

INDUSTRIAL RELATIONS BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the legislation

The principal objective of this Bill is to provide a framework for industrial relations that supports economic prosperity and social justice by:

- providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and
- providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and
- preventing and eliminating discrimination in employment, and ensuring equal remuneration for men and women; and
- helping balance work and family life; and
- promoting the effective and efficient operation of enterprises and industries; and
- ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
- promoting participation in industrial relations by employees and employers; and
- encouraging responsible representation of employees and employers by democratically run organisations and associations; and
- promoting and facilitating the regulation of employment by awards and agreements; and
- meeting the needs of emerging labour markets and work patterns; and
- promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and
- providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes; and
- assisting in giving effect to Australia's international obligations in relation to labour standards

Reasons for the Bill

The Bill implements the objectives of the Government's pre-election "Industrial Relations New Directions Statement":

- to establish an effective industrial relations system that gives Queenslanders a fair and reasonable standard of living, an equitable share of the State's output, access to jobs and training, secure and satisfying employment, equal opportunity and freedom from discrimination in employment; and
- develop an industrial relations system which takes account of both social and economic goals in order to ensure a proper balance between the achievement of fair outcomes for workers and improving the productive performance of Queensland workplaces and industries.

To meet these objectives the Government established a review of Queensland's industrial relations system and immediately moved amendments to the *Workplace Relations Act 1997*.

On 27 July 1998, the Government approved the terms of reference for a comprehensive review of the industrial relations legislation and the membership of an Industrial Relations Taskforce. The Taskforce comprised representatives of unions and employer associations, independent experts and a representative of the Department of Employment, Training and Industrial Relations.

The Taskforce was chaired by Professor Margaret Gardner, Pro Vice-Chancellor (Business, Equity), Griffith University.

The members of the Taskforce were:

- Ingrid Asbury, National Industry Group Manager, Australian Industry Group;
- John Battams, General Secretary, Queensland Teachers Union;
- Don Brown, Secretary, Australian Liquor, Hospitality & Miscellaneous Workers Union;
- Robin Franklin, Group Manager, Human Resources, Thiess Contractors Pty Ltd;
- Judith Himstedt, Manager, Workplace Relations Division, Queensland Chamber of Commerce and Industry;
- Peter Henneken, Acting Deputy Director-General, Department of Employment, Training and Industrial Relations;
- Chris Ketter, Branch Secretary, Shop, Distributive & Allied Employees Association (from October 1998);
- Joseph Ludwig, Senior Industrial Advocate, Australian Workers Union (to 2 September 1998); and
- an independent expert, Professor Ron McCallum, Blake Dawson Waldron, Professor in Industrial Law at the University of Sydney.

The Government set the following terms of reference for the review of Queensland's industrial relations legislation.

The new legislation will result in the development of an industrial relations system that:

- improves the strength of the economy, provides for job growth and enhances job security;
- meets the needs of emerging labour markets and work patterns;
- is fair and equitable;
- provides an effective balance between collective and individual rights;
- is flexible, responsive and accessible; and
- is based on cooperation, consultation and participation.

It was proposed that the following elements form the basis of the legislative review:

- strengthening and enhancing job security and addressing the issue of non-standard forms of work and related employment conditions;
- creating a responsive and accessible industrial relations system;
- fair and equitable arrangements for wages and conditions that meet the needs of industry, employers and employees including the public sector;
- the need for a viable, relevant and up-to-date award system that protects the wages and conditions of workers;
- the interface between State and federal industrial relations systems;
- the role, structure and function of the Industrial Relations Court, Commission and Registry and related tribunals; and
- strengthening collective arrangements, including the operation and regulation of industrial organisations.

On 28 August 1998 the *Workplace Relations Amendment Act 1998* was passed by Parliament. The Act overturned certain harsh and unfair aspects of the *Workplace Relations Act 1997*. This included stopping awards from being stripped back to 20 allowable matters. In regard to Queensland workplace agreements (QWAs), the Act removed secrecy provisions, included a protection for disadvantaged groups (such as young workers and women) and required the commission to consider the public interest before approval of a QWA.

The Report of the Industrial Relations Taskforce recommended the development of a new Industrial Relations Act to replace the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997*.

In total the Taskforce made 166 recommendations, of which 139 (84%) were unanimous, 27 were by majority. Of the 166 recommendations the Bill has adopted 150 in total or with addition or modification and 16 have been rejected.

Achieving the objective

The Bill repeals the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997* and provides for a new industrial relations system based on recommendations of the Industrial Relations Taskforce and key policy issues determined by Government.

The Bill:

- strengthens the role of the commission in the making and varying of awards and in mediating and conciliating where negotiations over enterprise bargains have broken down;
- introduces a position of full-time president of the Industrial Commission and court, and simplifies the appeals provisions, but generally retains the current structure of the commission and court;
- provides for legal representation before the commission to occur by leave of the commission;
- requires awards to be reviewed regularly and to set fair and reasonable wages and conditions of employment rather than be limited to a minimum safety net of conditions;
- provides greater choice in the types of agreements that can be made between employers and employees including agreements that can be made for a single business or enterprise, for projects, for multiple employers and for new business sites;
- introduces a 21 day peace obligation period during which parties are expected to bargain without resorting to protected industrial action;
- retains agreements between an individual employer and employee (Queensland workplace agreements);
- removes the small business exemption from the unlawful dismissal laws for employers of fifteen or less staff during the first year of employment;
- provides a three month probationary period for all employees;
- streamlines unfair dismissal provisions and requires the commission to deal with applications expeditiously;
- provides a minimum statutory entitlement for annual leave, sick leave, long service leave, parental leave, carers leave (i.e. where employees can use sick or annual leave for caring purposes), bereavement leave and public holidays for all employees;

- increases the minimum entitlement for sick leave from one week per year to eight days per year;
- sets the maximum number of hours of work at 8 hours per day, unless otherwise agreed in an award or agreement;
- makes it easier for the commission to establish a minimum wage for non-award employees;
- requires that, as soon as practicable, a review of Queensland awards is undertaken to remove discriminatory provisions;
- adds outworkers to the definition of employee, and gives the Industrial Commission the power to conduct an inquiry to determine whether a category of independent contractors should be deemed as employees;
- broadens the criteria for a review of an unfair contract;
- simplifies election provisions for industrial organisations for democratic elections;
- removes the requirement that organisations pay for elections and provides that elections conducted by the electoral commission be funded by that body;
- simplifies the accounting provisions for industrial organisations and removes provisions relating to political objects funds;
- requires unions to give notice to an employer on entering a workplace;
- requires the commission to consult with peak councils and other industrial organisations on coverage of industrial organisations, where it believes this to be necessary;
- transfers the determination of wages and conditions of employment of apprentices and trainees to the industrial relations legislation from the vocational education and training legislation;
- provides that the positions of Enterprise Commissioner and Employment Advocate be abolished;
- provides that the Industrial Registry become a public service office under the *Public Service Act 1996*; and
- provides that statutory precedence of public service directives over awards be largely relinquished.

Alternatives to the Bill

The Report of the Industrial Relations Taskforce recommended the development of a new Industrial Relations Act to replace the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997*.

The Bill repeals the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997* and provides for a new industrial relations system based on recommendations of the Industrial Relations Taskforce and key policy issues determined by Government.

Government has a commitment to creating an industrial relations system that ensures a proper balance between improving the economic competitiveness of Queensland workplaces and industries and the achievement of fair outcomes for workers. In order to maintain this commitment, the Taskforce and Government considered a wide range of differing views and divergent options when settling upon the principal objectives of the Bill. The Government considers that the Bill reflects the best approach to maintaining and securing the Bill's objectives.

Administrative cost to Government

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

Consistency with fundamental legislative principles

The following provisions of the Bill may be perceived as inconsistent with fundamental legislative principles:

Clause 72 (4) (Dismissals Part 1—Exclusions)

This clause provides a regulation-making power to exclude particular employees from the operation of certain provisions of the chapter dealing with dismissals. This clause preserves a regulation-making power from section 216(5) of the *Workplace Relations Act 1997*.

Clause 83(7) (Requirements for dismissal)

This clause provides a regulation-making power to exclude from the operation of the clause dismissals happening in circumstances specified in a regulation that relate to the transfer of the employer's business. This clause preserves a regulation-making power from section 226(12) of the *Workplace Relations Act 1997*.

Clause 84(2) (Minimum period of notice)

This clause provides a regulation-making power to prescribe matters that must be disregarded when calculating continuous service under clause 84(1). This clause preserves a regulation-making power from section 226(5) of the *Workplace Relations Act 1997*.

Clause 564 (Auditors have qualified privilege)

This clause confers immunity from civil and criminal proceedings relating to defamation on an organisation's auditor similar to the position of company auditors (see section 863 of the Corporations Law).

Consultation

To assist the review of Queensland's industrial relations legislation, the Taskforce undertook a wide-ranging process of consultation. This consultation had four elements:

- distribution of an Issues Paper;
- a series of regional consultation meetings;
- a call for written submissions; and
- issues workshops.

The Taskforce Issues Paper was tabled in the Parliament in September 1998 and subsequently some 2500 copies of the Issues Paper were distributed directly to employer associations, unions, companies, government agencies, parliamentarians, other organisations and interested individuals. The Issues Paper was also placed on the Internet to allow general public access.

The Issues Paper provided information and posed questions for those wishing to make a written submission. In response, 208 submissions were received by the closing date of 14 October 1998.

In addition, regional consultations were held at the Gold Coast, Townsville, Cairns, Rockhampton, Mt Isa, Brisbane, Nambour and Roma between 22 and 29 September. These were attended by some 340 people. Three issues workshops were also conducted with stakeholders on the bargaining process, the structure of the Commission and the Court, and the public service.

The Taskforce report provides a summary of the views of the written submissions to the Taskforce, as well as the views expressed by individuals and organisations expressed during regional consultations.

The Taskforce's final report was released in December 1998 and further public comments were invited by 12 February 1999. Forty-two submissions were received.

NOTES ON CLAUSES

The following notes indicate where clauses have been wholly retained, without alteration, from previous sections of the *Workplace Relations Act 1997* or the *Industrial Organisations Act 1997*.

CHAPTER 1—PRELIMINARY**Short title**

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides that clause 744 (amendment of section 136 (Existing regulations)) of the *Public Service Act 1996* commences, or is taken to have commenced, on 1 July 1999. The remaining provisions of this Bill commence on a day to be fixed by proclamation.

Principal object of this Act

Clause 3 defines the Bill's objects.

Definitions

Clause 4 provides that the dictionary in schedule 5 defines particular words in the Bill.

Who is an employee

Clause 5 defines an "employee" for the purposes of the Bill. However, the clause also provides that a person who is undertaking an industry placement within the meaning of the *Vocational Education and Training (Industry Placement) Act 1992* is not an employee.

Who is an employer

Clause 6 defines an "employer" for the purposes of the Bill. This clause also provides for a definition of "group training scheme" and "labour hire agency" for the purposes of the Bill.

What is an industrial matter

Clause 7 defines an "industrial matter". It sets out all matters that are an "industrial matter" for the purposes of this Bill. Without limiting the clause a matter is also an industrial matter if it relates to a matter mentioned in schedule 1.

Provisions about appointments and procedures of committees

Clause 8 describes the provisions contained in schedule 2 of the Bill.

CHAPTER 2—GENERAL EMPLOYMENT CONDITIONS**PART 1—GENERAL*****Division 1—Working time*****Working time**

Clause 9 applies to an employee under an industrial instrument. The clause does not apply if an industrial instrument provides otherwise.

The periods for which an employee is required to work must not exceed:

- 6 days in any 7 consecutive days; or
- 40 hours in any 6 consecutive days; or
- 8 hours in any day.

An employee must be paid overtime at the rate of at least:

- for a calling in which more than 1 shift is worked in a day—double time; and
- for another calling—time and a half.

If an employee is paid at a higher rate than the minimum rate prescribed in the industrial instrument, the overtime rate must be worked out on the higher rate.

If practicable, an employee is entitled to a rest pause of at least 10 minutes in each 4 hours of working time on a day.

The rest pause:

- is part of the employee's working time; and
- if continuity of work is necessary, must be taken when it does not interfere with continuity.

A definition of "overtime" is provided for the clause.

Division 2—Sick leave**Entitlement**

Clause 10 provides entitlement and conditions for sick leave for employees other than casual employees and pieceworkers. This clause does not confer entitlement on a person that the person did not have before the commencement of this clause.

Division 3—Annual leave**Entitlement**

Clause 11 establishes a minimum period of annual leave for all employees, other than casual employees and piecework employees, and defines "shift worker" to be applied under this part.

Taking annual leave

Clause 12 establishes arrangements for the time at which annual leave may be taken.

Payment for annual leave

Clause 13 establishes arrangements for the payment of annual leave. Unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.

Payment for annual leave on termination of employment

Clause 14 establishes arrangements for the payment of unused annual leave on termination of employment. The clause applies whether the employee or the employer terminates an employee's employment.

Division 4—Public holidays**Public holidays**

Clause 15 provides an employee, other than a casual employee or pieceworker, with entitlements for leave on full pay for a public holiday unless otherwise provided for under this part.

The clause defines "double time and a half", "ordinary working day", "ordinary working hours" and "show holiday" for this part.

The clause provides for the rate of payment for an employee who works on a public holiday, if the employee's employment is governed by an industrial instrument.

The commission may give an employee entitlement to extra annual leave instead of extra pay for work on a public holiday.

An employer and an employee are to agree upon a day to be treated as a public holiday in a district that does not have an annual agricultural, horticultural or industrial show.

PART 2—FAMILY LEAVE***Division 1—Parental leave*****Who this division does not apply to**

Clause 16 establishes to whom this division does not apply and that this division applies to:

- long term casual employees only so far as it relates to maternity leave; and
- long term casual employees even if some of the periods of employment were before the commencement of this clause.

Definitions for pt 2

Clause 17 defines terms to be applied in this part.

Entitlement

Clause 18 provides the amount of parental leave to which the employee is entitled and defines "continuous service" for this part.

The clause also provides for the amount of leave to which the employee's spouse, a former spouse or a de facto spouse is entitled upon the birth of a child. The term "spouse" is defined to include a spouse of the same sex as the employee.

Notices and documents—maternity leave

Clause 19 establishes the amount of notice and the documents that a pregnant employee who wishes to take maternity leave must give to the employer.

Notices and documents—parental leave other than maternity or adoption leave

Clause 20 provides the amount of notice and the documents that an employee who wishes to take parental leave other than maternity leave or adoption leave must give to the employer.

Notices and documents—adoption leave

Clause 21 provides the amount of notice and the documents that an employee who wishes to take adoption leave must give to the employer and defines "adoption agency" for this part.

Reasons not to give notice or documents

Clause 22 provides that the employee does not fail to comply with clauses 19, 20 or 21 if the failure was caused by an exception provided for in this clause (see subclauses (a), (b) and (c)).

The clause provides the amount of notice that the employee must give upon the occurrence of the events mentioned in subclauses (a), (b) and (c).

Notice of change to situation

Clause 23 provides that an employee must notify their employer of any change in the information provided in clauses 19, 20 or 21 within 2 weeks after the change.

Continuity of service

Clause 24 provides that parental leave does not break an employee's continuity of service.

Spouses not to take parental leave at same time

Clause 25 provides that an employee cannot take parental leave (except short parental leave or short adoption leave) at the same time as their spouse.

Where an employee contravenes this clause, then the period of leave the employee is entitled to is reduced by the period of leave the employee's spouse has taken.

Cancelling parental leave

Clause 26 provides the conditions under which parental leave is automatically cancelled. This clause does not affect an employee's entitlement to special maternity leave or sick leave under clause 37.

Parental leave with other leave

Clause 27 provides, subject to clause 18, that employees may take long service leave and annual leave together with or instead of parental leave, provided that the total amount of leave taken does not exceed the employee's entitlement.

The clause also defines "other paid leave" for this part.

An employee is not entitled to take paid sick leave or other paid leave while on unpaid parental leave unless the employer agrees.

Interruption of parental leave by return to work

Clause 28 provides that, subject to clause 18, an employer and employee may agree to break a period of parental leave, by the employee returning to work whether on a full time, part-time or casual basis.

Extending period of parental leave

Clause 29 provides, subject to clause 18, the conditions under which an employee can extend their period of parental leave.

Shortening period of parental leave

Clause 30 provides the conditions under which the employee may shorten parental leave.

Effect on parental leave of ceasing to be primary care-giver

Clause 31 provides conditions for the cancelling of parental leave if:

- during a substantial period beginning on or after the beginning of an employee's long parental leave, the employee is not the child's primary care-giver; and
- considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary care-giver within a reasonable period.

Return to work after parental leave etc.

Clause 32 establishes how an employee is entitled to return to work at the completion of a period of parental leave. The clause includes a female employee returning to work after a period of special maternity leave or sick leave under clause 37.

An employer must make a position to which an employee is entitled available to the employee. If a long-term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

Employer's obligations

Clause 33 requires the employer to give prescribed information to the employee at the time when the employer first becomes aware that the employee or the employee's spouse is pregnant, or that the employee is adopting a child.

Dismissal because of pregnancy or parental leave

Clause 34 prohibits an employer from dismissing an employee because:

- the employee or employee's spouse is pregnant or has applied to adopt a child; or
- the employee or employee's spouse has given birth to a child or adopted a child;
- the employee has applied for, or is absent on, parental leave.

The clause does not affect the employer's right to dismiss an employee for other reasons nor does it affect the rights of a dismissed employee.

Replacement employees

Clause 35 requires an employer to give certain information to a replacement employee and defines "replacement employee" for this part.

Transfer to a safe job

Clause 36 (1) applies where the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or newborn child.

The clause provides for how the assessment of risk is to be made.

The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk. The clause also establishes what is to happen if it is not feasible or reasonable to adjust the employee's work.

Special maternity leave and sick leave

Clause 37 provides leave for an employee, before the employee starts maternity leave, if the employee's pregnancy terminates before the expected date of birth other than by the birth of a living child, or if the employee suffers illness related to her pregnancy.

Special adoption leave

Clause 38 provides for up to 2 days unpaid leave, to attend compulsory interviews or examinations for an employee wishing to adopt a child.

Division 2—Carer's leave**Entitlement**

Clause 39 provides that an employee may use up to 5 days of sick leave entitlement to provide care and support for members of their immediate

family or members of their household when they are ill. An employee cannot take carer's leave if another person has taken leave to care for the same person.

An employee may take unpaid carer's leave, with their employer's consent.

Division 3—Bereavement leave

Entitlement

Clause 40 provides that employees (other than casual employees or pieceworkers) may take paid leave on the death of a member of their immediate family or household in Australia.

An employee may take unpaid bereavement leave with the employer's consent.

Division 4 — Part overrides less favourable conditions

This part overrides less favourable conditions

Clause 41 provides that this part has effect despite another Act or industrial instrument or order, to the extent that these provide an employee with a benefit that is less favourable to the employee.

PART 3—LONG SERVICE LEAVE

Division 1—Definitions for pt 3

Definitions for pt 3

Clause 42 defines terms used in this part.

Division 2—Employees generally

Entitlement

Clause 43 applies to employees, other than seasonal employees, and provides the period of long service leave to which an employee is entitled for their period of service.

The clause establishes that an employee is entitled to proportionate payment for long service leave if certain prescribed conditions are met.

Long service leave is exclusive of a public holiday that falls during the period of the leave.

An employee who has entitlements to long service leave other than from this Bill, is entitled to leave that is at least as favourable as leave under this Bill.

The clause defines the term “proportionate payment” for this part.

Working out continuity of service for service before 23 June 1990

Clause 44 applies to employees who had service before 23 June 1990 and were not casual employees. Specific sections of the repealed *Industrial Conciliation and Arbitration Act 1961* apply to these employees to determine their continuous service and calculate their long service leave entitlements in relation to service before 23 June 1990.

Taking long service leave

Clause 45 provides that the commission may insert provisions in an industrial instrument concerning the time at which long service leave is to be taken.

An employer and employee may agree when long service leave is to be taken. The employer may decide when long service leave is to be taken, subject to certain conditions, if the employer and employee cannot agree on the time.

Payment for long service leave

Clause 46 provides for payment of long service leave at the rate at which the employee was being paid immediately before taking long service leave. The clause defines "usual rate" for this part.

Division 3—Casual employees

Continuity of service—additional considerations for casual employees

Clause 47 provides how continuity of service for casual employees is to be calculated.

The clause does not limit any other entitlement to long service leave that an employee may have. For example, if a casual employee gained an entitlement to long service leave under the *Industrial Conciliation and Arbitration Act 1961*, this entitlement would be retained under this Act.

Taking long service leave—alternative provision for casual employees

Clause 48 provides that an employer and casual employee may 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 49 provides the manner and the method of calculation of payment of long service leave for casual employees.

A definition of "actual service", "casual employee" and "hourly rate" are provided for the clause.

Division 4—Seasonal employees**Entitlement—employees in sugar industry and meat works**

Clause 50 provides the method of calculating the long service leave entitlement of seasonal employees in the sugar and meat industries.

The clause excludes service before 23 June 1990 in calculating the length of the employee's continuous service. A definition of "section 43 entitlement" and "actual service" is provided for the clause.

Taking long service leave—employees in sugar industry and meat works

Clause 51 provides that a seasonal employee in the sugar or meat industry may take long service leave between seasons.

Other seasonal employees

Clause 52 provides that the commission may decide long service leave conditions for other seasonal employees.

Division 5—Miscellaneous**Payment instead of long service leave on termination**

Clause 53 provides that it is an offence:

- for an employer to make payment in lieu of long service leave, except on the occasion of termination of employment; and
- for an employee's employment to be terminated and the employee to be paid their long service leave entitlement and the employee then to be re-employed within a period less than the period of long service leave entitlement.

The maximum penalty in each instance is 40 penalty units.

Payment instead of long service leave on death

Clause 54 provides for payment of long service leave upon the death of the employee.

Continuity not broken by service in Reserve Forces

Clause 55 provides for the continuity of service, for long service leave purposes, of members of the Reserve Forces and defines "Reserve Forces" for this part.

Recognition of certain exemptions

Clause 56 provides that this part does not apply to an employer if any exemptions from long service leave awarded by the commission under the *Industrial Conciliation and Arbitration Act 1961* are still in force.

The commission may on application revoke such an exemption.

Person may be "employer" and "employee"

Clause 57 preserves section 208 of the *Workplace Relations Act 1997* and provides that a person who is an employee is entitled to long service leave notwithstanding that the person may satisfy the definition of "employer" under clause 6.

PART 4—REVIEW**Review of general employment conditions**

Clause 58 provides that the Minister, an organisation or a State peak council may apply to the full bench for a review of the conditions provided in this chapter.

The full bench may by general ruling (see clause 287, General rulings) substitute a condition with another that is no less favourable.

The full bench must, before 30 June 2000, conduct a review of long service leave entitlements.

PART 5—EQUAL REMUNERATION FOR WORK OF EQUAL OR COMPARABLE VALUE

Definition for pt 5

Clause 59 defines “equal remuneration for work of equal or comparable value” for this part.

Orders requiring equal remuneration

Clause 60 provides that the commission may make orders to ensure that employees covered by the order will receive equal remuneration for work of equal value or comparable value.

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

Orders only on application

Clause 61 provides that the commission may make an order under this part only on application by certain specified parties. The clause allows the Minister and a State peak council to make an application.

When commission must and may only make order

Clause 62 requires that the commission must and may only make an order when it is satisfied that the employees to be covered by the order do not receive equal remuneration for work of equal or comparable value.

Immediate or progressive introduction of equal remuneration

Clause 63 provides that the order may introduce equal remuneration immediately or progressively.

Employer not to reduce remuneration

Clause 64 provides that an employer is not to reduce the remuneration of an employee because an application or order has been made under this part. If an employer purports to do so, the reduction is of no effect.

Part does not limit other rights

Clause 65 provides that this part does not limit (subject to clause 66) any other right that a person or organisation has to secure equal remuneration for work of equal or comparable value.

Applications under this part

Clause 66 provides that an application may not be made under this part where alternative action has begun under another provision of this Bill or under another Act, unless that action has been discontinued or has failed for want of jurisdiction.

An application cannot be made under another provision of this Bill or of another Act for an order for equal remuneration where action has begun under this part, unless that action has been discontinued or has failed for want of jurisdiction.

PART 6—Continuity OF SERVICE and employment**Definition for pt 6**

Clause 67 provides a definition for the term “service” that is to be used in this part.

