

Queensland



# INDUSTRIAL RELATIONS ACT 1990

**Reprinted as in force on 3 August 1993  
(includes amendments up to Act No. 32 of 1993)**

**Reprint No. 1 revised edition**

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# Information about this reprint

This Act is reprinted as at 3 August 1993. As required by section 5 of the *Reprints Act 1992*, it—

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

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- correct spelling, and use different spelling consistent with current legislative drafting practice, as permitted by section 26 of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- reorder definitions as permitted by section 30 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 37, 39 and 40 of that Act;
- omit historical notes as permitted by section 42 of that Act;
- correct minor errors as permitted by section 44 of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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

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

# Queensland



## INDUSTRIAL RELATIONS ACT 1990

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	21
2	Commencement .....	21
3	Objects .....	21
4	Application .....	22
<b>PART 2—INTERPRETATION</b>		
5	Meaning of terms .....	23
6	Industrial matter .....	32
7	Construction of Act etc. ....	35
<b>PART 3—INDUSTRIAL COURT</b>		
8	Preservation of Court .....	35
9	Membership of Court .....	35
10	Exercise of Court's jurisdiction .....	36
11	President's tenure of office .....	36
12	Acting President .....	37
13	Jurisdiction of Court .....	37
14	Court's jurisdiction exclusive .....	39
15	Binding nature of Court's decisions .....	39
16	Court may refuse to proceed .....	40
17	Proceedings in Full Industrial Court .....	40
18	President's annual report .....	40

**PART 4—INDUSTRIAL RELATIONS COMMISSION*****Division 1—Establishment of Commission***

19	Preservation of Commission . . . . .	41
20	Membership of Commission . . . . .	41
21	Exercise of Commission's jurisdiction . . . . .	42
22	Decision of Full Bench . . . . .	42
23	Control of Commission's affairs . . . . .	42
24	Replacement for Chief Commissioner . . . . .	43
25	Term of appointment of Commissioners . . . . .	43
26	Continuance in Commissioner's office for limited purpose . . . . .	44
27	Acting Commissioners . . . . .	44
28	Remuneration of Commissioners . . . . .	44
29	Pension benefits of Commissioners . . . . .	45
30	Leave of absence to Commissioners . . . . .	47

***Division 2—Jurisdiction of Commission***

31	General jurisdiction of Commission . . . . .	48
32	Commission may refuse to proceed . . . . .	50
33	Commission's jurisdiction re awards . . . . .	50
34	Provisions affecting exercise of award jurisdiction . . . . .	51
35	Bonus payments . . . . .	52
36	General rulings . . . . .	53
37	Statement of policy . . . . .	54
38	Jurisdiction of Commission exclusive . . . . .	54

***Division 3—Specific powers of Commission***

39	Power to vary or void contracts . . . . .	55
40	Power to order superannuation contribution to particular fund . . . . .	56
41	Power to grant injunctions . . . . .	57
42	Direction or order of Commission in relation to strike or lockout . . . . .	58
43	Demarcation disputes . . . . .	58
44	Organisation coverage . . . . .	59
45	Procedures for reopening . . . . .	60
46	References to Full Bench . . . . .	61

---

47	Case stated to Court .....	62
48	Remission to Industrial Magistrate .....	62
49	Power to enter and inspect .....	63
<b>PART 5—INDUSTRIAL MAGISTRATES</b>		
50	Office of Industrial Magistrate .....	63
51	Industrial Magistrates Court .....	64
52	Jurisdiction of Industrial Magistrate .....	64
53	Power of Industrial Magistrate concerning unpaid superannuation contribution .....	65
54	Industrial Magistrate's powers on remission .....	67
55	Exclusive nature of Industrial Magistrates' jurisdiction .....	67
<b>PART 6—INDUSTRIAL REGISTRAR'S OFFICE</b>		
56	Establishment and role of office .....	68
57	Industrial Registrar and staff .....	68
58	Functions etc. of Industrial Registrar .....	68
59	Functions etc. of Assistant Industrial Registrar .....	69
<b>PART 7—ARRANGEMENTS WITH OTHER INDUSTRIAL AUTHORITIES</b>		
60	Commissioner may hold other appointment .....	70
61	Appointment of Commonwealth official as Commissioner .....	70
62	Role of appointee under s.61 .....	71
63	Reference of matter to Commonwealth official .....	71
64	Coordination and joint sessions of authorities .....	72
65	Restriction on Chief Commissioner's authority .....	74
66	Powers etc. vested in Commission by other jurisdictions .....	74
<b>PART 8—PROCEEDINGS OF INDUSTRIAL COURT, INDUSTRIAL COMMISSION, INDUSTRIAL MAGISTRATES AND INDUSTRIAL REGISTRAR</b>		
67	Initiation of proceedings—exercise of powers .....	74
68	General powers .....	75
69	Protection of proceedings .....	77
70	Basis of procedures and decisions of the Commission and Industrial Magistrates .....	78

*Industrial Relations Act 1990*


---

71	Proceedings of Commission or Industrial Magistrate not to be questioned . . . . .	78
72	Powers incidental to exercise of jurisdiction . . . . .	79
73	Power to obtain data and expert evidence . . . . .	80
74	Competence and compellability of witnesses . . . . .	81
75	Service of process . . . . .	81
76	Evidentiary provisions affecting proceedings under Act . . . . .	82
77	Confidential material tendered in evidence . . . . .	83
78	Evidentiary value at large of official records . . . . .	85
79	Proof of certain facts by averment . . . . .	86
80	Evidentiary value of certificate of trustee of occupational superannuation scheme . . . . .	87
81	Certificate evidence in proceedings concerning holding of office in industrial organisation . . . . .	87
82	Crown employee to furnish information . . . . .	87
83	Representation of parties . . . . .	88
84	Costs . . . . .	89
85	Intervention as of right . . . . .	90
86	Adjournment by Industrial Registrar . . . . .	90
87	Reserved decisions . . . . .	90
88	Extent of decisions and their execution . . . . .	91
89	Enforcement of Commission's orders . . . . .	92
90	Remedies on show cause . . . . .	93
91	Filing Industrial Magistrate's decision . . . . .	95
92	Recovery of moneys under orders . . . . .	95
93	Rules of court . . . . .	95
94	Directions as to practice . . . . .	97
<b>PART 9—APPEALS</b>		
95	Appeal to Supreme Court from Industrial Court . . . . .	97
96	Appeal to Industrial Court . . . . .	97
97	Court's discretion on penalty on appeal . . . . .	99
98	Appeals to Industrial Commission . . . . .	99
99	President may stay decisions when leave sought . . . . .	100

---

100	Decision on appeal against single Commissioner final . . . . .	101
101	Appeal against single Commissioner requires appellant's election . . . . .	101
102	Appeal to Commission against stand downs . . . . .	101
103	Nature of appeal . . . . .	102
104	Time limited for appeal . . . . .	103

**PART 10—AWARDS AND INDUSTRIAL AGREEMENTS**

*Division 1—Awards*

105	Form, effect and term of award . . . . .	103
106	Persons bound by award . . . . .	104
107	Exemptions . . . . .	104

*Division 2—Certified agreements*

108	Objects of Division . . . . .	105
109	Definitions . . . . .	106
110	Agreements may be made about industrial matters . . . . .	106
111	Minister may intervene in certain cases . . . . .	107
112	Certification of agreements under this Division . . . . .	107
113	When Commission may refuse to certify agreements . . . . .	109
114	Other options open to Commission . . . . .	109
115	Procedures for preventing and settling disputes . . . . .	110
116	Operation of certified agreements . . . . .	110
117	Party may retire from a certified agreement . . . . .	111
118	Extension of certified agreements . . . . .	111
119	Effect of certified agreements . . . . .	111
120	Certified agreements may be varied or terminated by Full Bench . . . . .	112
121	Certified agreements may be terminated by parties . . . . .	113
122	Enforcement of certified agreements . . . . .	114

*Division 3—Industrial agreements*

123	Procedure for making agreement . . . . .	114
124	Agreement subjected to conditions . . . . .	115
125	Registration of agreement . . . . .	116
126	Requirements of agreement . . . . .	116
127	Continuance of agreement . . . . .	116

---

128	Persons bound by agreement . . . . .	117
129	Retirement of parties from agreement . . . . .	117
130	Addition of parties to agreement . . . . .	117
	<i>Division 4—Powers relevant to awards and industrial agreements</i>	
131	Powers of Commission re awards . . . . .	118
132	Powers of Commission re agreements . . . . .	119
133	Agreement may be declared a common rule . . . . .	119
134	Agreement may be renewed, varied etc. . . . .	120
	<i>Division 5—Provisions common to awards and industrial agreements</i>	
135	Components of wage rates . . . . .	120
136	Preservation of percentage rate values . . . . .	121
137	Enforceability of awards and agreements . . . . .	121
138	Effect of appeal decisions on awards or agreements . . . . .	121
139	Inconsistency between awards, agreements and contracts . . . . .	121
	<b>PART 11—GENERAL CONDITIONS OF EMPLOYMENT</b>	
	<i>Division 1—Conditions other than leave conditions</i>	
140	Hours of work . . . . .	122
141	Public holidays . . . . .	124
142	Employee stood down in December, re-employed in January . . . . .	126
143	Stand down of employee . . . . .	126
144	Employees working both in and outside State . . . . .	126
145	Student's work permit . . . . .	127
146	Aged or infirm persons . . . . .	127
147	Preference . . . . .	128
148	Grievance or dispute settling procedures . . . . .	128
	<i>Division 2—Conditions for sick and annual leave</i>	
149	Sick leave . . . . .	130
150	Sick leave accumulated during apprenticeship or traineeship . . . . .	131
151	Calculation of sick leave . . . . .	131
152	Annual leave . . . . .	133
153	Leave accumulated during apprenticeship or traineeship . . . . .	134
154	Payment for annual leave . . . . .	135



---

155	Payment in lieu of annual leave . . . . .	135
156	Pro rata annual leave . . . . .	136
<b><i>Division 3—Conditions for long service leave</i></b>		
157	Source of long service leave entitlement . . . . .	136
158	Commission’s jurisdiction to approve conditions for long service leave .	137
159	Entitlement to long service leave . . . . .	138
160	Continuity of service generally . . . . .	139
161	Determination of length of continuous service . . . . .	141
162	Service performed in apprenticeship or traineeship . . . . .	143
163	Service in Defence Forces . . . . .	143
164	Continuous service of casual employees . . . . .	143
165	Time and manner of taking long service leave . . . . .	144
166	Payment for long service leave . . . . .	145
167	Payment in lieu of long service leave . . . . .	147
168	Inquiry upon re-employment of employee during long service leave . . . .	148
169	Long service leave in meat works and sugar industry . . . . .	148
170	Long service leave for other seasonal workers . . . . .	152
171	Long service leave for employees not governed by awards etc. . . . .	152
172	Recognition of certain exemptions . . . . .	154
173	Person may be “employer” and “employee” . . . . .	155
<b><i>Division 4—Reinstatement and re-employment</i></b>		
174	Application for reinstatement, re-employment or compensation . . . . .	155
175	Orders on application . . . . .	156
176	Effect of dismissal relief order on leave . . . . .	157
177	Costs for frivolous or vexatious applications . . . . .	157
178	Further orders against employer . . . . .	157
<b><i>Division 5—Protection of injured employees</i></b>		
179	Interpretation of Division . . . . .	158
180	Wages to be paid for the day employee injured . . . . .	159
181	Application to employer for reinstatement after dismissal . . . . .	159
182	Application to Commission for reinstatement order . . . . .	159
183	Commission order to reinstate . . . . .	159

---

184	Extension of time for application . . . . .	160
185	Dismissal an offence in certain cases . . . . .	160
186	Preservation of employee's rights . . . . .	160
<b>PART 12—PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES</b>		
187	Action on industrial dispute on notification or in public interest . . . . .	161
188	Mediation by Commissioner or Industrial Magistrate . . . . .	163
189	Compulsory conference . . . . .	164
190	Secret ballot on strike action . . . . .	164
191	Consequence of ballot adverse to strike . . . . .	166
192	Nonparticipation in strike or lockout . . . . .	167
193	Indemnity against agent's unauthorised actions . . . . .	167
<b>PART 13—INDUSTRIAL ORGANISATIONS</b>		
<i>Division 1—Registration</i>		
194	Applicants for registration . . . . .	168
195	Application for registration . . . . .	168
196	Criteria for registration . . . . .	170
197	Continued registration of small industrial organisations . . . . .	171
198	Registration of several industrial organisations for the same calling . . . . .	172
199	Change of callings . . . . .	173
200	Determination of application . . . . .	173
201	Industrial organisations corporate bodies . . . . .	174
202	Registered name of industrial organisation . . . . .	174
<i>Division 2—Rules of industrial organisations</i>		
203	Requirement for rules . . . . .	175
204	General requirements for rules . . . . .	175
205	Subject matter of rules . . . . .	176
206	Rules to provide for election of officers . . . . .	178
207	Rules to provide for elections by secret postal ballot . . . . .	179
208	Rules to provide for term of office . . . . .	181
209	Rules may provide for filling casual vacancies . . . . .	182
210	Rules to provide conditions for loans, grants and donations . . . . .	183
211	Model rules, adoption by industrial organisations . . . . .	184

