organisation, an officer or agent of an organisation or any other person. If an order is to be directed to an organisation or a person, the commission must first consider if it is more appropriate to direct the order to the organisation.

Subclauses 351(3), (4) and (5) specify that the order must state the persons name (if directed to a person) and state a time for complying with the order. The order must also direct the filing of an affidavit, with the registrar, stating whether the order has been complied with or, if not complied with, the steps have been taken to comply. Affidavits must be filed, within a stated time, by the organisation or person, the party who sought the order and any other appropriate party to the proceedings. Times stated in the order may be extended by the commission.

Subclause 351(6) provides that at the end of the time for filing an affidavit the registrar must examine the affidavits and if necessary make further appropriate inquiries. The registrar must also determine if there has been substantial compliance with the order.

Subclause 351(7) provides that if the registrar is not satisfied that there has been substantial compliance a notice must be issued calling on the person or organisation to show cause why they should not be dealt with under Clause 352 of this Bill.

Remedies on show cause

Subclauses 352(1) and (2) prescribe powers that may be exercised by the full court if an organisation or person that does not substantially comply with an order of the commission does not show cause at the stated time under Subclause 351(7).

Subclause 352(3) provides that all persons concerned must comply with an order or direction of the court.

Subclause 352(4) prescribes that in this clause the term 'stated time' means at the time stated in the show cause notice or at a time to which the proceeding is adjourned.

Proceeding of commission or magistrate not to be questioned

Subclauses 353(1) and (2) provide that decisions of the commission or the Industrial Magistrates Court can not be impeached for informality or want of form or be appealed against, quashed or invalidated except as provided under an industrial Act.

Subclauses 353(3) and (4) provide that proceedings are not removable by certiorari and that prohibition orders can not be issued and an injunction or mandamus can not be granted for, or to restrain, proceedings about matters within the jurisdiction of the commission or magistrates.

Filing magistrate's decision

Subclause 354(1) provides that a decision of a magistrate on a matter remitted to the magistrate from the commission must be filed in the registrar's office and, when filed, is taken to be a decision of the commission.

Subclause 354(2) provides that this procedure does not limit any right of appeal.

Recovery of moneys under orders

Subclauses 355(1) and (2) provide that if in a proceeding the court or the commission orders payment of any amount, the registrar may issue a certificate stating the amount payable, who is to pay the amount and to whom it is payable. Upon filing of the certificate in a court of competent

jurisdiction, the order is enforceable as an order of that court.

Subclause 355(3) provides that the clause does limit other ways in which amounts may be recovered.

Division 6—Protections and immunities

Protections and immunities

Subclause 356(1) provides that the president of the industrial court, a member of the commission and a magistrate, in the exercise of their jurisdiction under this Bill or any Act, have the protections and immunities of a Supreme Court judge.

Subclause 356(2) provides a defence of absolute privilege in defamation proceedings for a publication made to or by the official, in their official capacity, provided the publication was made in good faith. The term 'the official' includes the president, a member of the commission, a magistrate or the registrar.

Subclause 356(3) places the burden for proving absence of good faith on a person who alleges the absence.

Division 7—Rules of court and practice

Rules of court

Subclauses 357(1) and (2) allow the president to make rules under this Bill. Such rules can only be made with the concurrence of two commissioners except if a rule relates to an enterprise commissioner in which case it must be made with the concurrence of an enterprise commissioner. The concurrence of the chief stipendiary magistrate is necessary for rules relating to the Industrial Magistrates Court.

Subclause 357(3) sets out the matters about which rules may be made. They include the practice and procedure of proceedings, forms to be used, recovery of fines and penalties, enforcement of orders, fees payable, service of notices, and functions and powers of officers of the court or commission.

Subclause 357(4) provides that rules of court made under this clause are subordinate legislation, i.e. the Bill prevails over the rules should there be any inconsistency.

Directions about practice

Clause 358 provides that the practice and procedure of the Industrial Court, Queensland Industrial Relations Commission, Industrial Magistrates Court or Industrial Registrar are as directed by the president, a member, a magistrate or the registrar, subject to this Bill and the rules of court. Application for directions may be made in chambers to the appropriate one of these persons, if the Bill or rules of court do not provide for a person taking a step in an industrial cause.

PART 7—APPEALS

Division 1—Appeals to Court of Appeal

Appeal from court to Court of Appeal

Subclause 359(1) provides for an appeal to the Court of Appeal against certain decisions of the Industrial Court or Full Industrial Court.

Subclause 359(2) provides that the validity of a proceeding in or before, or the validity of a decision of the commission or magistrate, cannot be questioned in an appeal.

Division 2—Appeals to Industrial Court

Appeal from commission, magistrate or registrar to court

Subclause 360(1) provides for appeals to the Industrial Court against a decision of the commission or registrar. The State, or a person aggrieved by the decision, may appeal but only on the ground of an error of law; or excess; or want of jurisdiction.

Subclause 360(2) prevents an appeal to the court on any ground, against a decision of a full bench made:

- on appeal from a decision of a commissioner; or
- under *Clause 55(4)* (in relation to an award made following termination of bargaining period).

Subclause 360(3) provides for appeals to the Industrial Court by a dissatisfied person against decisions of an industrial magistrate relating to certain offences, and claims for wages and superannuation contributions. A 'person dissatisfied' is defined in the dictionary in the schedule at the back of this Bill.

Subclause 360(4) sets out the action that the Industrial Court may take in respect of appeals.

Court may vary penalty on appeal

Clause 361 allows the court to increase or reduce the penalty imposed, if on appeal, it confirms a person's conviction for an offence.

Division 3—Appeals to Industrial Relations Commission

Appeals from commissioner to full bench with leave

Subclause 362(1) provides for appeals to a full bench of the commission against a decision of a single commissioner on grounds other than an error of law, or excess or want of jurisdiction.

Subclause 362(2) provides that such an appeal is with the leave of the president who may only grant the leave if the matter warrants an appeal on the grounds of public interest.

Subclause 362(3) describes what action the full bench may take on appeal.

Appeal from magistrate to commission

Subclause 363(1) provides for appeals to the full bench of the commission by a person aggrieved by a decision of a magistrate exercising jurisdiction on a matter mentioned in Clause 310, unless the appeal can be brought under Subclause (2) of this clause or Subclause 360(3).

Subclause 363(2) allows a person aggrieved by a decision of a magistrate under Clause 471 [re aged or infirm persons permits] to appeal to the commission.

Subclause 363(3) limits the ground for appeal if a decision is in favour of the issue of an aged or infirm persons permit. The appeal can only be brought on the ground that the permit should not be issued in the calling to which the permit relates.

Subclause 363(4) describes the action that the commission may take on appeal.

Appeal from registrar to full bench

Subclause 364(1) allows a person aggrieved by a decision of the registrar under Subclause 132(9) or Clause 470 to appeal to the full bench of the commission.

Subclause 364(2) describes the action that the full bench may take on appeal.

President may stay decisions when leave sought

Clause 365 provides that, if the leave of the president is sought in relation to an appeal against the decision of a single commissioner under Subclause 362(1), the president may order that the operation of such decision be stayed.

Decisions on appeal that are final

Clause 366 states that, in an appeal to the full bench against a commission decision, the decision of the full bench is final.

Appeal to commission against stand-downs

Subclause 367(1) allows an employee who has been stood down in accordance with Clause 23 to appeal to the commission against the stand-down.

Subclause 367(2) allows an industrial organisation to institute and conduct such an appeal on behalf of an employee who is a member of that

organisation.

Subclause 367(3) sets out what action can be taken by the commission on appeal.

Subclause 367(4) enables the commission to order default provisions for the enforcement of a specific order as if the commission were an Industrial Magistrates Court and the commissioner was a magistrate. However, it cannot order a term of imprisonment.

Subclause 367(5) provides that the order may be filed in the Magistrates Court and can then be enforced as an order made by an industrial magistrate.

Division 4—Appeals to both Industrial Court and Industrial Relations Commission

Appeals from member of commission to both court and full bench

Subclauses 368(1) and (2) allow a person who has right of appeal against a decision of a single commissioner to appeal to both the Industrial Court and the full bench of the commission. Two separate appeals must be filed stating the grounds relevant to Subclause 360(1) and Subclause 362(1).

Subclause 368(3) empowers the president to decide in what order the appeals are to be heard.

Subclause 368(4) provides that for the purposes of this clause, an 'appeal against decision' includes an application for a prerogative order in relation to a decision.

Division 5—General

Nature of appeal

Clause 369 provides that appeals to the court or commission are by way of rehearing on the record. The court can, however, hear evidence afresh or

additional evidence if it considers it appropriate to dispose of the appeal.

Time limited for appeal

Clause 370 provides that an appeal against a decision must be commenced within 21 days of the decision handed down or released through the registrar.

CHAPTER 8—ADMINISTRATION

PART 1—EMPLOYMENT ADVOCATE

Employment advocate

Clause 371 provides for the appointment of a person as the employment advocate, who may also be the chief inspector at the same time. Arrangements may be made for the Commonwealth employment advocate to perform some or all of the functions and the powers of the employment advocate under this Bill.

Functions and powers

Subclause 372(1) specifies the functions of the employment advocate. These include providing help and advice to employees and employers about their rights and obligations under this Bill and Part 14 of the *Industrial Organisations Act 1996*, providing advice concerning QWAs and investigating and remedying alleged contraventions of same, and any other functions prescribed by regulation or given to the employment advocate by Part 2 of Chapter 2 of this Bill.

Subclause 372(2) details a number of matters to which the employment advocate must have particular regard when performing the functions of the office. These include the needs of workers in a disadvantaged bargaining position, assisting workers to balance work and family responsibilities, and promoting better work and management practices through QWAs.

Subclause 372(3) specifies that the powers of the employment advocate include the power to do all necessary or convenient things to be done for, or that are connected with, the performance of the advocate's functions.

Subclause 372(4) provides that for the purposes of investigating alleged contraventions of QWAs or Part 14 of the *Industrial Organisations Act 1996*, the employment advocate is appointed as an inspector. However, the provisions of Clause 376 (appointment of inspectors) do not apply.

Delegation by employment advocate

Clause 373 provides that certain of the employment advocate's powers may be delegated by the employment advocate to an appropriately qualified officer or employee of the public service. In the specific case of providing help and/or advice to employees and employers about their rights and obligations under this Bill and the *Industrial Organisations Act 1996*, Part 14, and relevant award matters, entitlements and provisions relating to QWAs, the employment advocate's powers may be delegated to another appropriately qualified person.