How part applies

Clause 68 provides that this part applies when working out an employee’s rights and entitlements under this chapter or chapter 3.

An employee cannot claim the benefit of a right or entitlement for the same period of service.

Continuity of service—transfer of calling

Clause 69 defines the term "transferred employee" and "dismissed" for this part.

The transfer of a business does not break the transferred employee’s continuity of service. The service of an employee with the former employer is taken to be service with the new employer.

Continuity of service—apprentices or trainees

Clause 70 provides that the period of service of an employee as an apprentice or trainee does not break the employee’s continuity of service with the employer at the completion of the apprenticeship or traineeship, or re-employment of the employee within three months of the completion.

The period of service of an employee with an employer before the commencement of an apprenticeship or traineeship does not break the employee’s continuity of service.

Continuity of service—generally

Clause 71 establishes the circumstances where an employee's continuity of service is considered not have been broken. The clause defines "subsidiary" and "terminate" for this clause.

CHAPTER 3—DISMISSALS**PART 1—Exclusions****Who this chapter does not apply to**

Clause 72 specifies those employees who are exempt from part 2 (unfair dismissals) and part 3 (requirements for dismissal) of this chapter. The clause defines "federal award employee", "long term casual employee" and "short term casual employee" for this part.

PART 2—UNFAIR DISMISSALS**When is a dismissal unfair**

Clause 73 provides that a dismissal is unfair if it is harsh, unjust or unreasonable or for an invalid reason. As an example, the refusal of an employee to negotiate for or make a certified agreement or Australian Workplace Agreement under the *Workplace Relations Act 1996* (Cwlth) is an invalid reason.

Application for reinstatement

Clause 74 provides the time limits within which an application for reinstatement may be lodged, and who may make the application.

The registrar may reject an application if the registrar considers that the dismissed employee is a person to whom this chapter does not apply. When rejecting an application, the registrar must give written reasons for the rejection.

Within 21 days of the registrar's notice, the applicant may inform the registrar in writing that they wish the application to proceed. After this notification, the commission must deal with the application, despite the registrar's rejection.

Conciliation before application heard

Clause 75 provides that the commission must hold a conference to attempt to settle an application before it hears the application.

The commission is required to issue a written certificate if it is satisfied that all reasonable steps to settle the matter by conciliation are, or are likely to be, unsuccessful.

An application lapses if the applicant has not, within 6 months after receiving such a written certificate:

- taken any action in relation to the application; or
- discontinued the application.

The parties may seek further conciliation, or settle the matter, at any time before an order is made under clause 78, 79 or 80.

The president may delegate the functions of the commission under this clause to the registrar or a deputy registrar.

Arbitration when conciliation unsuccessful

Clause 76 provides that the commission may hear and decide the application once it considers that all reasonable steps have been taken, but have been unsuccessful, to settle an application by conciliation.

Matters to be considered in deciding an application

Clause 77 establishes the matters that the commission must consider when deciding whether a dismissal was harsh, unjust or unreasonable.

Remedies—reinstatement or re-employment

Clause 78 provides remedies that the commission may order if it is satisfied that an employee was unfairly dismissed.

Remedies—compensation

Clause 79 provides that the commission may order that the employer pays the employee compensation, where the commission considers that reinstatement or re-employment would be impracticable.

The clause requires the commission to consider a number of matters in determining the amount of compensation to be paid.

Sanctions for unfair dismissal

Clause 80 provides that the commission may order an employer to pay to the employee an additional amount of not more than the monetary value of 135 penalty units, if it is satisfied that the employer dismissed the employee for an invalid reason.

Further orders if employer fails to reinstate

Clause 81 provides further orders that the commission may make if the employer wilfully contravenes an order to reinstate or re-employ the employee.

Effect of order on leave

Clause 82 provides that, if the commission orders the reinstatement or re-employment of an employee, the interruption to the employee's continuity of employment or service caused by the dismissal must not be counted when calculating the employee's entitlement to annual, sick, family or long service leave.

PART 3—REQUIREMENTS FOR DISMISSAL**What employer must do to dismiss employee**

Clause 83 provides that an employer may dismiss an employee only if the employer has given the employee the required period of notice required by clause 84 or paid the amount of compensation required by clause 85, or if the employee has engaged in misconduct as defined in this clause (see subclause (2)).

Where an employer fails to give the required notice or pay the required compensation, an application can be made to either the commission or a magistrate to order the employer to pay the required compensation.

A regulation may exclude from the operation of this clause dismissals happening in specified circumstances that relate to the transfer of the employer's business.

Minimum period of notice required

Clause 84 establishes the minimum period of notice to be given to an employee and provides that a regulation may prescribe matters that must be disregarded when working out continuous service.

Minimum amount of compensation required

Clause 85 provides the method of calculating the minimum amount of compensation to be paid to an employee.

A regulation may prescribe the amount that is taken to be payable, or how to work out the amount, under an employment contract mentioned in this clause, to an employee whose wages before dismissal were determined wholly or partly on the basis of commission or piece rates.

PART 4—Dismissal of 15 or more employees

When this part applies

Clause 86 provides that this part applies if an employer decides to dismiss 15 or more employees for an economic, technological or structural reason.

Orders about severance allowances and other separation benefits

Clause 87 provides that the commission may make an order about severance allowance or other separation benefits upon application. The clause specifies who may make an application, and that an employer must not contravene the commission's order.

The clause provides remedies for the commission to apply should an employer contravene the commission's order.

A definition of "severance allowance or other separation benefits" is provided for this clause.

Employer must give notice of proposed dismissals

Clause 88 requires the employer who wishes to dismiss 15 or more employees to provide notification to the Commonwealth department or agency whose primary responsibility is helping unemployed people find work and each employee organisation of which any of the employees is a member.

The clause specifies the details required to be included in the notice. A failure to give notice is not an offence. The commission is provided with remedies where the employer fails to provide the required notice.

Employer must consult with employee organisations about dismissals

Clause 89 provides that the employer must give each employee organisation of which any of the employees is a member an opportunity to consult about the dismissals.

Where the employer fails to consult, the commission may make orders it considers appropriate to put employees, and their organisations, in the same position as if the employer had consulted.

The clause does not apply if the employer could not reasonably be expected to have known (at the time of the decision) that the organisation's rules entitled it to represent the industrial interests of the dismissed employees.

Time within which application under this part must be made

Clause 90 provides the time limit within which an application under this part must be made.

PART 5—PROTECTION OF INJURED EMPLOYEES

Definitions for pt 5

Clause 91 preserves section 232 of the *Workplace Relations Act 1997* and defines terms used in this part.

Wages to be paid for the day employee injured

Clause 92 provides that an injured employee is entitled to be paid a full day's wages for the day when the injury happens, despite an industrial instrument or employment contract.

An injured employee's entitlement under this clause or an entitlement to be paid in relation to an injury under the *Workcover Queensland Act 1996* is in addition to the employee's entitlement to sick leave under chapter 2, part 1, division 2 (sick leave).

Dismissal of injured employees only after 6 months

Clause 93 provides that it is an offence for the employer to dismiss an employee within 6 months of the employee becoming injured, solely or mainly because the employee is not fit for employment in a position because of the injury.

The maximum penalty is 40 penalty units.

The clause applies to a dismissal after the commencement of this Bill even if the employee became unfit before the commencement.

Replacement for injured employee

Clause 94 provides for the employment of an employee to replace an injured employee. A definition of "replacement employee" is provided for this clause.

Reinstatement of injured employees

Clause 95 provides for the reinstatement of an employee after they have been dismissed because they are not fit for duty. A dismissed employee may apply to the employer, within 12 months after the injury, for reinstatement to their former position.

An employee may apply to the commission for a reinstatement order if the employer fails to reinstate the employee.

The clause applies to a dismissal that occurred after the commencement of this Bill, even if the injury occurred before its commencement. A definition of "former position" is provided for this clause.

Preservation of employee's rights

Clause 96 preserves section 236 of the *Workplace Relations Act 1997* by providing that this part does not affect any other rights of a dismissed employee under this law or another law. A contract or agreement cannot affect this part.

PART 6—STAND-DOWN OF EMPLOYEES**Employee stood down in December then re-employed in January**

Clause 97 provides for payment of certain public holidays for employees (other than casual employees) who are stood down in December and re-employed in January, and who have been employed for a continuous period of at least 2 weeks immediately before being stood down.

A definition of "stand-down" is provided for this clause.

Permissible stand-down of employee

Clause 98 preserves section 231 of the *Workplace Relations Act 1997* and establishes the circumstances under which an employer may stand down an employee without pay on a day, or for part of a day, when the employee cannot be usefully employed because a matter specified in the clause has happened.

The clause does not apply to an apprentice or trainee.

PART 7—General

Chapter does not limit other rights

Clause 99 preserves section 237 of the *Workplace Relations Act 1997* by providing that this chapter does not limit a right a person or organisation has to appeal against a dismissal or have an industrial instrument or order about a dismissal made.

Inconsistent instruments and orders

Clause 100 preserves section 229 of the *Workplace Relations Act 1997* by providing that an industrial instrument or order that is inconsistent with an order under this chapter does not apply to the extent that the inconsistency detrimentally affects the rights of the employees.

CHAPTER 4—FREEDOM OF ASSOCIATION

PART 1—PRELIMINARY

Main purposes of ch 4

Clause 101 is a statement of the right to join or not to join an industrial association. This chapter gives effect to the principles of freedom of association, including the right to join or not join an industrial association, by providing protection from discrimination arising out of membership or non-membership of an industrial association.

Definitions for ch 4

Clause 102 defines certain words and phrases to be applied under this chapter.

Meaning of “industrial action” for ch 4

Clause 103 extends the definition of “industrial action” in the Bill to include, in this chapter, action taken by an independent contractor or a person who has engaged an independent contractor.

Meaning of “engaging in” conduct for a “prohibited reason”

Clause 104 specifies that a person engages in “prohibited conduct” if:

- they engage in or threaten to engage in conduct that is specified in part 2; and
- it is for at least one of the reasons mentioned in the clause.

Where conduct is engaged in for more than one reason, and one of those reasons is prohibited by this clause, then the whole of the conduct is taken to be engaged in for a reason prohibited by this clause.

PART 2—PROHIBITED CONDUCT**Prohibited conduct for employers and principals**

Clause 105 provides the conduct that is prohibited under this chapter for:

- employers and principals; and
- those who are taking steps or intend to take steps leading up to engaging another as an employee or an independent contractor.

Prohibited conduct for employees and independent contractors

Clause 106 sets out the conduct that is prohibited under this chapter for a person who has been engaged under a contract of service or a contract for services or who proposes to be engaged under such a contract.

Prohibited conduct for industrial associations

Clause 107 sets out the conduct that is prohibited under this chapter for an industrial association.

Certain actions by representative not prohibited conduct

Clause 108 provides a defence for an industrial association for prohibited conduct engaged in by its representatives. The defence is established where the prohibited conduct was engaged in during or in connection with industrial action, provided the representative acted without the knowledge of the governing body, and the governing body, by the exercise of due diligence, could not have prevented the conduct.

Provision requiring or permitting prohibited conduct

Clause 109 provides that any industrial instrument or arrangement is void to the extent that it requires or permits conduct prohibited under this chapter.

Encouragement provisions permitted

Clause 110 limits the operation of clause 109. It permits provisions in instruments or industrial agreements that encourage a person to join or maintain membership of an industrial association, provided such provisions do not coerce a person to join or maintain membership of an industrial association.

PART 3—EXEMPTION FROM MEMBERSHIP**Who may apply for exemption**

Clause 111 limits the persons who may apply for an exemption certificate to those who hold conscientious beliefs as defined in clause 102.

Procedure for hearing

Clause 112 requires the magistrate or registrar to follow the procedures for the grant of an exemption certificate as prescribed under a regulation.

Deciding application

Clause 113 empowers the registrar or magistrate to grant an application for an exemption certificate only where they are satisfied that the applicant genuinely holds conscientious beliefs as defined in clause 102, and the applicant has paid into the court or the registry an amount equal to the annual subscription fee for the organisation from which they are seeking an exemption.

How payment must be applied

Clause 114 provides that the amount paid by an applicant under clause 112 must be paid into the consolidated fund.

Exemption certificate

Clause 115 provides that, upon granting an application under this part, the magistrate or registrar must give the successful applicant a certificate stating that they are exempt from membership of the organisation named in the certificate because of their conscientious beliefs. The certificate must also state the date that it takes effect.

Expiry of exemption certificate

Clause 116 provides that an exemption certificate remains in force for one year after the date it is stated to take effect.

PART 4—CIVIL REMEDIES

Who may apply

Clause 117 establishes who may apply for a remedy for a breach of this part.

Conciliation required before hearing

Clause 118 requires that the commission must attempt to resolve, by conciliation, the matters in the application and any matters that might arise out of the application. It also requires the commission to advise the parties in the conciliation process of any remedies that may be granted should the application proceed to hearing.

Right to be heard

Clause 119 provides that, before making an order under clause 120, the commission must ensure that the entity against whom the order is to be directed has an opportunity to be heard on the matter of whether prohibited conduct has been engaged in, or is proposed to be engaged in, and on the appropriateness of any orders.

There is an exception to this requirement in the case of an interim order or injunction; i.e. the commission is not prevented from making an interim order or injunction, even if the entity against which it is made has not been given an opportunity to be heard.

Remedies

Clause 120 provides for the various remedies that the commission may order for a breach of this part. The commission may order one or more of the available remedies for any breach.

The remedies available are payment of a penalty, reinstatement of an employee, re-engagement of an independent contractor, payment of compensation, and orders preventing any further breach or threats of breach.

The commission may also order an injunction to prevent a breach from occurring or continuing to occur, or to remedy the effects of any breach that has already occurred. In addition, the commission may make any other order that is consequential to a remedy ordered under this clause.

Payment of civil penalty

Clause 121 provides that if the commission orders a penalty to be paid under clause 120, that penalty shall be paid to the consolidated fund unless the commission orders that all or part of it be paid to another entity.

Evidence of prohibited conduct

Clause 122 deems evidence of a breach of a provision of this chapter by stated persons or bodies of an industrial association to also be evidence of a breach by the industrial association. The stated persons or bodies include:

- **the management committee;**
- **an officer or agent acting in that capacity;**

- **a member or group of members, but only if they are authorised by the association's rules or management committee or an officer or agent of the association acting in that capacity;**
- **a member, but only if that member is dealing with an employer or principal on behalf of themselves and other members.**

Where evidence is tendered of a breach of a provision of this chapter by a director, another officer or an employee of a corporation, then that evidence is also evidence of a breach by the corporation, but only where the director, officer or employee was acting in that capacity.

CHAPTER 5—AWARDS

PART 1—FORM AND APPLICATION

Form, effect and term of award

Clause 123 provides for an award to be in the form approved by the commission. The award has the force of law through the State, unless its operation is restricted in accordance with subclause (2).

Persons bound by award

Clause 124 specifies the parties on whom an award is binding subject to clause 653 (Effect on certain instruments) and to all exemptions ordered by the commission under clause 132 (Exemptions) or 234 (Remedies on show cause).

PART 2—COMMISSION’S POWERS

Making, amending and repealing awards

Clause 125 provides that the commission may make, amend or repeal an award on its own initiative or by application by certain parties. In doing so, the commission is required to provide, among other things, fair and just employment conditions.

Content of awards

Clause 126 requires the commission to ensure that those matters provided in the clause are contained in an award. As examples, these matters include:

- **conditions that are suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces; and**
- **conditions that take account of the efficiency and effectiveness of the economy.**

Dispute resolution procedures in each award

Clause 127 requires that the commission must ensure that a dispute resolution procedure is contained in each award, whether through agreement by the parties or by direction of the commission.

Awards that fix wage rates

Clause 128 provides that, when fixing wage rates for employees, the commission:

- must fix equal wage rates for men and women employed by the same employer performing work of equal or comparable value;
- may fix wage rates for persons under 21 on a progressive scale based on the wage rates payable to employees 21 years or over in the same calling;
- must consider the age and experience of persons under 21 years of age.

Flow-on of certified agreements

Clause 129 provides for the inclusion in an award of provisions from a certified agreement only if the commission is satisfied of certain matters.

Review of awards

Clause 130 provides that the commission, on its own initiative or on the application of a party to the award, may review an award.

A party may apply to the commission to amend a provision of an award about wages or employment conditions.

The clause also provides for the regular review of awards, every three years, by the commission. In reviewing an award the commission must do what is required by clauses 126 (Content of awards), 127 (Dispute resolution procedures in each award) and 128 (Awards that fix wage rates).

Review of awards referred by the Anti-Discrimination Commission

Clause 131 provides that the commission must review an award that is referred to it by the Anti-Discrimination Commission on the grounds that it is discriminatory. In addition to the parties to the review, the Anti-Discrimination Commission is also a party.

PART 3—EXEMPTIONS

Exemptions

Clause 132 provides that the commission may by application or on its own initiative exempt from the application of the award an employer or class of employers, or employee or class of employees.

The commission may only give the exemption if satisfied:

- it is the best interests of the employees and employers concerned; and
- it is not contrary to the public interest.

PART 4—GENERAL

Enforceability of awards

Clause 133 preserves section 137 of the *Workplace Relations Act 1997* by providing that action cannot be taken to enforce the provisions of an award until 21 days after it is published in the industrial gazette.

Effect of appeals on awards

Clause 134 provides that the commission must immediately amend an award to give effect to a decision of the Court of Appeal, court or full bench affecting the award or a decision of the court affecting the award on a case stated by the commission.

Inconsistency between awards and contracts

Clause 135 continues the provisions of section 139 of the *Workplace Relations Act 1997* by providing that the provisions of an award prevail over any provision in a contract of service, where the provision of the contract is less favourable to the employee.

However, no inconsistency arises only because the contract provides for employment conditions more favourable to the employee than the award.

Part 5—Wages and Employment conditions for apprentices and trainees

To facilitate the objectives of the Bill, provisions relating to employment for apprentices and trainees, under registered training agreements that were previously contained in the *Vocational Education, Training and Employment Act 1991*, have been removed and included in this Bill. Accordingly, an apprentice or trainee will have all the rights of an “employee” under this Bill except where specifically excluded: for example, unfair dismissal provisions.

Apprentices’ and trainees’ employment conditions

Clause 136 provides that an apprentice or trainee is entitled to the same conditions of employment as those fixed by the industrial instrument applicable to other employees in the same workplace.

A definition of "industrial instrument" is provided for this clause.

Order setting minimum wages and conditions

Clause 137 provides that the commission may make orders fixing minimum wages and employment conditions for apprentices and trainees, regardless of whether they are employed under an industrial instrument or not.

Where there is inconsistency between an order and an industrial instrument, the order will prevail.

A definition of "industrial instrument" is provided for this clause.

Order setting tool allowance

Clause 138 provides that the commission may make an order for the provision of tools, or a tool allowance, for apprentices. An employer must not contravene such an order. The maximum penalty is 40 penalty units. The clause establishes remedies that a magistrate may apply to the employer contravening an order. The magistrate may express the order in the alternative so that the employer may decide how to comply with it.

The court must pay an amount paid under this clause to the apprentice.

Termination of employment before apprenticeship or traineeship cancelled or completed

Clause 139 provides that, if the employer is training an apprentice under an apprenticeship or a trainee under a traineeship, the apprentice's or trainee's employment with the employer cannot be terminated unless the apprenticeship or traineeship is completed or is cancelled under the *Vocational Education, Training and Employment Act 1991*, part 3 (Training administration).

The maximum penalty is 40 penalty units.

Part 6—labour Market Programs**Orders for wages and employment conditions**

Clause 140 (1) provides that the commission may make an order setting wages and conditions for employees who participate in labour market programs.

In making an order the commission may consider any matter it considers relevant, together with those matters provided for in the clause. As an example, the clause provides that the commission may determine remuneration to be a combination of a wage paid by the employer and benefits that the participants receive from the State or Commonwealth.

CHAPTER 6—AGREEMENTS**PART 1—CERTIFIED AGREEMENTS*****Division 1—Making agreements*****Certified agreements**

Clause 141 establishes that a certified agreement may be made between an employer and a group of employees, being either all employees of the employer or a category of the employees of the employer. The certified agreement covers all employees in the group, whether they were employed before or after the commencement of the agreement.

The clause defines “group of employees” for this part. Agreements may be made for employees of a single employer, a multi-employer, a project or proposed project, a new business and the State.

The dictionary at schedule 5 provides a definition of "new business" for this part. A "new business" does not include the construction of the new workplace. A definition of construction is provided in the dictionary at schedule 5 and means "building and construction, civil and engineering construction or demolition work".

For the purposes of this part "building and construction" as part of the definition of "construction" is to have the meaning of the term "building and construction industry" as provided for in the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (see section 3 Definitions).

Who may make certified agreements

Clause 142 provides that a certified agreement may be made between the employer and either one or more employee organisations, who are entitled to represent the employees concerned, or the employees.

Proposed parties to be advised when agreement proposed

Clause 143 establishes what must be done when a person (the proposer) proposes to make a certified agreement. The proposer must give notice to certain persons, and also provides the time periods within which notice must be given.

The proposed parties to either a project agreement or a multi-employer agreement must notify the proposer of their intention of being a party within 21 days of receiving advice of the proposed agreement. In addition, a proposed party to a project agreement must notify the commission of their intention to be included.

The clause provides definitions for the terms “multi-employer agreement” and “relevant employee organisation”.

What is to be done when an agreement proposed

Clause 144 provides the action that must be taken when a certified agreement is proposed to be made with employees who are employed in a current business undertaking.

The employer must take reasonable steps to ensure that employees are given certain information at least 14 days before the employees are asked to approve the proposed agreement. The employer must also ensure that the terms and the effect of the terms are explained to every relevant employee, before an approval is given.

Where the agreement is proposed to be made with employees, each employee is to be informed that they may seek assistance from a relevant employee organisation to represent them.

If an employee organisation is asked by a relevant employee to represent an employee, it must be given a reasonable opportunity to represent the employee in negotiations with the employer. This right stops operating in certain circumstances. A definition of “relevant employee organisation” is provided.

Negotiations for project agreements

Clause 145 requires an employer to negotiate with a single bargaining unit, or through a person nominated by a single bargaining unit, if more than one employee organisation has given notice under clause 143 (4) that they want to be part of a project agreement.

A definition of the term “single bargaining unit” is provided.

Negotiations must be in good faith

Clause 146 requires that negotiations for a proposed agreement must be conducted in good faith. Examples of good faith in negotiating are given.

Peace obligation period to assist negotiations

Clause 147 provides that certain action cannot be taken during the peace obligation period. A definition is provided of the term “peace obligation period”.

Assistance in negotiating by conciliation

Clause 148 applies after the peace obligation period has ended, in specified circumstances. In this event, the commission may use the conciliation powers provided in clause 230 (Action on industrial dispute) as if the section applied to negotiations for a certified agreement. The commission may also make certain orders.

Arbitration if conciliation unsuccessful

Clause 149 specifies action that the commission may take if it considers that conciliation under clause 147 has not been successful for specified reasons.

To determine the matter by arbitration, the commission:

- has the powers of clause 230 (Action on industrial dispute) as if it applied to negotiations for a certified agreement; and
- may give directions or orders of an interlocutory nature; or
- may order that clause 174 (Protected industrial action) does not apply from the time of making the order until the commission determines the matter by arbitration.

In exercising the arbitration powers, the commission must consider at least certain prescribed matters. These considerations include the likely effect on the community, the economy, industry generally and the particular enterprise or industry concerned.

The full bench may establish principles concerning arbitration of certified agreements. Once these principles are established, the commission must exercise its power to arbitrate in a manner that is consistent with the principles.

Determinations made under s 149

Clause 150 establishes procedural matters regarding determinations made under clause 149.

Steps to be repeated if proposed agreement amended

Clause 151 establishes those steps that need to be taken, or not taken, if a proposed agreement is amended.

Certificate as to requested representation

Clause 152 provides that an employee organisation may apply to the registrar for a certificate stating that a relevant employee has requested the organisation represent the employee in negotiations for a certified agreement.

The employer may apply to the registrar for a certificate stating that the employer need not negotiate with the organisation because the employee has withdrawn the request for the organisation to represent them, or the employee has ceased to be a relevant employee.

Division 2—Certifying agreements**Time for applying for certification**

Clause 153 provides that an application to certify a proposed agreement must be made within 21 days after the date on which the agreement is signed by or for all parties.

Notice of hearing

Clause 154 requires that the registrar must take prescribed action before an application for certification is to be heard.