---

212	Change of name or alteration of eligibility rules of industrial organisation .....	186
213	Approval and registration of rules .....	187
214	Certain alterations of rules to be recorded .....	188
<b><i>Division 3—Validity and performance of rules</i></b>		
215	Rules contravening s.204 .....	189
216	Directions for performance of rules .....	190
217	Financial assistance for application under this Division .....	191
<b><i>Division 4—Conduct of elections for office</i></b>		
218	Conduct by Electoral Commission .....	192
219	Application for industrial organisation or branch to conduct its elections .....	192
220	Objections to application to conduct elections .....	193
221	Registrar may permit industrial organisation or branch to conduct its elections .....	193
222	Industrial Registrar to arrange for conduct of elections .....	194
223	Provisions applicable to elections conducted by Electoral Commission .	195
224	Expenses of election ballot .....	195
225	Death of candidate .....	196
226	Ballot papers etc. from elections to be preserved .....	196
227	No action for defamation in certain cases .....	197
<b><i>Division 5—Disqualification from holding office in industrial organisation</i></b>		
228	Interpretation .....	197
229	Eligibility for office in industrial organisation .....	198
230	Application for leave to hold office in industrial organisation by prospective candidate for office .....	200
231	Application for leave to hold office in industrial organisation by office holder .....	201
232	Court to have regard to certain matters .....	201
233	Action by Court .....	202
<b><i>Division 6—Disputed elections in industrial organisation</i></b>		
234	Application for election inquiry .....	202
235	Action by Industrial Registrar in respect of election inquiry .....	203

---

236	Commission to conduct inquiry . . . . .	204
237	Commission may make interim orders . . . . .	204
238	Procedure at inquiry into election . . . . .	206
239	Functions and powers of Commission at inquiry . . . . .	206
240	Enforcement of orders under this Division . . . . .	207
241	Validation of certain acts . . . . .	208
242	Inquiry costs . . . . .	208
243	Registrar to conduct elections on request . . . . .	209
244	Conduct of election of Industrial Registrar's own motion . . . . .	210
245	Expenses in connection with elections under this Division . . . . .	210
	<b><i>Division 7—Membership of industrial organisations</i></b>	
246	Entitlement to membership . . . . .	211
247	Disputes concerning membership cognisable by Court . . . . .	212
248	Membership of persons under 18 . . . . .	213
249	Register of members and officers . . . . .	213
250	Filing of registers with Industrial Registrar . . . . .	214
251	Exemption from filing registers etc. . . . .	215
252	Registers subject to rectification by Commission and access by Industrial Registrar . . . . .	216
253	Industrial organisation to keep butts of documents issued . . . . .	217
254	Resignation of member of membership of industrial organisation . . . . .	217
255	Conscientious objection to membership of industrial organisation . . . . .	218
	<b><i>Division 8—Amalgamation of industrial organisations</i></b>	
	<b><i>Subdivision A—General</i></b>	
256	Application of objects to Division etc. . . . .	220
257	Interpretation . . . . .	220
258	Procedure to be followed for proposed amalgamation etc. . . . .	223
	<b><i>Subdivision B—Preliminary matters</i></b>	
259	Federations . . . . .	224
260	Use of resources to support proposed amalgamation . . . . .	225
	<b><i>Subdivision C—Commencement of amalgamation procedure</i></b>	
261	Scheme for amalgamation . . . . .	226
262	Alternative scheme for amalgamation . . . . .	226

---

263	Approval by committee of management . . . . .	227
264	Community of interest declaration . . . . .	227
265	Application for approval for submission of amalgamation to ballot . . . . .	230
266	Holding office after amalgamation . . . . .	230
267	Application for exemption from ballot . . . . .	232
268	Application for ballot not conducted under s.285 . . . . .	232
269	Lodging “yes” case . . . . .	232
	<b><i>Subdivision D—Role of the Electoral Commission</i></b>	
270	Ballots to be conducted by the Electoral Commission . . . . .	232
271	Notification of Electoral Commission . . . . .	233
272	Officer of industrial organisation to provide information for ballot etc. . . . .	233
	<b><i>Subdivision E—Procedure for approval of amalgamation</i></b>	
273	Fixing hearing in relation to amalgamation etc. . . . .	233
274	Submissions at amalgamation hearings . . . . .	234
275	Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc. . . . .	234
276	Objections in relation to amalgamation involving extension of eligibility rules etc. . . . .	237
277	Approval for submission to ballot of amalgamation involving extension of eligibility rules etc. . . . .	237
278	Fixing commencing and closing days of ballot . . . . .	240
279	Roll of voters for ballot . . . . .	240
280	“Yes” case and “no” case for amalgamation . . . . .	241
281	Alteration and amendment of scheme . . . . .	242
282	Outline of scheme for amalgamation . . . . .	244
283	Exemption from ballot . . . . .	244
284	Approval for ballot not conducted under s.285 . . . . .	245
285	Secret postal ballot of members . . . . .	246
286	Determination of approval of amalgamation by members . . . . .	247
287	Further ballot if amalgamation not approved . . . . .	248
288	Inquiries into irregularities . . . . .	248
289	Approval of amalgamation . . . . .	249
290	Expenses of ballot . . . . .	249

---

<b><i>Subdivision F—Amalgamation taking effect</i></b>	
291	Action to be taken after ballot . . . . . 250
291	Assets and liabilities of deregistered industrial organisation become assets and liabilities of amalgamated organisation . . . . . 251
293	Effect of amalgamation on existing decisions of Commission . . . . . 251
294	Instruments . . . . . 251
295	Pending proceedings . . . . . 252
296	Subdivision applies despite laws and agreements prohibiting transfer etc. . . . . 252
297	Amalgamated organisation to take steps necessary to carry out amalgamation . . . . . 253
298	Certificates in relation to land and interests in land . . . . . 253
299	Certificates in relation to charges . . . . . 254
300	Certificates in relation to shares etc. . . . . 254
301	Certificates in relation to other assets . . . . . 255
302	Commission may resolve difficulties . . . . . 256
<b><i>Subdivision G—Validation</i></b>	
303	Validation of certain acts done in good faith . . . . . 256
304	Validation of certain acts after 4 years . . . . . 257
305	Orders affecting application of s.303 or 304 . . . . . 258
306	Commission may make orders in relation to consequences of invalidity . 259
<b><i>Subdivision H—Miscellaneous</i></b>	
307	Ballot papers etc. from ballots to be preserved . . . . . 260
308	No action for defamation in certain cases . . . . . 260
<b><i>Division 9—Cancellation of registration</i></b>	
309	Cancellation of registration for industrial conduct . . . . . 260
310	Orders where cancellation of registration deferred . . . . . 262
311	Cancellation of registration on other grounds . . . . . 263
312	Directions as to cancellation . . . . . 264
313	Cancellation to be recorded . . . . . 264
314	Consequences of cancellation of registration . . . . . 264
<b><i>Division 10—Accounts and audit</i></b>	
315	Application of Division . . . . . 266

---

316	Interpretation of Division . . . . .	266
317	Application of this Division to industrial organisations with branches . . .	266
318	Industrial organisation to keep proper accounting records . . . . .	268
319	Industrial organisation to prepare accounts . . . . .	268
320	Information to be provided to members . . . . .	269
321	Duties of officers of industrial organisation . . . . .	269
322	Auditors of industrial organisations . . . . .	270
323	Powers and duties of auditors . . . . .	271
324	Fees and expenses of auditors . . . . .	272
325	Removal of an auditor from office . . . . .	273
326	Copies of report and audited accounts to be provided to members and presented to meetings . . . . .	273
327	Reports to be lodged with Industrial Registrar . . . . .	275
328	Examination and audit by Industrial Registrar's auditor . . . . .	277
329	Industrial organisation may lodge accounts of all branches . . . . .	279
330	Industrial organisation to forward notices to auditor . . . . .	281
331	Auditor entitled to attend meetings . . . . .	281
332	Auditors and other persons to enjoy qualified privilege in certain circumstances . . . . .	282
333	Accounts and audit where income of industrial organisation less than certain amount . . . . .	282
	<b><i>Division 11—Presumed validity of industrial organisations' actions</i></b>	
334	Interpretation . . . . .	284
335	Validation of action taken in good faith . . . . .	285
336	Validation of action after 4 years . . . . .	287
	<b><i>Division 12—Miscellaneous</i></b>	
337	Registered office of industrial organisation . . . . .	288
338	Documents open to inspection . . . . .	288
339	Industrial organisations to notify particulars of loans, grants and donations . . . . .	289
340	Nomination . . . . .	290
341	Recovery of moneys due to industrial organisation . . . . .	290
342	Prejudice of employee by reason of membership of industrial organisation . . . . .	291

343	Prejudice of employee by reason of non-membership of industrial organisation . . . . .	293
344	Conduct in relation to holder of conscientious objector's certificate . . . .	293
345	Prejudice of employer by reason of membership of industrial organisation . . . . .	295
346	Conduct in relation to independent contractors . . . . .	295
347	When conduct presumed that of industrial organisation . . . . .	296

#### **PART 14—INDUSTRIAL INSPECTORS**

348	Appointment of Industrial Inspectors . . . . .	296
349	Evidence of appointment . . . . .	297
350	Extent of Industrial Inspector's jurisdiction . . . . .	298
351	Validity of Industrial Inspector's conduct despite administrative breach .	298
352	Duty of Industrial Inspector . . . . .	298
353	Powers of Industrial Inspector . . . . .	298
354	Obstruction of Industrial Inspector . . . . .	300
355	Confidentiality of information . . . . .	301
356	Protection from liability . . . . .	301
357	Assistance in exercise of Industrial Inspector's powers . . . . .	301
358	Payment of employee's wages etc. to Industrial Inspector . . . . .	302
359	Industrial Inspector's obligation for moneys paid on demand . . . . .	303

#### **PART 15—FACILITATION OF ADMINISTRATION**

##### *Division 1—Maintenance and inspection of employers' records*

360	Interpretation . . . . .	305
361	Issue of authorisation . . . . .	306
362	Time and wages record of award employees . . . . .	307
363	Wages record of non-award employees . . . . .	309
364	Register of employees . . . . .	309
365	Records to be kept in English . . . . .	311
366	Failure to keep records a composite offence . . . . .	311
367	Notation of wages details . . . . .	311
368	Inspection of employer's record by Industrial Inspector . . . . .	312
369	Inspection by authorised industrial officer . . . . .	312
370	Inspection by Industrial Registrar . . . . .	314



---

371	Inspection by employees . . . . .	314
372	Revocation and suspension of industrial officer's authorisation . . . . .	315
<b><i>Division 2—Other facilitating provisions</i></b>		
373	Copy of award and industrial agreement to be displayed . . . . .	316
374	Incorporation of variations in reprint of award, industrial agreement or certified agreement . . . . .	316
375	Obsolete award or industrial agreement . . . . .	316
376	Certificate of employment on termination . . . . .	317
377	False pretences relating to employment . . . . .	317
378	Certifying Barrister . . . . .	318
379	Stamp duty . . . . .	318
380	Payments to financially distressed . . . . .	318
381	Regulations . . . . .	319
382	Parliamentary supervision of orders in council . . . . .	319
383	Inaccurate descriptions . . . . .	320
<b>PART 16—EMPLOYEES IN EMPLOYMENT OF STATE</b>		
384	Application of Act to Crown . . . . .	320
385	Conflict between award etc. and statutory determination . . . . .	321
386	Protection of public property and officers . . . . .	321
387	Ambit of reference to Crown . . . . .	321
388	Representation of public sector units . . . . .	322
389	Industrial cause affecting diverse employees . . . . .	323
<b>PART 17—WAGES</b>		
<b><i>Division 1—Protection for wages</i></b>		
390	Interpretation . . . . .	323
391	Wages are first charge on moneys due to employer . . . . .	324
392	Assignment etc. of moneys due and payable ineffectual against claims for wages . . . . .	324
393	Moneys due to or received by employer to be applied in payment of wages due or to become due . . . . .	325
394	Notice of attachment . . . . .	325
395	Consequences of notice of attachment . . . . .	325
396	Orders for payment by prime contractor or clerk of the court . . . . .	327

---

397	Employees to be paid according to time at which notices of attachment are served .....	328
398	Employee may sue prime contractor .....	329
399	Cessation of attachment not to prejudice prime contractor .....	329
400	Discharge by employee for payment received .....	330
401	Remedy of employees of subcontractor .....	330
402	Prime contractor's right to reimbursement. ....	330
403	Mode of service .....	331
404	Industrial Magistrate may hear claim for wages ex parte .....	331

***Division 2—Payment and recovery of wages***

405	Payment of wages .....	331
406	Provision for payment of wages contrary to s.405 void .....	333
407	Contract not to stipulate mode of expending wages .....	333
408	Payment of unpaid wages etc. where employee's whereabouts unknown .....	334
409	Recovery of wages etc. ....	334
410	Enforcement of Industrial Magistrate's order .....	336
411	Recovery from employee of amounts overpaid .....	337
412	Deduction in default of notice of termination .....	337
413	Minor may sue .....	338

***Division 3—Wages in rural and mining industries***

414	Interpretation .....	338
415	Wages recoverable against mortgagee where mortgagor defaults .....	338
416	Distress warrant levied on property of mortgagor or mortgagee .....	339
417	Application of ss.415 and 416 to mines .....	340
418	Priority in payment of wages etc. earned in mine .....	341
419	Provisions concerning application of ss.418 and 419 .....	341

**PART 18—OFFENCES**

420	Contempt of Court .....	342
421	Offence to disobey certain orders .....	342
422	Obstruction of power of entry etc. ....	342
423	Obstruction or hindrance of officers generally .....	343

---

424	Improper conduct towards Industrial Commissioner, Industrial Magistrate or Industrial Registrar . . . . .	343
425	Disturbances near tribunals . . . . .	345
426	Contempt by witness . . . . .	345
427	Disclosure of confidential material tendered in evidence . . . . .	345
428	Avoiding Act's obligations . . . . .	346
429	Offence re long service leave for employees not governed by awards etc. . . . .	346
430	Offence re compulsory conference . . . . .	347
431	Offence re secret ballot . . . . .	347
432	Failure to comply with direction for performance of rules of industrial organisation . . . . .	348
433	Offence re property of industrial organisation . . . . .	348
434	Offences re action by Industrial Registrar in respect of election inquiry .	349
435	Offences re enforcement of orders concerning disputed elections in industrial organisation . . . . .	349
436	Offences re ballot papers and other records . . . . .	350
437	Offences re elections . . . . .	350
438	Offences in relation to the conduct of ballots . . . . .	350
439	Offences re membership of industrial organisation . . . . .	352
440	Offence re young person's membership . . . . .	353
441	Offences re register of members and of officers of industrial organisation . . . . .	354
442	Failure to provide information re amalgamation ballot . . . . .	354
443	Offence re duty of officer of industrial organisation . . . . .	354
444	Failure to keep accounts—offences re auditor . . . . .	354
445	Obstruction or hindrance of auditor . . . . .	355
446	Failure to provide and present reports of industrial organisation . . . . .	356
447	Offence re false or misleading statement in s.326 report, accounts or statement . . . . .	357
448	Failure to lodge accounts with Industrial Registrar . . . . .	357
449	Offence re investigation by Industrial Registrar . . . . .	357
450	Offences re lodging accounts . . . . .	358
451	Offence re accounts of low income industrial organisation . . . . .	358