For the purposes of investigating and remedying alleged contraventions of QWAs and Part 14 of the *Industrial Organisations Act 1996*, the employment advocate may delegate powers to an inspector.

Annual report

Clause 374 provides that the department's annual report is to include a report on the employment advocate's operations.

Complementary laws

Clause 375 provides that to enable functions to be performed or powers to be exercised by the Commonwealth employment advocate or the Australian commission, the Commonwealth provisions apply as a law of the State with any amendments required or allowed under a regulation. The clause also defines the terms 'Commonwealth employment advocate' and 'Commonwealth provisions'.

PART 2—INSPECTORS

Division 1—Appointment

Appointment of inspectors

Subclauses 376(1), (2), (3) and (4) provide for the appointment of the chief inspector and inspectors.

Subclause 376(5) lists four Acts, other than this Bill, for the purposes of which an inspector appointed under this Bill, while holding such appointment, is also an inspector.

Limitation of inspector's powers

Clause 377 ensures that an inspector is subject to the chief inspector's directions in the exercise of the inspector's powers (other than power exercised in relation to a QWA or part 14 of the *Industrial Organisations Act 1996*), which may be limited under a condition of appointment, or by notice to the inspector given by the chief executive, or under a regulation.

An inspector is subject to the directions of the employment advocate whilst exercising powers in relation to a QWA or Part 14 of the *Industrial Organisations Act 1996.*

Inspector's appointment conditions

Subclauses 378(1) and (2) provide that an inspector holds office on the conditions which are stated in the instrument of appointment, and specifies two avenues by which an inspector ceases holding office.

Subclauses 378(3) and (4) provide for the resignation of an inspector.

Division 2—Identity cards

Identity card

Subclauses 379(1) and (2) ensure that each inspector will be issued with an identity card by the chief executive and specifies details of what is

required on the identity card.

Subclause 379(3) provides that unless a person has a reasonable excuse, if such person stops being an inspector, he or she must return the identity card to the chief executive as soon as practicable (but within 21 days) after ceasing to be an inspector. Failure to comply with this provision may incur a penalty.

Subclause 379(4) allows for the giving of a single identity card to a person appointed under this Bill and relevant Acts or for other purposes.

Production or display of identity card

Clause 380 prescribes that before exercising a power in relation to a person, an inspector is to either produce his or her identity card for the person's inspection, or have the identity card displayed so that it is clearly visible to the person. However, if for any reason it is not practicable to produce or display the identity card before exercising a power, the inspector must produce it for the person's inspection at the first reasonable opportunity.

Division 3—General powers

Entry to places

Subclauses 381(1) and (2) allow an inspector, without the occupier's consent, to enter a public place or a 'workplace' (which is defined in Subclause 381(4)) provided that the workplace is open for business or otherwise open for entry. If the workplace is on or near domestic premises, entry is permitted to the land around the premises to gain access to the workplace.

Subclause 381(3) provides that before exercising the power of entry to land around domestic premises, the inspector must, if it is practicable to do so, first tell the occupier of the premises of his or her intention of gaining access to the workplace.

Subclause 381(4) defines the terms 'domestic premises' (meaning premises usually occupied as a private dwelling house) and 'workplace' (meaning a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on). A 'calling' is defined in the dictionary in the schedule.

General powers after entering places

Subclauses 382(1) and (2) describe the specific powers of an inspector who enters a place under the provisions of Clause 381 for the purposes of monitoring or enforcing compliance with this Bill.

Subclause 382(3) provides that if the inspector requires assistance under Subclause (2)(e), he or she must warn the person that it is an offence not to comply with the request without a reasonable excuse.

Subclause 382(4) provides that a person required to give reasonable help to an inspector under Subclause (2)(e) must comply with the request unless the person has a reasonable excuse. There is a maximum penalty of 40 penalty units for non-compliance with this provision.

Power to require documents to be produced

Clause 383 gives an inspector the power to require an employer to produce for inspection, at a reasonable time and place nominated by the inspector, a document relating to the employees of the employer. This is a general power relating to any relevant document including for example a time sheet or pay sheet. Specific powers concerning the inspection of time and wages records by an inspector appear in Clause 399.

The employer must produce the document as required unless he or she has a reasonable excuse. The inspector may keep the document for copying and require the employer to certify the copy as a true copy of the document. There is a maximum penalty of 40 penalty units for non-compliance with this provision.

Power to require information

Paragraph (a) of Subclause 384(1) enables an inspector, during business hours, to question an employer in a calling with respect to matters under the Bill or under a relevant industrial instrument. An inspector may question also any person found in or on a workplace in respect of such matters.

Paragraph (b) of Subclause 384(1) provides that the inspector may require the employer or person to give the inspector information to help ascertain whether there has been or will be compliance with the Act or relevant industrial instrument, or whether the Bill or instrument should have

application in the calling.

Subclauses 384(2), (3) and (4) provide that the inspector is to warn the employer or person that it is an offence not to comply with the request for information without a reasonable excuse and that the person must comply with the requirement unless he or she has a reasonable excuse. It is a reasonable excuse to fail to comply with the requirement if an individual might tend to incriminate himself or herself by providing the information requested.

Subclause 384(5) enables an inspector to question an employee out of anyone else's hearing.

Power to require name and address

Clause 385 gives an inspector the power to obtain a person's name and address for the purposes of the Bill.

Division 4—Powers to claim and deal with unpaid amounts

Paying employee's wages etc. to inspector

Subclause 386(1) provides that on an inspector's written demand, an employer must pay unpaid wages and occupational superannuation contributions payable to the employee or an approved fund (including any return that would have accrued had the contributions been properly paid in the first instance). This does not prevent an inspector from making a verbal claim for arrears of wages or occupational superannuation contributions, but it is not an offence in itself for an employer to refuse or fail to pay such claim.

Subclause 386(2) prescribes to whom such payment must be made. Unpaid wages due to the employee must be paid to the inspector. Unpaid superannuation contributions must be paid into a complying superannuation fund in the time specified by the inspector. If the contributions are not paid into the fund within the specified time, they must be paid to the inspector.

Subclause 386(3) provides that in relation to unpaid wages that were not recoverable by way of application under Clause 423, a demand must not be

made, and if made need not be complied with.

Subclause 386(4) provides that an Industrial Magistrates Court that hears and determines a complaint against an employer for an offence under Subclause (1)(a) (failure to pay inspector on demand for unpaid wages), apart from any penalty it may impose, and whether or not it finds the employer guilty, may order the employer to pay the employee the amount the court finds, on the balance of probabilities, to be payable to the employee.

Subclauses 386(5) and (6) provide that a court that finds an employer guilty of an offence under Subclause 1(b) (failure to pay occupational superannuation contributions on demand of inspector), may order the employer to make payments which a magistrate may order on an application under Clause 435, which then applies to such order.

Subclause 386(7) prescribes that for the purpose of this clause, an 'employee' includes a former employee.

Inspector's obligation for amounts paid on demand

Subclauses 387(1) and (2) stipulate that an inspector who is paid any amount of wages and superannuation contributions must immediately give the payer a receipt for the amount. The receipt is a full discharge to the employer concerned for the amount stated in the receipt.

Subclause 387(3) nominates where an inspector must pay wages and occupational superannuation contributions paid to him or her.

Subclauses 387(4) and (5) provide that if the inspector has not distributed the amount collected within 30 days of receipt of it, he or she must immediately pay it to the department, which must account for the money in a way required by Subclause (3).

Subclause 387(6) provides that if the employee cannot be located after making reasonable enquiries, or the employee does not nominate a superannuation fund, the department must pay the amounts into the unclaimed moneys fund in the Treasury.

Subclause 387(7) includes a former employee in the meaning of 'employee' and defines 'superannuation contribution' for the purposes of this clause. A 'superannuation contribution' includes the return that would have accrued had the contributions been paid and is mentioned in Subclause

386(1)(b)(ii).

Division 5—General

Obstructing inspectors

Clause 388 prohibits a person from obstructing an inspector in the exercise of a power unless the person has a reasonable excuse. The term 'obstruct' is defined in the dictionary in the schedule. There is a maximum penalty of 40 penalty units for a breach of this provision.

Impersonating inspectors

Clause 389 makes it an offence for a person to pretend to be an inspector, with a maximum penalty of 40 penalty units.

Validity of inspector's conduct despite administrative contravention

Clause 390 makes an inspector liable to disciplinary action if such inspector fails to comply with Clause 380 (production of identity card) and Subclause 377(1) (subject to the direction of the chief inspector or employment advocate). However, the failure to comply with these provisions does not affect the lawfulness or effect of an act done or omission made by the inspector for this Bill.

CHAPTER 9—RECORDS AND WAGES

PART 1—EMPLOYERS RECORDS

Division 1—Definitions

Definitions for Part 1

Clause 391 defines 'authorised industrial officer', 'record' and 'time and wages record'. A 'record' includes a computer printout if the relevant contents are separate from all other material in the printout, and the particulars required are presented accurately and in a format convenient for the purpose of inspection under this part.

Division 2—Authorised industrial officers

Authorising industrial officers

Subclauses 392(1), (2) and (3) enable an officer or employee of an organisation to be authorised as an 'authorised industrial officer' and to exercise the powers of that office.

Subclause 392(4) sets out certain conditions for the authorisation.

Subclause 392(5) provides that when an authorisation ceases to be in force, the organisation must notify the registrar within 14 days and surrender the authorisation to the registrar on his or her request.

Revocation and suspending industrial officer's authorisation

Clause 393 provides that the commission may take certain action if, on application by an employer, it considers that an authorised industrial officer has:

- contravened Clause 400(2) (re giving 48 hours notice of intention to enter a relevant workplace); or
- breached a condition of the authorisation; or
- exercised the power to enter in an unreasonable or vexatious way; or
- made unreasonable, vexatious or inappropriate use of information obtained from records made available because of the exercise of the power.

In the above circumstances, the commission may cancel the officer's authorisation, suspend the authorisation for a period it considers

appropriate, or attach such conditions as it considers appropriate to the officer's authorisation.

Division 3—Employers to keep certain records

Time and wages record—industrial instrument employees

Subclause 394 (1) prescribes that an employer must keep a time and wages record at the workplace and specifies the particulars in respect of each industrial instrument employee (see 'industrial instrument employee' in Subclause (5)) that must be contained in the record.

Subclause 394(2) provides that if the industrial instrument does not limit the employee's daily or weekly working hours, there is no need to record the employee's starting and finishing times each day, unless the instrument requires it.

Subclause 394(3) provides that the record must be kept by the employer for six years.