Right of employee organisation to be heard

Clause 155 provides that all relevant employee organisations have a right to be heard on an application for certification of an agreement.

The commission must notify all relevant employee organisations that an application has been made and that the organisation is entitled to be heard.

The term “relevant employee organisation” is defined.

Certifying an agreement

Clause 156 provides the matters that the commission must consider before certifying an agreement.

When commission to refuse to certify an agreement

Clause 157 prescribes the circumstances in which the commission must refuse to certify an agreement.

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

Clause 158 preserves the provisions of section 27 of the *Workplace Relations Act 1997* by specifying action, other than refusing to certify an agreement, that the commission can take if it is unable to certify an agreement because of the provisions of clauses 156 or 157.

Procedures for preventing and settling disputes

Clause 159 provides that the procedures for preventing and settling disputes contained in a certified agreement may, with the commission’s consent, allow the commission to settle a dispute.

Division 3—No-disadvantage test**When a certified agreement passes the no-disadvantage test**

Clause 160 provides that a certified agreement passes the no-disadvantage test if it does not disadvantage employees in relation to their employment conditions.

An agreement may disadvantage an employee only if the commission considers its certification would result in a reduction in the employees' entitlements or protections.

If the commission considers that, in the context of the employment conditions considered as a whole, the reduction is not against the public interest, an agreement can disadvantage an employee.

The president may require the registrar to prepare a report comparing the agreement with the employee's entitlements or protections. A definition of "entitlements or protection" is provided for use in this section.

Special case—employee eligible for supported wage system

Clause 161 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 certification of the agreement is not to be taken to result in a reduction of the employee's wages.

Special case—employee undertaking approved apprenticeship or traineeship

Clause 162 provides that, if wages payable under a certified agreement to an employee undertaking an approved apprenticeship or traineeship are no less than wages calculated in accordance with this clause, those wages will not be taken to reduce the employee's wages for the purpose of the no-disadvantage test.

The clause excludes a traineeship where the trainee is paid in accordance with the Training Wage Award—State and the National Training Wage Award 1994.

A definition of "benchmark training" is provided for use in this clause.

Determination of designated awards

Clause 163 requires the commission, on application, to designate an appropriate award to use as the comparison for the no-disadvantage test where it is proposed to make an agreement and there is no relevant award applicable to some or all of the persons to be covered by the proposed agreement.

Division 4—Effect of certified agreements**When a certified agreement is in operation**

Clause 164 establishes the time period in which an agreement operates.

Certified agreement's effect on awards, agreements or orders

Clause 165 provides that a certified agreement, while operating, prevails over another award, industrial agreement or order made under clause 137.

An operational project agreement operates to the exclusion of any other certified agreement or QWA.**Persons bound**

Clause 166 specifies who is bound by a certified agreement. These include:

- **the employer—whether as a member of an organisation of employers or an employer who made an agreement;**
- **all relevant employees;**
- **any employee organisations with whom the agreement was made.**

Where an agreement is made between an employer and employees, the commission must also determine whether the agreement binds an employee organisation, if specified conditions are met.

Successor employers bound

Clause 167 establishes that a successor to the whole or part of a business becomes a party to any certified agreement operating in that business or part of a business. The previous employer stops being bound.

Division 5—Extending, amending or terminating certified agreements**Extending a certified agreement**

Clause 168 provides means for the nominal expiry date of a certified agreement to be extended.

The clause does not apply to:

- **an agreement made with an employee organisation for a business that an employer proposes to commence; and**
- **an agreement that did not pass the no-disadvantage test, but was approved as not being against the public interest.**

Amending a certified agreement

Clause 169 establishes the method of amending a certified agreement.

The clause does not apply to an amendment of the parties to the agreement, except if the amendment is to a multi-employer agreement.

Amendment if discrimination between unionists and non-unionists

Clause 170 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.

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

Clause 171 provides action that the commission may take, other than refusing to approve the agreement, if not satisfied that a proposed amendment to a certified agreement can be certified.

Terminating a certified agreement on or before its nominal expiry date

Clause 172 allows the employer and one or more of the organisations bound by the agreement to terminate it by notice on or before its nominal expiry date. Before the commission terminates the agreement, a valid majority of relevant employees must approve of its termination.

Terminating an agreement after its nominal expiry date

Clause 173 provides the means by which an agreement may be terminated after its nominated expiry date.

Division 6—Industrial action**Protected industrial action**

Clause 174 provides that a protected person, or the employer, may organise or engage in industrial action for the purpose of:

- supporting or furthering claims made in relation to a proposed agreement; or

- responding to industrial action by the employer or the relevant employees.

An action for the industrial action which is taken after the peace obligation period does not lie under any law, unless the action has involved, or is likely to involve personal injury, wilful or reckless destruction of, or damage to, property or the unlawful taking or keeping or use of property. However, this does not apply to a strike or lockout unless the protected person or employer has genuinely tried to reach agreement.

An action for defamation can be brought in respect of anything that happened during the industrial action. A definition of “protected person” is given for use in this part.

Notice of industrial action to be given

Clause 175 provides that the provisions of clause 174 (1) do not apply unless the party intending to take action gives all the negotiating parties notice of the action as specified in this clause.

Secret ballot about taking industrial action

Clause 176 provides for the commission to order a secret ballot (see clause 285 (Conducting a secret ballot)) to be taken to discover the attitude of employees towards taking industrial action. A definition of the term “organisation” is given for use in this clause.

Industrial action must be properly authorised

Clause 177 provides that engaging in industrial action by members of an employee organisation that is a negotiating party is only protected action if it is properly authorised. Details of how the industrial action is to be properly authorised are prescribed in the clause.

No protection if certification application not timely

Clause 178 provides that any industrial action undertaken, which occurred for the purposes of making the agreement, is not protected if an application for approval for its certification is not made within 21 days of the making of the agreement.

Employer not to dismiss employee for engaging in protected action

Clause 179 preserves the provisions of section 52 of the *Workplace Relations Act 1997* by providing that the employer must not take, or threaten to take, certain action wholly or partly because the employee is proposing to engage, is engaging or has engaged in protected action.

Remedies if employee dismissed etc. for engaging in protected action

Clause 180 provides remedies for an employee in the circumstances where the employer contravenes the provisions of clause 179 (1).

When industrial action must not be taken

Clause 181 prohibits certain action from being taken by an employee, an employee organisation, an officer or employee of an employee organisation or an employer. The action is prohibited from the time a certified agreement starts operating until its nominal expiry date, or while a determination under clause 149 (Arbitration if conciliation unsuccessful) operates. An employer must not lock out an employee for the purpose of supporting or advancing the employer's claim.

Division 7—Penalty provisions

Penalty provisions

Clause 182 identifies the clauses in this division that are penalty provisions.

Penalties for contravening penalty provisions

Clause 183 continues the provisions of section 63 of the *Workplace Relations Act 1997* by providing that a contravention of the penalty provisions set out in clause 182 is not an offence. However, a magistrate may impose a penalty on a person who contravenes a penalty provision.

The clause specifies who may make an application for an order under each of the penalty provisions.

Division 8—General**Secret ballot on valid majority**

Clause 184 provides that, if the commission is not satisfied that a 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.

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

Clause 185 prohibits coercion in relation to making, amending, terminating or extending the nominal expiry date of an agreement, but does not prohibit industrial action that is protected action.

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.

A definition of "take or refrain from taking" is provided for this clause.

Complementary laws

Clause 186 provides that the Commonwealth provisions relating to certified agreements apply as a law of the State with any amendments prescribed under a regulation.

PART 2—QUEENSLAND WORKPLACE AGREEMENTS***Division 1—Preliminary*****Definitions for pt 2**

Clause 187 provides definitions for terms used in this part.

Proposed QWAs and ancillary documents—interpretation

Clause 188 preserves the provisions of section 69 of the *Workplace Relations Act 1997* by clarifying the references in this part to QWAs or ancillary documents (an agreement to vary, extend or terminate a QWA) or references to employers and employees.

Functions and powers of commission

Clause 189 requires how the commission must perform its functions under this part. Clause 320(4) (Basis of decisions of the commission and magistrates) does not apply to the performance of the commission's functions under this part.

Division 2—General rules about QWAs and ancillary documents**QWAs and ancillary documents only have effect as provided by this part**

Clause 190 preserves the provisions of section 72 of the *Workplace Relations Act 1997* by providing the time from which a QWA or ancillary document takes effect.

Collective QWAs

Clause 191 preserves the provisions of section 73 of the *Workplace Relations Act 1997* by providing that two or more agreements that have been negotiated collectively may be included in the same document if the same employer is party to all the agreements.

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 192 provides that, subject to the exceptions contained in this clause, an employer may make a QWA with an employee.

Matters to be included in QWA

Clause 193 preserves the provisions of section 75 of the *Workplace Relations Act 1997* and provides the matters that must be included in a QWA.

Nominal expiry date of QWA

Clause 194 preserves the provisions of section 76 of the *Workplace Relations Act 1997* and provides that a QWA must specify a nominal expiry date. The clause also allows the employer and employee to make a written agreement to extend the nominal expiry date.

Period of operation of QWA

Clause 195 preserves the provisions of section 77 of the *Workplace Relations Act 1997* and provides the point of time at which a QWA commences and stops operating.

Bargaining agents

Clause 196 provides that an employer or employee may appoint a bargaining agent to act on their behalf for the making, approval, amendment or termination of a QWA.

Where an employer proposes the QWA, they must inform the employee of their right to appoint a bargaining agent.

Amending a QWA

Clause 197 preserves the provisions of section 79 of the *Workplace Relations Act 1997* and provides for the amendment, in writing, of QWAs and the time at which the amended QWA takes effect.

Terminating a QWA

Clause 198 preserves the provisions of section 80 of the *Workplace Relations Act 1997* and provides that the employer and employee may at any time make a written agreement to terminate the QWA.

Division 4—Filing QWAs and ancillary documents**Filing QWAs and ancillary documents**

Clause 199 provides that a QWA or ancillary document may be filed with the registrar or chief inspector.

The conditions under which a filing receipt is to be given are prescribed.

Filing requirements

Clause 200 establishes the requirements that must be met before a filing receipt under clause 199 may be given for a QWA or an extension agreement, termination agreement and termination notice.

Employer's declaration must be accurate

Clause 201 preserves the provisions of section 83 of the *Workplace Relations Act 1997* and provides that, in filing a declaration under this part, the employer must not 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**

Clause 202 preserves the provisions of section 84 of the *Workplace Relations Act 1997* and provides additional requirements that are necessary for approval of a QWA, an amendment agreement, an extension agreement and a termination agreement. A definition of “comparable employee” is provided for this clause.

Approving QWA

Clause 203 provides that the commission must approve a QWA if it meets the requirements of this clause.

Action that the commission must take if the proposed agreement does not pass the no-disadvantage test is prescribed.

Approving amendment agreement

Clause 204 provides that the commission must approve an amendment agreement if it meets the requirements of this clause.

Action that the commission must take if the agreement, as amended, does not pass the no-disadvantage test is prescribed.

Approving other ancillary documents

Clause 205 provides that the commission may approve an extension agreement, a termination agreement or a termination notice if the document meets the additional approval requirements for the document prescribed in clause 202.

Commission must issue approval or refusal notice

Clause 206 requires the commission to issue an approval or refusal notice to the employer or employee, and must issue a notice to the employee to the effect that the QWA does not pass the no-disadvantage test.

Undertakings taken to be included in QWAs

Clause 207 provides that an undertaking accepted by the commission is taken to be included in the QWA.

Commission to issue copies of approved QWAs and ancillary documents

Clause 208 requires that the commission must issue the employer with a copy of a QWA or ancillary document as approved.

Division 6—No-disadvantage test**When does a QWA pass the no-disadvantage test**

***Clause 209* provides that a QWA passes the no-disadvantage test if it does not disadvantage the employee in relation to their employment conditions.**

A QWA may disadvantage an employee in relation to their employment conditions only if the commission considers its approval would result in a reduction in the employee’s entitlements and protections.

The president may request the registrar to give the commission a report comparing the QWA with the employee’s entitlements and protections.

Definitions are provided for the terms “certified agreement” and “entitlements and protections”.

Special case—employee eligible for supported wage system

***Clause 210* provides that if a QWA 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 of the agreement is not to be taken to result in a reduction of the employee’s wages.**

Special case—employee undertaking approved apprenticeship or traineeship

***Clause 211* provides that, if wages payable under a QWA to an employee undertaking an approved apprenticeship or traineeship are no less than wages calculated in accordance with this 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 an apprentice’s or trainee’s wages in consideration of the time spent in apprenticeship and traineeship courses and time spent at work. The clause excludes a traineeship where the trainee is paid in accordance with the Training Wage Award—State and the National Training Wage Award 1994.**

A definition is provided for the term “benchmark training” for use in this clause.

Determination of designated awards

Clause 212 provides that the commission, on application, may designate an appropriate award to use as the comparison for the no-disadvantage test. The clause applies only where it is proposed to make a QWA and there is no relevant award applicable to the employee.

Division 7—Effect of a QWA***QWA’s effect on awards, certified agreements or orders***

Clause 213 provides that, during its period of operation, a QWA excludes the operation of an award that would otherwise have effect on the employment of the employee.

During its period of operation, a certified agreement or a determination prevails over a QWA to the extent of any inconsistency. However, the

QWA prevails over the certified agreement or the determination if they have a provision that expressly allows a QWA made after the certified agreement:

- to operate to the exclusion of the certified agreement; or
- to prevail over the certified agreement or determination to the extent of any inconsistency.

A definition of the term “QWA provision” is provided.

QWA binds employer’s successor

Clause 214 provides that, where an employer is a party to a QWA and at a later time a new employer becomes a successor to the whole or part of a business in which the QWA operates, the new employer replaces the employer as a party to the QWA.

Parties must not contravene QWA

Clause 215 preserves section 93 of the *Workplace Relations Act 1997* by providing that a party to a QWA must not contravene the QWA.

Conciliation for agreements

Clause 216 establishes that, for a matter arising under this part, the commission has the conciliation power set out in clause 230 (Action on industrial dispute), as if that clause applied to the matter.

Industrial action by party to QWA

Clause 217 preserves section 95 of the *Workplace Relations Act 1997* by requiring that, during the period of operation of a QWA and 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 8—Enforcement and remedies**Penalties for contravening this part**

Clause 218 preserves the provisions of section 96 of the *Workplace Relations Act 1997* and provides that, upon application, a magistrate may impose a penalty on a person who contravenes a penalty provision. The penalty provisions are identified in the clause.

Damages for contravention of QWA

Clause 219 preserves the provisions of section 97 of the *Workplace Relations Act 1997* by providing that a party to a QWA may recover in an Industrial Magistrates Court any loss or damage suffered because of a contravention of the terms of the QWA by the other party.

Compensation to new employee for shortfall in entitlements

Clause 220 establishes that an employee may make application to the commission or an industrial magistrate for a shortfall in payment of entitlements in the following circumstances:

- Where a QWA for a new employee is refused, the employee is entitled to the difference if the amount of (a) is less than the amount of (b):
 - I. the total value of entitlements to which the employee became entitled under the QWA for the period while it operated;
 - II. the total value of entitlements to which the employee would have been entitled under an award or agreement had the QWA not been made, in relation to the period of employment to which the QWA relates.
- Where a QWA has been approved for a new employee and it includes an undertaking given by the employer, the employee is entitled to the difference if the amount of (a) is less than the amount of (b):
 - III. the total value of the entitlements to which the employee became entitled under the QWA for the period before it was approved;
 - IV. 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 221 provides that a party to a QWA may apply to the commission for an injunction requiring a person not to contravene, or to stop contravening, this part.

Division 9—General**Hindering QWA negotiations**

Clause 222 provides that a person who is not a party to negotiations for a QWA or ancillary document must not use threats or intimidation with the intention of hindering the negotiations or the making of the QWA or ancillary document.

This clause does not apply to conduct by or for an employee organisation for the purpose of negotiating a certified agreement if the conduct is authorised by another provision of this Bill. A definition of the term “party to negotiations” is provided for use in this clause.

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

Clause 223 preserves the provisions of section 105 of the *Workplace Relations Act 1997* by requiring that a person must not apply duress to an employer or employee in connection with a QWA or ancillary document.

A person must not knowingly make a false or misleading statement to someone else with the intention of persuading them to make or not to make a QWA or ancillary document.

Employer must give copy of documents to employee

Clause 224 requires that the employer must give the employee specified documents as soon as the employer receives them from the commission, registrar or chief inspector.

Intervention not permitted

Clause 225 preserves the provisions of section 107 of the *Workplace Relations Act 1997* by providing that a person, other than those persons specified, must not be heard in relation to the filing, approval, amendment or termination of a QWA.

Reports and advice about development in making QWAs

Clause 226 preserves the provisions of section 111 of the *Workplace Relations Act 1997* and requires that, on request of the Minister, the chief executive must prepare a report about developments in the State in bargaining for the making of QWAs.

For the purpose of preparing this report, the registrar must give the chief executive, or their agent, access to approved QWAs and ancillary documents.

Evidence

Clause 227 preserves the provisions of section 113 of the *Workplace Relations Act 1997* and allows the registrar to give a certified copy of an approved QWA or ancillary document to a person who is or was a party to the QWA or ancillary document.

The registrar may give a certificate about specified matters.

Signature for corporation

Clause 228 preserves the provisions of section 114 of the *Workplace Relations Act 1997* by providing that a QWA or ancillary document may be signed on behalf of a corporation by its properly authorised officer and need not be made under the seal of the corporation.

CHAPTER 7—INDUSTRIAL DISPUTES**PART 1—NOTICE OF INDUSTRIAL DISPUTE****Notice of industrial dispute**

Clause 229 applies 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 must immediately notify the registrar of the dispute.

The clause provides how notice may be given and what must be included in the notice of dispute to the registrar.

If the Minister is aware an industrial dispute exists, the Minister may notify the commission or registrar of the dispute.

PART 2—ACTION FOR SETTLING INDUSTRIAL DISPUTES**Action on industrial dispute**

Clause 230 provides that the commission (whether or not a notification is given under clause 229) may take appropriate action for the prevention and prompt settlement of the dispute.

While not restricting the commission's powers, the clause specifies how the commission may take steps appropriate for the prevention or prompt settlement of the dispute.

Where a dispute exists, the commission 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.

The clause does not affect the operation of an industrial instrument where the instrument imposes a duty on a party in relation to industrial disputes.

Mediation by commission

Clause 231 provides that the commission may act as a mediator in an industrial cause, whether or not it is in their jurisdiction, either at the request of the parties directly involved in the cause or if it appears that mediation is desirable in the public interest.

Compulsory conference

Clause 232 applies to action taken by the commission under clause 230 and establishes that the commission, if it considers that it is desirable for the prevention or prompt settlement of a dispute, may summons a person to attend a conference at a stated time and place.

The conference may be held in public or private or partly in public and partly in private.

A person summoned must attend. The maximum penalty is 40 penalty units.

Enforcing commission's orders

Clause 233 provides that the commission may direct an order about an industrial dispute to certain parties and defines "full bench" for this part.

The clause provides the requirements that must be contained in the order.

The clause provides information that must be included in an affidavit, if the commission has ordered that an affidavit be filed.

The clause provides the action that the registrar must take at the completion of the time required for affidavits to be filed.

Remedies on show cause

Clause 234 provides remedies available to the full bench when an organisation or person who has been issued with a show cause notice by the registrar under clause 233 (7) does not show cause at the stated time. A definition of "stated time" and "organisation" is provided for this clause.

PART 3—BALLOTS

Secret ballot on strike action

Clause 235 applies where:

- a strike happens; or
- the commission or a person applying to the commission considers a strike is likely to happen.

The clause provides that the commission may, on application or if directed by the Minister, direct the registrar to conduct a secret ballot to ascertain the number of employees or members of an employee organisation who are in favour of the strike.

The registrar must publish the result of the secret ballot in a newspaper circulating in the locality concerned.

Effect of ballot adverse to strike

Clause 236 applies when a secret ballot was conducted under clause 235(4). The clause 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 in a newspaper circulating in the locality concerned.

PART 4—INDUSTRIAL ACTION**Indemnity against agent's unauthorised actions**

Clause 237 preserves section 247 of the *Workplace Relations Act 1997* and provides for the indemnification on certain grounds of an organisation or association of persons against the unauthorised actions of an agent during or in connection with industrial action.

Payments for strikes cannot be compelled

Clause 238 provides that an employer may pay, or refuse to pay, an employee for a period when the employee engages in a strike.

An employee, employee organisation or officer, member or employee of the organisation must not threaten to organise or engage in a strike, with the intention of coercing the employer to make payment.

A definition of "strike" is provided for this clause.

Orders the commission may make

Clause 239 preserves section 249 of the *Workplace Relations Act 1997* and provides that specified persons may make an application to the commission for orders under this clause for a contravention of clause 238.

Commission not to deal with claims for payments for strikes

Clause 240 preserves section 250 of the *Workplace Relations Act 1997* and provides that the commission cannot deal with an application 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 241 preserves section 251 of the *Workplace Relations Act 1997* and provides that 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 8—INDUSTRIAL TRIBUNALS AND REGISTRY**PART 1—INDUSTRIAL COURT*****Division 1—Industrial Court of Queensland*****Continuance**

Clause 242 provides that the Industrial Court as formerly established as a superior court of record in Queensland is continued in existence as the Industrial Court of Queensland under this Bill.

Division 2—President**President of the court**

Clause 243 establishes the appointment of the president of the court as a full-time appointment and provides for how the president shall be appointed, who may not be so appointed and what qualifications, skills and experience a person to be appointed must have.

When a judge is appointed as president

Clause 244 describes the consequence of a judge of the Supreme Court or District Court being appointed as the president.

When president holds office

Clause 245 provides the conditions for holding office as president, including the circumstances under which the president may resign from, ceases to hold or may be removed from office. The clause also provides for a contingency measure if the president stops holding office while hearing a matter.

Acting president of the court

Clause 246 provides that the Governor in Council may appoint a person as acting president. This clause applies only if the president temporarily cannot perform the function of office. 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 247 provides for the constitution of the Industrial Court as the president sitting alone.

Court's jurisdiction

Clause 248 establishes the jurisdiction of the court.

Court's interpretation

Clause 249 establishes that the court's interpretation of certain specified matters is binding on the commission, magistrates, and organisations and persons bound by this Bill.

Court may refuse to proceed

Clause 250 applies to proceedings before the court where an industrial instrument exists or is sought, and establishes the conditions in which the court may refuse to hear and determine a proceeding.

Contempt of court

Clause 251 establishes the protection, powers, jurisdiction and authority of the court when dealing with a contempt of court.

Division 4—President's annual report

President's annual report

Clause 252 requires the president to provide an annual report to the Minister on the operation of the Bill, the working of the court, commission registry including summaries of significant decisions, interpretations and agreements. The Minister must table a copy of the report in the Legislative Assembly.

Division 5—President's advisory committee**Advisory committee established**

Clause 253 establishes the president's advisory committee, describing its composition and how members may be appointed (see also schedule 2, part 4, President's advisory committee).

Functions of advisory committee

Clause 254 establishes the function of the president's advisory committee.

PART 2—INDUSTRIAL RELATIONS COMMISSION***Division 1—Continuance and composition*****Continuance**

Clause 255 preserves the existence of the Queensland Industrial Relations Commission as a court of record.

Composition

Clause 256 establishes that the members of the commission are the president, the vice president, commissioner administrator and at least 6 other industrial commissioners.

The full bench of the commission is constituted by the president and 2 or more commissioners for appeal and deregistration proceedings or otherwise 3 or more members.

The commission's jurisdiction or existence is not affected by a vacancy in any office of the commission.

Division 2—Membership of the commission**President of the commission**

Clause 257 establishes that the president of the court is also the president of the commission.

Vice president of the commission

Clause 258 provides for a vice president of the commission, describing the eligibility and method of appointment for this position.

Commissioners

Clause 259 establishes the method of appointment of commissioners and eligibility for appointment. The Governor in Council may appoint a commissioner as the commissioner administrator by gazette notice.

The appointment as commissioner administrator is to be for a term of at least 5 years stated in the notice. A commissioner holds office as commissioner administrator until:

- **the end of the term of appointment; or**
- **The commissioner resigns as commissioner administrator by signed notice given to the Governor.**

The commissioner administrator may resign office as commissioner administrator without resigning office as commissioner.

When commissioner holds office

Clause 260 provides the conditions for holding office as commissioner, including the circumstances under which the commissioner may resign from, ceases to hold or may be removed from office. The clause also provides for a contingency measure if the commissioner stops holding office while hearing a matter.