---

452	Failure to have registered office of industrial organisation . . . . .	359
453	Offences re particulars of loans, grants and donations . . . . .	359
454	Offences re prejudice of person because of membership or non-membership of industrial organisation . . . . .	359
455	Offence of obstruction of Industrial Inspector . . . . .	361
456	Offence of disclosure of information . . . . .	361
457	Offences re records of time and wages . . . . .	361
458	Offences re register of employees . . . . .	362
459	Offences re inspections by authorised industrial officers . . . . .	362
460	Offence re false pretences . . . . .	363
461	Non-payment of wages . . . . .	363
462	Offence of failure to make occupational superannuation contribution . . .	365
463	Offence to agree to accept reduced wages . . . . .	366
464	Publication of statement re employment at less than lawful rates . . . . .	367
465	Offence to offer or accept premiums . . . . .	368
466	Breaches of awards etc. generally . . . . .	369
467	Injunction restraining breaches . . . . .	370
468	Persons considered parties to offences . . . . .	370
469	General penalty . . . . .	371
470	Attempt to commit offence . . . . .	372
471	Proceedings generally . . . . .	372
472	Recovery of moneys by industrial organisation . . . . .	373
473	Recovery of moneys from industrial organisation . . . . .	373

**PART 19—INDUSTRIAL RELATIONS CONSULTATIVE  
COMMITTEE**

474	Establishment of committee . . . . .	374
475	Membership . . . . .	374
476	Appointment of members . . . . .	375
477	Recommendation of members in absence of nomination by industrial organisations . . . . .	375
478	Term of office . . . . .	376
479	Deputies of members . . . . .	376
480	Emoluments of Committee members . . . . .	376

---

481	Proceedings of Committee .....	377
482	Functions of Committee .....	377

**PART 20—SAVINGS, TRANSITIONAL AND REPEALS**

483	Repeals .....	378
484	Savings .....	379
485	Demarcation orders and disputes .....	380
486	Transitional provisions in relation to amalgamations .....	380

**PART 22—ELECTRICITY INDUSTRY PROVISIONS**

491	Saving of decisions etc. of tribunal .....	381
492	Continuance of existing proceedings .....	382

**ENDNOTES**

1	Index to Endnotes .....	383
2	Date to which amendments incorporated .....	383
3	List of legislation .....	383
4	List of annotations .....	384
5	Table of corrected minor errors .....	397
6	Table of renumbered provisions .....	397
7	Table of comparative legislation .....	424



# INDUSTRIAL RELATIONS ACT 1990

[as amended by all amendments that commenced before 3 August 1993<sup>2</sup>]

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

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Industrial Relations Act 1990*<sup>3-7</sup>.

#### Commencement

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

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

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

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

#### Objects

3. The objects of this Act are—

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

- (b) to encourage and facilitate conciliation in industrial matters, including settlement of industrial disputes between employers and employees, and to provide for arbitration in relation to such matters, where it is necessary; and
- (c) to ensure that agreements made between employers, or industrial organisations of employers, and employees, or industrial organisations of employees, in relation to industrial matters and decisions made or given by a tribunal constituted for the purposes of this Act are respected; and
- (d) to recognise and encourage the formation of organisations representative of employers and organisations representative of employees to provide adequate and competent representation for their members in respect of industrial matters; and
- (e) to encourage the democratic control of industrial organisations, and the participation by their members in the affairs of industrial organisations; and
- (f) to encourage the efficient management of industrial organisations; and
- (g) to encourage and facilitate the amalgamation of industrial organisations where this will contribute to the attainment of the object mentioned in paragraph (d); and
- (h) to encourage and facilitate rationalisation of the coverage of industrial organisations, particularly by reducing the number of industrial organisations that are in an industry or enterprise.

### **Application**

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

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

**(3)** If, pursuant to subsection (1), the provisions of this Act, or any of



them, do not apply to a person or a class of person, a decision is inoperative to the extent to which it purports to apply to that person or a member of that class of person, at all or, as the case may be, in respect of the subject matter of the provisions that do not apply.

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

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

- (a) the entitlement of a person to an office in an industrial organisation, which entitlement the person has acquired in accordance with law at any time before the commencement of this Act;
- (b) the entitlement of a person to an office in an industrial organisation, which entitlement the person acquires pursuant to a process of election or selection being conducted in accordance with law at the commencement of this Act;
- (c) the further conduct of a process of election or selection for an office in an industrial organisation being conducted in accordance with law at the commencement of this Act.

## **PART 2—INTERPRETATION**

### **Meaning of terms**

**5.(1)** In this Act—

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

**“apprentice”** means a person who has entered into an arrangement with an employer to become an apprentice and is registered as an apprentice

pursuant to the *Employment, Vocational Education and Training Act 1988* or pursuant to any Act replaced by that Act;

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

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

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

**“breach”** includes any non-observance;

**“calling”** means any manufacture, trade, undertaking, vocation, craft or occupation and any section thereof;

**“certified agreement”** means an agreement certified under Division 2 of Part 10 that is in force, and includes an agreement varied—

(a) under section 119(2); or

(b) in accordance with a permission given under section 120(3)(e);

**“Chief Industrial Inspector”** means the person for the time being holding the appointment, Chief Industrial Inspector, under this Act, and includes any person for the time being performing the duties of that appointment;

**“Commission”** means the Industrial Commission;

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

**“Commonwealth Act”** means the *Industrial Relations Act 1988* of the Commonwealth;

**“Court”** means the Industrial Court;

**“decision”** means a decision of the Industrial Court, Industrial Commission, an Industrial Magistrate, or the Industrial Registrar and

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

**“demarcation dispute”** includes—

- (a) a dispute arising between 2 or more industrial organisations, or within an industrial organisation, about the rights, status or functions of members of the industrial organisations or industrial organisation in relation to the employment of those members; or
- (b) a dispute arising between employers and employees, or between members of different industrial organisations, about the demarcation of functions of employees or classes of employees; or
- (c) a dispute about the representation under this Act of the industrial interests of employees by an industrial organisation of employees;

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

**“electoral official”** means the Electoral Commissioner, the Deputy Electoral Commissioner or a member of the staff of the Electoral Commission;

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

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

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

- (a) a person whose usual occupation is that of an employee in a calling;
- (b) a person employed in any calling notwithstanding that—

- (i) the person is working under a contract for labour only, or substantially for labour only;
- (ii) the person is lessee of any tools or other implements of production, or of any vehicle used in delivery of goods;
- (iii) the person is the owner, wholly or partially, of any vehicle used in transport of goods or passengers;

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

- (c) each person, being 1 of 4 or more persons who are, or claim to be, partners working in association in any calling or business;
- (d) in relation to proceedings for payment or recovery of moneys, a former employee;

**“employer”** means—

- (a) a person employing, or who usually employs, 1 or more employees, on behalf of that person or of any other person;
- (b) the chief executive of a department of government in relation to employees employed in that department;

and includes—

- (c) a person carrying on a calling in which employees are usually employed notwithstanding that for the time being employees are not employed therein;
- (d) a person who is managing director, manager, secretary or member of the governing body (however called) of any body corporate, partnership, firm or association of persons;
- (e) in relation to persons referred to in paragraph (c) of the definition “employee”, the partnership firm constituted, or claimed to be constituted, by such persons;
- (f) in relation to proceedings for payment or recovery of moneys, a former employer;

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

- (a) the period of 12 months commencing on 1 July in any year; or
- (b) if the rules of the industrial organisation provide for another

period of 12 months as its financial year, that other period;

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

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

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

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

**“Industrial Commission”** means the Queensland Industrial Relations Commission established under this Act;

**“Industrial Commissioner”** or **“Commissioner”** means a person holding for the time being an appointment as Chief Industrial Commissioner or as an Industrial Commissioner, and includes a person holding for the time being an appointment as Acting Industrial Commissioner;

**“industrial dispute”** means—

- (a) a dispute, including a threatened, pending or probable dispute, as to an industrial matter; or
- (b) a situation which is likely to give rise to a dispute as to an industrial matter;

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

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

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

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

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

- (a) to compel or induce employees to agree to conditions of employment or to comply with any demands made upon them by that employer, or any other employer, contrary to the provisions of this Act; or
- (b) to cause loss or inconvenience to employees; or
- (c) to incite, instigate, aid, abet or procure any other lockout; or
- (d) to assist any other employer to compel or induce employees to agree to terms of employment or comply with any demands made by that other employer;

**“office”**, in relation to an industrial organisation, or branch of an industrial organisation, means—

- (a) an office of president, vice-president, secretary or assistant secretary; or
- (b) the office of a voting member of a collective body, being a collective body that has power in relation to any of the following functions—
  - (i) the management of the affairs of the industrial organisation or branch;
  - (ii) the determination of policy for the industrial organisation or branch;
  - (iii) the making, alteration or rescission of rules of the industrial organisation or branch;
  - (iv) the enforcement of rules of the industrial organisation or

branch, or the performance of functions in relation to the enforcement of such rules; or

- (c) an office the holder of which is, under the rules of the industrial organisation or branch, entitled to participate directly in any of the functions referred to in paragraph (b)(i) and (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing—
  - (i) existing policy of the industrial organisation or branch; or
  - (ii) decisions concerning the industrial organisation or branch; or
- (d) an office the holder of which is, under the rules of the industrial organisation or branch, entitled to participate directly in any of the functions referred to in paragraph (b)(ii) and (iii); or
- (e) the office of a person holding (whether as trustee or otherwise) property—
  - (i) of the industrial organisation or branch; or
  - (ii) in which the industrial organisation or branch has a beneficial interest;

**“officer”**, in relation to an industrial organisation, or branch of an industrial organisation, means a person who holds an office in the industrial organisation or branch;

**“party”**, in relation to any award, industrial agreement, certified agreement or permit, includes any person bound by the award, agreement or permit;

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

**“permit”** means a permit granted under this Act, and a permit or licence continued in force by this Act;

**“place”** means any land, building, structure, vehicle, vessel or aircraft and includes any part thereof;

**“President”** means the President of the Industrial Court and includes any

person for the time being acting as President;

**“public office”** means the office of member of a local government body, or of a local public body that is empowered to raise money by means of a rate;

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

**“registered company auditor”** means a registered company auditor within the meaning of the Corporations Law;

**“repealed Acts”** means the Acts or parts of Acts that have been repealed by this Act;

**“rules of court”** means the rules of court made, or continued in force, under this Act;

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

- (a) a refusal or wilful failure to perform work required of them in accordance with their contracts of employment; or
- (b) a performance of work in a manner other than that in which it is customarily performed; or
- (c) the adoption of a practice or stratagem the result of which is a restriction, limitation or delay in the performance of work or a restriction or limitation of the product of work; or
- (d) a ban, restriction or limitation on the performance of work or on acceptance or offering for work; or
- (e) a refusal or wilful failure that is not authorised by the employer, or employers, of the employees to attend for work; or
- (f) a refusal or wilful failure that is not authorised by the employer, or employers, of the employees to perform any work at all by employees who attend for work;

which in any such case is due to, or in pursuance of, a combination,



agreement or understanding, expressed or implied, entered into by the employees or any of them and which has a purpose—

- (g) to compel or induce any such employer to agree to conditions of employment, or to employ, or cease to employ, any person or class of person, or to comply with any demands made by the employees or any of them or by any other employees; or
- (h) to cause loss or inconvenience to any such employer in the conduct of business; or
- (i) to incite, instigate, aid, abet or procure any other strike; or
- (j) to assist employees in the employment of any other employer to compel or induce that employer to agree to conditions of employment or to employ, or cease to employ, any person or class of person or to comply with any demands made by any employees;

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

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

**“wages”** means an amount payable to an employee in relation to—

- (a) work performed, or to be performed, by the employee; or
- (b) a public holiday; or
- (c) leave to which the employee has an entitlement; or
- (d) termination of employment;

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

**“young employee”** means any person under the age of 21 years engaged in a calling, other than an apprentice or a person subject to the *Employment, Vocational Education and Training Act 1988*, who receives a lower wage, price or rate than that fixed by an award, industrial agreement or certified agreement for adult employees in the calling.

(2) In this Act, except where a contrary intention appears, a reference to

an office in an industrial organisation, or association of persons, includes reference to an office in a branch of the industrial organisation or association.

**(3)** In this Act—

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

### **Industrial matter**

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

- (a) work done or to be done;
- (b) the privileges, rights or duties of employers or employees or of persons who have been, or propose to be, or who may become, employers or employees;
- (c) any matter whatsoever, whether or not an industrial matter as defined in this section, that, in the opinion of the Industrial Court or Industrial Commission has been, is, or may be a cause or contributory cause of a strike, lockout, or industrial dispute.