Subclause 394(4) provides that if requested, the employer must give the employee a certificate stating the total hours recorded under Subclause (1)(d) (i.e. total hours worked by casual employee) calculated to the previous 30 June.

Subclause 394(5) defines an 'industrial instrument employee' for the purposes of this clause as an employee of the employer working under an industrial instrument (i.e. an award, certified agreement or QWA) or permit.

Time and wages record—non-industrial instrument employees

Subclause 395(1) prescribes that an employer must keep a time and wages record at the workplace and specifies the particulars in respect of each non-industrial instrument employee (see 'non-industrial instrument employee' in Subclause (4)) that must be contained in the record. Details to be kept are substantially the same as those required for an industrial instrument employee under Subclause 394(1) except there is no requirement to record the employee's name and address or date of birth, the number of hours worked and starting and ceasing times, and sick leave

details.

Subclause 395(2) provides that the record must be kept by the employer for six years.

Subclause 395(3) provides that if requested, the employer must give the employee a certificate stating the total hours recorded under Subclause (1)(b) (i.e. total hours worked by casual employee) calculated to the previous 30 June.

Subclause 395(4) defines a 'non- industrial instrument employee' for the purposes of this clause.

Employee register

Subclause 396(1) provides that each employer must keep a register of employees and prescribes the details to be kept in the register.

Subclauses 396(2) and (3) provide circumstances in which an alphabetical index of the employee's names must be kept and specify the accepted form of the index.

Subclause 396(4) provides that the employer is to enter any change in an employee's calling into the register within 14 days after the change.

Subclause 396(5) provides that an employee is to inform the employer of his address and change of address.

Subclause 396(6) provides that particulars must be entered opposite and relative to the name of the employee to which they relate.

Subclause 396(7) requires an employer to keep a register of employees in respect of each place of business.

Subclause 396(8) permits action to be taken against a person who manages the business of a corporation which commits an offence against this clause.

Subclause 396(9) provides that it is a defence for a person to prove that he or she was not in a position to influence the conduct of the corporation in relation to the offence. If the person was in such a position, it is a defence for the person to prove that he or she exercised reasonable diligence to ensure that the corporation complied with the provision.

Records to be kept in English

Clause 397 requires that a record or index must be kept in the English language.

Notation of wages details

Subclause 398(1) provides that an employer must provide an employee with a written

statement of the make-up of the payment when paying the wages. There is a maximum penalty of 40 penalty units for non-compliance with this provision.

Subclause 398(2) allows the statement to be given on the employee's pay envelope or advice and sets out the details that must be included in the statement.

Division 4—Power to inspect certain records

Inspection of time and wages record—inspector

Subclause 399(1) permits an inspector to inspect time and wages records at a workplace during the employer's business hours.

Subclause 399(2) prescribes that the employer must allow the inspector to inspect the records. There is a maximum penalty of 40 penalty units for non-compliance with this provision.

Subclauses 399(3) and (4) empower an industrial inspector to serve a notice on the employer to produce the time and wages records at a specified workplace or reasonably convenient place nominated at a specified time, if in the first instance such records were not produced, an inspection was obstructed, or an inspector wants to inspect the record of a former employer.

Subclause 399(5) provides that if the employer fails to produce the records in response to the notice it is deemed that the employer has failed to keep the record, unless he or she has a reasonable excuse.

Subclause 399(6) allows the notice to be given by post or in another way.

Right of entry—authorised industrial officer

Subclause 400(1) permits an authorised industrial officer to enter a relevant workplace during the employer's business hours to exercise a power under Clause 401.

Subclause 400(2) prescribes that the officer must give the employer at least 48 hours notice of the intention to enter the workplace. However, the registrar may waive the 48 hour requirement if satisfied that it is impracticable to give the notice because of emergent reasons (Subclause 400(3)).

Subclauses 400(4) prescribes that the registrar must issue a certificate to the officer stating that the employer's workplace is a relevant workplace if satisfied the certificate is required to enable the officer to enter the workplace. A 'relevant workplace' is defined in Subclause (9).

Subclause 400(5) provides that on entering the workplace the officer must notify the employer or the employer's representative and produce the officer's authorisation.

Subclause 400(6) provides that if an officer produces a copy of the registrar's waiver if the 48 hour notice has not been given, and produces a certificate on request, and complies with Subclause (5), the employer must not refuse entry to the workplace. There is a maximum penalty of 27 penalty units for non-compliance with this provision.

Subclause 400(7) provides that if the officer fails to notify of his presence and does not produce authorisation and the certificate if required, he or she may be treated as a trespasser.

Subclause 400(8) waives the requirements of Subclause (5) in remote workplaces where it is impracticable to give the notice. If neither the employer nor an employer's representative is present, the officer need not abide by Subclause (5).

Subclause 400(9) defines a 'relevant workplace' for the purposes of this clause.

Inspection of time and wages record—authorised industrial officer

Subclause 401(1) enables the officer to inspect the time and wages records of an employee who is a member of the officer's organisation, or who is eligible to become a member of such organisation, providing that the

officer has entered the workplace in accordance with the provisions of Clause 400.The officer may also inspect the time and wages records of an employee who is a party to a QWA, but only with the employee's written consent.

Subclause 401(2) prescribes that the employer must allow the officer to inspect the record in respect of the employee mentioned in Subclause (1) (other than an employee who is a party to a QWA) unless the employee has requested in writing that the record be withheld from an authorised industrial officer or a particular authorised industrial officer. The employee may also request that the record be witheld from a particular officer. If the employee requests in writing that the record not be made available, the employer must not allow the officer (or the particular officer) to inspect it. Under no circumstances is the employer to allow the officer to inspect the record of an employee who is a party to a QWA unless the employee has given written consent. There is a maximum penalty of 27 penalty units for non-compliance with the provisions of this clause.

Subclause 401(3) provides that a person must not threaten or intimidate an employee in order to persuade or attempt to persuade the employee to make, or refuse to make, a written request that the record be withheld from the officer.

Subclause 401(4) allows the employer to withhold particulars not listed in Clause 394(1).

Subclause 401(5) allows the officer to make a copy of the record but prohibits the officer from requiring any help from the employer.

Subclause 401(6) allows the officer to interview the employer in relation to the relevant industrial instrument or permit. The officer may also interview the employees during non- working time.

Subclause 401(7) prohibits a person (not just the employer) from obstructing the officer exercising a power under Subclauses (5) or (6).

Subclause 401(8) provides that the officer must not wilfully obstruct an employee during the employee's working time. The officer is prohibited from obstructing the employer and must not contravene a requirement of this clause.

Subclause 401(9) prohibits a person from acting as an authorised industrial officer under this clause unless the person holds a current authorisation.

Subclause 401(10) defines several expressions used in this clause.

Inspection of employee register and index—registrar

Subclauses 402(1) and (2) allow the registrar to inspect the employee register and index during business hours at the employer's workplace, and prescribe that the employer must allow the inspection to take place. There is a maximum penalty of 40 penalty units for non- compliance with this subclause.

Subclauses 402(3) and (4) provide that for the purpose of taking a ballot or in response to court or commission orders, the registrar may direct the employer to give the register or index to a nominated person at a reasonable time and place. The employer must comply with the direction with a maximum penalty of 40 penalty units for failure to do so.

Inspection of time and wages book—employees

Clause 403 enables an employee to inspect or, at the employer's discretion, be supplied in writing with particulars of the time and wages record at intervals of not less than 12 months.

PART 2—WAGES AND OCCUPATIONAL SUPERANNUATION

Division 1—Interpretation

Definitions for Part 2

Clause 404 defines a number of terms used in this part. However, the definition of 'employer' is limited to Division 2 concerning prime contractors.

References to service

Clause 405 provides that in this part reference to service on a person includes reference to service on a person's agent.

Division 2—Protection for wages

Wages are first charge on amounts payable to employer

Clause 406 provides that wages due to employees are a first charge on moneys due to the employer by a prime contractor. The prime contractor is free to pay the employer all moneys due until the service of a notice of attachment on the prime contractor (Subclause (2)).

Assignment of amount payable ineffectual against claims for wages

Clause 407 provides that a claim for wages due to an employee is to take precedence over any assignment given by an employer against moneys due to that employer from a prime contractor. This does not apply if the assignment by the employer is to employees of the employer for wages for performing the work.

Amounts payable to or received by employer to be applied in payment of wages payable or to become payable

Subclauses 408(1) and (2) provide that money due to or received by an employer from a prime contractor cannot be attached or charged other than by the employees until employees of that employer have been fully paid.

Subclause 408(3) provides that the employer must apply the amounts received from the prime contractor in payment of wages payable, or to become payable, to employees who performed the work for which the amounts are received.

Subclauses 408(4), (5) and (6) provide that the employer must keep an accurate written account of amounts received from the prime contractor and of the way they have been disbursed. The employer must produce the account and allow it to be copied by an employee under certain circumstances.

Attachment notices

Clause 409 provides for service of an attachment notice on the prime contractor by an employee whose wages remain unpaid 24 hours after they are payable and have been demanded.

Effect of attachment notice

Subclauses 410(1) and (2) provide that a prime contractor who has been served with an attachment notice must retain from amounts payable, or to become payable, to the employer an amount sufficient to satisfy the claims for wages specified in the notice and all further claims in notices served within seven days of the first notice.

Subclauses 410(3) and (4) provide that at the end of the seven-day period, the amount specified in the notices must be kept by the prime contractor until a magistrate orders to whom the moneys are payable, or the amount is paid to the clerk of the Magistrates Court, or the notices are withdrawn. However, after being served with a notice, the prime contractor may pay the amount to a clerk of the Magistrates Court until the order is made or the notice is withdrawn.

Subclause 410(5) provides that payment must be accompanied by the notice or a true copy and is full discharge from any liability.

Subclause 410(6) provides that amounts paid in to the clerk of the Magistrates Court may only be paid out on the order of the magistrate or on withdrawal of the attachment notice.

Subclause 410(7) provides that a prime contractor who fails to keep or pay to the clerk of the Magistrates Court the amount required by Subclauses (2) or (3) to be kept is personally liable for the amount stated in the attachment notice.

Subclause 410(8) provides that an employee who has served an attachment notice may withdraw the notice by giving notice of withdrawal to the prime contractor and to the employer to whom amounts are payable, or are to become payable, by the prime contractor.

Orders for payment by prime contractor or clerk of the court

Clause 411 provides for the issue by a magistrate of an order for

payment of an amount provided for in a notice of attachment. Moneys retained on the notice of attachment are to be paid out 21 days after a copy of the order is served unless an appeal is lodged. If an appeal is lodged the moneys are to be retained until either the determination or withdrawal of the appeal.