Acting vice president, commissioner administrator or other commissioner

Clause 261 applies only if the vice president, commissioner administrator or another commissioner temporarily cannot perform the functions of office. In such a situation the Governor in Council may appoint a person to act as the vice president, commissioner administrator or other commissioner by industrial gazette notice.

Restrictions on appointment

Clause 262 describes those persons who cannot be appointed as commissioners.

Removal of commissioners from office

Clause 263 establishes how and on what grounds a commissioner may be removed from office.

Division 3—The commission

Administrative responsibilities for the commission

Clause 264 provides that the president in addition to performing the functions of a member is responsible for the administration of the commission and registry and the orderly and expeditious exercise of the commission's jurisdiction and powers.

The role of the commissioner administrator is the same as the role of the Senior Judge Administrator of the Supreme Court of Queensland (see *Supreme Court of Queensland Act 1991*).

The commissioner administrator is responsible to the president for the administration of the commission and the orderly and expeditious exercise of the commission's jurisdiction and powers.

The vice president of the commission is to assist the president to perform the president's functions.

Commission's jurisdiction

Clause 265 establishes the commission's jurisdiction.

Commission to prevent discrimination in employment

Clause 266 requires the commission, when exercising a power under this Bill, not to allow discrimination in employment.

Commission's jurisdiction is exclusive

Clause 267 establishes that the commission's original and appellate jurisdiction is exclusive unless otherwise prescribed by this Bill.

Commission may refuse to proceed

Clause 268 provides the commission with a discretion to refuse to hear or decide a proceeding which relates to an industrial instrument that exists or is sought because any of the employees who are or would be bound by the instrument are involved in an industrial dispute or are contravening this Bill or a decision of the commission.

This discretion applies whether or not the employees are employees whose employment may be affected by the decision of the proceeding.

President or commissioner administrator to consider efficiencies that may be achieved by allocating matters to dual commissioners

Clause 269 requires the president or commissioner administrator, when administering the commission and organising and allocating its work, to consider whether it might be advantageous for powers to be performed and exercised, for a particular matter, by a dual commissioner.

Reallocation of commission's work

Clause 270 allows the president or commissioner administrator to reallocate a matter of proceedings before the commission.

Commission may continue to hear reallocated work without re-hearing evidence.

Clause 271 allows a matter to be heard and decided by a reallocated commission without re-hearing evidence given before the reallocation.

Decision of full bench

Clause 272 establishes that a decision of the full bench is the decision of the majority of its members.

Division 4—Commission’s functions and powers**Commission’s functions**

Clause 273 establishes the commission's functions. A definition of "occupational superannuation" is provided for this clause.

General powers

Clause 274 establishes the commission's general powers.

Power to declare persons to be employees

Clause 275 provides discretion to a full bench, on application, to make an order declaring a class of persons who perform work in an industry under a contract for services to be employees under this Bill.

A definition of “contract” and “industrial instrument” is provided for this clause.

Power to amend or void contracts

Clause 276 establishes that the commission may on application amend or declare void (wholly or partly) a contract. The clause describes those matters that the commission may consider in deciding whether to amend or declare void a contract's conditions.

A definition of “contract”, “industrial instrument” and “unfair contract” is provided for this clause.

Power to grant injunctions

Clause 277 provides that the commission may on application grant an injunctive order as described by the clause, as it considers appropriate. The clause describes who may make such an application and that a person to whom the order is directed must comply with the order after the person has received notice of it.

The commission cannot grant an injunctive order for a proposed contravention of clauses 73 (When is a dismissal unfair), 83 (What employer must do to dismiss employee), 87 (Orders about severance allowances), 88 (Employer must give notice of proposed dismissals), or 89 (Employer must consult with employee organisations about dismissals).

A definition of "injunctive order" and "organisation" is provided for this clause.

Power to recover wages and superannuation

Clause 278 establishes that an application may be made to the commission for a claim for wages or occupational superannuation of an amount up to \$10 000. A definition of "occupational superannuation" is provided for this clause.

Orders about representation rights of employee organisations

Clause 279 establishes that the full bench may, on application, make orders about a demarcation dispute. A definition of "right to represent" is provided for this part.

Procedures for reopening

Clause 280 provides that proceedings may be reopened on application and describes those persons who may make an application, and the powers of the commission, should it decide to reopen a matter.

Reference to full bench

Clause 281 establishes that the commission has the discretion to refer a matter to the full bench.

Case stated to court

Clause 282 establishes that the commission may state a written case for the industrial court's opinion on a question of law relevant to a proceeding. The commission must give effect to the court's opinion.

Power to enter and inspect

Clause 283 preserves section 298 of the *Workplace Relations Act 1997* and provides that a member, an officer of the commission or another person with a member's written authority may enter a workplace. This power may be exercised only during working hours at the workplace. Should a person impede this power the clause provides a maximum penalty of 40 penalty units or 1 year's imprisonment.

A definition of "workplace" is provided for this clause.

Interpretation of industrial instrument

Clause 284 establishes that the commission may give an interpretation of an award on application.

Conducting a secret ballot

Clause 285 establishes that the commission may specify when, where and how a secret ballot is to be conducted. The registrar is required to conduct the ballot in accordance with the direction of the commission. The clause prohibits any obstruction or intimidation by any person to anyone involved in the conduct of, or voting in, a secret ballot.

A maximum penalty of 40 penalty units is provided.

A definition of "prevent", "resist or obstruct", "threaten or intimidate" and "vote" is provided for this clause.

Other powers

Clause 286 preserves section 302 of the *Workplace Relations Act 1997* and establishes that this division of the Bill does not limit by implication another power given to or possessed by the commission under this or another Act or law.

General rulings

Clause 287 establishes that the full bench may make general rulings. A definition of “Queensland minimum wage” is provided for this clause.

Statement of policy

Clause 288 establishes that the full bench may make a statement of policy about an industrial matter whether or not the matter is before the commission.

PART 3—INDUSTRIAL MAGISTRATES***Division 1—Industrial Magistrates Court*****Industrial Magistrates Court**

Clause 289 preserves section 307 of the *Workplace Relations Act 1997* and provides that an Industrial Magistrates Court is a court of record.

Division 2—Industrial magistrates**Office of Industrial Magistrate**

Clause 290 preserves section 308 of the *Workplace Relations Act 1997* and provides that a stipendiary magistrate and an acting stipendiary magistrate are both industrial magistrates.

Division 3—Constitution and jurisdiction of Industrial Magistrates Court**Constitution of Industrial Magistrates Court**

Clause 291 preserves section 309 of the *Workplace Relations Act 1997* and establishes that a magistrate sitting alone constitutes an Industrial Magistrates Court.

Magistrate's jurisdiction

Clause 292 establishes a magistrate's jurisdiction.

Magistrates' jurisdiction is exclusive

Clause 293 provides that a magistrate's jurisdiction is exclusive unless otherwise provided for under this Bill.

PART 4—INDUSTRIAL REGISTRY***Division 1—Industrial Registry*****Industrial Registry**

Clause 294 establishes the Industrial Registry, which consists of an industrial registrar, one or more deputy industrial registrars and other staff mentioned in clause 303.

Functions of the registry

Clause 295 provides for the functions of the registry.

Seal of the registry

Clause 296 provides for a seal of the Queensland Industrial Registry. Judicial notice must be taken of the imprint of the registry's seal on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Division 2—Industrial registrar and staff**Appointment of registrar**

Clause 297 provides that the Governor in Council may appoint a person as registrar. The registrar is to be paid the remuneration and allowances determined by the Governor in Council.

Termination of appointment of registrar

Clause 298 establishes the circumstances under which the Governor in Council may terminate the registrar's appointment.

Functions and powers of registrar

Clause 299 specifies the registrar's functions and attendant powers available to complete these functions. In performing a function or exercising a power, the registrar must comply with a direction given in relation to the performance or exercise by the president or commissioner administrator.

Deputy registrars

Clause 300 provides that a deputy registrar must help the registrar in the performance of his or her functions.

Delegation by registrar

Clause 301 provides to whom the registrar may delegate his or her powers.

Acting registrar

Clause 302 provides that the Governor in Council may, by industrial gazette notice, appoint a person to act as the registrar.

Staff

Clause 303 provides that the staff of the registry including the deputy registrar are appointed under the *Public Service Act 1996*.

Officers of the court and commission

Clause 304 establishes that the registrar, deputy registrar and registry staff are officers of the court and commission.

PART 5—ARRANGEMENTS WITH OTHER AUTHORITIES***Division 1—Member may also be member of Australian commission*****Member may hold other appointment**

Clause 305 enables a member to hold at the same time an appointment as a member of the Australian Industrial Relations Commission.

Division 2—Dual commissioners**Appointment of Commonwealth official as commissioner**

Clause 306 preserves section 320 of the *Workplace Relations Act 1997* and enables the appointment of a member of the Australian Industrial Relations Commission to the Queensland Industrial Relations Commission.

This 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. These provisions accord with similar provisions in the Commonwealth Act.

Role of dual commissioner

Clause 307 preserves section 320 of the *Workplace Relations Act 1997* and provides that a member of the Australian Industrial Relations Commission appointed under clause 306 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 308 defines “industrial matter” for the purposes of this clause, and authorises the president, in consultation with the president of the commission, to refer an industrial matter to a member of the Australian Industrial Relations Commission nominated by the president of that commission.

The nominated member has the powers of a commissioner and is taken to constitute the 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 309 enables the commission to confer, if the president considers it desirable, with any State or federal industrial authority to secure coordination of decisions between the jurisdictions.

Joint sessions with industrial authorities

Clause 310 enables a joint session with another industrial authority to be initiated at the discretion of the president and if the other authority agrees.

Similar matters before full bench and industrial authority

Clause 311 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 president may delegate a member of the full bench to participate in joint sessions and report back to the full bench.

Member's powers in joint session

Clause 312 provides that, while participating in a joint session, the member must perform the function and has and may exercise the powers of the commission.

President may decide matter not to be dealt with in joint session

Clause 313 enables the president to terminate participation in a joint session. If the joint session has already commenced, the president may decide to order the commission to cease participating in the joint session, and order that the industrial matter proceed before the commission or, if appropriate, the full bench.

Division 5—Other functions etc. and arrangements**Functions and powers vested in commission by other jurisdictions**

Clause 314 preserves section 329 of the *Workplace Relations Act 1997* and authorises the commission to exercise powers and duties conferred on it by the *Workplace Relations Act 1996* (Cwlth) and the enactment of other States.

Arrangements with Commonwealth public service

Clause 315 provides that arrangements may be made, under the *Public Service Act 1996*, for an officer of the Commonwealth to perform functions and exercise powers under this Bill. A definition of “Commonwealth public servant” is provided for this part.

PART 6—PROCEEDINGS OF COURT, COMMISSION, MAGISTRATES AND REGISTRAR***Division 1—Definitions*****Definitions for pt 6**

Clause 316 preserves section 331 of the *Workplace Relations Act 1997* and provides definitions of “administer”, “exercising” and “take” for this part.

Division 2—Starting proceedings and service of process**Starting proceedings**

Clause 317 preserves section 332 of the *Workplace Relations Act 1997* and specifies who may instigate proceedings by application before the court, commission or registrar.

Service of process

Clause 318 defines “document” for this clause and establishes the processes of serving documents that are to be applied for proceedings in the court and commission where personal service cannot in the view of the president or registrar be effected promptly or in a way prescribed in the rules. The clause gives power to the president, registrar and commission to substitute service of the document.

Division 3—Conduct of proceedings**Representation of parties**

Clause 319 provides a definition of “proceeding” for the purpose of this clause. The clause specifies by whom a person ordered to appear or to be represented in a proceeding may be represented.

In proceedings, a party to the proceedings, or a person ordered or permitted to appear or to be represented in the proceedings may be represented by an agent appointed in writing or if the party or person is an organisation an officer or member of the organisation.

The clause also provides for strict limitations upon legal representation for a person or a party to proceedings.

As an example, for proceedings before the commission, other than proceedings under clause 278 (Power to recover wages and superannuation) a party or person may be represented by a lawyer if and only if:

- the proceedings relate to a matter under Chapter 4 (Freedom of Association); or
- all parties consent; or
- on application by a party or person the commission is satisfied having regard to the matter the proceedings relate to that there are special circumstances that make it desirable for the party or person to be represented; or
- on application by a party or person, the commission is satisfied the party or person can be adequately represented only by a lawyer.

In so determining these last two points the commission may consider:

- the amount claimed in the proceedings, if any;
- the nature and complexity of the matter;
- the nature of the evidence to be adduced;
- the cross-examination likely to be required;

- the capacity of the party or person to represent themselves;
- the questions of law likely to arise; and
- whether the duration or cost of the proceedings will be decreased or increased if the party or person is represented.

Basis of decisions of the commission and magistrates

Clause 320 provides that in proceedings the commission or Industrial Magistrates Court is:

- not bound by technicalities, legal forms or rules of evidence; and
- may inform itself on a matter it considers appropriate in the exercise of its jurisdiction.

The commission and Industrial Magistrates Court is to be governed in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of:

- the persons immediately concerned; and
- the community as a whole.

In making a decision the commission must consider the public interest and to that end must consider:

- the objects of this bill; and
- the likely effects of the commission's decision on the community, local community, economy, industry generally and the particular industry concerned.

In proceedings the commission may admit evidence given before, and the findings of, the Anti-Discrimination Commission as evidence in the proceeding.

The clause does not apply to proceedings for the recovery of amounts other than an amount ordered under clause 278 (Power to recover unpaid wages and superannuation contribution) or an offence against this Bill.

Competence and compellability of witnesses

Clause 321 preserves section 336 of the *Workplace Relations Act 1997*, and provides that any party to proceedings before the court or commission is competent and may be compelled to give evidence to the same extent as in a civil proceeding in the Supreme Court.

Intervention

Clause 322 provides a definition of “industrial tribunal” for this clause and specifies in what circumstances and by whom intervention in proceedings, either before an industrial tribunal or in proceedings of another court, may occur.

Adjournment by registrar

Clause 323 preserves section 338 of the *Workplace Relations Act 1997* and provides the registrar with powers to adjourn proceedings to another day and time if the president or a member cannot attend the proceeding.

State employee to give information

Clause 324 preserves section 339 of the *Workplace Relations Act 1997* and 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 325 preserves section 340 of the *Workplace Relations Act 1997* and 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

Clause 326 prescribes the powers of the president, commission and the registrar in relation to an interlocutory proceeding before the hearing of an industrial cause.

Power to order inquiry or taking of evidence

Clause 327 preserves section 342 of the *Workplace Relations Act 1997* and provides that the commission may by order direct:

- the registrar to conduct an inquiry into a matter; or
- an appropriately qualified person to take evidence for the commission about an industrial cause.

The clause provides certain powers to the registrar, which are incidental to the exercise of the functions provided for in this part.

Power to administer oath

Clause 328 preserves section 343 of the *Workplace Relations Act 1997* and specifies who under this Bill may take evidence and who may administer an oath or take a statutory declaration.

Powers incidental to exercise of jurisdiction

Clause 329 preserves section 344 of the *Workplace Relations Act 1997* and 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 330 preserves section 345 of the *Workplace Relations Act 1997* and allows the commission by order to obtain certain data and receive expert evidence. Such information that is requested may not be divulged without the commission's leave.

A maximum penalty of 20 penalty units is provided in the clause.

Division 5—Decisions and enforcement**Decisions generally**

Clause 331 preserves section 346 of the *Workplace Relations Act 1997* and provides the decisions the court or commission may make in an industrial cause.

Reserved decisions

Clause 332 preserves section 347 of the *Workplace Relations Act 1997* and provides in what circumstances the commission may reserve its decision in a proceeding. It also provides the procedures in the case of a reserved decision.

Commission decisions to be in plain English

Clause 333 preserves section 348 of the *Workplace Relations Act 1997* and 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

Clause 334 preserves section 349 of the *Workplace Relations Act 1997* and provides the ways in which the court or commission may make a decision.

Costs

Clause 335 provides that the court or commission may order a party to an application to pay costs incurred by another party only if satisfied:

- the party made the application vexatiously or without reasonable cause; or
- for an application for reinstatement, the party caused costs to be incurred by the other party because of an unreasonable act or omission connected with the conduct of the application.

A definition of “costs” is provided for this clause.

Recovery of amounts under orders

Clause 336 provides the procedures the registrar must follow where the court or commission orders an amount to be paid arising from proceedings. The clause provides a definition of "registrar".

Division 6—Protections and immunities**Protection and immunities**

Clause 337 preserves section 356 of the *Workplace Relations Act 1997* and provides protections and immunities for the president, commission and a magistrate in the exercise of their jurisdiction and in the case of defamation.

Division 7—Rules and practice**Rules**

Clause 338 provides that the Governor in Council may make rules under this Bill. The clause describes how such rules shall be made and upon what matters such rules may be made.

Directions about practice

Clause 339 preserves section 358 of the *Workplace Relations Act 1997* and provides that directions about the practice and procedure of the court, commission, Industrial Magistrates Court or the registrar shall be as directed by the president, a commissioner, a magistrate or the registrar.

Applications may be made where a rule does not provide or sufficiently provide for a step a person wishes to take in an industrial cause.

CHAPTER 9—APPEALS***Division 1—Appeals to Court of Appeal*****Appeal from court or full bench**

Clause 340 provides for appeals from decisions of the court or full bench to the Court of Appeal where:

- a defendant is dissatisfied with a decision of the court in proceedings under clause 251 (contempt of court); and
- **the Minister or another person is dissatisfied with a decision of the full bench, which included the president. An appeal is available only on the ground of error of law or excess, or want of jurisdiction.**

The clause provides for the remedies available to the Court of Appeal on hearing an appeal.

Division 2—Appeals to Court**Appeal from commission, magistrate or registrar**

Clause 341 provides for appeals from decisions of the commission, magistrate or registrar.

The Minister, or a person dissatisfied with a decision of the commission or registrar, may appeal to the court only on the grounds of:

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

An appeal under this clause is not available in relation to a determination under clause 149 (Arbitration if conciliation unsuccessful) or a decision of the full bench that included the president.

A person may appeal to the court if dissatisfied with a decision of a magistrate under section 292 (Magistrate's jurisdiction) in relation to:

- **the matters stated in clause 292; or**
- **the powers provided in clause 408 (Recovery of unpaid superannuation).**

The clause provides for the remedies available to the court on hearing an appeal.

Division 3—Appeals to full bench**Appeal from commission, magistrate or registrar**

Clause 342 provides for appeals from decisions of the commission, magistrate and registrar to the full bench.

With the leave of the full bench, the Minister or another person dissatisfied with a decision of the commission may appeal against the decision to the full bench, on a ground other than:

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

If the Minister or another person wishes to appeal to the full bench on a ground mentioned in clause 341(1) (Excess, error of law and want of jurisdiction) and a ground mentioned in subclause (1), the appeal may continue only with leave of the full bench.

The full bench must and may only give leave if it considers the matter is important enough that, in the public interest, leave should be given.

A person dissatisfied with a decision of:

- a magistrate other than a decision under clause 341 (3) may appeal against the decision to the full bench; and
- the registrar other than a decision under clause 287 (General rulings), 241(1) (Right to refuse to work) or 695 (Student's work permits) may appeal against the decision to the full bench; and
- the registrar under clause 287 may appeal against the decision to the full bench as it was constituted when the general ruling was made.

The clause provides for the remedies available to the full bench on hearing an appeal.

Division 4—Appeals to commission**Appeal from registrar**

Clause 343 provides for appeals from decisions of the registrar to the commission. A person dissatisfied with a decision of the registrar under clause 695 (Student's work permit) may appeal to the commission.

The clause provides for the remedies available to the commission on hearing an appeal.

Appeal to commission against stand-down

Clause 344 continues the provisions of section 367 of the *Workplace Relations Act 1997* and provides that an employee, or an employee organisation, may appeal to the commission against the decision of an employer to stand down an employee.

The clause provides for the remedies available to the commission on hearing an appeal.

Division 5—General**Definition for div 5**

Clause 345 defines “industrial tribunal” for this division.

Time limited for appeal

Clause 346 provides the time limits within which any appeal must be lodged.

Stay of decision appealed against

Clause 347 provides that, if an appeal is lodged against a decision, the tribunal hearing the appeal may wholly or partly stay the decision being appealed, until:

- the determination of the appeal; or
- a further order is made by the tribunal.

Nature of appeal

Clause 348 provides that an appeal to an industrial tribunal is by way of re-hearing on the record. The industrial tribunal may hear evidence afresh or hear additional evidence.

Finality of decision

Clause 349 provides that this clause does not apply to a decision for which there is a right of appeal under clauses 340 to 344 or another Act.

Subject to clause 340, the decisions of the Court of Appeal (under clause 340), court (under clause 341), full bench (under clause 342), commission (under clause 343 or 344), or another decision of the court, full bench, commission, Industrial Magistrates Court or the registrars:

- are final and conclusive;
- cannot be impeached for informality or want of form; and
- cannot be appealed against, reviewed, quashed or invalidated in any court.

The Court of Appeal, court, full bench, commission, Industrial Magistrate Court or the registrar's jurisdiction is exclusive of any court's jurisdiction and an injunction or prerogative order cannot be issued, granted or made in relation to a proceeding in the court within its jurisdiction.

The clause defines "industrial tribunal" for this part.

CHAPTER 10—ENFORCEMENT

Division 1—Appointment

Appointment of inspectors

Clause 350 provides that:

- the Governor in Council may appointment a person as the chief inspector; and
- the chief executive may appoint a person as an inspector.

The person must have the necessary expertise to be an inspector and must be :

- a public service officer or employee; or
- a training consultant under the *Vocational Education, Training and Employment Act 1991*; or
- any other person prescribed under a regulation.

An inspector is employed under the *Public Service Act 1996* and is also an inspector for the:

- *Pastoral Workers' Accommodation Act 1980*; and
- *Trading Hours (Allowable Hours) Act 1990*; and
- *Workers' Accommodation Act 1952*.

Functions

Clause 351 specifies an inspector's functions and provides specific circumstances an inspector must consider.

Powers

Clause 352 provides that an inspector has the power to do all things necessary or convenient to be done in the performance of an inspector's functions. An inspector must produce his or her identity card for inspection at the time of the inspection or at the first reasonable opportunity.

Division 2—General powers**Entry to places**

Clause 353 defines “domestic premises” and “workplace” for this part, and specifies when and where an inspector may enter without the owner’s consent.

General powers after entering places

Clause 354 preserves section 382 of the *Workplace Relations Act 1997*, and provides the specific powers of an inspector who enters a place under the provisions of this clause for the purposes of monitoring or enforcing compliance with this Bill. There is a maximum of 40 penalty units for breach of this provision.

Power to require documents to be produced

Clause 355 preserves section 383 of the *Workplace Relations Act 1997*, which gives an inspector the power to require an employer to produce for inspection, at a reasonable time and place nominated by the inspector, any relevant documents relating to the employees of the employer, including time and wages records. The inspector may request a certified copy of the document at that time. The employer must comply with these requests unless he or she has a reasonable excuse. There is a maximum of 40 penalty units for breach of this provision.

Power to require information

Clause 356 preserves section 384 of the *Workplace Relations Act 1997*, and provides the matters about which an inspector is allowed to question an employer or other person. It specifies that an inspector must warn the employer or other person that it is an offence to fail to answer such questions without a reasonable excuse, with a maximum of 40 penalty points for breach of this provision. This clause enables an inspector to question an employee out of anyone else’s hearing.

Power to require name and address

Clause 357 preserves section 385 of the *Workplace Relations Act 1997* and gives an inspector the power to obtain a person’s name and address for the purposes of the Bill. The penalty for breach of this provision is a maximum of 40 penalty units.

Division 3—Powers to claim and deal with unpaid amounts**Paying employee’s wages etc. to inspector**

Clause 358 provides a definition of “employee” for this division. It specifies that, on an inspector’s written demand, payment of an employee’s unpaid wages, tool allowance and superannuation contributions be paid to the inspector.

An Industrial Magistrates Court on deciding a matter may order the employer to pay, in addition to penalties, the amount payable to the employee. The penalty for breach of this provision is a maximum of 40 penalty units.

Inspector’s obligation for amounts paid on demand

Clause 359 preserves section 387 of the *Workplace Relations Act 1997* and provides procedures for inspectors when receiving amounts mentioned in section 358 of this Bill. It provides definitions of “employee” and “superannuation contribution” for this clause.