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

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

- (a) if it relates to—
  - (i) wages, allowances or remuneration of persons employed, or to be employed, during ordinary working hours, on overtime, on special work or on public holidays;
  - (ii) whether piecework will be allowed;
  - (iii) whether employees are to be granted leave of any description

- on full pay;
  - (iv) whether and on what conditions employees may board and lodge with their employers;
  - (v) whether monetary allowances will be paid by employers to employees in respect of standing back or waiting time caused by the conditions of the employer's calling, or the intermittency of industrial operations, or otherwise;
  - (vi) what length of notice (if any) should be given by an employer or employee to the other of them before terminating service or employment, and what amount of wages (if any) should be paid or may be deducted in lieu of notice;
  - (vii) occupational superannuation;
- (b) if it relates to—
- (i) the hours of work, the time to be worked to entitle employees to any particular wage, allowance, remuneration or price, or what time will be regarded as overtime;
  - (ii) claims to restrict work before or after particular hours;
  - (iii) the age, qualification or status of employees, or the mode and conditions of employment or non-employment including whether any person should be disqualified for employment;
  - (iv) claims to have protective clothing or appliances, hot or cold water, or sanitary or bathing accommodation provided for the use of employees;
  - (v) fixing of standards of normal temperatures or atmospheric purity in working places, above or below ground;
  - (vi) providing for shorter hours, higher wages, or other conditions for persons employed under abnormal conditions or in abnormal working places, and determining what are abnormal conditions or working places;
- (c) if it relates to—
- (i) employment of young employees or of any person or

- persons, or class of person, or the disqualification of any person for employment by reason of age or disease;
- (ii) the number or proportion of aged or infirm persons or other employees that may be employed by an employer, or the lowest prices or rates payable to them;
  - (iii) a claim to dismiss or to refuse to employ any particular person or persons, or class of person, or whether any particular person or persons, or class of person, ought to be continued or reinstated in the employment of a particular employer, having regard to the public interest, notwithstanding common law rights of employers or employees;
  - (iv) the right to dismiss, or to refuse to employ or reinstate a particular person, or class of person, in a particular calling;
  - (v) custom or usage as to conditions of employment, either generally or in any particular calling or locality;
- (d) if it relates to—
- (i) the interpretation or enforcement of any award, industrial agreement, certified agreement or permit, except where this Act otherwise prescribes;
  - (ii) the subject matter of an industrial dispute, and any matter that has caused or, in the opinion of the Industrial Court or Industrial Commission is likely to cause, disagreement or friction between employers and employees;
  - (iii) what is fair and just (having regard to the interests of the persons immediately concerned and the community as a whole) according to the standard of the average good employer and the average competent and honest employee in all matters pertaining to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed at or before the making of any relevant application to the Industrial Court or Industrial Commission or at the making or enforcement of any decision of the Court or Commission;
  - (iv) the regulation of relations between employer and employee,

or between employees, and to that end the imposition of conditions on the conduct of any calling and on the provision of benefits to persons engaged therein;

- (v) a demarcation dispute.

### **Construction of Act etc.**

7. This Act and every proclamation, order in council, regulation and rule of court made under this Act and every decision is to be read and construed so as not to exceed the legislative power of the State, to the intent that where any enactment of this Act or any provision of such proclamation, order in council, regulation, rule of court or decision would, but for this section, have been construed as being in excess of that power, it is nevertheless a valid enactment, provision or decision to the extent to which it is not in excess of that power.

## **PART 3—INDUSTRIAL COURT**

### **Preservation of Court**

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

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

### **Membership of Court**

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

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

(3) Notwithstanding the provisions of any other Act, a person may hold and exercise the office of a Judge of the Supreme Court and the office of

President of the Industrial Court at one and the same time.

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

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

### **Exercise of Court's jurisdiction**

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

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

### **President's tenure of office**

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

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

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

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

**Acting President**

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

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

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

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

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

- (a) for as long as the President is unable to perform the duties of office under this Act, or until the term of the appointment to act as President expires, whichever is the shorter period; and
- (b) if necessary, for an additional period to enable completion of the hearing and determination of matters on which the appointee has entered during the shorter period referred to in paragraph (a).

**Jurisdiction of Court**

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

- (a) to exercise all powers and authorities and to discharge all functions and duties prescribed for the Court by this, or any other, Act;
- (b) to hear and determine the following matters—
  - (i) appeals from decisions of the Industrial Commission duly made to the Court under this Act;

- (ii) cases stated to it by the Industrial Commission under this Act;
  - (iii) appeals from decisions of Industrial Magistrates in proceedings for—
    - (A) offences against this Act;
    - (B) recovery of damages, or other moneys, under this Act or under any award, industrial agreement, certified agreement or permit;
  - (iv) proceedings for offences against this Act for which the punishment prescribed is imprisonment or a penalty exceeding 40 penalty units, other than offences in respect of which jurisdiction is expressly conferred on Industrial Magistrates;
  - (v) proceedings for cancellation or suspension of registration of an industrial organisation;
  - (vi) proceedings for offences defined in any of the following sections—
 

423	430	435	442
426	432	437	443
427	434	441	
  - (vii) appeals from decisions of, and references by, the Industrial Registrar on matters of law or procedure;
- (c) to punish contempts of the Court;
- (d) to exercise the jurisdiction, powers and authorities of the Supreme Court so as to ensure, by means of prerogative writ or other appropriate process, that the Industrial Commission and Industrial Magistrates exercise their respective jurisdictions according to law, and do not exceed their respective jurisdictions.

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

(3) The Industrial Court may, in any proceedings, make such decisions as it thinks appropriate irrespective of specific relief claimed or applied for



by any party, and may give directions as to the hearing and determination of any matter within the Court's jurisdiction.

(4) Exercise of the Industrial Court's jurisdiction in relation to persons under the age of 21 years is subject to the *Employment, Vocational Education and Training Act 1988*.

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

### **Court's jurisdiction exclusive**

**14.(1)** Except as is prescribed by section 95, a decision of the Industrial Court is final and conclusive, and cannot be impeached for informality or want of form, or be appealed against, reviewed, quashed or called in question in any court on any account whatever.

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

- (a) proceedings in the Court are not removable by certiorari;
- (b) a writ of prohibition cannot be issued, and an injunction or mandamus cannot be granted, in respect of or to restrain proceedings in the Court that relate to matters within the Court's jurisdiction.

### **Binding nature of Court's decisions**

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

- (a) the Industrial Commission; and
- (b) all Industrial Magistrates; and
- (c) all industrial organisations and persons who are subject to this Act, or bound by the award, agreement or permit.

**Court may refuse to proceed**

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

**Proceedings in Full Industrial Court**

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

(a) on a question as to—

(i) the Court's jurisdiction;

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

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

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

**President's annual report**

**18.(1)** As soon as is practicable after 30 June in each year the President is to furnish to the Minister a report on the operation of this Act and, in particular, on the working of the Industrial Court, the Industrial Commission and the Industrial Registrar's Office throughout the period of 12 months preceding that date.

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

## **PART 4—INDUSTRIAL RELATIONS COMMISSION**

### *Division 1—Establishment of Commission*

#### **Preservation of Commission**

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

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

#### **Membership of Commission**

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

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

- (a) a member of the Executive Council or Legislative Assembly;
- (b) a person who acts as director or auditor, or participates in any capacity in the management of a body corporate engaged in a calling, or of a business.

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

**(4)** An Industrial Commissioner who becomes—

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

ceases to be a Commissioner.

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

**Exercise of Commission's jurisdiction**

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

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

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

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

**Decision of Full Bench**

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

**Control of Commission's affairs**

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

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

(a) administering the Industrial Commission;

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

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

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

(a) the administration of the Industrial Commission;

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

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

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

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

(b) by a different Commissioner or different Commissioners;

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

### **Replacement for Chief Commissioner**

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

### **Term of appointment of Commissioners**

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

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

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

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

(5) An Industrial Commissioner cannot be removed from office unless an address praying for the Commissioner's removal on the ground of

misbehaviour or incapacity is presented to the Governor by the Legislative Assembly.

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

### **Continuance in Commissioner's office for limited purpose**

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

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

### **Acting Commissioners**

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

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

(3) For as long as an appointment as Acting Industrial Commissioner continues, the appointee may constitute the Industrial Commission and exercise all the jurisdiction and powers of the Commission constituted by a single Commissioner.

### **Remuneration of Commissioners**

28.(1) The Chief Industrial Commissioner is entitled to be paid salary at a rate that is 105% of the rate applicable for the time being to the salary of a Judge of District Courts.

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

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

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

### **Pension benefits of Commissioners**

**29.(1)** In this section—

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

“**scheme**” means the scheme within the meaning of the *Superannuation (State Public Sector) Act 1990*;

“**1958 Act**” means the *Public Service Superannuation Act 1958*, and includes any Act passed in substitution therefor;

“**1972 Act**” means the *State Service Superannuation Act 1972*, and includes any Act passed in substitution therefor.

(2) Except as is prescribed by subsection (4), the provisions of the *Judges’ Pensions Act 1957*, other than sections 2(2), 14, 15 and 16, apply mutatis mutandis to each Industrial Commissioner and to any relict or child of a Commissioner as they apply to a Judge of the Supreme Court, and to any widow or child of a Judge, and for this purpose those applicable provisions are to be read and construed as if—

(a) reference to the *Judges’ Retirement Act 1921* did not appear therein;

(b) the words ‘Industrial Commissioner within the meaning of the *Industrial Relations Act 1990*’ were substituted for the word ‘Judge’ wherever it occurs therein, except in the definition “Judge” in section 2(1) thereof.

(3) In computing length of service of a person as a Commissioner for the

purposes of subsection (2) every period during which the person has served as a Commissioner, whether pursuant to a first appointment as a Commissioner or pursuant to any renewal thereof, or subsequent appointment, and every period during which the person has served as an Acting Industrial Commissioner, or as a deputy of a Commissioner (pursuant to any of the repealed Acts) is taken into account.

(4) Subsection (2) does not confer entitlement to pension benefits on an Industrial Commissioner, or on any relict or child of a Commissioner if—

- (a) being a Commissioner appointed before the commencement of this Act, the Commissioner was entitled to elect under section 10A(2) of the *Industrial Conciliation and Arbitration Act 1961* and has duly elected under that section 10A(2) to continue to contribute to the Fund; or
- (b) being a Commissioner appointed after the commencement of this Act, the Commissioner is a contributor to the Fund or a member of the scheme at the date of appointment and duly elects under this subsection to continue to contribute to the Fund or continue as a member of the scheme, as the case may be; or
- (c) being a Commissioner who is not a contributor to the Fund or a member of the scheme and who duly elects under this subsection to be a member of the scheme.

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

- (a) the first appointment as a Commissioner of the person whose election it is; or
- (b) in respect of a person who at the date of commencement of section 10.2 of the *Superannuation (Miscellaneous Acts) Amendment Act 1991* is a Commissioner—the date of commencement of that Act;

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

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



- (a) contributions are subject to and in accordance with such of the provisions of the 1958 Act and the 1972 Act as applied in respect of the Commissioner's contributions immediately before appointment as a Commissioner;
- (b) benefits payable to the Commissioner or any relict or child of the Commissioner by reason of contributing to the Fund are as prescribed by the provisions of the 1958 Act and the 1972 Act applicable to the Commissioner or any relict or child of the Commissioner, as the case may be;
- (c) for the purpose of the application of the 1958 Act the Commissioner is taken to be an officer within the meaning of that Act, and for the purpose of the application of the 1972 Act the Commissioner is taken to be an officer within the meaning of that Act.

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

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

### **Leave of absence to Commissioners**

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

- (a) a reference therein to the *Judges' Salaries and Pensions Act 1967*

is to be read and construed as a reference to the *Industrial Conciliation and Arbitration Act 1974 (No. 2)*; and

- (b) the proviso to that section 15(1) is to be read and construed as if the words 'but who was not in office at the time of the passing of this Act' did not appear therein.

(2) In computing length of service of a person as an Industrial Commissioner for the purposes of subsection (1) every period during which the person has served as a Commissioner, whether pursuant to a first appointment as a Commissioner or pursuant to any renewal thereof, or subsequent appointment, and every period during which the person has served as an Acting Industrial Commissioner, or as a deputy of a Commissioner (pursuant to any of the repealed Acts) is taken into account.

### *Division 2—Jurisdiction of Commission*

#### **General jurisdiction of Commission**

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

- (a) all questions of law or fact brought before it or that it considers expedient to hear and determine for the purpose of regulating any calling or callings;
- (b) all questions arising out of an industrial matter or involving the determination of the rights and duties of any person in respect of an industrial matter;
- (c) all questions that it considers expedient to hear and determine in respect of an industrial matter;
- (d) any industrial dispute, as to which an Industrial Commissioner has held a conference under this Act at which no agreement has been reached, and which a Commissioner has thereupon referred to the Commission;
- (e) all appeals duly made to it under any provision of this Act;
- (f) all matters committed to the Commission by this, or any other, Act.

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

- (a) on reference by an industrial organisation, an employer, or 20 employees (not being members of an industrial organisation of employees and not covered by an award) in any calling, or by the Minister, or of its own motion, to regulate the conditions of any calling or callings by an award;
- (b) on application by any person interested, by direction of the Minister, or of its own motion, to hold an inquiry into or relating to an industrial matter and to report the result of the inquiry to the Minister;
- (c) on application by an industrial organisation or an employer, or by direction of the Minister, to consolidate into 1 award—making such amendments therein as it considers expedient to make—all awards binding or affecting any employer or class (or section of a class) of employer in any calling or callings, or the members of an industrial organisation employed by the same employer or class (or section of a class) of employer, where such employer or class (or section of a class) of employer, or such members is or are subject to more than 1 award;
- (d) having regard to the interests of the persons immediately concerned and of the community as a whole, to define and declare the rights and duties of employers and employees according to what, in the Commission's opinion, should be the standard of fair dealing between an average good employer and a competent and honest employee.

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

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

**(5)** The Industrial Commission may in its discretion, by general order or for the purposes of a particular case, delegate either to Industrial Magistrates generally or to a particular Industrial Magistrate, or to the Chief Industrial

Inspector the working out of any decision of the Commission, or the making of orders, the giving of directions, the preparation of rosters and schedules, or such like function as it thinks fit consequent on its decision.

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

- (a) refer the whole or part of any question or matter before it to an Industrial Commissioner for investigation and report to the Full Bench of the Commission, or for such other action as it determines;
- (b) direct 1 or more of its members to carry out such investigation or inspection as it considers desirable and to report thereon to the Full Bench of the Commission.