Employees to be paid according to when attachment notices are served

Subclause 412(1) provides that amounts attached or paid to the clerk of the Magistrates Court are to be paid in priority according to the order in which the relevant attachment notices are served.

Subclause 412(2) provides that all notices served within seven days of the first notice are taken to have been served simultaneously with the first notice and are given equal priority in distribution of the amount attached.

Subclauses 412(3) and (4) provide that where the amount attached is less than the total amount claimed in the attachment notices which are taken to be served simultaneously, then the claims are to abate in equal proportions among themselves.

Employee may sue prime contractor

Clause 413 allows an employee, in whose favour an order concerning a notice of attachment is unpaid, to sue the prime contractor on whom the order was issued for the amount indicated in the order.

Cessation of attachment not to prejudice prime contractor

Clause 414 provides that a prime contractor is not to be prejudiced in relation to a payment made in satisfaction of an order under Clause 411 if that order stops operating either because of satisfaction of the employee's claim or because the order is set aside.

Discharge by employee for payment received

Clause 415 provides that if asked, an employee who receives an amount for a claim for wages to which an order under Clause 411 relates, must sign a discharge for the amount to the person making the payment.

Remedy of subcontractor's employees

Clause 416 gives an employee of a subcontractor to an employer the same rights as employees of the employer with regard to notices of attachment against the prime contractor.

Prime contractor's right to reimbursement

Clause 417 provides for the right of a prime contractor who has paid wages to an employee as a result of a notice of attachment, to a claim for reimbursement from the assets of an employer in the event of the employer's winding up or insolvency.

Magistrate may hear claim for wages ex-parte

Clause 418 provides that a magistrate may hear and decide claims for wages in the absence of the person to whom the originating process is directed provided there is proof of service of the process on that person.

Division 3—Paying and recovering wages

Wages to be paid without deduction

Subclause 419(1) provides that if an employee is employed to work on a fixed rate (i.e. a rate fixed by an industrial instrument or permit), he or she must be paid the fixed rate without deduction except for any deductions authorised by a relevant industrial instrument, by this division or with the employee's written consent.

Subclause 419(2) provides that where employers and employees agree to a rate for work performed which is not fixed by a relevant industrial instrument or is in excess of that fixed by a relevant industrial instrument, the employees are to be paid the agreed wages without unauthorised deduction.

Subclause 419(3) provides that a contract or authority is void to the extent that it provides for deductions in contravention of this clause.

Paying wages

Clause 420 provides that wages must be paid at least monthly in Australian currency. The clause provides for the method of payment of wages and voids any contract or authority which provides for payment of wages other than in accordance with this clause.

Contract not to stipulate mode of spending wages

Clause 421 provides that an employer is not to impose as a condition of employment the place where, the way in which or the person with whom the employee is to spend any part or all of his or her wages. It also prohibits the employer from dismissing an employee for spending or not spending his or her wages at a particular place, in a particular way or with a particular person.

Payment of unpaid wages etc. if employee's whereabouts unknown

Clause 422 provides that, where an employer cannot locate an employee who has terminated employment and to whom the employer owes money, the employer must pay the unclaimed moneys to the nearest clerk of the Magistrates Court. A receipt for the payment from the clerk is full discharge to the employer for the stated amount. If the moneys have not been paid to the former employee at the end of 30 days the amount is to be paid over to the department's funds for the former employee.

Recovery of wages etc.

Subclauses 423(1) and (2) provide that an application for an order for payment of wages payable to an employee, but unpaid, may be made to a magistrate. The application may be made by the employee, an employee organisation of which the employee is a member, a person authorised by the employee to make the application, or an inspector.

Subclause 423(3) provides that applications for wages must be made within six years after they became payable.

Subclause 423(4) provides that the magistrate on hearing the application must order the employer to pay the amount that the magistrate finds to be payable. However, the amount is limited to wages that have become due and payable within six years preceding the making of the application. The

magistrate may also make an order for payment despite provisions of an agreement to the contrary, order the payment on terms considered appropriate, and award costs to either party.

Enforcement of magistrate's order

Subclauses 424(1),(2) and (3) provide that an order of a magistrate for payment of wages or approved superannuation contributions found to be payable, or for costs in a proceeding relating to such matters, is enforceable under the *Justices Act 1886.* The amount ordered to be paid is a debt payable to the person in whose favour the order is made

Subclause 424(4) provides that the order may be filed in the registry of the Magistrates Court, and on being filed it is taken to be an order properly made and which may be enforced as an order made by a Magistrates Court.

Recovery from employee of amounts overpaid

Subclauses 425(1), (2) and (3) provide that an employer may recover amounts overpaid to an employee because of the employee's absence from work. The amount overpaid may be recovered by deduction from subsequent pay periods, but deductions must be commenced within one year after the payment and may extend over a period of six years after the payment.

Subclause 425(4) provides that deductions made may not reduce the amount payable to an employee during any pay period to less than an amount prescribed under a regulation.

Deduction in default of notice of termination

Clause 426 applies if an employment contract is governed by an industrial instrument that provides a specified period for notice of termination of employment and the employee leaves employment without giving the specified notice. In such instances the employer may deduct from wages payable an amount stated by the industrial instrument to be payable in lieu of notice not given.

Minor may sue

Clause 427 allows for minors to instigate proceedings under this division as if they were 18 years of age.

Division 4—Wages in rural and mining industries

Wages recoverable against mortgagee if mortgagor defaults

Clause 428 provides for the recovery, in certain circumstances, of the wages of employees in rural industries from a mortgagee if the employer defaults on a mortgage.

Distress warrant levied on property of mortgagor or mortgagee

Clause 429 deals with a warrant of distress in relation to the enforcement of wages in accordance with Clause 428.

Application of ss 428 and 429 to mines

Clause 430 provides for the recovery, in certain circumstances, of the wages of employees in the mining industry from a mortgagee if the employer defaults on a mortgage or bill of sale.

Priority in payment of wages earned in mine

Clause 431 provides that wages due (up to four weeks) to an employer in a mine are a first charge on a claim or land in which the mine is situated. If a corporation operating a mine is wound up and wages are due to employees, the wages (of not more than four weeks) must be paid in priority to all other debts of the corporation.

Division 5—Occupational superannuation

Agreement about superannuation fund

Subclauses 432(1), (2) and (3) provide that even though an industrial instrument requires an employer to pay contributions to a specified superannuation fund, the employer and employee may by written agreement agree that the required contributions be paid to a complying superannuation fund.

Subclause 432(4) specifies a maximum penalty of 40 penalty units for the offence of coercing an employee to make such a written agreement.

Contributing occupational superannuation

Subclauses 433(1) and (2) specify a maximum penalty of 40 penalty units against an employer for the offence of failing to contribute, for eligible employees, to the approved superannuation fund at the level required by the relevant industrial instrument. The offence is prescribed as a continuing offence that may be charged in one complaint for a period.

Subclause 433(3) provides that no offence is committed by an employer who contributes to a complying superannuation fund—but not the approved fund—at the level required by a relevant industrial instrument, unless the employer knowingly contravene the instruments.

Subclause 433(4) provides that where the commission has made an order specifying the complying superannuation fund to which contributions should be made, an employer who fails to contribute in accordance with the order is taken to fail to make the contribution under the relevant industrial instrument, whether or not the order was directed to that employer.

Subclause 433(5) provides that a court that finds a defendant guilty of an offence may make an order that a magistrate is authorised to make under Clause 435 (i.e. amount of and where unpaid contributions are to be paid) on application under that clause.

Power to order superannuation contribution to particular fund

Subclauses 434(1) and (2) provide that the commission may determine and order accordingly to which complying superannuation fund an employer should have been, or should be, contributing to comply with the relevant industrial instrument. This power may be exercised where it has been alleged that an employer is contributing at the required level but not to

an approved superannuation fund. The order may be made on the initiative of the commission or on application by an inspector, organisation or employee concerned.

Subclause 434(3) enables the commission to make such an order to operate from the date when a particular employee became eligible for payment of contributions to the fund.

Subclause 434(4) enables the commission to recognise all or any of the contributions made to a complying superannuation fund up to the date of a determination as having met requirements under a relevant industrial instrument.

Magistrate's power for unpaid superannuation contribution

Subclauses 435(1), (2) and (3) allow an application to be made to a magistrate for an order for payment of unpaid superannuation contributions. The application must be made within six years after the contributions became payable and may be made by an inspector, an eligible employee on whose behalf an employer is required to contribute, or an employee organisation of which the eligible employee is a member.

Subclause 435(4) provides that a magistrate must order an employer to pay the amount of contribution he or she finds payable and unpaid within the six years preceding the application, plus an amount equivalent to the return (interest) that would have accrued had the contributions been properly paid to the fund.

Subclause 435(5) specifies where the amount ordered is to be paid. It may be paid to the employee only if the amount is less than total benefits that may revert to the employee under the *Superannuation Industry (Supervision) Act 1993*.

Subclause 435(6) provides that if a former employee in relation to whom an order is made cannot be found after reasonable inquiry or has not nominated a superannuation fund, then the amount must be paid into the unclaimed moneys fund in the Treasury.

Subclause 435(7) enables the magistrate to order payment on terms and to order, or not order, costs as he or she considers appropriate.

CHAPTER 10—OFFENCES

Contempt of court

Subclauses 436(1) and (2) provide that the court (i.e. the Industrial Court) has all the protection, powers, jurisdiction and authority possessed by the Supreme Court in relation to contempt of court. The Rules of the Supreme Court apply, with necessary changes, in such cases and must be complied with.

Subclause 436(3) provides that the registrar or an officer of the court may apply to the court for an order that a person be imprisoned for contempt of court.

Subclause 436(4) specifies that jurisdiction to punish a contempt of court committed in the face and hearing of the court rests with the president (i.e. the president of the Industrial Court). In all other cases jurisdiction rests with the full court.

Subclause 436(5) provides that the court has jurisdiction to punish an act or omission as a contempt of court although a penalty is prescribed for the act or omission.

Disobeying penalty orders

Clause 437 provides that a person must obey a penalty order unless he or she has a reasonable excuse. For the purposes of this clause, 'penalty order' means an order of the court or commission that provides for payment of a penalty if the order is disobeyed.

Improper conduct towards member of the commission, magistrate or registrar

Clause 438 makes it an offence to engage in improper conduct before an industrial authority. The clause specifies the actions which a person must not take and enables a person engaging in such conduct to be excluded from the hearing. There is a maximum penalty of 40 penalty units or one year's imprisonment for improper conduct.