Division 4—General**Obstructing inspectors**

Clause 360 preserves section 388 of the *Workplace Relations Act 1997* and 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 schedule 5. There is a maximum penalty of 40 penalty units for a breach of this provision.

Impersonating inspectors

Clause 361 preserves section 389 of the *Workplace Relations Act 1997* and 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 362 preserves section 390 of the *Workplace Relations Act 1997* and makes an inspector liable to disciplinary action if an inspector fails to comply with schedule 2, part 3, section 9 (Limitation on powers) or section 352(2) or (3) (Powers).

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 11—RECORDS AND WAGES**PART 1—EMPLOYERS RECORDS*****Division 1—Definitions*****Definitions for pt 1**

Clause 363 preserves the provisions of section 391 of the *Workplace Relations Act 1997* and defines "authorised industrial officer", "record" and "time and wages record" in this part.

Division 2—Authorised industrial officers**Authorising industrial officers**

Clause 364 provides that the registrar may issue an officer or employee of an organisation with an authorisation. A person who holds an authorisation may exercise the powers of an authorised industrial officer under this part.

The clause sets out certain conditions for the issuing of an authorisation.

When an authorisation stops being in force the organisation who applied for it must take certain prescribed steps to notify the registrar and surrender the authorisation. A maximum penalty of 16 penalty units applies to a breach of this provision.

Revocation and suspending industrial officer's authorisation

Clause 365 preserves the provisions of section 393 of the *Workplace Relations Act 1997* by providing the reasons and the method of revoking or suspending an industrial officer's authorisation.

Division 3—Employers to keep certain records**Time and wages record—industrial instrument employees**

Clause 366 preserves section 394 of the *Workplace Relations Act 1997* and provides that the employer must keep a time and wages record containing certain prescribed particulars mentioned, for each industrial instrument employee.

The record must be kept at a workplace of the employer in Queensland. A failure to comply with these record-keeping requirements brings a maximum penalty of 40 penalty units.

The employer must keep the records for 6 years. The maximum penalty for failing to do so is 40 penalty units.

On an employee's request the employer must give the employee a certificate stating the total hours recorded for the purposes of clause 47 (Continuity of service—additional considerations for casual employees) for the employee calculated to 30 June. The maximum penalty for failing to comply is 40 penalty units.

A definition of "industrial instrument employee" is provided for this clause.

Time and wages record—non-industrial instrument employees

Clause 367 preserves the provisions of clause 395 of the *Workplace Relations Act 1997* and provides that the employer must keep a time and wages record containing certain prescribed particulars, for each non-industrial employee. This record must be kept at a workplace of the employer in Queensland.

A failure to comply with these record-keeping requirements brings a maximum penalty of 40 penalty units.

The employer must keep the records for 6 years. The maximum penalty for failing to do so is 40 penalty units.

On an employee's request the employer must give the employee a certificate stating the total hours recorded for the purposes of clause 47 (Continuity of service—additional considerations for casual employees) for the employee calculated to 30 June. The maximum penalty for failing to comply is 40 penalty units.

A definition of "non-industrial instrument employee" is provided for this clause.

Employee register

Clause 368 preserves the provisions of section 396 of the *Workplace Relations Act 1997* and requires an employer to keep a register that complies with certain prescribed particulars. The maximum penalty for failing to comply is 40 penalty units.

If the employer has more than 100 employees the employer must keep an alphabetical index of the employees' names. The maximum penalty for failing to comply is 40 penalty units.

The employer must within 14 days after a change in the employee's calling enter in the register particulars of the change and the date when the change happened.

The maximum penalty for failing to comply is 40 penalty units.

An employee must provide to the employer:

- **the employee's current residential address, whenever asked; and**
- **the employee's new residential address if it changes.**

The maximum penalty for failing to comply is 40 penalty units.

Records to be kept in English

Clause 369 continues the provisions of section 397 of the *Workplace Relations Act 1997* and provides that a record or index under this part must be kept in the English language.

Notation of wages details

Clause 370 preserves section 398 of the *Workplace Relations Act 1997* and requires the employer to give an employee, at the time of paying wages, a written statement specifying how the payment is made up.

The clause provides the information that must be included on the statement. The maximum penalty is 40 penalty units.

Division 4—Power to inspect certain records

Inspection of time and wages record—inspector

Clause 371 preserves section 399 of the *Workplace Relations Act 1997* and provides that an inspector may inspect an employer's time and wages record at a workplace during the employer's business hours.

The employer must allow the inspector to inspect the record. If an employer fails to comply a maximum penalty of 40 penalty units is provided.

An inspector may 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.

If the employer fails to produce the records in response to the notice the employer is taken to have failed to keep the record, unless the employer has a reasonable excuse.

Right of entry—authorised industrial officer

Clause 372 provides that an authorised industrial officer (the officer) may enter a workplace at which a person carries on a calling that relates to the eligibility rules of the officer's organisation. The right of entry must be exercised during the employer's business hours.

The entry is for the sole purpose of exercising a power under clause 373.

The officer must take certain steps on entering the workplace. An employer must not refuse an authorised industrial officer entry to the workplace if the officer complies with the prescribed actions required upon entry. If the employer fails to comply the maximum penalty is 27 penalty units.

If the officer does not take the prescribed steps, the officer may be treated as a trespasser. However, this does not apply if the employer or their representative, having charge of the workplace, is not present at the time the officer enters the workplace.

A person must not obstruct an officer exercising a power under this clause. The maximum penalty is 27 penalty units.

The officer must not wilfully obstruct the employer, or an employee during the employee's working time, or contravene a requirement of this clause. The maximum penalty is 27 penalty units.

A person must not act as an authorised industrial officer under this clause unless the person holds a current authorisation.

Right to inspect and request information—authorised industrial officer

Clause 373 applies to an authorised industrial officer (an officer) who has entered a workplace under clause 372.

An officer may only inspect records of and speak to certain prescribed persons, once they have entered the workplace. The officer may only inspect time and wages records of certain prescribed employees.

The employer must allow the officer to inspect the records for an employee unless the employee has made a written request to the employer that the record not be available for inspection by an officer. The maximum penalty is 27 penalty units.

The employer must not allow the officer to inspect a record where a such a written request has been made. The maximum penalty is 27 penalty units.

A person must not by threat or intimidation persuade or attempt to persuade an employee or prospective employee to make or refuse to make such a written request to the employer. The maximum penalty is 27 penalty units.

A person must not obstruct an officer exercising a power under this clause. The maximum penalty is 27 penalty units.

The officer must not wilfully obstruct the employer, or an employee during the employee's working time, or contravene a requirement of this clause. The maximum penalty is 27 penalty units.

A person must not act as an authorised industrial officer under this clause unless the person holds a current authorisation. The maximum penalty is 27 penalty units.

The clause defines "member employee" and "time and wages record" for this clause.

Inspection of employee register and index—registrar

Clause 374 preserves section 402 of the *Workplace Relations Act 1997* and provides that the registrar may inspect the employer's employee register and index at the employer's workplace and during the employer's business hours. The employer must allow the inspection. The maximum penalty is 40 penalty units.

The registrar may direct the employer to give the register and index to a stated person, at a stated reasonable time and place in certain prescribed circumstances. The employer must comply with this direction. The maximum penalty is 40 penalty units.

Inspection of time and wages book—employees

Clause 375 preserves section 403 of the *Workplace Relations Act 1997* and enables an employee to inspect or, at the employer's discretion, be supplied in writing with particulars of the time and wages record of the employee at intervals of no less than 12 months.

PART 2—WAGES AND OCCUPATIONAL SUPERANNUATION***Division 1—Interpretation*****Definitions for pt 2**

Clause 376 preserves section 404 of the *Workplace Relations Act 1997* and defines certain words and phrases to be applied under this part.

References to service

Clause 377 preserves section 405 of the *Workplace Relations Act 1997* and establishes that in this part a 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 378 preserves section 406 of the *Workplace Relations Act 1997* and 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, under clause 381, on the prime contract.

Assignment of amount payable ineffectual against claims for wages

Clause 379 preserves section 407 of the *Workplace Relations Act 1997* and 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 paid or payable to employer to be applied in payment of wages
Clause 380 preserves section 408 of the *Workplace Relations Act 1997* and provides that money due to or received by an employer from a prime contractor cannot be attached or charged other than by the employees until the employees of that employer have been fully paid.

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.

The employer must keep an accurate written account of the amounts received from the prime contractor and of the ways the amounts have been disbursed. This record must be made available for inspection and copying by an employee. A maximum penalty of 40 penalty units is provided for each offence in this clause.

Attachment notices

Clause 381 preserves section 409 of the *Workplace Relations Act 1997* and allows the employee to serve an attachment notice on the prime contractor if wages remain unpaid by the employer 24 hours after they are payable and have been demanded.

Effect of attachment notice

Clause 382 preserves section 410 of the *Workplace Relations Act 1997* and provides the requirements of the prime contractor and clerk of the Magistrates Court, following the serving of an attachment notice on the prime contractor.

A prime contractor is personally liable for the amounts payable subject to the attachment notice, if they fail to keep or pay the money as required by this clause.

Orders for payment by prime contractor or clerk of the court

Clause 383 preserves section 411 of the *Workplace Relations Act 1997* and establishes that a magistrate may issue 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

Clause 384 preserves section 412 of the *Workplace Relations Act 1997* and provides that, subject to clauses 381 to 383, amounts attached in the hands of a prime contractor 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, subject to specified conditions.

Employee may sue prime contractor

Clause 385 preserves section 413 of the *Workplace Relations Act 1997* and provides that an employee, in whose favour an order concerning a notice of attachment was issued and has not been paid, may sue the prime contractor on whom the order was issued for the amount indicated in the order.

The clause establishes the conditions under which the employee can sue the prime contractor, and the prime contractor's right to set off specified amounts.

Cessation of attachment not to prejudice prime contractor

Clause 386 preserves section 414 of the *Workplace Relations Act 1997* and provides that a prime contractor is not to be prejudiced in relation to a payment made in satisfaction of an order under clause 383, 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 387 preserves section 415 of the *Workplace Relations Act 1997* and provides that, if asked, the employee, when receiving an amount for a claim for wages to which an order under clause 383 relates, must sign a discharge for the amount to the person making the payment.

Remedy of subcontractor's employees

Clause 388 preserves section 416 of the *Workplace Relations Act 1997* and provides that an employee of a subcontractor to the employer has the same rights as employees of the employer have towards the prime contractor with regard to notices of attachment.

Prime contractor's right to reimbursement

Clause 389 preserves section 417 of the *Workplace Relations Act 1997* and provides for the right of a prime contractor who has paid wages to an employee, as a result of a notice of attachment, to 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 390 preserves section 418 of the *Workplace Relations Act 1997* and 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 etc. to be paid without deduction**

Clause 391 establishes that an employee (whether paid at a rate fixed by an industrial instrument or agreement or paid at a rate agreed between the employer and employee) is to be paid the full amount without unauthorised deduction. Deductions may be authorised by the relevant industrial instrument (if applicable), an order made under clause 137 or this division, or with the employee's consent in writing.

An apprentice or trainee must be paid the fixed rate, without unauthorised deduction, until the training agreement has been cancelled or the State Training Council has allowed the employer to stand down the apprentice or trainee.

Paying apprentices or trainees for course time

Clause 392 provides that time spent in training, up to but not exceeding the nominal time specified in the approved course of instruction or qualification, is to be time worked for the employer and ordinary working hours when calculating the apprentice's or trainee's wages and employment conditions. Similarly, course time should be taken into account when calculating an employee's entitlements including annual leave, sick leave and rostered days off. An example is provided in relation to the calculation of wages.

All time spent in training by an apprentice or trainee, despite the way the course is delivered, is time worked for the employer as ordinary working hours when calculating the apprentice's or trainee's wages and employment condition.

The clause specifically excludes certain apprentices or trainees from the operation of this clause.

A definition of the term "approved course of instruction or qualification" is provided for use in this clause.

Paying wages

Clause 393 preserves section 420 of the *Workplace Relations Act 1997* and provides the methods and associated conditions for payment of wages to an employee. The clause also voids any contract or authority that provides for payment of wages other than in accordance with this clause.

Contract not to stipulate mode of spending wages

Clause 394 preserves section 421 of the *Workplace Relations Act 1997* and provides that, subject to this division, 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 part or all of their wages.

A maximum penalty of 40 penalty units is provided for a contravention of this clause.

An employer is prohibited from dismissing an employee for spending or not spending their wages at a place, in a way or with a person.

Payment of unpaid wages if employee's whereabouts unknown

Clause 395 preserves section 422 of the *Workplace Relations Act 1997* and establishes that an employer is required to pay to the clerk of the nearest Magistrate's Court unpaid wages that are owed to an employee who has terminated employment and who cannot be located.

A maximum penalty of 40 penalty units is provided for failure of the employer to take the action prescribed.

The clause specifies what the clerk of the Magistrates Court must do with unpaid wages paid by an employer.

Overpaid wages

Clause 396 preserves section 425 of the *Workplace Relations Act 1997* and provides that an employer can recover amounts overpaid to an employee on account of the employee's absence from work. The ability of the employer to recover these amounts is restricted as to the time periods in which recovery can be made and the amounts that can be recovered.

Deduction of wages in lieu of notice of termination

Clause 397 preserves section 425 of the *Workplace Relations Act 1997* and provides that an employer may deduct from wages owing to an employee an amount stated in an industrial instrument to be forfeited if notice of termination is not given, if:

- **the relevant industrial instrument requires the employee to give notice of termination; and**
- **the employee fails to give the notice required.**

Minor may recover unpaid wages

Clause 398 preserves section 427 of the *Workplace Relations Act 1997* and provides that minors may instigate proceedings under this Bill as if they were 18 years of age.

Recovery of unpaid wages etc.

Clause 399 establishes that an application may be made to a magistrate for an order for payment of:

- wages payable to an employee, but unpaid;
- unpaid tool allowance, due to an apprentice;
- **remuneration lost by an apprentice or trainee because the employer:**
- **purportedly cancelled or suspended the training agreement, in contravention of clause 391 (2); or**
- **failed to provide work for the apprentice or trainee without the approval of the State Training Council as provided in section 91 of the *Vocational Education, Employment and Training Act 1991*.**

An application cannot be made under this clause if an application for the same matter has been made to the commission under clause 278 (Power to recover unpaid wages and superannuation contribution etc.).

Enforcement of magistrate's order

Clause 400 provides that an order of a magistrate for payment of wages, unpaid tool allowance, occupational superannuation or costs in relation to proceedings is enforceable under the *Justices Act 1886*.

In addition to the order being enforceable under the *Justices Act 1886*, 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.

Division 4—Wages in rural and mining industries

Wages recoverable against mortgagee if mortgagor defaults

Clause 401 preserves section 428 of the *Workplace Relations Act 1997* and provides for the recovery of wages, for employees who have performed specified work in rural industries, from a mortgagee if the employer defaults on a mortgage.

Distress warrant levied on property of mortgagor or mortgagee

Clause 402 preserves section 429 of the *Workplace Relations Act 1997* and provides for a warrant of distress in relation to the enforcement of wages in accordance with clause 401.

A definition of the term “land” is provided for use in this clause.

Application of ss 401 and 402 to mines

Clause 403 preserves section 430 of the *Workplace Relations Act 1997* and 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.

A definition of the term “wages” is provided for use in this clause.

Priority in payment of wages earned in mine

Clause 404 preserves section 431 of the *Workplace Relations Act 1997* and provides that wages due (up to 4 weeks) to an employee in a mine are a first charge on the 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.

A definition of the term “wages” is provided for use in this clause.

Division 5—Occupational superannuation**Agreement about superannuation fund**

Clause 405 preserves section 432 of the *Workplace Relations Act 1997* and provides that, even though an industrial instrument requires an employer to pay contributions to a specified superannuation fund, the employer and employee may agree in writing that the required contributions be paid to a complying fund.

It is an offence to coerce a person to make an agreement. A maximum penalty of 40 penalty units is provided.

Contributing occupational superannuation

Clause 406 preserves section 433 of the *Workplace Relations Act 1997* and provides that it is an offence for an employer to fail to make superannuation contributions on behalf of an eligible employee into an approved superannuation fund, at the level required by the relevant industrial instrument.

A maximum penalty of 40 penalty units is provided for a failure.

An employer does not commit an offence if the employer contributes to a complying fund, but not the approved fund, at the level required by the relevant industrial instrument, unless the employer knowingly contravenes the instrument.

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.

A court that finds a defendant guilty of an offence may make an order that a magistrate is authorised to make under clause 408 on application under that clause.

Power to order contribution to particular fund

Clause 407 preserves section 434 of the *Workplace Relations Act 1997* and provides that the commission may determine an order according 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 commission may recognise all or any of the contributions made to a complying fund up to the date of a determination as having met requirements under a relevant industrial instrument.

Recovery of unpaid superannuation contribution

Clause 408 provides that an application may be made by a specified person to a magistrate for an order for payment of unpaid superannuation contributions.

On hearing the application, the magistrate must order the employer to pay the employee:

- **the amounts the magistrate finds payable and unpaid within the 6 years before the date of the application; and**
- **the amount of return that the amount would have earned had it been paid**

and may award costs to either party.

An application cannot be made under this clause if an application for the same matter has been made to the commission under clause 278 (Power to recover unpaid wages and superannuation contributions etc.).

CHAPTER 12—INDUSTRIAL ORGANISATIONS

PART 1—PRELIMINARY

Definitions for ch 12

Clause 409 defines the terms used in chapter 12.

Meaning of “corporation” for ch 12

Clause 410 defines the term “corporation” for its use in this chapter. It includes bodies incorporated under other prescribed legislation but does not include a body incorporated under this Bill, a federal organisation or a body incorporated by its registration as an industrial organisation in another State.

Meaning of “counterpart federal body” for ch 12

Clause 411 defines the term “counterpart federal body” for its use in this chapter.

Meaning of “office” for ch 12

Clause 412 defines the term “office” for its use in this chapter.

PART 2—REGISTRATION

Division 1—registration applications

Application is to commission

Clause 413 provides that applications for registration of organisations are to be made to the commission.

Who may apply

Clause 414 provides that an association may apply for registration as either an employee or employer organisation and that a corporation may apply for registration as an employer organisation only.

General requirements for application

Clause 415 stipulates what must accompany an application for registration. This consists of the proposed registered address for the organisation, 2 copies of the proposed rules, a copy of the register of its officers, a list of any trustees and the application fee. The application must be signed by the applicant's president and secretary.

The applicant is required to publish notice of the application in a way prescribed by regulation.

Additional requirements for employee organisation application

Clause 416 specifies the additional documents that are required to accompany an application for registration as an employee organisation.

Additional requirements for employer organisation applications

Clause 417 specifies the additional documents that are required to accompany an application for registration as an employer organisation.

Definitions for the terms "member" and "rules" are provided for use in this part.

Division 2—Hearing of registration applications**Right to object**

Clause 418 provides that a person with sufficient interest may object to the commission about the registration of an organisation. The commission must hear the objection in the way prescribed by regulation.

Registration criteria for all applications

Clause 419 provides the criteria on which the commission must be satisfied before it can grant an application for registration. For example:

- *the applicant exists to further or protect its members' interests;*
- *the association will meet the obligations imposed on organisations by this chapter and the chapter on freedom of association;*
- *the association's rules comply with parts 3 and 4;*
- *the applicant's name will not cause confusion;*
- *its registration will be consistent with the objectives of this Bill.*

Additional criteria for registration as employee organisation

Clause 420 stipulates further criteria on which the commission must be satisfied before it can register an employee organisation. For example:

- the applicant is not influenced by an employer or employer organisation;

- the applicant has at least 20 members;
- there is no organisation to which the applicant's members might belong or could conveniently belong, or the applicant has given an undertaking in respect to demarcation disputes;
- the members who are not employees are officers or independent contractors performing work that would normally be performed by employees.

Additional criteria for registration as employer organisation

Clause 421 stipulates further criteria on which the commission must be satisfied before it can register an employer organisation. For example:

- the members of the applicant must consist of employers and can include its officers, persons who were employers at the time they became a member and persons carrying on a business;
- there is no organisation to which the applicant's members might belong or there is no organisation to which the members could conveniently belong;
- members have in total employed an average of at least 20 members in the 6 months before the application unless special circumstances exist.

Division 3—Grant of application**Grant of application**

Clause 422 provides that if the commission grants the registration application, the applicant immediately becomes an organisation and the rules for which the application was granted take effect as the rules of the organisation.

The registrar is required to enter the organisation in the register of organisations, issue a certificate of registration and register its rules.

Incorporation on registration if not already incorporated

Clause 423 grants incorporation to an association on its registration.

Division 4—Registered name and office**Registered name of organisation that is not a corporation**

Clause 424 provides that the name of an organisation that is not a corporation must include the words industrial organisation or union of employees or employers, as the case may be, and include a reference to the locality in which most of the members live or carry on business.

Registered office

Clause 425 provides that an organisation must have a registered office and must notify the registrar of any change of the registered office.

A maximum penalty of 40 penalty units is provided if the organisation fails to comply with the clause.

Division 5—Miscellaneous**Registrar’s functions for register and rules**

Clause 426 provides that the registrar must keep a register of organisations and a copy of the rules of each organisation.

A person is entitled to inspect the rules held by the registrar, on payment of the fee prescribed in the rules of court.

Change of callings

Clause 427 provides that an organisation may apply to the commission to amend its list of callings.

A definition of the term “list of callings” is provided for use in this clause.

PART 3—General CONTENTs OF RULES***Division 1—Requirement to have rules*****Organisation must have complying rules**

Clause 428 provides that an organisation must have rules to cover matters set out in this part and part 4. The organisation must give a copy of its rules to any person who asks for it, and who pays the fee prescribed by a regulation.

Division 2—General requirements for contents**Requirements for all organisations**

Clause 429 provides compulsory requirements for the rules of all organisations.

A definition of the term “committee” is provided for use in the clause.

Additional requirements for organisation that is not a corporation

Clause 430 provides additional compulsory requirements for rules of organisations that are not corporations. They do not apply to organisations that are corporations, as the legislation under which they are incorporated deals with these issues.

Rules must give conditions for loans, grants and donations

Clause 431 requires that the rules of an organisation must include specified conditions regarding making of a loan, grant or donation of more than \$1000. It limits the maximum payment to a member to relieve severe financial hardship to \$3000.

Division 3—Permitted contents**Permitted contents—general**

Clause 432 allows organisations to have additional rules that make other provisions that do not contravene this Bill.

Filling casual vacancies

Clause 433 permits the rules of an organisation to provide for the filling of casual vacancies under the specified circumstances.

A definition of the term “term” is provided for use in this clause.

Mortality benefit fund

Clause 434 permits an organisation’s rules to provide for a mortality benefit. Members can nominate a person to whom the amount is payable on their death.

A definition of the term “eligible nominee” is provided for use in this clause.

Division 4—Restriction on contents**General restrictions**

Clause 435 requires that an organisation’s rules must not:

- contravene this Bill, another law or an industrial instrument;
- prevent members from complying with this Bill, another law or an industrial instrument or decision or from entering into an agreement under an industrial instrument or agreement or commission decision;
- impose oppressive, unreasonable or unjust conditions, obligations or restrictions on its members or applicants for membership.

An eligibility rule setting reasonable minimum standards for the conduct of the businesses or callings of its members or membership applicants does not contravene the provision prohibiting oppressive, unreasonable or unjust conditions.

Maximum office term for organisation that is not a corporation

Clause 436 provides that the rules of an organisation (which is not a corporation) may provide for a maximum term of office of 4 years. This period can be extended by up to 1 year for the purpose of synchronising elections.

PART 4—ELECTION RULES

Division 1—Preliminary

Part does not apply to corporations

Clause 437 provides that this division does not apply to organisations that are corporations as the legislation under which they are incorporated deals with these issues.

Meaning of “direct voting system” for pt 4

Clause 438 provides an explanation of what is meant by the term “direct voting system” in this part.

A definition is provided for the term “eligible member” for use in this clause.

Meaning of “collegiate electoral system” for pt 4

Clause 439 provides an explanation of what is meant by the term “collegiate electoral system” for this part.

Division 2—General requirements

General requirement of transparency

Clause 440 requires an organisation’s rules about elections to ensure that the processes for election are transparent and that no irregularities can occur.

Rules must provide for elections

Clause 441 requires an organisation’s rules to provide for the filling of elected offices by way of an election.

Direct voting system or collegiate electoral system must be used

Clause 442 requires that an organisation's rules must provide for its officers to be elected under a direct voting system or a collegiate electoral system.