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

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

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

### **Commission may refuse to proceed**

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

### **Commission's jurisdiction re awards**

33. Without limiting the powers of the Industrial Commission, the Commission may, in respect of any industrial matter or matters, make an

award, which—

- (a) fixes the lowest prices for work, or rates of wages, payable to employees other than employees who hold permits;
- (b) fixes the time to be worked in order to entitle employees to the prices or wages fixed by the Commission;
- (c) fixes the lowest rates for overtime, special work, or work on public holidays, as compensation (including allowances) for overtime, special work or work on public holidays;
- (d) fixes the number or proportion of young employees to adult employees;
- (e) fixes in respect of young employees the matters referred to in paragraph (a), (b) or (c);
- (f) rescinds or varies a decision;
- (g) abrogates or varies contracts for labour made before or after the commencement of this Act, subject to such conditions and exemptions as the Commission considers just;
- (h) gives such retrospective effect as the Commission considers just and fair, or as is consented to by the parties, to the whole or any part of any award, but so that, except with the consent of the parties, the retrospective effect is not made to operate before the date when the Commission first took cognisance of the matter in relation to which retrospective effect is to be given;
- (i) directs that a copy of any award be exhibited by the employer in a conspicuous and convenient place on the premises of any employer bound by the award;
- (j) deals generally with the determination and regulation of any industrial matter.

### **Provisions affecting exercise of award jurisdiction**

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

- (a) is to fix the same price or wage as payable to persons of either sex for performing the same work, or work of a like nature and

of equal value or productive of the same return of profit to their employer;

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

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

(3) The exercise of the Industrial Commission's jurisdiction in relation to persons under the age of 21 years is subject to the *Employment, Vocational Education and Training Act 1988*.

(4) Notwithstanding any other provision of this Act, prices for work, or rates of wages, fixed by the Industrial Commission in exercise of its jurisdiction in relation to persons under the age of 21 years in any calling who are not within the application of the *Employment, Vocational Education and Training Act 1988*, may be fixed on a progressive scale based on the prices for work, or rates of wages, payable to employees who have attained the age of 21 years in the same calling.

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

### **Bonus payments**

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

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

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

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

### **General rulings**

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

(2) Before entering upon the making of a general ruling the Industrial Commission is to give reasonable notice, in such manner as it considers appropriate, of its intention to do so and is to give an opportunity to all persons interested in the subject of the proposed general ruling to be heard thereon.

(3) A declaration of a general ruling—

- (a) must include specification of a date (the “**specified date**”) on and from which the general ruling is to have effect;
- (b) has effect as a decision of the Industrial Commission on and from the specified date.

(4) A declaration of a general ruling—

- (a) may provide that, notwithstanding any adjustment thereby made to the guaranteed minimum wage, the rate of wages prescribed in an award, or provided for in any industrial agreement or certified agreement remains unaltered;
- (b) may exclude from the operation of any of its provisions any class of employer or employee, or any award, industrial agreement or part of an award, industrial agreement or certified agreement.

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

(6) The notification so published, on and from the specified date for the

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

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

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

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

### **Statement of policy**

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

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

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

### **Jurisdiction of Commission exclusive**

**38.** Except where it is otherwise prescribed, the jurisdiction of the



Industrial Commission conferred by this Act, whether original or appellate, is exclusive of the jurisdiction of the Supreme Court or any other court or tribunal.

### *Division 3—Specific powers of Commission*

#### **Power to vary or void contracts**

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

- (a) the work would, but for the contract, arrangement or collateral arrangement, have been performed by that party as an employee subject to an award, industrial agreement or certified agreement, and the Commission is of opinion that the contract, arrangement or collateral arrangement avoids or is designed to avoid the provisions of an award, industrial agreement or certified agreement; or
- (b) the work, being work not subject to an award, industrial agreement or certified agreement or an award of the Australian Industrial Relations Commission or an agreement certified by that commission—
  - (i) is performed under the contract, arrangement or collateral arrangement by the individual as an employee on wages or piecework rates; or
  - (ii) in the Commission’s opinion, taking into account the respective bargaining positions of the parties to the contract, arrangement or collateral arrangement, would, but for the contract or arrangement, have been more appropriately performed by a person as an employee;

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

- (c) unfair; or

- (d) harsh or unconscionable; or
- (e) against the public interest; or
- (f) provides, or has provided, a total remuneration less than that which a person performing the work as an employee would have received.

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

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

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

### **Power to order superannuation contribution to particular fund**

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

- (a) of its own motion; or
- (b) on the application of an Industrial Inspector, industrial organisation or employee concerned;

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

agreement and may order the employer to make such contribution accordingly.

(2) The Industrial Commission may make its order under subsection (1) to operate from the date on which any particular employee or employees became eligible for payment by the employer of contribution to the scheme or fund determined by the Commission, if the Commission considers it just to do so.

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

### **Power to grant injunctions**

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

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

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

- (a) to the officers or members (or both) of an industrial organisation, or branch of an industrial organisation, generally and without further description; or
- (b) to such of the officers or members of an industrial organisation, or branch of an industrial organisation, as it thinks fit; or

(c) to any particular employer or employers.

(4) The Industrial Commission's jurisdiction under subsection (1) may be exercised in chambers, but any order so made by the Commission may be discharged by a Full Bench of the Commission, on the application of any party to the relevant award, industrial agreement or certified agreement or of any person affected by the order.

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

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

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

### **Direction or order of Commission in relation to strike or lockout**

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

### **Demarcation disputes**

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

- (a) must consider whether it should consult with appropriate peak councils and industrial organisations; and
- (b) may consult with appropriate peak councils and industrial organisations and, if it does so, must inform the parties to the

dispute of any views expressed by the peak councils and organisations.

### **Organisation coverage**

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

- (a) an order that an industrial organisation of employees is to have the right, to the exclusion of another industrial organisation or other industrial organisations, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;
- (b) an order that an industrial organisation of employees that does not have the right to represent under this Act the industrial interests of a particular class or group of employees is to have that right;
- (c) an order that an industrial organisation of employees is not to have the right to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.

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

- (a) must consider whether it should consult with appropriate peak councils and industrial organisations; and
- (b) may consult with appropriate peak councils and industrial organisations and, if it does so, must inform the parties to the dispute of any views expressed by the peak councils and organisations; and
- (c) must have regard to any agreement or understanding of which the Full Bench becomes aware that deals with the right of an industrial organisation of employees to represent under this Act the industrial interests of a particular class or group of employees.

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

**(4)** If the Full Bench makes an order under subsection (1), the Full Bench must refer the matter to a nominated Commissioner unless the Full

Bench is satisfied that the rules of the industrial organisations concerned do not need to be altered.

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

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

(7) In this section—

**“nominated Commissioner”** means the Chief Industrial Commissioner or another Industrial Commissioner nominated by the Chief Industrial Commissioner.

### **Procedures for reopening**

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

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

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

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

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

- (d) a person who is bound by or claims to be affected or aggrieved by, the proceedings to which the application relates, and who satisfies the Commission—
  - (i) that the person is not an officer of an association that is eligible to be, but is not, registered under this Act; and
  - (ii) that in making the application, the person is not acting on behalf of an association that is eligible to be, but is not, registered under this Act;

as an industrial organisation.

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

- (a) to cancel the action taken on the recommendation;
- (b) to vary such action;

to accord with the Commission's rescission or variation.

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

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

## **References to Full Bench**

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

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

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

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

### **Case stated to Court**

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

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

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

### **Remission to Industrial Magistrate**

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

- (a) investigation and report to the Commission; or
- (b) taking of evidence; or
- (c) hearing and determination;

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



**Power to enter and inspect**

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

- (a) to enter any place in which, or in respect of which—
  - (i) a calling is carried on; or
  - (ii) work has been, or is being, performed; or
  - (iii) any other activity has occurred, or is occurring;  
and in relation to which—
  - (iv) an industrial dispute exists, is impending or threatened, or will probably arise; or
  - (v) an industrial matter exists; or
  - (vi) any award, industrial agreement, certified agreement or permit exists; or
  - (vii) it is reasonably suspected an offence against this Act has been, or is being committed;
- (b) to view and inspect any work, machinery, appliance, materials, article or thing therein or thereon;
- (c) to question any person therein or thereon about any matter relevant to the Commission's concern with the place.

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

**PART 5—INDUSTRIAL MAGISTRATES****Office of Industrial Magistrate**

**50.** Each of the following persons is an Industrial Magistrate—

- (a) a Stipendiary Magistrate;

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

### **Industrial Magistrates Court**

**51.(1)** An Industrial Magistrates Court is a Court of Record, and is constituted by an Industrial Magistrate sitting or acting alone.

**(2)** Every Industrial Magistrate—

- (a) may hear and determine judicially, according to law, all matters within the jurisdiction of an Industrial Magistrate that are brought before, or referred to, that magistrate;
- (b) for the purpose of every such hearing and determination, constitutes an Industrial Magistrates Court;
- (c) has and may exercise jurisdiction throughout the State.

### **Jurisdiction of Industrial Magistrate**

**52.** Jurisdiction is hereby conferred on every Industrial Magistrate—

- (a) to hear and determine proceedings relating to—
  - (i) offences against this Act in respect of which—
    - (A) a maximum penalty not exceeding 40 penalty units is prescribed, except any such offence in respect of which this Act prescribes otherwise;
    - (B) jurisdiction is conferred by this, or any other, Act on Industrial Magistrates;
  - (ii) claims for wages due and payable to an employee under any award, industrial agreement, certified agreement or permit or in respect of moneys payable, with an employee's consent in writing, from such wages;
  - (iii) claims for wages due and payable to an employee pursuant to an agreement whereby—
    - (A) wages are payable at a price or rate that is not fixed by any relevant award, industrial agreement, certified agreement or permit; or

- (B) wages are payable at a price or rate that exceeds the price or rate fixed by any relevant award, industrial agreement, certified agreement or permit;  
or in respect of moneys payable, with an employee's consent in writing, from such wages;
- (iv) claims for exercise of jurisdiction of Industrial Magistrates under Division 1 of Part 17;
- (v) claims for damages for breach of an agreement made under an award, industrial agreement or certified agreement;
- (vi) claims for damages sustained by an employee because of the employer's neglect to pay the employee's wages;
- (vii) recovery of moneys due to an industrial organisation under its rules by a member thereof;
- (b) to exercise powers conferred on, or jurisdiction committed to, Industrial Magistrates by this Act;
- (c) to exercise powers conferred on, or jurisdiction committed to, Industrial Magistrates by an Act other than this Act;
- (d) to—
  - (i) investigate and report on;
  - (ii) take evidence concerning;
  - (iii) hear and determine;any industrial matter, or any aspect thereof, or any matter or question that arises in connection therewith, remitted to an Industrial Magistrate by the Industrial Commission, as required by the relevant order of the Commission.

### **Power of Industrial Magistrate concerning unpaid superannuation contribution**

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

- (a) an Industrial Inspector; or
- (b) an employee who is an eligible employee on whose behalf contribution to an approved occupational superannuation scheme

or fund is required by any award, industrial agreement or certified agreement to be paid by an employer; or

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

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

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

(2) Subject to subsection (3), an order under subsection (1) requires payment of the sum specified therein to an approved occupational superannuation scheme or fund in accordance with the relevant award, industrial agreement or certified agreement.

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

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

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

- (a) cannot be located after all reasonable inquiries; or
- (b) fails to nominate a superannuation scheme or fund for the purpose of the order;

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

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

- (a) may order payment on such terms as the Industrial Magistrate thinks fit;
- (b) may make an order for costs in an amount assessed by the Industrial Magistrate, or make no order for costs, as the Industrial Magistrate considers just.

### **Industrial Magistrate's powers on remission**

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

### **Exclusive nature of Industrial Magistrates' jurisdiction**

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

(2) Jurisdiction conferred on Industrial Magistrates by section 52(a)(iii) is not exclusive of jurisdiction had by any other court.

## **PART 6—INDUSTRIAL REGISTRAR’S OFFICE**

### **Establishment and role of office**

**56.(1)** There is hereby established an office called the Industrial Registrar’s Office.

**(2)** The Industrial Registrar’s Office—

- (a) is the registry of the Industrial Court and Industrial Commission;
- (b) provides administrative support to the Court and Commission;
- (c) discharges such functions as are prescribed for the office.

### **Industrial Registrar and staff**

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

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

- (a) such number of Assistant Industrial Registrars as is necessary for the effectual administration of this Act;
- (b) such number of other officers as is necessary for the proper performance of the Industrial Registrar’s functions.

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

### **Functions etc. of Industrial Registrar**

**58.(1)** The Industrial Registrar—

- (a) administers the Industrial Registrar’s Office;
- (b) is to maintain a register of industrial organisations;
- (c) in respect of the Industrial Court and Industrial Commission, has and may exercise such powers, and is to perform such duties, as

are prescribed or are provided for by the rules of court.

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

### **Functions etc. of Assistant Industrial Registrar**

**59.(1)** An Assistant Industrial Registrar—

- (a) is to assist the Industrial Registrar in the performance of the registrar's functions;
- (b) is to perform such other duties as the President, the Chief Industrial Commissioner or the Industrial Registrar directs.

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

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

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

## **PART 7—ARRANGEMENTS WITH OTHER INDUSTRIAL AUTHORITIES**

### **Commissioner may hold other appointment**

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

### **Appointment of Commonwealth official as Commissioner**

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

**(2)** Sections 25 and 28 do not apply in relation to an appointment under subsection (1) or to an Industrial Commissioner so appointed.

**(3)** An appointment under subsection (1)—

- (a)** is for such term as the Governor in Council thinks fit and specifies in the instrument of appointment;
- (b)** may be terminated at any time, with the approval of the Governor in Council, by notification in writing of the Minister given to the holder of the appointment.

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

- (a)** is not entitled to remuneration for performing the duties of a Commissioner;
- (b)** is entitled to be paid expenses reasonably incurred by the Commissioner in exercising powers and performing duties as a Commissioner.