Disturbances near tribunals

Clause 439 specifies a maximum penalty of 40 penalty units or one year's imprisonment for creating, taking part in or continuing a disturbance in or near a place where the court, commission, Industrial Magistrates Court or the registrar is sitting.

Contempt by witness

Clause 440 makes it an offence for a witness, when summoned to appear before an industrial authority, not to appear or alternatively, when appearing, to refuse to answer questions or produce records as required or be sworn in.

False or misleading statements

Clause 441 prohibits a person from making false or misleading statements to an official (i.e. an inspector or the registrar) for this Bill. For the purposes of laying a complaint for an offence against this clause, it is sufficient to state that to the person's knowledge the statement made was false or misleading. A person must not be prosecuted under this clause if he or she can be prosecuted under Clause 105 (re: false or misleading statements in connection with QWAs) or Clause 298 (re: false or misleading statements made to members or officers of the commission when they seek to enter a workplace).

False, misleading or incomplete documents

Subclause 442(1) prohibits a person from giving an official a document containing information which the person knows is false, misleading or incomplete in a material particular. There is a maximum penalty of 40 penalty units for non-compliance with this provision.

Subclause 442(2) provides relief from Subclause (1) if the person giving the document informs the official how it is false, misleading or incomplete, and the person gives the correct information if he or she can possibly do so.

Subclause 442(3) specifies a maximum penalty of 40 penalty units for a person who makes an entry in a document required or permitted under this Act that the person knows to be false, misleading or incomplete.

Subclause 442(4) provides that it is sufficient to state that to the person's knowledge the statement made was false, misleading or incomplete for the purposes of laying a complaint for an offence against Subclause (1) or (3).

Subclause 442(5) provides that if a person can be prosecuted under Clause 83 (re: accuracy of employer's declarations for QWAs) or Clause 298 (re: false or misleading statements made to members or officers of the commission when they seek to enter a workplace) he or she must not be prosecuted for an offence under this clause.

Subclause 442(6) defines an 'official' for the purposes of this clause. It includes an authorised industrial officer in addition to an inspector or the registrar.

Obstructing officers

Subclause 443(1) specifies a maximum penalty of 40 penalty units for obstructing an officer of the court or commission. The subclause details actions that a person must not take which, in general, consist of obstructing or wilfully misleading an officer, or, failing to answer a question truthfully or produce documents.

Subclause 443(2) provides that such provisions do not apply in respect of obstruction of a commissioner or officer of the commission in their right to enter places for which penalty is prescribed under Clause 298.

Subclause 443(3) defines the terms 'obstruct' and 'officer' for the purposes of this clause.

Avoiding Act's obligations

Subclause 444(1) specifies a maximum penalty of 40 penalty units for an employer intentionally avoiding an obligation to pay an employee for a public holiday or accrued leave. The subclause states that an employer must not avoid obligations by dismissing an employee or interrupting the continuity of service of an employee accruing long service leave as a casual.

Subclause 444(2) provides that a court which finds an employer has contravened Subclause (1) in relation to long service leave must order, in addition to any penalty, payment of proportionate long service leave.

Subclause 444(3) defines a number of terms used in the clause.

Non-payment of wages

Subclauses 445(1), (2) and (3) make it an offence not to pay wages payable under a relevant industrial instrument or permit to an employee or in accordance with the employee's written direction (e.g. into a specified financial institution). Such an offence starts on the day of the failure and continues until the wages are paid.

Subclauses 445(4) and (5) provide that a complaint or series of complaints may be made for any period over which the offence continues. However, the complaint must be limited to offences that started within 6 years before the complaint was made.

In effect, this means that legal proceedings can be taken any time within the six years following the offence as provided in Subclause 460 (7) (re: limitation on time for starting proceedings), but the complaint can only allege non-payment of wages that fell due or were payable within the six years preceding the laying of the complaint.

Subclauses 445(6) and (7) empower a magistrate to hear and determine a complaint for an offence under this clause. In addition to any penalty imposed, the magistrate must order the defendant to pay the employee the amount the court finds to be payable. If the defendant is not found guilty of the offence the magistrate may order the defendant to pay to the employee the amount found, on the balance of probabilities, to be payable to the employee.

The magistrate may make the order despite provisions of an agreement to the contrary and on terms considered appropriate.

Accepting reduced wages

Clause 446 makes it an offence for an employee to enter into an agreement with an employer to accept wages that, to the employee's knowledge, are reduced to less than those payable under a relevant industrial instrument.

The return from employee to employer of wages payable under an industrial instrument or permit is evidence that the employee has entered into an agreement to accept reduced wages.

Publishing statement about employment on reduced rates

Subclause 447(1) makes it an offence for a person to publish, or cause to be published, a statement that a person is ready and willing to employ a person on reduced wages or be employed on reduced wages.

Subclause 447(2) provides that proceedings for such an offence may only be commenced against a publisher of a statement after the publisher has been warned by an inspector that such a statement, or a similar statement, is an offence under the Act. If such a statement is subsequently published proceedings for the offence may only be commenced with the approval of the Minister.

Subclause 447(3) provides that unless a proprietor of a newspaper or other advertising medium can show that he or she took all reasonable precautions against committing the offence and believed in the lawfulness of the statement and had no reason to suspect that the statement was unlawful, then the proprietor is taken to have published the statement with knowledge of its unlawfulness.

Subclause 447(4) defines a number of terms used in the clause.

Offence to offer or accept premiums

Subclause 448(1) provides that the clause applies subject to the provisions of the *Private Employment Agencies Act 1983.* The *Private Employment Agencies Act 1983* does not prohibit the payment of a charge or fee by an employer to an agent for the procurement of employees for the employer.

Subclause 448(2) prohibits a person from offering, demanding, asking, accepting or agreeing to accept an employment premium.

Subclause 448(3) provides that a court that finds a defendant guilty of such an offence must, in addition to any penalty, order the defendant to pay an amount equivalent to the premium to the person from whom the defendant accepted the premium.

Subclause 448(4) defines employment premium as a consideration, gift, allowance or forbearance for the employment of a person.

Contraventions of awards, certified agreements or permits

Subclause 449(1) specifies maximum penalties for first and subsequent offences of contraventions of awards, certified agreements or permits (contraventions of QWAs are dealt with in Clause 93). Different penalties are specified based on whether the offender is an employee, an employer that is not a body corporate or an employer that is a body corporate.

Subclause 449(2) provides that a second or subsequent offence is not committed where more than one year has passed since the commission of the last similar offence of which the person was found guilty.

Subclause 449(3) provides that both an employer who pays, and an employee who receives, reduced wages are taken to have contravened the instrument or permit.

Subclause 449(4) provides that if an employee returns part of his or her wages to his or her employer, the employee is taken to have received and the employer is taken to have paid reduced wages unless the return is in payment or part payment of a lawful debt or obligation of the employee.

Injunction restraining contraventions

Clause 450 provides that the full court, if satisfied that a person convicted of contravening an industrial instrument did so wilfully, may grant an injunction restraining that person from continuing the contravention or committing further contraventions. A maximum penalty of 200 penalty units is prescribed for not obeying the injunction.

Persons considered parties to offences

Clause 451 provides that, without limiting section 7 of the Criminal Code, an organisation or person who takes part in, counsels, encourages or is concerned in the commission of an offence under this Act is taken to have committed the offence and is liable to the penalty prescribed for the offence.

Executive officers must ensure corporation complies with ss 396, 433 and 445

Clause 452 allows action to be taken against directors and persons

concerned with and taking part in the management of the business of a corporation which commits an offence relating to failure to keep a register of employees, non-contribution of superannuation and non-payment of wages. In addition to the prescribed penalty, such officers are liable to any other order for unpaid wages and superannuation contributions that the magistrate may make.

However, it is a defence for executive officers if they can prove that they exercised reasonable diligence to ensure that the corporation complied with Clauses 396, 433 and 445 or that they were not in a position to influence the conduct of the corporation in relation to the offence.

Attempt to commit offence

Clause 453 provides that a person who attempts to commit an offence commits an offence and is liable to the same penalty as if the offence had been committed.

CHAPTER 11— LEGAL PROCEEDINGS

General application of jurisdictional provisions

Clause 454 provides that the provisions of this Bill providing for powers of and procedures before the court, the commission or an Industrial Magistrates Court apply in relation to the jurisdiction of those authorities under this Bill or any Act unless the contrary intention appears.

Evidentiary provisions affecting proceeding under industrial Act

Clause 455 provides that in a proceeding under an industrial Act the appointment, authority, and signature of an inspector or the employment advocate must be presumed until the contrary is proved (Paragraphs (a), (b), (c) and (d)). Paragraph (e) allows a document purporting to be a copy of a notice issued by an inspector to be admitted as evidence of the notice and contents.

Paragraph (f) provides that the limits of a district, part of the State, or of a

road, stated in a complaint or document for the proceeding are presumed unless proved otherwise.

Paragraph (g) allows a tribunal to take judicial notice of the existence of industrial action (or proposed industrial action) if it considers that such existence is so well known as to require no proof of the fact.

Confidential material tendered in evidence

Clause 456 relates to confidential and other material tendered in evidence and enables the court, commission or registrar to make orders concerning the non-disclosure of such material. The court, commission or registrar may direct that a report of a proceeding not be published, or, evidence given, records tendered or things exhibited be withheld from release or search.

Evidentiary value at large of official records

Subclause 457(1) clarifies that a copy of the industrial gazette or an extract from the industrial gazette, either of which contains a decision of the court or commission, is admissible in all proceedings as evidence of the decision.

Subclause 457(2) details the various documents of which copies are admissible as evidence.

Proof of certain facts by statement

Clause 458 provides for the proof of certain facts by statement in a complaint or other process by which the proceeding is started, namely the transfer of a calling, membership or not of an organisation, and the liability to make occupational superannuation contributions, until the contrary is proved.

Evidentiary value of certificate of trustee of superannuation fund

Clause 459 allows for a certificate of a trustee of an occupational superannuation scheme to be proof of the amount of contributions which should have been paid into the scheme and the amount of return these contributions would have attracted.

Offence proceedings generally

Subclauses 460(1) and (2) provide that offence proceedings under an industrial Act are to be heard by the Industrial Court (the court) or industrial magistrates (magistrates) within the limits of their jurisdiction. A proceeding before a magistrate is to be taken in a summary manner and the Industrial Magistrates Court is constituted by a magistrate sitting alone.

Subclauses 460(3), (4) and (5) provide for the transfer of proceedings from a magistrate in one district to one in another district, and for transfers after proceedings have commenced and evidence has been heard.