Division 3—Direct voting systems***Subdivision 1—Preliminary*****Application of div 3**

Clause 443 provides that this subdivision applies if an organisation's rules provide for the election of its elected officers by a direct voting system.

Subdivision 2—Requirements for direct voting system**General requirements for direct voting system**

Clause 444 requires that an organisation's rules state the matters prescribed in this clause.

Required contents—ballots

Clause 445 requires that an organisation's rules must state the matters prescribed in relation to ballots. For example, the rules are required to permit candidates access to the voters roll and to stipulate the method of voting to decide the result of the ballot, which is either first-past-the-post or a preferential system.

Compulsory voting permitted

Clause 446 allows an organisation's rules to provide for compulsory voting in an election.

Subdivision 3—Alternative types of secret ballot**Approval application**

Clause 447 permits an organisation to apply to the registrar to conduct its election other than by post. The proposed amendments to the organisation's rules to permit this must be included with the application.

Consideration of application

Clause 448 stipulates the conditions of which the registrar must be satisfied before the application may be granted, including that the ballot is likely to have a higher participation rate than a postal vote and that voters will not be subject to intimidation.

Grant of approval

Clause 449 provides when the proposed amendments take effect if the registrar grants the application.

Cancellation of approval

Clause 450 sets out the conditions under which the registrar may cancel the approval.

Division 4—Collegiate electoral systems***Subdivision 1—Preliminary*****Application of div 4**

Clause 451 provides that this division applies if an organisation's rules provide for the election of its elected officers by a collegiate electoral system.

Subdivision 2—Requirements for collegiate electoral systems**Restriction on persons who may be elected by electoral college**

Clause 452 requires that of the people elected by an electoral college, at least 80% of them must have been elected in the collegiate electoral system at the stage immediately before the stage for which the electoral college was formed.

Requirements for second or subsequent stage

Clause 453 requires that the organisation's rules must state specified matters for an election at the second or subsequent stage of a collegiate electoral system.

Division 5—Model election rules**Model election rules**

Clause 454 provides that model election rules may be made by regulation.

Model election rules may be adopted

Clause 455 permits an organisation to adopt all or part of the election rules by resolution.

Adoption without change

Clause 456 permits an organisation's secretary to notify the registrar that the organisation had resolved to adopted all of the model rules without change.

The registrar must amend the organisation's rules accordingly.

Effect of adoption without change

Clause 457 provides that if an organisation adopts the model rules without change its election rules are deemed to comply with the Act.

Model rules apply if election rules do not comply with pt 4

Clause 458 provides that if an organisation's election rules do not comply with this division within 1 year of the commencement of this clause then the model rules are taken to be the organisation's election rules.

PART 5—VALIDITY AND COMPLIANCE WITH RULES***Powers of court***

Clause 459 empowers the court to decide whether an organisation's rules comply with clause 435 of this Bill or to direct a person obliged to perform or observe an organisation's rules to perform or observe the rules.

A direction must not be made if it invalidates an election or purported election, or a step for an election or purported election.

Who may apply

Clause 460 provides that only a member of the organisation or a person permitted by regulation may make application.

Financial help for application

Clause 461 provides the Minister a discretion to award financial assistance to a member of the organisation making application under this part.

The Minister may direct the State to give financial help if satisfied of the specified matters.

Interim orders

Clause 462 empowers the court to make interim orders.

Hearing application

Clause 463 empowers the court to adjourn an application, to give the organisation the opportunity to amend its rules or to take all reasonable steps to resolve the matter.

Effect of declaration

Clause 464 provides that if the court declares that a rule contravenes clause 435 of this Bill then the part of the rule in contravention is taken to be void.

Direction must be complied with

Clause 465 provides that a person who fails to comply with a direction of the court to comply with a rule of an organisation is guilty of an offence.

A maximum penalty of 40 penalty units is provided.

PART 6—AMENDMENT OF RULES***Division 1—Amendments by commission or registrar******Breach of demarcation dispute undertaking***

Clause 466 provides that the commission may amend an organisation's eligibility rules to remove an overlap with another organisation's eligibility rules where the organisation has breached a demarcation dispute undertaking that it has given.

When registrar may amend rules

Clause 467 provides that the registrar may amend an organisation's rules where it is considered in specified circumstances.

Amendment to cure non-compliance if rule declared void

Clause 468 empowers the commission, in respect of an organisation's eligibility rules, or the registrar in respect of other rules, to amend an organisation's rules where the court has declared the rule contravenes clause 435 of this Bill and the organisation has not amended the rule within 3 months of the declaration.

A definition of “appropriate tribunal” is provided for use in this clause.

How amendment must be made

Clause 469 provides that an amendment made under this division may only be made by an order, direction or written decision. The registrar is required to give the organisation a copy of the instrument as soon as possible after it is made.

Division 2—Amendments by organisation***Subdivision 1—Name or eligibility rule amendments*****Application of sdiv 1**

Clause 470 provides those changes to the name or eligibility rules that are not covered by this subdivision.

A definition of the term “amend” is provided for use in this clause.

Requirements for amendment

Clause 471 provides the conditions under which a proposed amendment may be made.

Approval to change “union” to “organisation” in name

Clause 472 provides allows the registrar to approve a change in an organisation’s name from the term “union” to “organisation” or “industrial organisation”.

Approval for other name amendment

Clause 473 provides the conditions under which the commission may approve the change of name of an organisation, other than replacing the word “union” with “organisation”.

Approval for eligibility rule amendment

Clause 474 provides the conditions under which the commission may approve a change to an organisation’s eligibility rules. The requirement include that:

- the amendment has been made under the organisation’s rules; and
- there is no other organisation that would effectively represent a person who becomes eligible for membership under the amendment or to which the person may conveniently belong.

Conditions are provided under which approval for the amendment may be refused. These include, but are not limited to:

- that it contravenes an agreement or undertaking in respect to demarcation issues;
- *that it alters the effect of an order made by the full court concerning an organisation's right to represent and the amendment raises a serious risk of a demarcation dispute, which could affect an employer's business.*

A definition of the term "right to represent" is provided for use in this clause.

When amendment takes effect

Clause 475 provides that the amendment takes effect on the day the approval is given or the date stated in the approval.

Registrar must record amendment

Clause 476 provides the action the registrar must take on approval of amendment to the organisation's name or eligibility rules.

Subdivision 2—Other rule amendments

Application of sdiv 2

Clause 477 clarifies that this subdivision does not apply to changes to an organisation's name or eligibility rules, or if it adopts in full the model election rules without change.

When amendment may be made

Clause 478 provides that an amendment can be made to the organisation's rules only if it has been approved by the registrar. The matters that the registrar must be satisfied of are prescribed.

When amendment takes effect

Clause 479 provides that the registrar must register an amendment as soon as practicable after it has been approved.

The amendment takes effect from the date it is registered.

PART 7—CONDUCT OF ELECTIONS

Division 1—Preliminary

Part does not apply to corporations

Clause 480 provides that this division does not apply to organisations that are corporations.

Division 2—Preparatory steps**Organisation or branch must file prescribed election information**

Clause 481 requires an organisation or branch wishing to conduct an election to file the information prescribed by regulation within the registry.

Registrar must arrange for elections

Clause 482 requires that if the prescribed information is filed with the registrar, and an election is required under the rules of the organisation or branch, the registrar must arrange for the electoral commission to conduct the election.

Division 3—Conduct of election**Electoral commission to conduct elections**

Clause 483 requires that elections must only be conducted by the electoral commission.

Organisation's rules generally to be complied with

Clause 484 requires, subject to clause 485, an election or any step involved in the election to be conducted in accordance with the rules of the organisation.

Action or directions by electoral officer

Clause 485 provides that the electoral officer may take action or give directions to:

- *ensure no irregularities occur in the election; or*
- *remedy any procedural defect that appears to exist in the organisation's rules.*

The election or step in the election is not invalidated because the rules of the organisation have not been followed due to the action or direction.

Substitute electoral officer

Clause 486 requires the electoral commissioner to appoint a substitute electoral officer if the electoral officer conducting an election dies, cannot complete the election or ceases to be qualified to conduct the election.

Death of candidate

Clause 487 requires that, despite anything in an organisation's rules, an election must be discontinued if one of the candidates dies and there were 2 or more candidates.

Election result report

Clause 488 requires that the electoral commission must provide the registrar with a written electoral result report containing details prescribed under a regulation, within 14 days of the declaration of the result of the election.

Failure to do so does not invalidate the election.

Election costs to be paid by State

Clause 489 provides that the State is responsible for the costs of an election.

Ballot records must be preserved

Clause 490 requires the electoral commission to ensure all ballot records are kept for 1 year after an election.

Division 4—Offences about conduct of elections**Using organisation's resources for election purposes**

Clause 491 requires that an organisation's resources are not used to help one candidate against another.

A maximum penalty of 80 penalty units is provided.

Obstructing conduct of election

Clause 492 establishes that it is an offence for a person to obstruct another person conducting an election.

A maximum penalty of 80 penalty units is provided.

Failing to comply with electoral officer's direction

Clause 493 provides that it is an offence for a person, without a reasonable excuse, not to comply with a direction given by the electoral officer conducting an election.

A maximum penalty of 80 penalty units is provided.

Obstructing electoral officer's direction

Clause 494 provides that it is an offence for a person to obstruct another person from complying with an electoral officer's direction.

A maximum penalty of 80 penalty units is provided.

Offences about ballots

Clause 495 requires that a person must not take any of the prescribed actions, without a lawful authority or excuse.

A maximum penalty of 80 penalty units is provided.

Disadvantaging candidates etc.

Clause 496 makes it an offence for a person to cause, inflict or procure a disadvantage in any way to another person because of, or to induce:

- *a candidature or withdrawal of a candidature;*
- *a vote or omission to vote in an election;*
- *support for or opposition to a candidate in an election; or*
- *a promise of a vote, omission to vote, support or opposition for or to a candidate in an election.*

A maximum penalty of 80 penalty units is provided.

Definitions of the terms “cause” and “disadvantage” are provided for use in this part.

Unauthorised access to ballot paper

Clause 497 makes it an offence for a person to gain access to another person’s ballot paper to see how the person voted.

It is also an offence for a person performing duties for an election to permit access to a ballot paper to anyone else, other than for a function involved in the election.

A maximum penalty of 80 penalty units is provided.

PART 8—ELECTION INQUIRIES***Division 1—Preliminary***

Part does not apply to corporations

Clause 498 provides that this part does not apply to organisations that are corporations.

Division 2—Applications and referrals to commission**Commission may conduct election inquiry**

Clause 499 provides that the commission may, on application referred to it by the registrar, conduct an inquiry into a claimed irregularity in an election.

Who may apply

Clause 500 provides that only a financial member or a person who was a financial member, within one year before the application is made, of the organisation that conducted the election may apply for an election inquiry.

Requirements for application

Clause 501 provides that the application must identify the election in which an irregularity is claimed, and provide details of the irregularity and an affidavit of the facts that support the application.

The application is to be lodged within 6 months of the election, or a longer period allowed by the registrar.

Referral to commission

Clause 502 provides that where the registrar is satisfied that reasonable grounds exist to justify an inquiry, the registrar may refer the application to the commission.

The registrar can take into account any appropriate information that is known by the registrar.

Division 3—Investigations and interim orders**Commission may authorise registrar to investigate**

Clause 503 provides that the commission may authorise the registrar to inspect and take possession of ballot records, enter premises where the records are kept and require a person in possession of the ballot record to give them to the registrar.

It is an offence under this section for a person who has the ballot records not to give them to the registrar when required or to obstruct the registrar in exercising a power under this section.

A maximum penalty of 80 penalty units is provided.

Interim orders

Clause 504 provides that the commission may make specified interim orders in respect of the election inquiry.

Person acting under interim order

Clause 505 provides that, while an interim order is in effect, the person holding office as a result of the order is taken to hold the office despite the rules of the organisation.

When interim order ends

Clause 506 provides when an interim order ends.

Division 4—Conduct of election inquiries**Commission’s functions and powers for inquiry**

Clause 507 provides the matters the commission must inquire into and decide at an election inquiry.

Orders if irregularity found

Clause 508 provides the types of orders the commission may make if it finds an irregularity has happened or is likely to happen in an election.

Enforcing pt 8 orders

Clause 509 provides that the commission may make an order as an injunction to enforce an order, or perform its functions or exercise its powers under this part.

Division 5—Offences about election inquiries**Disadvantaging applicant for inquiry**

Clause 510 provides for a maximum penalty of 80 penalty units against those who cause, inflict or procure a disadvantage to another person because the other person has applied for an election inquiry.

A definition for the term “disadvantage” is provided for the purposes of this clause.

Obstructing orders being carried out

Clause 511 requires that a person must not obstruct the carrying out of a commission order under this part.

A maximum penalty of 80 penalty units is provided.

Division 6—Miscellaneous**Financial help for application**

Clause 512 provides for an applicant for an election inquiry to seek financial help from the Minister. The clause describes those circumstances under which the Minister may direct the State to provide financial help. The registrar is to decide the amount of the financial help.

Costs of fresh elections ordered by inquiry

Clause 513 provides that the State must pay the costs of a fresh election where the commission so orders a fresh election under this part.

A definition of the term “fresh election” is provided for use in this clause.

PART 9—OFFICERS***Division 1—Preliminary*****Definitions for pt 9**

Clause 514 provides the definitions to be applied to certain words and phrases that apply under this part.

Meaning of “convicted person” for pt 9

Clause 515 provides a definition of “convicted person” to be applied under this part.

Division 2—Disqualifications from candidature or holding office***Subdivision 1—Disqualifications*****Persons under 18**

Clause 516 provides those positions within an organisation for which a person under the age of 18 years is ineligible to be a candidate or to be elected.

Convicted persons—candidature

Clause 517 establishes the circumstances under which a person convicted of a prescribed offence may be a candidate or be elected to an office in an organisation.

Convicted persons—holding office

Clause 518 applies to a person who holds an office in an organisation and is convicted of a disqualifying offence. This clause describes how such a person ceases to hold an office and the circumstances under which the court may extend the time for making such a leave application.

Subdivision 2—Applications for leave to hold office**Prospective candidates**

Clause 519 provides that a person who meets the criteria prescribed by the clause may apply to the court for leave to hold office.

Existing office holders

Clause 520 provides that a person convicted of a disqualifying offence may apply to the court for leave to hold the office or another stated office. The court may only grant such leave if the application is made within 28 days after the conviction and the person has not already made a leave application for the conviction.

Consideration of leave applications

Clause 521 provides what the court must consider in deciding a leave application.

Disqualification period may be given if leave refused

Clause 522 provides a power for the court to state a disqualification period for the applicant to hold office in any organisation, if it decides to refuse a leave application. The factors determining the maximum length of the disqualification period are specified.

Leave or fixing of disqualification period does not affect div 2

Clause 523 provides that the granting of a leave application for a conviction or the fixing of a disqualification period does not affect the operation of this division for another conviction.

Subdivision 3—Miscellaneous**Declaration about eligibility or ceasing to hold office**

Clause 524 provides for applications from a member of the organisation, or from the registrar, for a declaration that because of this division a person is not or was not eligible to be a candidate or to be elected to office in the organisation, or the person has ceased to hold an office in the organisation. The court may make orders it considers appropriate, despite anything in the rules of the organisation, to give effect to the declaration.

Certificate evidence for div 2

Clause 525 establishes what shall, under this division, be taken as evidence of a person's conviction, acquittal, release from prison, or dismissal of charges against a person.

A definition is provided for the term “appropriate officer” for use in this clause.

Division 3—Officers’ financial management duties**Application of div 3**

Clause 526 provides that this division applies if an officer of an organisation performs functions or exercises powers about the organisation's financial management.

Duty of honesty

Clause 527 provides that an officer must act honestly.

A maximum penalty of 40 penalty units is provided.

Duty of reasonable care and diligence

Clause 528 establishes the degree of care and diligence expected of an officer.

A maximum penalty of 40 penalty units is provided.

Officers with material personal interests

Clause 529 requires that an officer with a material personal interest must disclose such, and requires the officer not to be present or vote at any annual general or management committee meeting at which the matter is considered.

A maximum penalty of 40 penalty units is provided for each offence in this clause.

Other duties not affected

Clause 530 provides that this division does not limit certain specified matters.

PART 10—MEMBERSHIP***Division 1—Eligibility and admission to membership*****Eligibility**

Clause 531 establishes the eligibility of a person to become a member of an organisation.

Obligation to admit

Clause 532 requires that an organisation must admit an eligible person to membership and provides time limits in which the person must be admitted.

A definition of the term "admit to membership" is provided for this clause.

Obligation to give union card

Clause 533 provides when an organisation must give a person a union card.

A maximum penalty of 40 penalty units is provided for contravention of this clause.

The term "union card" is defined for the purposes of this clause.

Members under 18

Clause 534 provides that a person under 18 may become a member of an organisation, unless the rules provide otherwise. The rights that accrue to persons under 18 who are members are prescribed.

Division 2—Membership disputes**Court may decide**

Clause 535 provides that the court can decide a question or dispute, on application of a person or an organisation, in relation to specified matters.

Deciding application

Clause 536 provides the discretionary powers available to the court after having heard the application.

Division 3—Membership subscriptions**Obligation to give a receipt**

Clause 537 provides that a person must be given a written receipt within one month of their payment to an organisation of a membership subscription or membership renewal.

A maximum penalty of 40 penalty units is provided.

Division 4—Resignation**Division applies despite rules**

Clause 538 provides that this division applies despite the rules of an organisation.

Resignation

Clause 539 provides the conditions and manner in which a member may resign from an organisation.

Resignation if membership subscription unpaid for 2 years

Clause 540 provides that a person's membership of an organisation automatically ends if the person owes a membership subscription and has owed this subscription for 2 years.

Division 5—Liabilities of member to organisation**Definition of “member’s liability” for div 5**

Clause 541 provides a definition for the term “member’s liability” used in this division.

Recovering member’s liabilities

Clause 542 provides for the recovery of a member’s liability to an organisation.

Limit on liability after resignation

Clause 543 limits the liability of a member whose membership of an organisation has ended.

PART 11—REGISTERS**Members and officers registers**

Clause 544 requires that an organisation must keep written registers of certain matters.

A maximum penalty of 40 penalty units is provided for failure to do so.

Requirements for members register

Clause 545 prescribes the information that must be recorded in the members register.

A maximum penalty of 40 penalty units is provided for each of the offences prescribed under this clause.

Officers register—required particulars

Clause 546 prescribes the information that must be kept in the officers register.

A maximum penalty of 40 penalty units is provided for failure to do so.

Annual obligation to file officers register

Clause 547 provides that the organisation must file, annually, a copy of its officers register.

A maximum penalty of 40 penalty units is provided for failure to do so.

Obligation to file officers register on change of office holder

Clause 548 provides that an organisation must file a copy of its officers register each time a person becomes or ceases to be an officer of the organisation.

A maximum penalty of 40 penalty units is provided for failure to do so.

Inspection of registers

Clause 549 provides for the inspection of the registers of an organisation by the registrar, a member or a person with the written authority of the registrar or a member or a person with the written authority of a member. A copy of the register held by the registrar may be inspected by any person upon payment of the fee prescribed by the rules of court.

Registrar’s direction about registers

Clause 550 provides that the registrar may give certain written directions to an organisation.

A maximum penalty of 40 penalty units is provided if the organisation fails to comply with the direction, unless the organisation has a reasonable excuse.

PART 12—ACCOUNTS AND AUDIT***Division 1—Preliminary*****Definitions for pt 12**

Clause 551 defines certain terms to be used in this part.

Meaning of “financial year” for pt 12

Clause 552 provides an explanation of the term “financial year”.

Part applies to branches with separate financial affairs

Clause 553 provides that, if a branch keeps separate accounting records from those of the organisation, this part applies to the branch as if it were an organisation.

Division 2—Accounting obligations**Obligation to keep accounting records**

Clause 554 provides the requirements of the organisation for keeping accounting records.

A maximum penalty of 40 penalty units is provided.

The clause also requires that the accounting records be kept in the manner prescribed by a regulation.

A maximum penalty of 40 penalty units is provided.

A definition of the term “accounting records” is provided for use in this clause.

Obligation to prepare accounts

Clause 555 provides that an organisation must prepare the accounts prescribed under a regulation for each financial year. The matters that must be included in the accounts are prescribed.

A maximum penalty of 40 penalty units is provided for each offence under this clause.

A definition of the term “compulsory levy” is provided for use in this clause.

Member may apply for prescribed information

Clause 556 provides that a member, or the registrar on a member’s behalf, may apply to an organisation for certain information.

A maximum penalty of 40 penalty units is provided for failure to provide the information.

Registrar’s directions about accounts and accounting records

Clause 557 provides that the registrar may direct an officer of an organisation to give certain information or accounts to the registrar or to direct any officer of an organisation with functions or powers in relation to the accounts or accounting records to do certain things. It is an offence (maximum penalty 40 penalty units) to fail to comply with a direction, unless the officer has a reasonable excuse.

Division 3—Audits**Obligation to have auditor**

Clause 558 provides that an organisation must appoint a competent person as an auditor to inspect and audit the organisation’s accounting records and to make an audit report.

A maximum penalty of 40 penalty units is provided for failure to do so.

A definition for the term “competent person” is provided for use in this clause.

How auditor may be removed

Clause 559 provides the ways in which an auditor may be removed.

Requirements for audit report

Clause 560 provides that the audit report must state certain specified matters.

Audit report must not be knowingly false or misleading

Clause 561 provides that it is an offence for an auditor to make a statement in an audit report that is knowingly false or misleading to the auditor's knowledge.

A maximum penalty of 40 penalty units is provided.

Auditor must notify registrar of contravention

Clause 562 provides that an auditor must notify the registrar of a contravention of this part if the auditor is of the opinion that the matter cannot be adequately dealt with by a comment in the audit report.

A maximum penalty of 40 penalty units is provided for failure to take this action.

Auditor's powers

Clause 563 establishes the powers of an auditor.

A definition of the term "auditor" is provided for this clause.

Auditors have qualified privilege

Clause 564 provides that an auditor may make defamatory statements subject to certain conditions and a person may publish in good faith defamatory matter subject to certain specified conditions.

A definition of the term "auditor" is provided for this clause.

Division 4—Presentation and filing of audit reports**Obligation to present to general or committee meeting**

Clause 565 provides that an organisation must present its audit report and account to an annual general meeting within 5 months of the ending of each financial year unless the time is extended by the registrar.

A maximum penalty of 40 penalty units is provided.

Obligation to publish audit report and accounts

Clause 566 provides that an organisation must, at least 28 days before a presentation meeting, give each member a copy of the audit report and relevant accounts or publish the report and accounts in a journal or newsletter provided to members. Provision of the reports and accounts must be free of charge to the member.

A maximum penalty of 40 penalty units is provided.

Notice of meetings to auditor

Clause 567 provides that an organisation is to give notice to the auditor of:

- any meeting at which the auditor's report will be presented; or
- any meeting at which business is to be conducted about the auditor, in that capacity.

A maximum penalty of 40 penalty units is provided.

A definition of the term "notice" is provided for use in this clause.

Auditor may attend meetings

Clause 568 provides that an auditor or authorised substitute may attend the part of an organisation's meeting at which the auditor's report and the accounts will be presented, or business will be conducted concerning the auditor, in that capacity.

It is an offence for an officer, employee or member of the organisation to prevent the auditor or authorised substitute from attending or addressing the part of the meeting.

A maximum penalty of 40 penalty units is provided.

False or misleading statements about reports

Clause 569 provides that a member of an organisation's management committee must not make a statement that the member knows is false or misleading about the organisation's audit report.

A maximum penalty of 40 penalty units is provided.

Report and accounts must be filed

Clause 570 provides that an organisation that has presented its audit report and accounts must lodge a copy with the registrar within 14 days, unless the registrar allows a longer period.

A maximum penalty of 40 penalty units is provided.

A definition of the term “required period” is provided for use in this clause.

Division 5—Registrar’s investigations and audits

Registrar’s investigations

Clause 571 provides that the registrar must investigate an accounting deficiency identified in an auditor’s report, or another matter which the registrar considers should be investigated, as revealed by documents filed by an organisation or if requested by a required number of members.

The registrar may also conduct an investigation if satisfied there are reasonable grounds or in other circumstances that are provided by a regulation.

Registrar’s directions for investigation

Clause 572 provides the powers of the registrar in conducting an investigation under clause 571.

It is an offence for a person to fail to comply with a direction of the registrar under this clause, unless the person has a reasonable excuse. A maximum penalty of 40 penalty units is provided.