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

- (a)** becomes—
  - (i)** a member of the Executive Council or Legislative Assembly; or
  - (ii)** a person such as is referred to in section 20(2)(b); or



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

the person ceases to be an Industrial Commissioner.

### **Role of appointee under s.61**

**62.(1)** As agreed from time to time by the Chief Industrial Commissioner and the President of the Australian Industrial Relations Commission, a person who is an Industrial Commissioner appointed under section 61 and who is also a member of the Australian Industrial Relations Commission—

- (a) is to perform the duties of an Industrial Commissioner; and
- (b) has and may exercise, in relation to a particular matter—
  - (i) powers that the person has in relation to the matter as a Commissioner; and
  - (ii) powers that the person has in relation to the matter as a member of the Australian Industrial Relations Commission.

**(2)** A provision of this Act that prescribes powers or duties of an Industrial Commissioner is to be construed as subject to subsection (1) in its application to a Commissioner appointed under section 61.

### **Reference of matter to Commonwealth official**

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

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

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

constituted by a single Commissioner.

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

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

- (a) does not derogate from the authority of the Industrial Commission to exercise jurisdiction in relation to the industrial matter, or part, referred;
- (b) may be revoked at any time by the Chief Industrial Commissioner by notification in writing given to the nominated member.

### **Coordination and joint sessions of authorities**

**64.(1)** If—

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

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

(2) If—

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

the Chief Industrial Commissioner—

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

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

**(3)** If—

- (a) it appears to the Chief Industrial Commissioner that any industrial authority has before it an industrial matter identical or similar to an industrial matter before a Full Bench of the Industrial Commission; and
- (b) the industrial authority agrees to participation in joint session;

the Chief Industrial Commissioner—

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

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

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

- (a) the Commissioner participating in the joint session is to forthwith cease to so participate; and
- (b) the industrial matter may proceed before the Industrial Commission, or a Full Bench thereof, whichever was seised of

the matter before commencement of participation in the joint session.

### **Restriction on Chief Commissioner's authority**

**65.** In exercising authority conferred by section 63 or 64 the Chief Industrial Commissioner is to act in consultation with the President.

### **Powers etc. vested in Commission by other jurisdictions**

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

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

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

### **Initiation of proceedings—exercise of powers**

**67.(1)** Except as is otherwise prescribed—

- (a) proceedings may be commenced in the Industrial Court or the Industrial Commission or before the Industrial Registrar on the application of—
  - (i) an industrial organisation or an officer or member of an industrial organisation;
  - (ii) the Minister;
  - (iii) an Industrial Inspector;

- (iv) an employer;
  - (v) any person who has an interest in the cause or matter to which the application relates;
- (b) the Industrial Commission may, of its own motion, initiate proceedings in the Commission and, for the purpose of such proceedings, may summon before it such persons as it considers necessary.
- (2) Except as is otherwise prescribed, the Industrial Commission may exercise any of its powers—
- (a) of its own motion;
  - (b) on the application of—
    - (i) a party to the proceedings in which the power is to be exercised;
    - (ii) an industrial organisation
- (3) The Industrial Commission may of its own motion join any 2 or more matters to be heard and determined by the Commission, whether the matters or any of them arise under this, or any other, Act, and may hear and determine all such matters in 1 proceedings.

### **General powers**

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

- (a) may make any decision that appears to it to be just, and may include therein any requirement or provision that it thinks necessary or expedient for preventing or settling the industrial dispute, or dealing with the industrial matter, to which the cause relates, without being restricted to any specific relief claimed by the parties to the cause;
- (b) may dismiss the cause, or refrain from hearing, further hearing, or determining the cause, if it appears to the Court or Commission that the cause is trivial or that, in the public interest, further proceedings by the Court or Commission are not necessary or desirable;

- (c) may order any party to the cause to pay to any other party thereto such expenses (including expenses of witnesses) as it considers just, and specifies in its order.

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

- (a) any interlocutory proceedings to be taken before the hearing of the cause, including with respect to—
  - (i) naming and joinder of parties;
  - (ii) persons to be served with notice of proceedings;
  - (iii) summoning of persons to attend in proceedings;
  - (iv) particulars of the claims of the parties;
  - (v) the issues to be submitted to the Court or Commission;
  - (vi) admissions, discovery, interrogatories or inspection of documents or of property;
  - (vii) examination of witnesses;
  - (viii) costs of the interlocutory proceedings;
  - (ix) place, time and mode of hearing of the cause;
- (b) any matter that, pursuant to the rules of court, the President, an Industrial Commissioner, or the Industrial Registrar as the case may be, is authorised to hear or deal with in chambers.

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

- (a) direct the Industrial Registrar to conduct an inquiry into any matter as to which the Commission requires information for the purpose of exercising the Commission's jurisdiction;
- (b) direct any person to take evidence on behalf of the Commission in relation to any industrial cause.

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

(5) For the purpose of—

- (a) conducting an inquiry referred to in subsection (3);
- (b) disposing of any other matter referred to the Industrial Registrar by or under this Act;

the registrar may—

- (c) summon persons to attend before the registrar;
- (d) examine parties and witnesses.

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

- (a) summoning witnesses;
- (b) requiring production of records.

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

- (a) the Industrial Court;
- (b) the Industrial Commission;
- (c) an Industrial Magistrates Court;

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

### **Protection of proceedings**

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

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

Industrial Registrar in the official capacity of any of those officials.

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

### **Basis of procedures and decisions of the Commission and Industrial Magistrates**

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

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

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

- (a) the state of the economy;
- (b) the likely effects of the Commission's decision on the economy, industry generally and the particular industry concerned.

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

### **Proceedings of Commission or Industrial Magistrate not to be questioned**

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

- (a) cannot be impeached for informality or want of form;
- (b) except as is prescribed, cannot be appealed against, reviewed, quashed or called in question;



in any court on any account whatever.

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

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

### **Powers incidental to exercise of jurisdiction**

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

- (a) at or before a hearing, take steps to ascertain whether all persons who ought to be bound by any decision to be made in proceedings have been summoned to attend or given notice of, the proceedings;
- (b) direct—
  - (i) who are the parties to the proceedings; and
  - (ii) by whom the parties may be represented; and
  - (iii) persons to be summoned to attend the proceedings, if they have not been summoned and it appears that they should attend the proceedings; and
  - (iv) parties to be joined or struck out; and
  - (v) who may be heard and on what conditions; and
- (c) hear and determine the cause in such manner as appears best suited for the purpose;
- (d) allow any amendment of the proceedings on such terms as appear just and fair, and correct, amend or waive any error, defect or irregularity therein, whether in substance or in form;
- (e) give directions consequent upon a decision, which directions in the opinion of the Court, Commission or registrar are necessary for, or conducive and appropriate to the effectual implementation

of the decision;

- (f) hear and determine a cause in the absence of any party, or of a person who has been summoned to attend, or served with a notice to appear at, the proceedings;
- (g) sit at any time and in any place for hearing and determining a cause, and adjourn a sitting to any time and place;
- (h) refer technical matters, matters of accounting, or matters involving expert knowledge to an expert, and admit the expert's report in evidence;
- (i) extend any prescribed, or specified, time, before or after expiry of the time;
- (j) waive compliance with any rule of court.

### **Power to obtain data and expert evidence**

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

- (a) order—
  - (i) any industrial organisation that is, or any of whose members are, party to the proceedings;
  - (ii) any employer, or group of employers, who is or are party to the proceedings;

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

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

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

- (a) relevant to the cause; or
- (b) of a description indicated by the Industrial Commission as sought for the Commission's information;

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

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

### **Competence and compellability of witnesses**

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

### **Service of process**

75.(1) If it is made to appear to—

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

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

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

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

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

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

### **Evidentiary provisions affecting proceedings under Act**

**76.(1)** In proceedings relating to anything done, or proposed to be done, because of a request made, or purporting to have been made, under section 243 in relation to—

- (a) an industrial organisation, or branch of an industrial organisation to which section 250 applies;
- (b) an industrial organisation, or branch of an industrial organisation, in respect of which a certificate of exemption under section 251 is in force;

the copy of the register of members of the industrial organisation to which section 250 applies, or of the branch thereof, (as at 31 December last preceding the date on which the request is made) as varied (before the date on which the request is made) in accordance with any yearly returns referred to in section 250, or, as the case may be, the register of members maintained by the industrial organisation or branch exempted under section 251 showing the members of the industrial organisation or branch as at the date on which the request is made, is prima facie evidence that each person shown in—

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

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

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

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

- action, is to be presumed in the absence of evidence to the contrary;
- (b) a signature purporting to be that of an Industrial Inspector is to be taken as the signature it purports to be, until the contrary is proved;
  - (c) a document purporting to be a duplicate or copy of any notice or order issued under this Act by an Industrial Inspector is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the issue of the notice or order and of the matters contained therein;
  - (d) the limits of any district or part of the State, or of any road, as alleged, averred or stated in any complaint or other document made for the purposes of the proceedings are to be presumed in the absence of evidence to the contrary;
  - (e) judicial notice of the existence of a strike or lockout, or of a proposed strike or lockout, may be taken, if the tribunal concerned is of the opinion that the existence of the strike or lockout, or the proposal therefor, is so well known as to require no proof of the fact;
  - (f) a list of officers of an industrial organisation last lodged in the Industrial Registrar's Office, on behalf of the industrial organisation, or a copy of such a list, bearing a certificate purporting to be that of the Industrial Registrar, that it is a true copy, is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence that on the day on which the list was lodged in the Industrial Registrar's Office each person named in the list was an officer (as specified in the list) of the industrial organisation and has continued to be that officer;
  - (g) a copy of the rules of an industrial organisation, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the rules.

### **Confidential material tendered in evidence**

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

Commission records, relating to—

- (a) trade secrets of any person; or
- (b) the financial position of any party or witness;

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

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

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

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

- (a) evidence given;
- (b) records tendered;
- (c) things exhibited;

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

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

- (a) disclosure of the matter to which the direction would relate would not be in the public interest; or
- (b) persons other than parties to the cause do not have a sufficient

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

### **Evidentiary value at large of official records**

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

**(2)** In all proceedings—

- (a) a copy of, or a document purporting to be an extract from, the Industrial Gazette purporting to contain notification of—
  - (i) a declaration of a general ruling published pursuant to section 36;
  - (ii) a variation of any award, industrial agreement or certified agreement;

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

- (b) a copy of any industrial agreement, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence of the agreement, its execution as shown in the copy, and its registration in the Industrial Registrar's Office; and
- (c) a copy of a certified agreement, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence of the agreement, its execution as shown in the copy, and its certification by the Commission; and
- (d) a copy of, or a document purporting to be an extract from the Industrial Gazette purporting to contain notification of the

registration of any industrial agreement, or purporting to record the agreement is evidence of the agreement, its execution as recorded therein and its registration in the Industrial Registrar's Office; and

- (e) a copy of a permit issued by an Industrial Magistrate or the Industrial Registrar bearing a certificate purporting to be that of the appropriate Clerk of Magistrates Courts, or, as the case may be, the registrar, that it is a true copy is admissible as evidence of the permit; and
- (f) a certificate purporting to be that of the Industrial Registrar relating to the registration of an industrial organisation is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein; and
- (g) a certificate purporting to be that of the Industrial Registrar that a person named therein was, at a time specified therein an officer (as named therein), or a member, of an industrial organisation specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

### **Proof of certain facts by averment**

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

- (a) that a calling was, at or about a time specified therein, transmitted from one person to another, by operation of law or by agreement;
- (b) that a person named therein is or is not or was or was not, at a time specified therein, an officer or a member of an industrial organisation;
- (c) that a person named therein is liable to pay, but has not paid, contribution to an occupational superannuation scheme or fund as required by any award, industrial agreement or certified agreement;

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



**Evidentiary value of certificate of trustee of occupational superannuation scheme**

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

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

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

**Certificate evidence in proceedings concerning holding of office in industrial organisation**

**81.(1)** In proceedings on an application under section 229, 230 or 231 a certificate purporting to be that of a registrar or other proper officer of a court of the State, the Commonwealth, another State or a Territory of the Commonwealth or another country, that—

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

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

**(2)** In proceedings on an application under section 229, 230 or 231 a certificate purporting to be that of an officer in charge of a prison that a person specified therein was released from the prison on a day specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

**Crown employee to furnish information**

**82.(1)** A person in the employment of the Crown, on being required by

the Industrial Court or Industrial Commission to do so, is to furnish to the Court or the Commission information of which the person has knowledge in an official capacity.

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

### **Representation of parties**

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

- (a) in relation to proceedings in the Industrial Court—
  - (i) if the proceedings are for the prosecution of an offence under any Act; or
  - (ii) if all parties to the proceedings consent; or
  - (iii) if the Court grants leave; or
- (b) if the proceedings are for leave of the President under section 98(1), with the consent of all parties to the application and of all persons ordered or permitted to be heard on the application, or with the leave of the President;
- (c) if the proceedings are interlocutory proceedings before the Industrial Registrar in relation to proceedings before, or to be brought before, the Industrial Court, with the consent of all parties to the interlocutory proceedings, or with the leave of the registrar;
- (d) if the proceedings are in the Industrial Commission—
  - (i) with the consent of all parties to the proceedings; or
  - (ii) with the leave of the Commission, if—
    - (A) the proceedings relate to the rules of an industrial organisation, or an association seeking registration as

an industrial organisation; and

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

(e) if the proceedings are—

(i) in an Industrial Magistrates Court; or

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

with the consent of all parties to the proceedings.

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

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

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

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

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

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

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

## **Costs**

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

counsel, solicitor or agent, as the case may be, should be, or was, heard.

### **Intervention as of right**

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

- (a) in any proceedings in the Industrial Court, the Industrial Commission, an Industrial Magistrates Court, or before the Industrial Registrar;
- (b) in any proceedings in any court or tribunal that touch upon—
  - (i) the jurisdiction or powers of the Industrial Court, Industrial Commission, an Industrial Magistrate or the Industrial Registrar; or
  - (ii) any matter in relation to which such jurisdiction or powers may be exercised; or
  - (iii) the interpretation of this Act.