Subclause 460(6) provides that a proceeding for an offence under this Bill must commence within one year after the offence was committed, or within six months after the offence comes to the complainant's knowledge but within 18 months after the offence was committed. This limitation does not apply to an offence of failure to pay wages as prescribed by an industrial instrument.

Subclause 460(7) provides that a proceeding for an offence under Clause 433 or 445 must be commenced within six years after the commission of the offence.

Organisations may start proceedings

Clause 461 provides that an organisation may commence proceedings for contraventions of industrial instruments or permits, offences under this Bill and recovery of money on behalf of an employee.

Recovering amounts from organisations

Clause 462 provides that the recovery of any penalty or an amount ordered to be paid by an organisation can be enforced against the organisation's property.

CHAPTER 12—EMPLOYEES IN EMPLOYMENT OF STATE

Application of Act to State

Clause 463 provides that the State is bound by this Bill except in relation to:

- an Act providing that a determination on a matter can be made and such determination is made and is in force; or
- an Act prescribing the process to pursue a matter, which does not allow for the jurisdiction of the court or commission in respect to the matter; or
- an Act excluding the jurisdiction of the court or commission or the application of a decision under this Bill; or
- Section 235(2) of the repealed Act when an industrial instrument provides otherwise or the commission decides otherwise.

Conflict between industrial instruments etc. and statutory determination

Clause 464 provides for the situation where a determination under an Act is inconsistent with an industrial instrument. A certified agreement prevails over a determination in respect of a directive or guideline for reserved matters under the *Public Service Act 1996* and the determination prevails over any other instrument or decision. All other determinations prevail over the instrument or decision.

Protection of public property and officers

Clause 465 provides that execution or attachment cannot be issued against the property or revenues of the State or a department to enforce an industrial instrument or decision of the court, commission or magistrate. A person who is or is taken to be an employer of employees in a department is not personally liable under a relevant industrial instrument or for contravention of the instrument.

Ambit of reference to State

Clause 466 provides that the Bill binds any instrumentality or body that is not a department and which might be taken to represent the State or to have the rights, privileges or immunity of the State, in the same way as it

binds any other employer. The exclusions and protections given to the State do not apply to such instrumentalities or bodies.

Representation of public sector units

Clause 467 provides that a public sector unit in its role as an employer in an industrial cause must be represented in an industrial tribunal (which for the purpose of this clause includes also the commission and an Industrial Magistrates Court) by the unit's chief executive or an officer or employee of the unit authorised by the chief executive; or, if allowed by this Bill, a lawyer or agent.

Industrial cause affecting diverse employees

Clause 468 provides that if the Minister determines an industrial cause to be one that affects, or is likely to affect, employees in more than one public sector unit, the chief executive of the department responsible for the Bill is taken to be the employer of all affected employees of all units. Any agreement made by the chief executive or order made in a proceeding to which the chief executive is a party, binds all those to whom the agreement or order purports to apply.

CHAPTER 13—GENERAL

Employees working in and outside State

Clause 469 provides that employers and their employees engaged to work in Queensland and who are required by the employer to work partly in some other State are bound by the relevant Queensland industrial instrument for the full period of their employment including that outside Queensland. By definition in the *Acts Interpretation Act 1954* the term 'State' includes the Australian Capital Territory and the Northern Territory.

Student's work permit

Subclauses 470(1), (2), (3) and (4) enable a student undertaking a course

of tertiary study who is required to work in a calling in order to complete the course, to obtain a permit from the registrar to work in a calling at special wages. The permit may be issued with or without conditions.

Subclause 470(5) provides that after the permit is issued, the registrar must immediately advise the secretary of the employee organisation in the calling of the issue and conditions of the permit.

Subclause 470(6) ensures that this clause prevails over an award or certified agreement. However, the permit will only provide for a special rate of pay, not the conditions of employment which will still be as prescribed by the relevant award or certified agreement.

Aged or infirm persons permits

Subclauses 471(1) and (2) enable aged or infirm persons (or an inspector on their behalf) to apply to a magistrate for a permit to work for wages lower than those prescribed by an award or agreement.

Subclause 471(3) empowers a magistrate to decide whether or not the permit is issued and on what conditions.

Subclause 471(4) provides that the secretary of an employee organisation in the calling in which the person intends to be employed is to be notified of the application, so that it may object to the application.

Subclauses 471(5) and (6) provide that the magistrate must hear any objections from the applicable industrial organisation's authorised representative and allow the organisation to apply for the cancellation of the permit at any time.

Subclause 471(7) provides that this clause applies and a permit has effect despite an award, certified agreement, industrial agreement or EFA.

Right of entry provisions void

Clause 472 provides that provisions of industrial instruments, EFAs, industrial agreements, arrangements or orders that give an officer or employee of an organisation certain rights of entry, inspection and interview, are not enforceable. Paragraphs (a), (b) and (c) specify the powers not enforceable.

Preference provisions void

Clause 473 provides that preference clauses or provisions in industrial instruments, EFAs, industrial agreements, arrangements or orders are not enforceable.

Copy of award and certified agreement to be displayed

Clause 474 provides for the display of a true copy of an applicable award or certified agreement in the workplace. For the purposes of this clause a 'workplace' includes a factory, workroom or shop and the award or agreement must be displayed at or near the entrance where it can be easily read by employees.

Incorporation of amendments in reprint of award or certified agreement

Clause 475 allows the registrar to reprint and consolidate an award or certified agreement when it is amended.

Obsolete award or certified agreement

Subclause 476(1) provides a procedure by which the registrar can declare an intention to cancel obsolete awards or certified agreements.

Subclauses 476(2), (3), (4) and (5) allow for the lodgement and hearing of objections to the registrar's declaration. The award or certified agreement may then be declared obsolete and cease to have effect if no objections are lodged or if all objections are dismissed.

Certificate of employment on termination

Clause 477 provides that on termination of employment (by either the employer or the employee) the employer must provide the former employee with a certificate signed by the employer. The particulars to be supplied in the certificate are as prescribed under a regulation.

False pretences relating to employment

Subclauses 478(1),(2) and (3) prohibit a person from:

- pretending that a person has been employed in a capacity or for a period other than that in and for which the person was employed;
- asserting in writing that a person has been employed for a period or in a capacity knowing that assertion to be false;
- asserting in writing other matters relating to a person's employment knowing such assertion to be false;
- forging a certificate of previous employment;
- using a certificate or document of previous employment knowing that document to be false or not genuine;
- pretending to be another person for the purpose of seeking employment;
- seeking employment by assuming the name of another;

  (Maximum penalty for all the above— 40 penalty units)
- giving false information about one's age, experience or duration of previous employment.

  (Maximum penalty—16 penalty units)

Subclause 478(4) provides that a person's liability to be dealt with for an offence under Subclauses (1) and (2) does not affect his or her liability under the Criminal Code for forgery or false pretences.

Subclause 478(5) protects a person from being dealt with under both this Bill and the Criminal Code.

Protection from liability

Subclauses 479(1) and (2) provide that an official bears no civil liability in respect of acts done or omissions made honestly and without negligence acting under this Bill or any of the Acts listed in Subclause 376(5). However, if this provision prevents civil liability attaching to a person, it attaches instead to the State.

Subclause 479(3) prescribes a definition of official to include the Minister, the chief executive, the employment advocate, the Commonwealth employment advocate, the registrar, an officer of the court or commission, an inspector or Commonwealth public servant acting as an inspector and persons acting under direction of an inspector.

Payments to financially distressed

Clause 480 allows the payment from the unclaimed moneys fund in the Treasury to an employee suffering hardship due to an underpayment of wages which cannot be recovered from the employer. The employer is still liable to pay the unpaid wages although payment has been made from the fund. If the employee subsequently receives remuneration he or she is to repay the amount to the department.

Notices and applications to be written

Clause 481 provides that a notice or application given or made under this Bill must be in writing unless otherwise provided.

Inaccurate descriptions

Clause 482 provides that the operations of this Bill are not prevented or abridged by misnomer, inaccurate description or omission in or from a document given under this Bill in relation to subject matter which is sufficiently clear to be understood.

Confidentiality of information

Clause 483 prohibits a person (not limited to an inspector) from disclosing information acquired in the performance of functions or the exercise of powers under the Bill except in certain circumstances, viz. when the disclosure is:

- made for the purposes of this Bill when performing a function under this Bill; or
- authorised by the Minister, a court order, or a regulation; or
- required or permitted by another Act.

The maximum penalty for disclosure is 16 penalty units.

Application of Act generally

Subclause 484(1) provides that where a provision of this Bill does not apply to a person or class of person, a decision is inoperative to the extent of

its application to the person or member of the class about the provision's subject matter.

Subclause 484(2) provides that this Bill does not create rights, privileges or benefits for a period of service as an employee if similar rights, etc. were given to or received by the person under the repealed Act.

Regulation-making power

Subclauses 485(1) and (2) allow for the making of regulations under this Bill by the Governor in Council and detail a number of matters, mostly in relation to QWAs, about which regulations may be made. A regulation can create an offence and fix a penalty for the offence under a regulation.

Subclauses 485(3), (4), (5) and (6) provide for the exemption of a person, by regulation, from a provision of this Bill. The exemption may be subject to a specified condition and, if so, applies only while the person complies with the condition. Decisions purporting to apply to a person so exempted are inoperative to the extent that they apply to something covered by the exemption.

CHAPTER 14—INDUSTRIAL RELATIONS ADVISORY COUNCIL

Establishment of council

Clause 486 establishes the Industrial Relations Advisory Council made up of a maximum 12 members consisting of:

- employers, or officers or employees of employer organisations; and
- employees, or officers or employees of employee organisations; and
- persons with knowledge or experience in workplace relations; and
- the chief executive who is the chairperson.

Apart from the chief executive, the council members are to be appointed by the Minister. A deputy chairperson, other than the chief executive, must

also be appointed by the Minister.

Term of office

Clause 487 provides for the appointment of council members for a term not exceeding three years. An appointed member may resign at any time by giving signed notice to the Minister.

Deputies of members

Subclauses 488(1) and (2) allow the Minister to appoint a person to act as a deputy of a member during a period when a member is unable to perform the functions of the appointment.

Subclause 488(3) provides that the deputy has the entitlements of the member while exercising the powers and performing the duties of the member.

Remuneration of appointed members

Clause 489 entitles an appointed member to allowances and reasonable expenses approved by the Minister.

Functions of council

Subclause 490(1) specifies the functions of the council, which are to investigate and report to the Minister on matters of an industrial relations nature, review industrial Acts, and make recommendations to the Minister.