Notice of contravention to organisation

Clause 573 provides the action the registrar may take if at the conclusion of the registrar’s investigation a contravention of this Bill or a rule of the organisation has been revealed.

Court may order compliance with notice

Clause 574 provides that the court may, on application of the registrar, make necessary orders to remedy the contravention stated in the registrar’s notice given under clause 573.

Registrar’s examinations and audits

Clause 575 provides that the registrar may engage an auditor to examine an organisation’s accounting records in specified circumstances.

Powers of registrar’s auditor

Clause 576 provides that the registrar’s auditor has the same functions and powers as an organisation’s auditor.

Costs of examination and audit by registrar's auditor

Clause 577 provides that the costs of an audit by the registrar's auditor are to be borne by the organisation. The registrar is empowered to recover costs where they have not been paid on demand.

Division 6—Loans, grants and donations**Obligation to file details of loans, grants and donations**

Clause 578 provides that an organisation must prepare and file annually a statement of certain loans, grants or donations, including the specified information.

A maximum penalty of 40 penalty units is provided.

Member may inspect statement

Clause 579 provides that a filed statement may be inspected, during office hours, by a member of the organisation.

PART 13—EXEMPTIONS***Division 1—Exemptions for organisations with counterpart federal bodies******Subdivision 1—Exemption from holding election*****Exemption if federal election held**

Clause 580 provides how this section shall be applied, how an organisation may apply to the registrar for an exemption from holding an election, the matters the registrar must be satisfied of to grant an exemption and the effect of an exemption being granted.

A definition of “corresponding office” is provided for use in this clause.

Obligation to notify change in federal election result

Clause 581 provides what is to happen if an organisation is given an exemption under clause 580 and an order under the Commonwealth Act has changed the result of the federal ballot.

A maximum penalty of 40 penalty units is provided for failure to comply with this clause.

Subdivision 2—Exemption from keeping members or officers register**Exemption**

Clause 582 provides that an organisation may apply to the registrar for an exemption from keeping a members or officers register. The registrar may grant an exemption only if satisfied of the specified matters.

Effect of exemption

Clause 583 provides that, while an exemption is in force, the counterpart federal body's register of members or officers can be taken as the register required under this Bill.

Obligation to file copy of federal officers register

Clause 584 provides that an organisation with an exemption from keeping a separate members register must file a copy of an officers register filed under the Commonwealth Act with the registrar.

Failure to do so is an offence with a maximum penalty of 40 penalty units.

A definition of the term “officer’s records” is provided for use in this clause.

Obligation to give notice of change or contravention

Clause 585 establishes that if any of the specified events happen, the organisation must immediately give notice of the happening to the registrar.

Failure to notify the registrar is an offence with a maximum penalty of 40 penalty units.

Subdivision 3—Exemption from accounting or audit obligation**Who may apply**

Clause 586 provides that an organisation that meets the criteria of this clause may apply to the registrar for an exemption from the accounting or audit requirements.

Grant of exemption

Clause 587 provides the conditions that must be met before the registrar will grant an exemption.

The clause also prescribes the effect of the exemption.

A definition of the term “relevant Commonwealth provision” is provided for use in this clause.

Obligation to file copies of federal audit documents

Clause 588 provides that an organisation exempted from presenting or filing audit reports or accounts must file a copy of the audit report and relevant accounts for its counterpart federal body, subject to certain conditions.

A maximum penalty of 40 penalty units is provided for failure to do so.

Obligation to give notice of change or contravention

Clause 589 provides that an organisation with exemption from accounting or audit requirements must notify certain specified changes in circumstances to the registrar. A failure to do so is an offence with a maximum penalty of 40 penalty points. The organisation is taken to become aware of the happening if an officer of the organisation becomes aware of it.

Division 2—Other exemptions from accounting or audit obligations for employer organisations that are corporations**Who may apply**

Clause 590 provides that an organisation that is a corporation may apply to the registrar for an exemption from the whole or part of the accounting or audit requirements.

Grant of exemption

Clause 591 provides the criteria on which the registrar must be satisfied before granting an exemption.

The clause also prescribes the effect of the exemption.

Obligation to file copies of reports under other Act or law

Clause 592 provides that an organisation that has been granted an exemption from the audit requirements must file, within 14 days, a copy of the audit documents so lodged under another Act or law.

Failure to do so is an offence, with a maximum penalty of 40 penalty units.

Obligation to notify registrar of contravention of other law

Clause 593 provides that an organisation that has been granted an exemption must notify the registrar of any contravention of another Act for which the exemption has been granted.

A failure to do so is an offence, with a maximum penalty of 40 penalty points.

Division 3—Exemptions from requirement that electoral commission conduct election***Subdivision 1—Grant of exemption*****Who may apply**

Clause 594 provides that an organisation or branch may apply to the registrar for an exemption from the requirement that the electoral commission conduct elections.

Requirements for application

Clause 595 provides conditions that must be met before an exemption can be granted.

Publication of application

Clause 596 provides that the registrar must publish a notice stating details of the application. The notice must be published in a way prescribed in a regulation.

Hearing application

Clause 597 establishes that the registrar may grant an exemption only if satisfied that each of the specified criteria has been met.

Subdivision 2—Obligations if exemption granted**Application of sdiv2**

Clause 598 provides that this subdivision applies to an organisation or branch for each election to which an exemption under subdivision 1 is granted.

Obligation to appoint returning officer

Clause 599 stipulates what an organisation or branch must do before calling for nominations for an election, including obtaining the registrar's written approval of the returning officer's appointment.

Failure to so comply is an offence under this Bill, with a maximum penalty of 40 penalty units.

An employee, member or officer of the organisation or branch must not be appointed as the returning officer.

Election result report

Clause 600 requires that the returning officer for the election must give the registrar, within 14 days of the declaration of the result of the election, a result report for the election stating the particulars required under a regulation.

Failure to do so is an offence under this Bill. The maximum penalty is 40 penalty units.

Ballot records must be preserved

Clause 601 requires that specified persons must take reasonable steps to ensure that all ballot records given to them for the election are kept for 1 year after the declaration of the election result.

Failure to do so is an offence with a maximum penalty of 40 penalty units.

Division 4—Cancellation of exemptions**Cancellation grounds**

Clause 602 provides that an exemption may only be cancelled by the registrar:

- if the holder of the exemption asks for the cancellation; or
- on a ground stated in this clause.

Alternatives to cancellation for federal election exemption

Clause 603 applies if the registrar is considering cancelling an exemption for an organisation from holding an election, on the grounds of an election in the counterpart federal body, because an order under the Commonwealth Act has changed the federal election result.

The registrar may instead:

- amend it; or
- cancel it and grant a new exemption to reflect the terms of the order.

PART 14—VALIDATIONS***Division 1—Preliminary*****Definitions for pt 14**

Clause 604 defines terms that apply to this part.

Division 2—Validations**Limitation on validation if substantial injustice**

Clause 605 provides that where invalidities are automatically validated by the operation of this part, that validation will be limited to the extent that it does not cause substantial injustice to stated persons. For example, where the management committee of an organisation's counterpart federal body made a decision to engage a contractor to conduct repairs to a building that belonged to the organisation, the decision could be made valid as a decision of the organisation's management committee by operation of this part. The counterpart federal body would not be relieved of its obligation to pay the contractor for repairs to the building, even though it may have a valid claim for payment from the organisation.

This limitation does not apply to the operation of clauses 607 to 609.

Validation of certain acts done in good faith

Clause 606 operates automatically to validate specified acts of an organisation, a collective body of an organisation or an officer of an organisation where those acts would otherwise be invalid.

The acts that are validated by the operation of this clause include:

- an act that would be valid except for an invalidity in the composition of the body doing the act, or in the election or appointment of the collective body or officer doing the act;
- an act that would be valid except for an invalidity in the organisation's rules or in the making or amendment of its rules;
- an act that would be valid except for an absence of quorum or another procedural irregularity;
- an act that is invalid because of an intermingling of affairs between the organisation and its counterpart federal body.

It deems acts to have been done in good faith unless proved otherwise. In addition, where a person purports to be a member of a collective body of an organisation, they are deemed to have done so in good faith, unless proved otherwise.

The clause is limited in its operation as follows:

- it does not affect the operation of part 7, “Conduct of elections” and part 8, “Election inquiries”.
- it does not validate an invalid expulsion, suspension, fining or other penalisation of a member of an organisation.

Finally, the clause operates retrospectively to validate invalid actions made before its commencement and invalidities that may have occurred before an organisation became registered.

Certain acts by persons purporting to act in an office

Clause 607 provides that, if the election of a person to an office is declared void by the commission, then any acts done by the person, while purporting to act in the office for a period between the declaration of the election and the declaration of the commission, are valid.

Election not invalid because of compliance with order

Clause 608 provides that, where the commission makes an order for an election or step in an election and it is necessary to contravene an organisation’s rules to comply with the order, then the election or step is valid despite the contravention.

Election not invalid because of contravention of pt 13, div 3, sdiv2

Clause 609 provides that if:

- an organisation is given an exemption in relation to an election; and
 - the organisation does not comply with its obligations under part 13, division 3, subdivision 2,
- the election is not invalid.

Validation of certain events after 4 years

Clause 610 automatically validates particular events 4 years after they have happened. It is distinguished from clause 233 because it does not require good faith as an element (i.e. the invalid event will be validated by operation of this clause despite an absence of good faith). The events that are validated by this clause include:

- an otherwise invalid election or appointment of an officer of an organisation; and
- an otherwise invalid making or amending of a rule of an organisation.

A definition of the term “decision” is provided for use in this clause.

Counterpart federal body not a ground for challenge

Clause 611 provides that the validity of specified matters about an organisation may not be challenged in a proceeding on the grounds that the organisation's affairs are intermingled with the affairs of its counterpart federal body.

The stated matters include:

- an organisation's existence or registration;
- the election of an officer of an organisation;
- a rule of an organisation;
- a decision made by or about an organisation; or
- the operation of a rule of an organisation or decision made by or about an organisation.

Amalgamations and withdrawals

Clause 612 automatically validates an otherwise invalid amalgamation or withdrawal from amalgamation. This clause simplifies the existing validation provisions relating to amalgamations and withdrawals from amalgamations.

It also automatically validates anything else done for or in connection with the amalgamation or withdrawal, which is necessary for the amalgamation or withdrawal to be valid, and which would otherwise be invalid.

The clause only operates if no proceedings have been commenced to challenge the amalgamation or withdrawal within 6 months after the date from which the amalgamation or withdrawal purports to take effect.

Definitions of the terms "amalgamation" and "withdrawal" are provided for use in this clause.

Division 3—Orders about invalidity or its effects**Commission may decide**

Clause 613 provides that the commission may decide whether an invalidity has occurred in relation to an organisation and may make a declaration as to whether or not such an invalidity has occurred.

Who may apply

Clause 614 provides who may apply to the commission under this part for a decision or declaration as to whether invalidity has occurred in relation to an organisation. The only persons who may apply are the organisation

itself, a member of the organisation, or another person the commission considers has a sufficient interest in the matter. Examples of persons with a sufficient interest in the matter include a creditor of the organisation in regard to a claim on the organisation or the registrar in regard to a rule amendment.

Orders about effects of invalidity

Clause 615 provides that the commission may make various orders about an invalidity where it finds, on hearing the application, that an invalidity has occurred.

The orders that the commission may make include:

- an order to remedy the invalidity; for example, the commission may order that an organisation change its meeting procedure to ensure that an invalidity is not repeated or continued;
- an order to change the consequences of the invalidity prospectively or retrospectively; for example, the commission may order that an organisation admit a person to membership retrospectively where an invalidity has resulted in that person's application for membership not being properly accepted;
- an order to validate an otherwise invalid act, matter or thing; this empowers the commission to make an order that an invalidity is validated by the operation of other provisions in this part to remove any uncertainty about the operation of those provisions in relation to particular invalidities; it also empowers the commission to validate invalidities that may fall outside this part;
- additional orders that are consequential to those listed above.

In exercising its functions under this clause the commission must not make an order that would cause substantial injustice to the following persons:

- an organisation to which the invalidity relates;
- a member or creditor of the organisation; or
- a person dealing with or who has dealt the organisation.

PART 15—AMALGAMATIONS AND WITHDRAWALS

Division 1—Preliminary

Definitions for pt 15

Clause 616 provides definitions for certain words and phrases to be applied under this part.

Division 2—Amalgamations**Amalgamation permitted only under div 2**

Clause 617 establishes that an amalgamation may be carried out only under this division.

Commission to approve proposed amalgamation

Clause 618 provides the conditions under which the commission may approve an amalgamation.

Additional regulation-making power for amalgamations

Clause 619 describes what a regulation may provide for.

Effect of amalgamation

Clause 620 describes the effect of amalgamation, including when the clause applies, the obligations of the registrar and the effect on any deregistering organisation. The amalgamated organisation must take all necessary steps to give effect to the amalgamation.

Holding office after amalgamation

Clause 621 provides for an organisation's rules to allow an officer to be an officer of the proposed amalgamated organisation subject to a number of conditions described in the clause.

This clause applies only to the rules of an amalgamated organisation or proposed amalgamated organisation if the organisation is not a corporation.

Division 3—Withdrawing from amalgamation**Requirements for withdrawal**

Clause 622 provides that a constituent part may withdraw from an amalgamated organisation subject to the specified conditions.

Commission to approve proposed withdrawal

Clause 623 provides the commission with the power to approve a withdrawal and describes the two conditions that must be met for the commission to exercise its power.

Additional regulation-making powers for withdrawals

Clause 624 describes the matters that may be dealt with by the regulation.

Registration of constituent part on withdrawal

Clause 625 provides the action that the registrar must take on the withdrawal day.

Members of constituent part may join newly registered organisation

Clause 626 provides that members of the amalgamated organisation, who are eligible to join the newly registered organisation, may join that organisation without paying a membership fee.

Division 4—Offences about amalgamation or withdrawal ballots**Obstructing conduct of ballot**

Clause 627 provides that it is an offence for a person to obstruct another person from conducting an amalgamation or withdrawal ballot.

A maximum penalty of 40 penalty units is provided.

Offences about conduct of ballots

Clause 628 provides that a person must not do specified things in relation to an amalgamation or withdrawal ballot, without lawful authority or excuse.

A maximum penalty of 80 penalty units is provided.

Disadvantaging another to induce vote or omission to vote

Clause 629 provides that a person must not cause, inflict or procure a disadvantage to anyone or anything because of or to induce certain matters.

A maximum penalty of 80 penalty units is provided.

Definitions of the terms “cause” and “disadvantage” are provided for use in this clause.

Unauthorised access to ballot paper

Clause 630 requires that a person must not do certain things, unless they have a reasonable excuse, in relation to another person’s ballot paper.

A maximum penalty of 80 penalty units is provided.

Division 5—Miscellaneous**Using resources for proposed amalgamation**

Clause 631 provides that an organisation may use its resources to support the proposed amalgamation, under specified conditions.

Costs of ballot conducted by electoral commission

Clause 632 provides that expenses in relation to a ballot for an amalgamation or withdrawal are to be paid for by the State.

No action for defamation in certain cases

Clause 633 provides that defamation proceedings do not lie against specified persons for printing or publishing a document for an amalgamation or withdrawal ballot.

Commission may resolve difficulties

Clause 634 provides that the commission, on application, may make an order to overcome any difficulty that may arise in connection with this part or to give effect to a step necessary for the amalgamation or withdrawal.

Registration of property transferred under pt 15

Clause 635 provides for the transfer and registration of property after an amalgamation or a withdrawal.

A definition is provided of the term “authorised person” for use in this clause.

Part applies despite laws or instruments

Clause 636 provides that:

- this part prevails over another Act or an instrument;
- nothing done under this part makes an organisation or other person liable for a civil wrong or a contravention of a law for a breach of a contract or confidence;
- action taken under the part does not release any surety or part of the surety’s obligations
- where consent is required by a person to give effect to any aspect of this part, that consent is deemed to be given.

A definition of the term “instrument” is provided for use in this clause.

PART 16—DEREGISTRATION***Division 1—Preliminary*****Definitions for pt 16**

Clause 637 provides for definitions of certain words and phrases to be applied under this part.

Division 2 — General deregistration provisions***Subdivision 1—Bringing deregistration proceedings*****General deregistration grounds**

Clause 638 provides the grounds on which deregistration of an organisation can be ordered by the full bench.

Who may bring deregistration proceedings

Clause 639 provides who may apply to the full bench for a deregistration order.

Subdivision 2—Deciding deregistration proceedings**Hearing on ground other than industrial conduct**

Clause 640 provides that the full bench may make a deregistration order on the basis of a ground other than industrial conduct.

Hearing on industrial conduct ground

Clause 641 provides what the full bench must do at a deregistration hearing if a ground on which the proceedings is based is an industrial conduct ground.

Deferral of deregistration for industrial conduct

Clause 642 provides that the full bench may defer making its decision regarding a deregistration order and make a deferral order instead.

When deferral order ends

Clause 643 describes the circumstances under which a deferral order ceases to have any effect.

Incidental orders and directions

Clause 644 provides that if the full bench makes a deregistration order, it may also make an order or direction to give effect to the deregistration order or an order regarding property of the deregistered organisation, whether or not anyone has applied for the order.

Division 3—Small organisations**Commission may review**

Clause 645 establishes that the commission may conduct a review of an organisation as to whether the organisation is or may be a small organisation.

Deregistration proceedings by commission

Clause 646 provides that the commission may bring a deregistration proceeding under this division against an organisation if the commission considers an organisation is or may be a small organisation. The commission must not bring a proceeding under this division more than once a year against the same organisation.

Deciding proceedings

Clause 647 requires that the commission must make a deregistration order if satisfied the organisation is a small organisation. However, the commission may decide not to make the order if satisfied there are special circumstances and the continued registration is in the public interest.

Division 4—Effects of deregistration**Application and purpose of div 4**

Clause 648 provides that this division provides the effects of a deregistration order.

When deregistration takes effect

Clause 649 provides that the deregistered organisation ceases to be an organisation from the making of the deregistration order. The registrar must record the deregistration and date of the order in the register.

Effect on corporate status

Clause 650 provides that, if a deregistered organisation was a corporation under another law, the deregistered organisation continues to be incorporated, but only under the other law. If the deregistered organisation was incorporated only because of its registration, it ceases to be incorporated and becomes an association. Its rules continue in force so far as they can be carried out or complied with, but its name is taken to be changed so as to omit the words required for a registered name under clause 424 (2).

No release of liabilities

Clause 651 provides that the deregistration does not act to satisfy a liability or penalty incurred by a deregistered organisation or a member of the deregistered organisation before the deregistration.

Effect on property

Clause 652 provides what is to happen to the property of a deregistered organisation that was incorporated because of its registration.

A definition of the term “rules” is provided for the purposes of this clause.

Effect on certain instruments

Clause 653 provides the consequences of deregistration of an organisation in relation to an award, EFA, commission order, certified agreement or industrial agreement that bound the deregistered organisation and its members before the deregistration.

PART 17—MISCELLANEOUS**Hearing to be given before making decision**

Clause 654 provides who is entitled to be heard before any decision under this chapter is made by the court, commission or registrar. However, this does not apply where a person asks the court or commission or registrar to make a stated decision. A regulation may further provide for objections to the making of a decision under this chapter or the way in which the opportunity to be heard must be given. A decision for this part includes an amendment of a rule of an organisation other than correction of a formal or clerical error and a referral.

A definition of the term “decision” is provided for use in this clause.

Notice of registrar’s decisions

Clause 655 provides the circumstances under which this section applies and requires the registrar to promptly give a notice stating the decision, reasons for the decision, right of appeal and how to start an appeal.

Falsely obtaining organisation’s property

Clause 656 provides that a person must not obtain possession of an organisation's property by false representation or imposition.

A maximum penalty of 40 penalty units is provided.

Wrongfully applying organisation’s property

Clause 657 provides what a person holding an organisation's property must not do with such property.

A penalty of 40 penalty units is provided where such prohibited conduct can be proven.

Stamp duty

Clause 658 continues the provisions of section 292 of the *Industrial Organisations Act 1997* and provides the circumstances under which stamp duty is not payable.

CHAPTER 13—OFFENCES**Disobeying penalty orders**

Clause 659 preserves section 437 of the *Workplace Relations Act 1997*, and provides that a person must obey a penalty order unless they have a reasonable excuse.

A definition for the term “penalty order” is provided for use in this clause.

Improper conduct towards member, magistrate or registrar

Clause 660 requires that a person must not engage in specified improper conduct and enables a person engaging in such conduct to be excluded from the hearing. A maximum penalty of 100 penalty units or one year’s imprisonment for improper conduct is provided.

Definitions of the terms “industrial tribunal” and “official” are provided for use in this clause.

Contempt by witness

Clause 661 preserves section 440 of the *Workplace Relations Act 1997* and makes it an offence for a person, when issued an attendance notice to appear before an industrial tribunal, not to appear; or alternatively, when appearing, to refuse to answer questions or produce records as required or refuse to be sworn.

A maximum penalty of 40 units is provided.

A definition of the term “industrial tribunal” is provided for use in this clause.

False or misleading statements

Clause 662 preserves section 441 of the *Workplace Relations Act 1997* and prohibits a person from making false or misleading statements to an official for this Bill. A person must not be prosecuted under this clause if he or she can be prosecuted under clauses 223 or 283 of this Bill.

A maximum penalty of 40 units is provided.

A definition of the term “official” is provided for use in this clause.

False or misleading documents

Clause 663 prohibits a person from giving an official a document the person knows is false or misleading, but provides the circumstances under which a person may give such a document without penalty. A person must not be prosecuted under this clause if he or she can be prosecuted under clauses 201 or 283 of this Bill.

Maximum penalty is 40 penalty units.

A definition of the term “official” is provided for use in this clause.

Obstructing officers

Clause 664 preserves section 443 of the *Workplace Relations Act 1997*, and provides the ways in which a person must not obstruct an officer performing a function or exercising a power under this Bill. A person must not be prosecuted under this clause if the person can be prosecuted under clause 283 of this Bill.

A maximum penalty of 40 penalty units is provided.

A definition of the term “officer” is provided for use in this clause.

Avoiding Bill’s obligations

Clause 665 requires that an employer, to intentionally avoid an obligation to pay an employee for a public holiday or leave, must not dismiss the employee or interrupt the employee’s continuity of service if the employee’s entitlement for long service leave is worked out under clause 47. If the court finds that an employer has contravened the clause regarding long service leave, the court must order, in addition to any penalty, payment of proportionate long service leave.

A maximum penalty of 40 penalty units is provided.

Definitions of the terms “dismiss”, “leave” and “obligation” are provided for use in this clause.

Non-payment of wages

Clause 666 provides that an employer must pay an employee's wages to the employee or in accordance with an employee's written direction. Details of the offence of non-payment of wages and the penalties a magistrate may impose upon hearing a complaint regarding non-payment of wages are provided.

A maximum penalty of 200 penalty units is provided.

Accepting reduced wages

Clause 667 preserves section 446 of the *Workplace Relations Act 1997* and 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. The return from the employee to the employer of wages payable under an industrial instrument or permit is evidence that the employee has entered into an agreement to accept reduced wages.

A maximum penalty of 16 penalty points is provided.

Publishing statement about employment on reduced wages

Clause 668 preserves section 447 of the *Workplace Relations Act 1997* and 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. It further provides the circumstances under which proceedings for an offence under this section can be commenced and details the circumstances which must exist before proceedings can be commenced against a proprietor of a newspaper or advertising medium.

A maximum penalty of 16 penalty units is provided.

Definitions of the terms "publish" and "publisher" are provided for use in this clause.

Offence to offer or accept premiums

Clause 669 preserves section 448 of the *Workplace Relations Act 1997* and prohibits, subject to the *Private Employment Agencies Act 1983*, a person from offering, demanding, asking, accepting or agreeing to accept an employment premium. If the court finds that a defendant is guilty of accepting a premium it 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.

A definition of the term “employment premium” is provided for use in this clause.

Contraventions of industrial instruments

Clause 670 requires that a person must not contravene an industrial instrument and provides the penalties for first and subsequent offences under this clause.

Injunction restraining contraventions

Clause 671 provides that where a person is found guilty of contravening an industrial instrument, permit or this Bill, and the court is satisfied the contravention consisted of wilful action or default of the person, the court may grant specified injunctions. The person must obey the injunction.

A maximum penalty of 200 penalty units is provided for failure to do so.