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

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

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

### **Adjournment by Industrial Registrar**

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

### **Reserved decisions**

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

**(2)** If a decision is reserved, it may be pronounced at any continuation or resumption of the Industrial Court or Industrial Commission, or at any

subsequent sitting thereof, or the person or each of the persons constituting the Court or Commission may draw up a decision in writing and, after signing it, give it to the Industrial Registrar.

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

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

### **Extent of decisions and their execution**

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

- (a) may make and pronounce all such decisions as are necessary, in its opinion, for doing complete justice in any proceedings before it, and for the execution of any such decision;
- (b) may enforce its own decisions, and may direct the issue of any writ or process or impose and enforce any penalty authorised or prescribed by this, or any other, Act in the same manner as a judgment of the Supreme Court is enforced.

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

- (a) is to be drawn up and verified;
- (b) without prejudice to any other manner of execution and recovery prescribed, may be executed, recovered on, and otherwise enforced;

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

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

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

- (a) executing, recovering on, and otherwise enforcing decisions of the Industrial Court or Industrial Commission;
- (b) conferring powers and authorities or imposing duties by the rules of court and of exercising or performing such powers, authorities and duties.

### **Enforcement of Commission's orders**

**89.(1)** If the Industrial Commission makes an order directed to—

- (a) an industrial organisation, or a person in a capacity as an officer or agent of an industrial organisation; or
- (b) any other person;

it is to—

- (c) specify a time within which the industrial organisation or person must comply with the order;
- (d) direct—
  - (i) the industrial organisation or person; and
  - (ii) the party (if any) to the proceedings in which the order is made who sought the order; and
  - (iii) any other party to the proceedings that the Commission considers appropriate;

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

(2) The Industrial Commission may extend a time specified under subsection (1)(c) or (d) and the time so extended is taken to be the time specified under the paragraph.

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

the Industrial Registrar—

- (a) is to examine all affidavits filed;
- (b) where the registrar considers it necessary, is to make such further enquiries as the registrar thinks fit;

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

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

- (a) to the industrial organisation to which, or to whose officer or agent, the order was directed; or
- (b) to the person (other than such officer or agent) to whom the order was directed;

a notice in accordance with the rules of court, calling on the industrial organisation or person, as the case may be, to show cause to the Full Industrial Court on a day and at a time specified in the notice why the industrial organisation or person should not be dealt with under section 90.

### **Remedies on show cause**

90.(1) If, on the day and at the time specified in the notice to show cause under section 89(4), or on a day and at a time to which the proceedings are adjourned, the industrial organisation to which the notice was issued does not show cause, which in the opinion of the Full Industrial Court is sufficient cause, the Court may exercise all or any of the following powers—

- (a) impose on the industrial organisation a fine not exceeding 1 000 penalty units;
- (b) vary an award, industrial agreement or certified agreement to which the industrial organisation is a party;
- (c) suspend the date of operation of any wage increase that would otherwise be payable to members of the industrial organisation or to any class of such members;
- (d) alter the rules of the industrial organisation so as to exclude from

eligibility for membership thereof persons belonging to a particular class of member or section of such membership;

- (e) make such orders as it thinks fit—
  - (i) restricting the use of property of the industrial organisation, or any branch thereof;
  - (ii) controlling the property of the industrial organisation, or any branch thereof, with a view to ensuring observance of such restrictions;
- (f) suspend the registration of the industrial organisation for a specified period;
- (g) cancel the registration of the industrial organisation;
- (h) make such other order as it thinks fit with a view to securing the industrial organisation's compliance with the Industrial Commission's order or punishing the industrial organisation for its failure to comply with the Commission's order;
- (i) order the industrial organisation to pay the costs of the show cause proceedings.

**(2)** If, on the day and at the time specified in the notice to show cause under section 89(4), or on a day and at a time to which the proceedings are adjourned, the person to whom the notice was issued does not show cause, which in the opinion of the Full Industrial Court is sufficient cause, the Court may exercise all or any of the following powers—

- (a) impose on the person a fine not exceeding—
  - (i) in the case of a corporation—200 penalty units;
  - (ii) in the case of an individual—40 penalty units;
- (b) make such other order as it thinks fit with a view to securing the person's compliance with the Industrial Commission's order or punishing the person for failure to comply with the Commission's order;
- (c) order the person to pay the costs of the show cause proceedings.

**(3)** All persons concerned are to comply with and give full effect to every order or direction made or given by the Full Industrial Court under subsection (1) or (2).



**Filing Industrial Magistrate's decision**

**91.** Every decision of an Industrial Magistrate made upon a remission by the Industrial Commission under this Act must be filed in the Industrial Registrar's Office, and thereupon is taken to be a decision of the Commission and to have operation and effect and to be enforceable accordingly, subject to any appeal therefrom.

**Recovery of moneys under orders**

**92.(1)** If in any proceedings the Industrial Court or Industrial Commission orders payment of a sum (as a penalty or otherwise), the Industrial Registrar may issue a certificate in accordance with the rules of court, under the seal of the Court or, as the case may be, the Commission, specifying—

- (a) the amount payable;
- (b) the persons by whom and to whom the amount is payable;

and upon filing of the certificate in a court of competent jurisdiction in an action for a debt of that amount the order evidenced by the certificate is enforceable as an order made in such an action by the court in which the certificate is filed.

**(2)** The remedy prescribed by subsection (1) is without prejudice to any other manner prescribed in which moneys may be recovered on an order of the Industrial Court or Industrial Commission.

**Rules of court**

**93.(1)** The President, with the concurrence of any 2 Industrial Commissioners may make rules not inconsistent with this Act—

- (a) regulating the practice and procedure and forms to be followed and used in or in connection with or for the purposes of proceedings in the Industrial Court or Industrial Commission and before the Industrial Registrar, and in or in connection with or for the purposes of drawing up, settling and enforcing decisions, convictions and actions made, recorded or done by the Court, Commission or registrar and for regulating proceedings in chambers;

- (b) as to the publication of decisions and other actions of the Court, Commission or registrar and the effect of such publication;
- (c) for recovering fines and penalties imposed, and enforcing orders for attachment or imprisonment and orders for the payment of any moneys made by the Court or Commission;
- (d) prescribing the fees and expenses to be paid to witnesses;
- (e) prescribing fees to be paid in respect of any proceedings in the Court or Commission, or before the registrar and the party by whom such fees are to be paid;
- (f) prescribing the mode of service of process, notices, orders or other proceedings on parties and other persons;
- (g) prescribing the powers, authorities and duties of officers of the Court or the Commission;
- (h) relating to industrial agreements;
- (i) delegating the jurisdiction of the Commission as permitted by this Act;
- (j) requiring the furnishing of returns, lists of officers or members and other statistical information by industrial organisations and other organisations to the registrar;
- (k) providing for all matters required or permitted by this Act to be provided for by the rules of court;
- (l) providing for all matters necessary or expedient to be provided for, to allow for—
  - (i) the full and effectual exercise of jurisdiction and powers of the Court, Commission and registrar;
  - (ii) the giving of effect to the decisions, convictions and actions made, recorded, or done by the Court, Commission, any Industrial Magistrate, registrar, or officer of the Court or Commission.

(2) Every rule of court duly made is to be published in the Industrial Gazette and thereupon is to be judicially noticed and, unless it is disallowed by the Legislative Assembly, has the force of law.

(3) Section 28A (Tabling of regulations) of the *Acts Interpretation*

*Act 1954* applies in relation to rules made under subsection (1) as if such rules were regulations.

### **Directions as to practice**

**94.(1)** Subject to this Act and the rules of court, the practice and procedure of the Industrial Court, Industrial Commission or Industrial Registrar is as directed by the President, a Commissioner or the registrar respectively.

**(2)** If a person wishes to take any step in a cause or a proposed cause and this Act or the rules of court do not make provision, or sufficient provision, therefor application for directions may be made in chambers to the appropriate person referred to in subsection (1).

## **PART 9—APPEALS**

### **Appeal to Supreme Court from Industrial Court**

**95.(1)** A person aggrieved as defendant by—

- (a) a decision of the Full Industrial Court, in proceedings referred to in section 13(1)(b)(iv), (v) or (vi);
- (b) a decision of the Industrial Court in proceedings referred to in section 13(1)(c);

may appeal against the decision to the Court of Appeal.

**(2)** In proceedings instituted under subsection (1) the validity of proceedings in or before, or of a decision of, the Industrial Commission, or an Industrial Magistrate, must not be called in question.

### **Appeal to Industrial Court**

**96.(1)** A person aggrieved by a decision of the Industrial Commission on—

- (a) an application for registration of an industrial organisation;

- (b) an objection to such an application;

may appeal against the decision to the Full Industrial Court.

(2) Apart from the right of appeal under subsection (1), the Crown or a person aggrieved by a decision of the Industrial Commission or the Industrial Registrar, other than a decision of a Full Bench of the Commission made on appeal from a decision of a single Commissioner, may appeal against the decision to the Industrial Court on the ground of—

- (a) error of law;
- (b) excess, or want, of jurisdiction;

and on no other ground.

(3) A person aggrieved by a decision of an Industrial Magistrate made in exercise of jurisdiction conferred by section 52 in relation to—

- (a) the matters specified in section 52(a) or (c);
- (b) the powers provided for in section 53;

may appeal against the decision to the Industrial Court.

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

(5) On appeal duly instituted under this section the Industrial Court may, by its order—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision that, in its opinion, should have been made;
  - (ii) vary, as it considers appropriate, the decision appealed against;
  - (iii) suspend the operation of the decision appealed against and remit the cause, with or without directions, to the Industrial Commission, Industrial Magistrates Court, Industrial Registrar, or, as the case may be, Certifying Barrister, to

proceed according to law;  
as the Court considers appropriate.

### **Court's discretion on penalty on appeal**

**97.** If the Industrial Court, on appeal, affirms a conviction of a person for an offence it may—

- (a) increase the penalty, but so as not to exceed the maximum penalty prescribed for the offence; or
- (b) reduce the penalty;

as the Court considers just.

### **Appeals to Industrial Commission**

**98.(1)** A person aggrieved by a decision of the Industrial Commission constituted by a single Industrial Commissioner, with the leave of the President, may appeal against the decision to a Full Bench of the Commission on a ground other than—

- (a) error of law;
- (b) excess, or want, of jurisdiction.

**(2)** Leave for an appeal is not to be granted unless the President is of the opinion that the matter is of such importance that an appeal should be brought in the public interest.

**(3)** Except if an appeal may be brought under subsection (4) or under section 96(3), a person aggrieved by a decision of an Industrial Magistrate made in exercise of jurisdiction conferred by section 52 may appeal against the decision to a Full Bench of the Industrial Commission.

**(4)** A person aggrieved by a decision of an Industrial Magistrate made on an application under section 146 for a permit may, subject to subsection (5), appeal against the decision to the Industrial Commission.

**(5)** If the decision to be appealed against is that a permit be granted, an appeal may be brought on the ground that the calling to which the permit relates, or would relate, is one in relation to which such a permit should not be granted, and on no other ground.

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

- (a) under section 36(7)—varying terms of an award, industrial agreement or certified agreement;
- (b) under section 145—on application for a permit;

may appeal against the decision to the Industrial Commission.

(7) On an appeal duly instituted under this section the Industrial Commission may, by its order—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision that, in its opinion, should have been made;
  - (ii) vary as it considers appropriate the decision appealed against;
  - (iii) suspend the operation of the decision appealed against if, being a decision such as is referred in subsection (1), it has not already been stayed under section 99, and remit the cause, with or without directions, to the Industrial Commissioner, the Industrial Magistrate or, as the case may be, the Industrial Registrar—
    - (A) for report to the Commission as constituted for the purposes of the appeal; or
    - (B) to proceed according to law;

as the Commission considers appropriate.

### **President may stay decisions when leave sought**

**99.(1)** At any time after application is made for the President's leave to appeal to a Full Bench of the Industrial Commission pursuant to section 98(1), a person having a sufficient interest in the cause may make application to the President for an order staying the operation of the decision against which it is sought to appeal.

(2) The President may order that the operation of such decision be stayed, wholly or partly, for such period as is specified in the order, if the

President considers it appropriate to do so, and such order takes effect according to its terms.

### **Decision on appeal against single Commissioner final**

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

### **Appeal against single Commissioner requires appellant's election**

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

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

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

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

(3) In this section—

**“appeal against the decision”** includes application for a prerogative writ in respect of a decision.

### **Appeal to Commission against stand downs**

**102.(1)** An employee stood down by an employer under authority conferred by section 143, may appeal against the stand down to the

Industrial Commission.

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

(3) On an appeal under subsection (1), the Industrial Commission may, by its order—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) order that wages lost by the employee because of the stand down be paid to the employee by the employer within a period specified in the order;
  - (ii) if the employee remains stood down at the time of the Commission's decision, order the employer to provide for the resumption of work by the employee, immediately or on a day specified in the order.

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

- (a) the Commission were an Industrial Magistrates Court;
- (b) the Industrial Commissioner who makes the order were an Industrial Magistrate.

(5) The order may be filed in the office of a Clerk of the Magistrates Court and thereupon may be enforced as an order made by an Industrial Magistrates Court.

### **Nature of appeal**

**103.** An appeal to the Industrial Court or Industrial Commission is by way of re-hearing on the record, but the Court may hear evidence afresh, or hear additional evidence, if in its opinion it is necessary or desirable to do so to effectually dispose of the appeal.



**Time limited for appeal**

**104.** An appeal against any decision must be commenced in accordance with the rules of court within 21 days following—

- (a) the announcement of the decision at a hearing, if the decision is so delivered;
- (b) the release of the decision, if the decision is delivered through the Industrial Registrar.

## **PART 10—AWARDS AND INDUSTRIAL AGREEMENTS**

### *Division 1—Awards*

**Form, effect and term of award**

**105.(1)** Every award is to be made by the Industrial Commission and—

- (a) is to be in a form determined by the Commission in the particular case;
- (b) takes effect and has the force of law throughout the State and without limit of time, except as otherwise prescribed by this section.