Subclause 490(2) provides that the council must consult with the president and chief commissioner on matters relating to the court or commission and may consult with various organisations and persons and confer with the Minister in performance of its functions. The council must also consider the attainment of the objects of the industrial Act concerned.

Conduct of committee meetings

Clause 491 sets out the requirements for meetings of the committee as regards frequency of meetings, quorums, voting procedures and recording of minutes.

CHAPTER 15—SAVINGS, REPEALS AND OTHER AMENDMENTS

Savings

Subclause 492(1) provides that any person prescribed under any Act to be an employee within the meaning of the repealed Act will continue to be an employee within the meaning of this Bill.

Subclauses 492(2) and (3) provide that any instrument (as defined in this clause) made, given, done, granted, certified or approved by the court, the commission, a magistrate or the registrar under the repealed Act and in force immediately before the commencement of this Bill, will not be affected by the commencement of this Bill. The continued operation of such an order may however be revoked, amended or suspended under this Bill.

Subclause 492(4) provides that a proceeding started before the commencement of this clause under a provision of the repealed Act and pending at the time of the repeal may be carried on and prosecuted as if it had been started under this Bill.

Subclause 492(5) provides that a proceeding is regarded as part heard if the hearing has commenced and a decision has not been pronounced.

Regulation and rules to continue

Clause 493 provides that the *Industrial Relations Regulation 1990* and the *Industrial Court Rules 1990* made under the repealed Act continue as if they had been made under this Bill. The Regulation and Rules are to be read with the changes necessary to make them consistent with, and to adapt their operations to, this Bill.

Clause 494 provides that the *Industrial Relations Act 1990* and *City of Brisbane (Garbage Services) Act 1985* are repealed.

Amended Acts—sch 4

Clause 495 provides that Schedule 4 amends the Acts mentioned in it.

CHAPTER 16—TRANSITIONALS

PART 1—LIMITED CONTINUATION OF CERTAIN CONDITIONS

Preservation of certain general conditions in existing instruments

Clause 496 refers to the fact that certain provisions of general conditions of employment such as sick leave, annual leave and hours of work are not going to be provisions in this Bill. These sections (221, 222, 230, 233, 235, 236, and 237) of the repealed Act continue to apply to an existing award, industrial agreement, certified agreement or EFA for 18 months after commencement of this clause.

PART 2—EXISTING AWARDS

Definitions for Part 2

Clause 497 specifies definitions necessary for interpretation of the part:

- 'interim period' means a period of 18 months beginning on the day Clause 128 (Allowable award matters) commences;
- 'special consent provisions' means provisions of an award giving effect to certain principles adopted from prescribed State Wage Cases in 1992, 1994 and 1995.

Exercise of commission's powers under this part

Clause 498 provides that rather than have parts of awards cease to operate at the end of the interim period under Clause 500, the commission must consider the desirability of helping award parties to agree on amendments during the period.

Amendment of awards during the interim period

Subclause 499(1) provides that existing awards continue to have effect after the commencement of this section.

Subclause 499(2) provides that on application by a party to an award the commission may amend the award during the interim period so that it deals only with allowable award matters.

Subclause 499(3) provides that in Clause 499 an exceptional matters order is taken to relate wholly to allowable award matters.

Subclause 499(4) provides that this clause may not be used to amend special consent provisions before the termination time for the provisions.

Subclause 499(5) provides that the commission may deal with applications by arbitration only if satisfied that the applicant has made reasonable attempts to reach agreement with other parties on the amendment and the treatment of matters that are not allowable award matters.

Subclauses 499(6) and (7) provide that on application to amend an award considered to be operating as a paid rates award, the commission may make an amendment that provides for minimum wage rates consistent with Clause 122, Clause 123 and the limits on the commission's power in Clause 129.

Subclause 499(8) provides that in amending the award the commission must make provisions to ensure that overall pay entitlements are not reduced unless this is considered not to be in the public interest.

Subclause 499(9) provides that the commission must, if it considers it appropriate, review the award to determine whether it meets the following criteria:

- it does not contain matters more appropriately dealt with by agreement in the workplace or enterprise;
- it does not prescribe practices or procedures that hinder or restrict work efficiency;
- it does not contain provisions that restrict or hinder productivity, having regard to fairness to employees;
- whenever possible, it contains facilitative provisions allowing for agreement in the workplace or enterprise on how provisions

apply (including agreements with individual employees);

- whenever possible, it contains provisions enabling employment of regular part-time employees;
- it is in plain English and easy to understand;
- it contains no provisions that are obsolete or in need of updating;
- whenever possible, it provides for appropriate trainee wages and for supported wages for people with disabilities;
- it does not contain discriminatory provisions.

Subclause 499(10) allows the commission to take steps to facilitate amendment of an award so that it meets these criteria.

Parts of awards stop having effect at the end of the interim period

Subclause 500(1) provides that awards containing other than allowable award matters at the end of the interim period cease to have effect to the extent of those matters.

Subclause 500(2) provides that in Clause 500 an exceptional matters order and an award made under Subclause 55(4) are taken to relate wholly to allowable award matters.

Amendment of awards after the end of the interim period

Subclauses 501(1) and (2) provide that the commission must review all awards containing other than allowable award matters at the end of the interim period and make amendments to remove those provisions.

Subclause 501(3) provides that the commission may also amend an award so that an allowable award matter is stated in a way that reasonably represents entitlements as provided in the award prior to the end of the interim period.

Subclauses 501(4) and (5) provide that if immediately before the end of the interim period an award provided for what are considered to be paid rates, the commission may make an amendment that provides for minimum wage rates consistent with Clause 122, Clause 123 and the limits on the commission's power in Clause 129.

Subclause 501(6) provides that in amending the award the commission

must make provisions to ensure that overall pay entitlements are not reduced unless this is considered not to be in the public interest.

Subclause 501(7) provides that the commission must, if it considers it appropriate, review the award to determine whether it meets certain criteria. These are the same criteria as were stated in Subclause 499(9) above.

Subclause 501(8) allows the commission to take steps to facilitate amendment of an award so that it meets these criteria.

Matters to be dealt with by full bench

Clause 502 provides that a full bench of the commission may establish principles about amending awards under this part, but that once those principles have been established an amendment to an award under this part may be made only by a full bench. An exception to this is where the contents of an award give effect to the determinations of a full bench under this part or where the contents of the award are consistent with principles established by a full bench under this clause.

PART 3—EXISTING INDUSTRIAL AGREEMENTS

Existing industrial agreement continues

Subclause 503(1) provides that existing industrial agreements continue to have effect after the commencement of this clause.

Subclause 503(2) provides for the continued application of provisions of the repealed Act (other than those in relation to making an industrial agreement) to the industrial agreement, subject to this part.

Subclauses 503(3) and (4) provide that the commission may amend an industrial agreement before its expiry by a written agreement filed by the parties to the agreement in the registrar's office. However such agreement cannot extend the term of the industrial agreement.

Subclause 503(5) provides that the industrial agreement may be terminated before its term expires by written agreement filed by the parties in the registrar's office.

Agreement is displaced by QWA

Clause 504 provides that if a QWA comes into effect in relation to an employee bound by an industrial agreement, the industrial agreement ceases to have effect in relation to the employee.

PART 4—EXISTING CERTIFIED AGREEMENTS

New termination provisions apply to existing certified agreements

Subclause 505(1) provides that existing certified agreements continue to have effect after the commencement of this section.

Subclause 505(2) provides that a certified agreement entered into before the commencement of this section in which the specified period of operation, or any period of operation as extended under the repealed Act, has ended, may be terminated under Clause 38 (Terminating a certified agreement after its nominal expiry date) of this Bill.

EFAs that prevail over certified agreements

Clause 506 provides that, in certain circumstances, an enterprise flexibility agreement (EFA) prevails over a certified agreement, to the extent of the inconsistency, during the period of operation specified in the EFA (the post-commencement EFA period). The clause applies only if all the following conditions are met:

- an EFA is continued in force by Part 5;
- any part of the post-commencement EFA period or any extended period happens after the commencement of this section;
- the EFA is, during the post-commencement EFA period, inconsistent with a certified agreement;
- the certified agreement was certified after implementation of the EFA was approved.

Certified agreements that prevail over EFAs

Clause 507 provides that, in certain circumstances, a certified agreement prevails over an EFA, to the extent of the inconsistency. The clause applies only if all the following conditions are met:

- an EFA is continued in force by Part 5;
- a certified agreement is, after the commencement of this Bill, inconsistent with the EFA;
- Clause 506 does not apply to the inconsistency

Section 55(4) awards and exceptional matters orders prevail over pre and post commencement certified agreements

Clause 508 provides that awards made under Subclause 55(4) and exceptional matters orders prevail over certified agreements in accordance with the provisions of Subclauses 30 (2) and (3).

PART 5—EXISTING EFAs

Existing EFA continues

Subclause 509(1) provides that existing EFAs continue to have effect after the commencement of this clause to the extent provided by this part.

Subclause 509(2) provides for the continued application of provisions of the repealed Act (other than those relating to making an EFA) to EFAs.

Subclause 509(3) provides that the period of operation of an EFA cannot be extended after the commencement of the clause.

EFA is displaced by QWA

Clause 510 provides that if a QWA comes into effect in relation to an employee bound by an EFA, the EFA ceases to have effect in relation to the employee.

EFA displaced by certain awards or orders

Clause 511 provides that exceptional matters orders and awards made under Subclause 55(4) prevail over an EFA to the extent of any inconsistency.

PART 6—UNFAIR DISMISSALS

Dismissals before commencement of this section

Clause 512 provides that a dismissal that happened before the commencement of this section is subject to the dismissal provisions (Part 12, Division 5) of the repealed Act.

PART 7—REPRESENTATION RIGHTS OF EMPLOYEE ORGANISATIONS

Applications under the repealed Act, s 45

Clause 513 specifies that applications made under Section 45 (Organisation coverage) of the *Industrial Relations Act 1990* continue to be subject to those provisions, and orders made as a result of a hearing of such applications have effect as if they were made under that section before its repeal.

PART 8—REFERENCES AND APPOINTMENTS

References to *Industrial Relations Act 1990*

Clause 514 provides that a reference in an Act or document to the repealed Act is a reference to this Bill if the context permits.

Appointments continue

Clause 515 provides that a person who held an office or appointment under the repealed Act immediately before the commencement of this section continues to hold the office or appointment, but does so subject to the provisions of this Bill.