Persons considered parties to offences

Clause 672 preserves section 451 of the *Workplace Relations Act 1997* and 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 Bill 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 368, 406 and 666

Clause 673 preserves section 452 of the *Workplace Relations Act 1997* and provides the circumstances when executive officers are liable in conjunction with the corporation for offences under this Bill, and what defence the executive officer may offer regarding the offence.

A definition of “executive officer” for this clause is provided.

Attempt to commit offence

Clause 674 preserves section 453 of the *Workplace Relations Act 1997* and provides that a person who attempts to commit an offence, commits an offence and is liable to the same penalty as if the attempted offence had been committed.

References to making false or misleading statements

Clause 675 provides that a reference to a person making a statement knowing that it is false or misleading includes a reference to the person making the statement being reckless about whether the statement is false or misleading.

References to engaging in conduct

Clause 676 provides that a person engaging in conduct includes a reference to a person being, directly or indirectly, a party to or concerned in the conduct.

CHAPTER 14—LEGAL PROCEEDINGS**General application of jurisdictional provisions**

Clause 677 preserves section 454 of the *Workplace Relations Act 1997*. It establishes that the provisions of the Bill providing 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

Clause 678 provides the evidentiary nature in proceedings of specified matters including appointments, signatures and documents.

Confidential material tendered in evidence

Clause 679 preserves section 456 of the *Workplace Relations Act 1997* and applies to records tendered to the court or commission that relate to the person's trade secrets or the financial position of a party or witness. The clause provides for the confidentiality of these records and for action that the court, commission or registrar may take.

A definition of the term "expert witness" is provided for use in this clause.

Evidentiary value at large of official records

Clause 680 preserves section 457 of the *Workplace Relations Act 1997* and provides 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.

The clause provides details of other specified documents of which copies are admissible as evidence.**Proof of certain facts by statement**

Clause 681 preserves section 458 of the *Workplace Relations Act 1997* and provides for the proof of specified matters by a statement in a complaint or other process by which the proceeding started.

Evidentiary value of certificate of trustee of superannuation fund

Clause 682 preserves section 459 of the *Workplace Relations Act 1997*, and provides for a certificate of a trustee of an occupational superannuation scheme to be proof of the amount of contributions that should have been paid into the scheme and the amount of return these contributions would have attracted.

A definition of the term “trustee’s certificate” is provided for use in this clause.

Offence proceedings generally

Clause 683 provides that offences under this Bill are to be heard by the court or a magistrate within the limits of their jurisdiction. A proceeding before a magistrate is to be taken in a summary manner and the Industrial Magistrate’s Court is constituted by a magistrate sitting alone.

Provision is made 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.

The time limits within which proceedings for an offence must commence are prescribed.

Organisations may start proceedings

Clause 684 preserves section 461 of the *Workplace Relations Act 1997* and provides that an organisation may commence proceedings for contraventions of industrial instruments, permits or offences under this Bill and recover money on behalf of an employee.

Recovering amounts from organisations

Clause 685 preserves section 462 of the *Workplace Relations Act 1997* and 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.

A definition of the term “property” is provided for use in this clause.

CHAPTER 15—EMPLOYEES IN EMPLOYMENT OF STATE**Application of Act to State**

Clause 686 provides that this Bill binds the State, except in relation to certain specified matters.

Conflict between industrial instruments etc. and statutory decision

Clause 687 resolves inconsistencies between specified documents, including awards, agreements and directives.

A definition of the term “directive” is provided for use in this clause.

Protection of public property and officers

Clause 688 preserves section 465 of the *Workplace Relations Act 1997* and 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 decisions of the court, commission or a 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.

A definition of the term “execution or attachment” is provided for use in this clause.

Ambit of reference to State

Clause 689 preserves section 466 of the *Workplace Relations Act 1997* and 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 immunities 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. A definition of the term “department or part of a department” is provided for use in this clause.

Representation of public sector units

Clause 690 preserves section 467 of the *Workplace Relations Act 1997* and provides who must represent a public sector unit in its role as an employer in an industrial cause in the court, commission or an Industrial Magistrate’s Court. A definition of the term “industrial tribunal” is provided for use in this clause.

Industrial cause affecting diverse employees

Clause 691 preserves section 468 of the *Workplace Relations Act 1997* and 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. 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 16—INDUSTRIAL RELATIONS ADVISORY COMMITTEE

Committee established

Clause 692 establishes the industrial relations advisory committee, and provides the composition of the committee and how members of the committee are appointed.

Functions of committee

Clause 693 specifies the committee's functions, including the types of matters it is to investigate and on which it is to report to the Minister. It provides the people with whom the committee must consult and confer in the execution of its functions and specifies that the committee must consider the attainment of the objects of this Bill.

CHAPTER 17—GENERAL

Employees working in and outside State

Clause 694 preserves section 469 of the *Workplace Relations Act 1997* and applies where an employer with a workplace in Queensland engages an employee in Queensland. Where the work of this employee is performed partly in Queensland and partly in some other State, the employment is bound by the relevant Queensland industrial instrument for the full period of the employment including that outside Queensland.

Student's work permit

Clause 695 provides that a student undertaking tertiary studies may apply to the registrar for a permit to work in a particular calling for a particular period. It must be demonstrated by the applicant that the period of work is necessary to complete the course.

The conditions of the permit operate to the exclusion of any provision contained in an award or certified agreement.

Aged or infirm persons permits

Clause 696 provides that an application may be made to the commission for a permit for an aged or infirm person to work in a calling for less than the wages prescribed by an industrial instrument.

The relevant employee organisation must be notified of the application and any objections to the granting of the permit must be heard by the commission.

The conditions of the permit operate to the exclusion of any provision contained in an award or certified agreement.

Copy of award and certified agreement to be displayed

Clause 697 provides for the display of a true copy of an applicable industrial agreement (other than a QWA) in the workplace.

A maximum penalty of 20 penalty units is provided.

A definition of the term “workplace” is provided for use in this clause.

Incorporating amendments in awards, certified agreements or orders

Clause 698 provides that the registrar may reprint and consolidate an award, certified agreement or order when amended.

Obsolete industrial instrument

Clause 699 provides a procedure by which the registrar can cancel obsolete industrial instruments.

Certificate of employment on termination

Clause 700 preserves section 477 of the *Workplace Relations Act 1997* and provides that, on termination of employment (by either the employer or the employee), the employer must give the former employee a signed certificate providing details required by a regulation.

A definition of the term “terminated” is provided for use in this clause.

False pretences relating to employment

Clause 701 preserves section 478 of the *Workplace Relations Act 1997* and provides that a person is prohibited from specified false pretences in relation to employment.

A person’s liability to be dealt with for an offence under this clause does not affect their liability under the Criminal Code for forgery or false pretences. However, a person cannot be dealt with under both this Bill and the Criminal Code.

Protection from liability

Clause 702 provides 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 clause 350(4). If this provision prevents civil liability from attaching to a person, it attaches instead to the State.

A definition of the term “official” is provided for use in this clause.

Payments to financially distressed

Clause 703 provides for the payment from the unclaimed moneys fund 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 even though payment has been made from the fund. If the employee subsequently receives remuneration, he or she is to make payment to the fund. Definition of the term “remuneration” is provided for use in this clause.

Notices and applications to be written

Clause 704 preserves section 481 of the *Workplace Relations Act 1997* and provides that any notices or applications that are required under this Bill must be in writing, unless otherwise provided.

Inaccurate descriptions

Clause 705 preserves section 482 of the *Workplace Relations Act 1997* and 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 that is sufficiently clear to be understood.

Confidentiality of information

Clause 706 preserves section 483 of the *Workplace Relations Act 1997* and 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 specified circumstances. A maximum penalty of 16 penalty units is provided.

Application of Act generally

Clause 707 preserves section 484 of the *Workplace Relations Act 1997* and 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 that it purports to apply to the person or member of the class about the provision’s subject matter.

This Bill does not create rights, privileges or benefits for a period of service as an employee if similar rights etc. were given or received by the person under the repealed Act.

Approved forms

Clause 708 provides that forms may be used by or in the court, commission, Industrial Magistrates Court or registry when approved by the president. The chief executive may approve forms for use in other circumstances. Any forms prescribed in the *Industrial Court (Industrial Organisations) Rules 1990* or the *Industrial Court Rules 1997* for use under the rules may continue to be used until 1 July 2001, however, the provision relating to the previous Acts expires on 2 July 2001.

Regulation-making power

Clause 709 provides that the Governor in Council may make regulations and specifies some of the matters on which regulations may be made.

CHAPTER 18—SAVINGS AND REPEALS**Savings**

Clause 710 provides that a person prescribed under any Act to be an employee continues to be an employee within the meaning of this Bill.

An instrument (subject to subclause (2)) continues in force as if it had been made, given, done, granted or approved under this Bill. This instrument may be amended, revoked or suspended under this Bill.

If a proceeding was commenced under a provision of *the Workplace Relations Act 1997* or the *Industrial Organisations Act 1997*, it is to be continued under the provisions of the repealed Acts.

Regulation and rules to continue

Clause 711 provides for the continued operation of:

- the *Workplace Relations Regulation 1997*;
- the *Industrial Court (Industrial Organisations) Rules 1990*; and
- the *Industrial Court Rules 1997*.

These instruments are to be read with the changes necessary to make them consistent with this Bill.

The *Industrial Organisations Regulation 1997* continues in force, and may be amended, as if it had been made under this Bill.

Repeals

Clause 712 provides for the repeal of:

- the *Workplace Relations Act 1997*; and
- the *Industrial Organisations Act 1997*.

The repeal of the Acts can be made by one or more proclamations.

**CHAPTER 19—SAVING AND TRANSITIONAL PROVISIONS
FOR INDUSTRIAL RELATIONS ACT 1999****PART 1—EXISTING INDUSTRIAL AGREEMENTS****Existing industrial agreement continues**

Clause 713 provides for the continued effect of industrial agreements that are in force immediately before the commencement of this clause.

Provisions are made for the amendment and termination of industrial agreements.**Industrial agreement displaced by QWA**

Clause 714 provides that if a QWA comes into operation, the industrial agreement will stop having effect in relation to the employee.

PART 2—EXISTING CERTIFIED AGREEMENTS**New termination provisions for existing certified agreements**

Clause 715 provides for the continued effect of certified agreements that are in force immediately before the commencement of this clause and provides for the manner in which they can be terminated.

EFAs that prevail over certified agreements

Clause 716 provides for the circumstances in which an EFA will override a certified agreement.

Certified agreements that prevail over EFAs

Clause 717 provides for the circumstances in which a certified agreement will override an EFA.

PART 3—EXISTING EFAS

Existing EFA continues

Clause 718 provides for the continued effect of EFAs after the commencement of this clause. The clause also provides that certain sections of the *Industrial Relations Act 1990* continue to apply to EFAs.

EFA displaced by QWA and determination

Clause 719 provides for the circumstances in which a QWA or a determination under clause 149 will override an EFA.

PART 4—UNLAWFUL DISMISSALS

Dismissals before commencement of this section

Clause 720 provides that a dismissal that occurred before the commencement of this clause continues to be dealt with according to the provisions of the repealed Act.

PART 5—REPRESENTATION RIGHTS OF EMPLOYEE ORGANISATIONS

Applications under the repealed Act, s 293

Clause 721 provides that, for an application made under clause 293 of the *Workplace Relations Act 1997*, that section continues to have application, and any order made as a result of the hearing has effect as if it had been made before the section was repealed.

PART 6—REFERENCES AND APPOINTMENTS

References to repealed Act or *Industrial Organisations Act 1997*

Clause 722 provides that, in any Act or document, a reference to the *Workplace Relations Act 1997* or *Industrial Organisations Act 1997* is taken to be a reference to this Bill, if the context permits.

Appointments continue

Clause 723 provides for the continuation of certain appointments made under the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997*.

PART 7—VETE ORDERS AND DETERMINATIONS

Proceedings commenced under the *Vocational Education, Training and Employment Act 1991*

Clause 724 provides for ongoing proceedings to be continued and finished as if they had been started under the corresponding provisions of this Bill.

Orders and determinations under the *Vocational Education, Training and Employment Act 1991*

Clause 725 provides for:

- an order of the commission made under sections 83, 86(2) or 87(5) of the *Vocational Education, Training and Employment Act 1991*;
- a determination by the State Training Council under sections 86(5) or 87(2) of the *Vocational Education, Training and Employment Act 1991*;
- an order of the commission made under section 89(1) of the *Vocational Education, Training and Employment Act 1991*

to continue to have effect after the commencement of this Bill.

PART 8—ORGANISATIONS**Organisations with dual corporate status**

Clause 726 provides that this clause applies to an organisation that was incorporated under the *Industrial Organisations Act 1997* and was also:

- a corporation under the Corporations Law, section 57A;
- an incorporated association under the *Associations Incorporation Act 1981*; or
- incorporated under a law of the State.

Two years after the commencement, these corporations lose the incorporated status that they obtained under the former incorporation provisions.

An organisation may apply to the registrar for an earlier cancellation of its incorporation under the former incorporation provisions. In considering the cancellation, the registrar may refer the application to the commission to resolve any difficulties that may arise.

A definition of the term “former incorporation provision” is provided for use in this clause.

Continued registration of organisations

Clause 727 provides for the continued registration of organisations that were registered immediately before the commencement of this Bill.

Applications for exemption from membership of an organisation

Clause 728 provides for continued operation of the procedure under the *Industrial Organisations Act 1997* for the hearing of an application for exemption from membership of an organisation until a regulation is made.

Amalgamations

Clause 729 provides for the continued operation of certain sections of the *Industrial Organisations Act 1997*, until a regulation is made to replace the specified sections.

Withdrawals from amalgamations

Clause 730 preserves certain sections of the *Industrial Organisations Act 1997* until such time as a regulation is made that is expressed to replace these sections.

Election and ballot expenses

Clause 731 provides for the continued operation, in specified circumstances, of specified sections of the *Industrial Organisations Act 1997*.

Political objects fund

***Clause 732* provides interim provisions, and the continued operation of section 227 of the *Industrial Organisations Act 1997*, if an organisation conducted a political objects fund under the *Industrial Organisations Act 1997*.**

CHAPTER 20—AMENDMENT OF PUBLIC SERVICE ACT 1996**Act amended**

Clause 733 provides that this chapter amends the *Public Service Act 1996*.

Amendment of s 22 (Application of Act to certain public sector units etc.)

Clause 734 amends section 22 by replacing the term “remuneration” with “overall employment conditions”. The insertion of the concept of “overall employment conditions”, which means “remuneration and conditions of employment”, will overcome any ambiguity and ensure that an employee’s total overall benefits cannot be reduced. This amendment will also be consistent with amendments to sections 33 and 70.

The definition of remuneration is also omitted for this section, as the definition of “overall employment conditions” is being inserted into the dictionary.

Amendment of s 33 (Functions of commissioner)

Clause 735 amends section 33 by reflecting changes to Ministerial responsibilities under the *Administrative Arrangements Order (No. 1) 1998*, which gave the Minister for Employment, Training and Industrial Relations (the industrial relations Minister) responsibility for public sector remuneration and other public sector employment matters.

Subsections (b), (e) and renumbered (m) are amended by replacing “employment” with “workforce practices”. Employment matters are now the responsibility of the industrial relations Minister. The commissioner has the responsibility for workforce practices that aim to improve organisational performance, by examining such matters as organisational climate and morale, and flexible work practices.

Subsection (f) is amended to clarify the function of the Public Service Commissioner with respect to ensuring that the interests of the Government as public service employer are protected, only in so far as those interests relate to the other functions of the commissioner under the section.

Subsection (g) is amended to acknowledge that the Public Service Commissioner should retain responsibility for overall remuneration and employment conditions for the senior executive service, senior officers and public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer.

Subsections (h) to (o) are renumbered as subsections (i) to (p).

A new subsection (h) is inserted that recognises the responsibilities of the Public Service Commissioner in terms of public service management, agency performance, workforce practices and their links to public service remuneration and employment conditions.

Subsection (n) is amended to recognise the commissioner’s responsibilities to undertake or participate in negotiations affecting public service employees, where those negotiations relate to the commissioner’s functions under this section.

Amendment of s 34 (Rulings of industrial relations Minister and commissioner)

Clause 736 amends section 34(1) to (3) to generally reflect changes to Ministerial responsibilities under the *Administrative Arrangements Order (No. 1) 1998*, which gave the industrial relations Minister responsibility for public sector remuneration and other public sector employment matters. The clause reflects the power of the Minister to issue directives and guidelines for those matters relevant to the additional ministerial responsibilities given under the Order. The power of the Public Service Commissioner to issue directives and guidelines has been clarified to those matters relating to the commissioner's functions under the Act, as well as overall remuneration and employment conditions for the senior executive service, senior officers and public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer.

Subsections (4) to (6) are renumbered as subsections (3) to (5).

Amendment of s 69 (Basis of employment—tenure or contract)

Clause 737 amends section 69 and has the effect of providing that both the industrial relations Minister and the Public Service Commissioner may decide that an appointment may be made on a contract for a fixed term.

The clause also reflects the division of responsibilities between the industrial relations Minister and the Public Service Commissioner in terms of the functions under section 33. The Public Service Commissioner will be responsible for determining, by directive, whether an appointment may be made on a contract for a fixed term for officers whose remuneration under the contract will be equal to, or higher than, the remuneration payable to a senior officer.

Amendment of s 70 (Basis of employment for contract employment)

Clause 738 amends section 70(6) to clarify and strengthen the principle that employees should not be disadvantaged by their appointment on a contract for a fixed term. The overall employment conditions of the contract must not, on balance, be less than those prescribed if the officer was appointed on a tenured basis. The words "on balance" provide flexibility to allow the parties to negotiate an overall package of conditions that, on balance, are not less than the conditions that would exist if the employee were a tenured officer.

Subsection (7) is amended to reflect the correct title of the Queensland Industrial Relations Commission.

Subsection (8) is amended to replace “remuneration” with “overall employment conditions”, which is to be defined in the dictionary to mean remuneration and conditions of employment. This is consistent with amendments to section 22.

Amendment of s 81 (Action because of surplus)

Clause 739 amends section 81(2) the effect of which is to allow both the industrial relations Minister and the Public Service Commissioner to issue directives, in accordance with their respective responsibilities under the Act, about surplus employees, i.e. the commissioner may issue directives for deployment or redeployment of employees and the Minister may issue directives for determining the quantum of severance payments applicable to certain surplus employees.

Amendment of s 85 (Mental or physical incapacity)

Clause 740 amends section 85(1) to provide the ability for an employing authority to direct a public service employee to submit to medical examination, even if the employee is on approved leave. The current subsection (1)(a) specifies that the public service employee must be absent from duty without approved leave or the employing authority is reasonably satisfied that the person is not performing his or her duties satisfactorily. If an employee is on approved leave (eg. an employee has accrued sick leave and continues to supply medical certificates), even if such leave has been for an extended period, the employing authority is unable to direct that employee to submit to medical examination if the authority reasonably suspects that the employee’s absence is caused by mental or physical illness or disability. Presently, the only way to address this situation is for the employing authority not to approve the leave, thereby opening the way for the employee to be ‘absent from duty without approved leave’, but also causing the employee to lose any entitlement to salary or wages.

Amendment of s 114 (Application of Act to general and temporary employees)

Clause 741 amends sections 114(1) and 114(3) to allow both the industrial relations Minister and the Public Service Commissioner, in accordance with their respective responsibilities under the Act, to issue directives which are to apply to general and temporary employees.

Replacement of s 117 (Inconsistency between directives and industrial agreements)

Clause 742 omits section 117 and replaces it with a new section. In terms of the amendments to section 33, the Public Service Commissioner's responsibilities will be confined to public service management issues and not remuneration and conditions of employment (other than for the senior executive service, senior officers and officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer). Public service remuneration and conditions of employment for other employees will be the responsibility of the industrial relations Minister. The clause provides that directives of the industrial relations Minister will not prevail over an industrial agreement unless the directive otherwise provides. As these directives will be concerned with industrial relations issues, such as public service remuneration and employment conditions, they will be open to the jurisdiction of the Industrial Relations Commission, unless the directive itself states otherwise.

Amendment of s 118 (Regulation-making power)

Clause 743 amends section 118(3) to replace "reserved matters" with "remuneration and conditions of employment". This reflects the additional responsibilities bestowed on the industrial relations Minister in terms of the *Administrative Arrangements Order (No. 1) 1998*. The dictionary has also been amended to remove the definition of "reserved matters".

Amendment of s 136 (Existing regulations)

Clause 744 amends this section to insert after "this Act", the phrase "until the commencement of the amendment to section 34 (2) under the *Industrial Relations Act 1999*."

Amendment of sch 1 (Public service offices and their heads)

Clause 745 inserts the Industrial Registry and Industrial Registrar into schedule 1 (public service offices and their heads).

Amendment of sch 3 (Dictionary)

Clause 746 amends the dictionary to insert a definition for "overall employment conditions", to reflect the amendments contained in sections 22, 33 and 70, to mean remuneration and conditions of employment.

CHAPTER 21—CONSEQUENTIAL AMENDMENTS**Consequential amendments**

Clause 747 provides that schedule 3 amends the Acts that it mentions.

SCHEDULE 1**INDUSTRIAL MATTERS**

Provides an explanation of what is considered to be an industrial matter.

SCHEDULE 2**APPOINTMENTS AND PROCEDURES****PART 1—PRESIDENT, VICE PRESIDENT, COMMISSIONER ADMINISTRATOR AND COMMISSIONERS**

Provides for the salary and allowances, superannuation benefits and leave of absence of the president, commissioner administrator, vice president and commissioners.

PART 2—REGISTRAR

Provides that, if the person appointed as registrar was immediately before the appointment a public service officer, the person retains all the rights that have accrued to the person because of their employment as a public service officer.

The clause also provides for leave of absence of the registrar and for resignation of the registrar.

PART 3—INSPECTORS

Provides for appointment conditions for inspectors, limitation on the powers of inspectors and conditions relating to inspectors' identity cards.

PART 4—PRESIDENT'S ADVISORY COMMITTEE

Provides for the term of office, remuneration of members and timing of meetings of the president's advisory committee.

PART 5—INDUSTRIAL RELATIONS ADVISORY COMMITTEE

Provides for the term of office, appointment of deputies to the members, remuneration of members and the conduct of committee meetings.

SCHEDULE 3**CONSEQUENTIAL AMENDMENTS**

This schedule contains complementary amendments to other Acts required due to changes made in this Bill. Except for those listed below, all amendments to Acts in this schedule have references to the *Industrial Relations Act 1990*, the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997* replaced by a reference to the *Industrial Relations Act 1999*.

Other clauses have replaced sections of the Acts, where necessary, to accord with current drafting practice.

JUDGES (SALARIES AND ALLOWANCES) ACT 1967

Provides for salaries and allowances for the president and vice president of the Industrial Court and other members of the commission.

VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 1991

The Vocational Education, Training and Employment Act 1991 has been amended to exclude specific provisions dealing with employment and related conditions of employment for apprentices and trainees, under registered training agreements. These provisions are included in the *Industrial Relations Bill 1999*.

Other sections of the Act that are amended:

Section 90

Section 90 is renamed “Effect of death or retirement of partner or transfer of business”.

The clause introduces a new subclause that deems that the training agreement is assigned to the new employer on transfer of the business.

The State Training Council must be notified of the assignment within 21 days of the transfer of the business.

Section 98

This clause omits the previous section and inserts new provisions that give the State Training Council additional powers in relation to the cancellation of training agreements. These powers are in addition to the powers in sections 96 and 97 of the *Vocational Education, Employment and Training Act 1991*.

Section 124 (3) to (6)

Allows for appeals against decisions of the Vocational Education, Training and Employment Commission. The requirements for an appeal are also specified.

Section 124 (11)

Amends the Act by direct appeals from the Industrial Relations Commission or an industrial magistrate to the Industrial Court.

Section 124(12)

Amends the Act by replacing the phrase “or the Minister” with the phrase “Industrial Relations Commission or industrial magistrate”.

Section 124

Amends the Act by inserting a definition of “Industrial Magistrates Court” for use in this section.

Section 124A

Inserts a new section that provides the orders that an industrial magistrate or the Industrial Relations Commission may make after hearing an appeal.

SCHEDULE 4**AMENDMENT OF MODEL ELECTION RULES**

Schedule 4 amends the model election rules that are contained in schedule 4 of the *Industrial Organisations Regulation 1997*.

SCHEDULE 5**DICTIONARY**

Schedule 5 defines terms for the purposes of this Bill. Terms already defined and “signposted” in the body of the Bill are repeated and cross-referenced in the Dictionary.