SCHEDULE 1

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This covenant recognises the obligation of the State under the Charter of the United Nations to create conditions whereby everyone may enjoy his or her economic, social and cultural rights.

SCHEDULE 2

FAMILY RESPONSIBILITIES CONVENTION

This convention recognises the problems of workers with family responsibilities and the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers.

SCHEDULE 3

TERMINATION OF EMPLOYMENT CONVENTION

This schedule adopts an international Convention regarding the termination of employment at the initiation of the employer.

The articles cover matters such as procedures, period of notice and severance allowance and income protection in relation to dismissals.

SCHEDULE 4—AMENDED ACTS

ACTS INTERPRETATION ACT 1954

Clause 1 ensures by the deletion of references to the *Industrial Relations Act 1990* in Section 36 of the *Acts Interpretation Act 1954* that the definitions of the terms 'Industrial Court', 'industrial magistrate' and 'Industrial Relations Commission' therein will be linked to definitions and provisions of the *Workplace Relations Act 1996*.

ANZAC DAY ACT 1995

Clause 1 corrects an error in the drafting of the *Anzac Day Act 1995*. Section 15 of that Act refers to the mandatory payment by Treasury to the Anzac Day Trust from the total amount of annual fees paid for general licences under the *Liquor Act 1992.*

Specifically, the amendment of Subsection 15(1)(a) alters the percentage from 0.0034% to read 0.34% to reflect the correct proportion of 1/300th in the legislation.

PUBLIC SERVICE ACT 1996

Clause 1 provides for the replacement in Section 117(2) of the *Public Service Act 1996* of the words 'an agreement made under the *Industrial Relations Act 1990*, part 11' with the words 'an industrial agreement'.

Clause 2 provides for the insertion of a new Subsection (3) into Section 117 of the Act which defines the term 'industrial agreement'.

This definition gives recognition in the Act both to agreements made under the *Industrial Relations Act 1990* that are continued in force under the *Workplace Relations Act 1996* and to certified agreements made under the *Workplace Relations Act 1996.*

TRADING (ALLOWABLE HOURS) ACT 1990

Clause 1 increases the number of persons that may be engaged at any one time in an independent retail shop from 6 to 20 (including the owner of the business).

Clause 2 increases the aggregate number of persons that may be engaged in a number of shops at any one time from 20 to 60 (including the owner of the business) where the owner conducts more than one shop.

Clause 3 omits Section 15 because Section 18 (to which section 15 refers) has also been deleted. Section 18 prescribed the allowable opening hours of non-exempt shops.

Clause 4 amends Section 16(2) so as to continue the prohibition and restriction on the auctioning of wool and tobacco leaf on Sundays or public holidays. The amendment is necessary because of the deletion of Section 18, which prescribed the days on which such prohibitions and restrictions applied.

Clause 5 removes the restriction on trading by independant retail shops, other than food or grocery shops, on the first Monday in May each year (Labour Day) if employees are to be employed in the shop on that day. All independent retail shops will therefore be permitted to open on Labour Day.

Clause 6 omits Section 18, as a full bench of the commission is now empowered in Section 21(1) to decide trading hours for non-exempt shops. This authority to decide trading hours for non-exempt shops is only in respect of hours other than those prescribed in Section 21(1A).

Clause 7 provides, through a new Section 21(1), for decisions on trading hours for non-exempt shops to be made by a full bench of the industrial commission.

In addition a new Section 21(1A) stipulates that the full bench is not to decide trading hours less than prescribed hours on a stated day, other than a public holiday.

Clause 8 inserts a new Subsection 21(3) to provide clarity as to what days constitute a public holiday. This is provided in the Schedule contained in the *Holidays Act 1983.*

Clause 9 omits Section 26(e) and inserts a new provision to which the commission must have regard when considering trading hour applications. This provision has been extended to include the interests of small, medium or large business.

VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 1991

Clause 1 omits definitions of 'industrial award or industrial agreement' and 'industrial organisation' from the Act.

Clause 2 defines terms used in the Act:

- 'industrial award' is equated to the definition of 'award' in the *Workplace Relations Act 1996;*
- 'industrial inspector' is equated to the definition of 'inspector' in the *Workplace Relations Act 1996;*
- 'industrial instrument' is defined in line with the *Workplace Relations Act 1996* (Queensland or Cwlth);
- 'industrial organisation' is defined in line with the *Industrial Organisations Act 1996.*

Clauses 3 and 4 provide for the terms 'an entity' and 'the entity' to replace 'a person' and 'the person' for the purposes of the registration of providers of training programs or courses.

Clause 5 extends the functions of the Vocational Education, Training and Employment Commission (VETEC) to performing the functions of an approving authority under the *Workplace Relations Act 1996* (Queensland or Cwlth).

Clause 6 provides for 'entities' to replace 'persons' for the purposes of

making VETEC rules about the registration of providers of training programs or courses.

Clause 7 provides for 'entities' to replace 'persons' for the purposes of Accreditation Council decisions and orders about the registration of providers of training programs or courses.

Clause 8 provides for 'appropriately qualified person or other appropriate entity' to replace 'person' for the purposes of to whom VETEC or a standing committee may delegate powers.

Clause 9 provides for 'entity' to replace 'person' in the definition of 'prescribed words' in relation to the conferring of awards.

Clause 10 changes references from industrial 'award' to industrial 'instrument'. The industrial commission is therefore enabled to fix a rate of wage or conditions of employment for a trainee by reference to an industrial instrument or industrial agreement.

Clause 11 changes references from industrial 'award' to industrial 'agreement'. Recognition is therefore given to superannuation contributions made in accordance with the provisions of an industrial instrument or industrial agreement.

Clause 12 changes references from industrial 'award or agreement' to industrial 'instrument or industrial agreement'. Similarly to Clause 11 above this is to recognise superannuation contributions made in accordance with an industrial instrument or industrial agreement.

Clause 13 provides that orders made by the industrial commission under the *Workplace Relations Act 1996* prescribing the approved occupational superannuation fund to which an industrial instrument requires contribution to be made will also apply in relation to contributions made on behalf of eligible trainees and apprentices.

Clause 14 changes references from industrial 'award' to industrial 'instrument'. The rate of wages payable to an apprentice may therefore be linked to rates under an industrial instrument or industrial agreement.

Clause 15 changes references from industrial 'award' to industrial 'instrument'. The fixing of other entitlements for apprentices (e.g. allowances, annual leave) may therefore be linked to entitlements under an industrial instrument or industrial agreement.

Clause 16 changes references from industrial 'award or agreement' to

industrial 'instrument or industrial agreement'. Similarly to Clause 15 above this relates to the fixing of other entitlements for apprentices that may be linked to entitlements under an industrial instrument or industrial agreement.

Clause 17 clarifies wording in relation to when annual leave is to be taken.

Clause 18 provides for inspection of time and wages records, which are defined as those prescribed by the *Workplace Relations Act 1996*, by a training consultant, a welfare consultant, an industrial inspector or a person authorised by the State Training Council. The standard of protection for apprentices and trainees relating to time and wages records is therefore the same as for other employees under the *Workplace Relations Act 1996.*

Clause 19 provides for a training consultant or industrial inspector to recover, by way of application proceedings, tools of trade or an amount equivalent to their cost.

Clause 20 specifies a maximum penalty of 40 penalty units for the offences of paying an apprentice at a rate of wage lower than that to which the apprentice is entitled under the Act and failing to pay or provide an apprentice or trainee an entitlement due under the Act.

Clause 21 specifies that offences in relation to failure to pay correct wages and entitlements to apprentices and trainees, or employing apprentices or trainees in excess of authorised numbers, are continuing offences that may be charged in one complaint for a period.

Clause 22 provides for a training consultant or industrial inspector to recover, by way of application proceedings, unpaid wages or entitlements.

Clause 23, by the inclusion in the 'amount due' definition of amounts equivalent to the cost of tools of trade, allows for the recovery of such amounts upon the written demand of a training consultant or industrial inspector, and creates an offence for failing to pay such amount due on demand.

Clause 24 changes the reference from industrial 'award' to industrial 'instrument'. Training consultants or industrial inspectors are therefore able to recover on demand unpaid superannuation contributions payable by an employer under an industrial instrument or industrial agreement.

Clause 25 changes the reference from industrial 'award' to industrial 'instrument'. Training consultants or industrial inspectors must therefore

account for, in the prescribed manner, amounts of superannuation contributions recovered by them under an industrial instrument or industrial agreement.

Clause 26 creates a definition of 'relevant industrial instrument' in relation to superannuation contributions that includes an industrial instrument determined by the State Training Council.

Clause 27 changes references from industrial 'award' to industrial 'instrument'. Recovery of unpaid superannuation contributions by application proceedings may therefore be made under a relevant industrial instrument or industrial agreement.

Clause 28 changes the reference from industrial 'award' to industrial 'instrument'. The Act therefore prevails over any provision of an industrial instrument or industrial agreement.

Clause 29 changes the reference from industrial 'award' to industrial 'instrument'. A monitoring warrant may therefore be issued to ascertain whether the provisions of an industrial instrument or industrial agreement are being complied with.

Clause 30 creates an evidentiary provision that in proceedings for the purposes of the Act, in the absence of evidence to the contrary, it is not necessary to prove the appointment of an industrial inspector.

Clause 31 creates an evidentiary provision that in proceedings for the purposes of the Act, a certified copy of an industrial instrument or a certificate from a trustee of a superannuation fund about contributions and rates of interest on contributions, is evidence of those matters.

WORKPLACE HEALTH AND SAFETY ACT 1995

Clause 1 ensures by the deletion of the reference to the *Industrial Relations Act 1990* in Section 66 of the *Workplace Health and Safety Act 1995* that the definition of the term 'union' therein will be linked to the definition in the *Industrial Organisations Act 1996.*

Clause 2 provides in Section 164(3) of the Act for the replacement of the words 'aggrieved by' with the words 'dissatisfied with'.

Clause 3 provides in Section 164(4) of the Act for the replacement of a reference to the '*Industrial Relations Act 1990*' with a reference to the

'*Workplace Relations Act 1996*'.

Clause 4 provides for the insertion of a new Sub-section (6) into Section 164 of the Act that defines the term 'person dissatisfied with a decision' in relation to a proceeding. The definition ensures that the right of appeal against a decision of an industrial magistrate is extended to include a party to the proceeding, a person bound by the decision or, if an inspector started the proceeding, any inspector.

SCHEDULE 5—DICTIONARY

Schedule 5—Dictionary defines terms for the purposes of the Bill. Terms already defined and 'signposted' in the body of the Bill are repeated and cross-referenced in the Dictionary.