**(2)** An award may provide that it is in force—

- (a) in a specified locality;
- (b) for a specified period;
- (c) in relation to 1 or more specified employers;
- (d) in relation to 1 or more named establishments or operations of 1 or more specified employers;

in which event the award takes effect and has the force of law to the extent that it so provides and no further.

**Persons bound by award**

**106.** Subject to—

- (a) all exemptions ordered by the Industrial Commission under section 107; and
- (b) sections 90 and 314;

an award is binding on—

- (c) all parties to the industrial cause in which the award is made who appear or are represented therein before the Commission;
- (d) all parties who have been summoned to appear before the Commission as parties to the industrial cause in which the award is made, whether or not they appear or are represented therein, unless the Commission is of the opinion that they were improperly summoned as parties;
- (e) all industrial organisations concerned with the calling or callings to which the award applies;
- (f) all members of industrial organisations bound by the award;
- (g) all employers and employees in a locality in which the award applies, who are engaged in the calling or callings to which the award applies;
- (h) if the award purports to apply to any particular employer or employers only, or named establishments or operations of any particular employer or employers only, all employees of that employer or those employers or, as the case may be, all employees of that employer or those employers in the named establishments or operations.

**Exemptions**

**107.(1)** The Industrial Commission, of its own motion or on the application of an industrial organisation or an employer, may, by its order by which it makes an award, or by its order made subsequently, exempt from the application of the award—

- (a) any employer or class of employer, or employee or class of employee, in a locality and in the calling or callings to which the

award applies; and

- (b) any person who is engaged, whether as employer or employee, in such a locality and calling or callings, at any time while the award remains in force;

and may, by its order, revoke any such exemption.

(2) For as long as an exemption subsists the award is not binding on the employer or employee or class thereof, or person, according to the terms of exemption.

### *Division 2—Certified agreements*

#### **Objects of Division**

**108.(1)** The objects of this Division are to assist the making and certifying of agreements that will facilitate labour market reform by encouraging—

- (a) single bargaining units; and
- (b) workplace bargaining that is directed at increased productivity; and
- (c) continuous improvement in the workplace; and
- (d) the achievement in the workplace of—
  - (i) best practice; and
  - (ii) increased work satisfaction; and
  - (iii) career opportunities.

(2) The Commission must, as far as practicable, perform its functions under this Division in a way that furthers the objects of this Act and, in particular, the objects of this Division.

(3) Section 46 does not apply to the performance of functions of the Commission under this Division.

**Definitions**

**109.** In this Division—

**“party”** to an agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the business of a party, including a corporation that has acquired or taken over the whole or part of the business of the party;

**“period of the agreement”** means—

- (a) the period of operation of the agreement specified in the agreement; or
- (b) that period as extended or further extended under section 118;

**“single business”** means—

- (a) a business that is carried on by a single employer; or
- (b) a business that is carried on by 2 or more employers as a joint venture or common enterprise; or
- (c) a single project or undertaking; or
- (d) an activity carried on by—
  - (i) the State; or
  - (ii) a body, association, office or other entity established for a public purpose by or under a law of the State; or
  - (iii) any other body in which the State has a controlling interest;

**“single employer”**, in relation to a single business, includes, if the employer is a corporation, wholly owned subsidiaries of the corporation.

**Agreements may be made about industrial matters**

**110.(1)** An employer or an industrial organisation of employers and an industrial organisation of employees may make a memorandum of agreement about an industrial matter.

**(2)** The parties to the agreement must apply to the Commission to certify the agreement.

**Minister may intervene in certain cases**

**111.(1)** If an agreement applies only to a single business, part of a single business or a single place of work, the Minister may intervene in the application on the ground that certification of the agreement may jeopardise seriously the public interest.

(2) The intervention is to be made by giving written notice to the Industrial Registrar.

(3) This section does not limit the operation of section 72 or 85.

(4) This section expires 18 months after the commencement of the section.

**Certification of agreements under this Division**

**112.(1)** If application is made under section 110(2), the Commission must certify an agreement if it is satisfied that—

- (a) the agreement does not disadvantage the employees who are covered by the agreement in relation to their terms of employment; and
- (b) the agreement includes procedures for preventing and settling disputes between the employers and employees covered by the agreement about matters arising under the agreement; and
- (c) subject to subsection (3), before the application for certification of the agreement was made, each industrial organisation of employees that is a party to the agreement took reasonable steps—
  - (i) to consult with its members whose employment is covered by the agreement over the terms of the agreement; and
  - (ii) to inform those members of the industrial organisation's intention to apply for certification; and
- (d) each industrial organisation of employees that is a party to the agreement has—
  - (i) informed the Commission whether or not it consulted with its members as described in paragraph (c)(i); and
  - (ii) informed the Commission of the outcome of any such

consultations; and

- (e) if the agreement applies only to a single business, part of a single business or a single place of work—
  - (i) subject to subsections (4) and (5), the parties to the agreement include—
    - (A) each industrial organisation of employees that is a party to an award that binds an employer in respect of the work performed in that business, part of a business or place of work; or
    - (B) if there is no such award—an industrial organisation of employees that is able to represent the industrial interests of the employees who are covered by the agreement; and
  - (ii) the agreement has been negotiated, on the one hand, by each employer concerned or a representative of the employer, and, on the other hand, by a single person or group of persons representing all the other parties to the agreement; and
- (f) the agreement specifies its period of operation.

**(2)** For the purposes of subsection (1)(a), an agreement is taken to disadvantage employees in relation to their terms of employment only if—

- (a) certification of the agreement would result in the reduction of any entitlements or protections of the employees under an award or an industrial agreement; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction would be contrary to the public interest.

**(3)** Subsection (1)(c) does not apply to an industrial organisation of employees if—

- (a) the agreement applies only to a new business, project or undertaking; and
- (b) at the time when the application for certification is made, no members of the industrial organisation have yet been employed in connection with the business, project or undertaking.

(4) Subsection (1)(e)(i) does not apply if the Commission is satisfied that—

- (a) each industrial organisation of employees referred to in subsection (1)(e)(i)(A) has been given the opportunity to be a party to the agreement; and
- (b) at least 1 of the organisations is a party to the agreement; and
- (c) the agreement is in the interests of the employees whose employment is covered by the agreement.

(5) Subsection (1)(e)(i)(A) does not apply to an industrial organisation of employees if none of its members are employed in the business, part of a business or place of work concerned.

### **When Commission may refuse to certify agreements**

**113.(1)** Despite section 112, the Commission may refuse to certify an agreement if—

- (a) the agreement is one that does not apply only to a single business, part of a single business or a single place of work; and
- (b) the Commission considers that certification of the agreement would be contrary to the public interest.

(2) Despite section 112, if—

- (a) the agreement applies only to a single business, part of a single business or a single place of work; and
- (b) the Minister has intervened in the application under section 111;

the Commission may also refuse to certify the agreement if it thinks that certification of the agreement is likely to jeopardise seriously the public interest.

(3) Subsection (2) and this subsection expire 18 months after the commencement of this section.

### **Other options open to Commission**

**114.(1)** If, under section 112 or 113, the Commission has grounds to refuse to certify the agreement—

- (a) the Commission may accept an undertaking from 1 or more of the parties in relation to the operation of the agreement and may certify the agreement if it is satisfied that the undertaking meets its concerns; and
- (b) in any case, before refusing to certify the agreement, the Commission must give the parties an opportunity to amend it or to take any other action that may be necessary to make the agreement certifiable.

(2) If an undertaking is not observed, the Commission may terminate the agreement after giving the parties an opportunity to be heard.

### **Procedures for preventing and settling disputes**

**115.** Procedures in an agreement for preventing and settling disputes between employers and employees covered by the agreement may, if the Commission so approves, empower the Commission to settle disputes over the application of the agreement.

### **Operation of certified agreements**

**116.(1)** A certified agreement comes into force when it is certified and, during the period of the agreement, it remains in force unless—

- (a) the Commission terminates it under section 114(2); or
- (b) because of 1 or more orders or declarations under section 120 or 121—
  - (i) the agreement is terminated; or
  - (ii) all the remaining parties to the agreement are industrial organisations of employees; or
  - (iii) all the remaining parties to the agreement are employers or industrial organisations of employers.

(2) If the agreement remains in force until the end of the period of the agreement, then, at the end of the period, the agreement continues in force until—

- (a) it is terminated by the Commission; or



- (b) it is varied by the parties (other than under section 120(3)(e)); or
- (c) a new agreement, in substitution for the agreement, is certified under this Division; or
- (d) all the remaining parties to the agreement are industrial organisations of employees; or
- (e) all the remaining parties to the agreement are employers or industrial organisations of employers.

### **Party may retire from a certified agreement**

**117.(1)** A party to a certified agreement—

- (a) within 30 days before the end of the period of the agreement; or
- (b) at any time while the agreement remains in force because of section 116(2);

may file in the Industrial Registrar's office a notice in accordance with the rules of court signifying an intention to retire from the agreement at the end of a specified period of at least 30 days from the day of filing.

**(2)** At the end of the specified period, the party that has filed the notice ceases to be a party to the certified agreement.

### **Extension of certified agreements**

**118.(1)** Subject to subsection (2), the parties to a certified agreement may extend the period of the agreement's operation.

**(2)** An extension has effect only if—

- (a) the parties agree to the extension; and
- (b) the parties notify the Commission in writing of the extension before the end of the period of the agreement's operation or that period as extended or further extended under this section.

### **Effect of certified agreements**

**119.(1)** While a certified agreement is in force—

- (a) the terms of the agreement prevail over the terms of an award or

an industrial agreement to the extent of the inconsistency; and

- (b) a term of the agreement can be varied by the parties, but only as provided in section 120.

(2) The agreement may only be varied by the Commission on the application of the parties for the purpose of removing ambiguity or uncertainty.

(3) Subject to section 115, the Commission must not exercise arbitration powers in relation to the agreement.

### **Certified agreements may be varied or terminated by Full Bench**

**120.(1)** At any time while a certified agreement is in force, a Full Bench may review the operation of the agreement after giving the parties to the agreement an opportunity to be heard.

(2) The Full Bench may act under subsection (1) only—

- (a) on its own motion; or
- (b) on application by an industrial organisation or person bound by the agreement.

(3) If the Full Bench finds—

- (a) in the case of any agreement—that the continued operation of the agreement would be unfair to the employees covered by the agreement; or
- (b) in the case of an agreement that does not apply only to a single business, part of a business or a single place of work—that the continued operation of the agreement would be contrary to the public interest;

it may do any of the following things—

- (c) by order, terminate the agreement;
- (d) accept an undertaking from all or any of the parties in relation to the operation of the agreement;
- (e) permit the parties to vary the agreement.

(4) If an undertaking is not observed, a Full Bench may, by order, terminate the agreement after giving the parties an opportunity to be heard.

(5) If a party to a certified agreement engages in industrial action in relation to a matter dealt with in the agreement, another party who is affected by the industrial action may apply to a Full Bench for a declaration that the applicant is no longer bound by the agreement.

(6) The Full Bench may, by order, declare that the applicant is no longer bound by the agreement if the Full Bench is satisfied that it is in the public interest to make the declaration.

(7) Despite subsections (2) and (3), the following provisions have effect in relation to an agreement that applies only to a single business, part of a single business or a single place of work—

- (a) the Minister may apply to a Full Bench to review the agreement on the ground that its continued operation would jeopardise seriously the public interest;
- (b) if, on such an application, the Full Bench finds that the ground is established, it may do any of the things specified in subsection (3)(c), (d) and (e).

(8) Subsection (7) and this subsection expire 18 months after the commencement of this section.

### **Certified agreements may be terminated by parties**

**121.(1)** A party to a certified agreement may, with the consent of all the relevant parties, give the Commission written notice stating that the party does not want to remain bound by the agreement.

(2) All the parties to a certified agreement may jointly give the Commission written notice stating that they want the agreement to be terminated.

(3) On receipt of a notice under subsection (1) or (2), if the Commission is satisfied that it would be in the public interest for the party to be no longer bound or for the agreement to be terminated, as the case may be, the Commission may, by order, make a declaration to that effect.

(4) In this section—

“**relevant party**” to an agreement means—

- (a) in relation to a party that is an employer or an industrial

organisation of employers—a party that is an industrial organisation of employees; or

- (b) in relation to a party to the agreement that is an industrial organisation of employees—a party that is an employer or an industrial organisation of employers.

### **Enforcement of certified agreements**

**122.** An agreement certified under this Division is enforceable in the same way as an award.

### *Division 3—Industrial agreements*

#### **Procedure for making agreement**

**123.(1)** An industrial organisation of employees may make an agreement in writing with an industrial organisation, or association, of employers, or with any particular employer or employers in relation to any industrial matter.

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

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

(4) If the Chief Industrial Commissioner considers that an agreement contains terms inconsistent with general Full Bench Principles, the Commissioner is to allocate the agreement to a Full Bench of the Industrial Commission.

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

(6) Subject to subsection (8), the Industrial Commission or a Full Bench of the Commission may—

- (a) approve an agreement referred to it under subsection (4) or (5);
- (b) after hearing the parties to the agreement, approve an agreement referred to it under subsection (4) or (5) with such exclusions

therefrom or variations therein as it considers necessary;

- (c) refuse to approve an agreement referred to it under subsection (4) or (5) if the Commission is of opinion that—
  - (i) the agreement contains any term or terms that the Commission is not authorised to include in an award; or
  - (ii) it is not in the public interest that the agreement be approved.

(7) Approval of an agreement is not to be taken to be contrary to the public interest merely because the agreement contains terms inconsistent with general Full Bench Principles.

(8) The powers conferred on the Industrial Commission by subsection (6) do not extend to approving an agreement that contains terms based on terms of another agreement already approved, which latter terms are considered to be inconsistent with general Full Bench Principles, unless the Commission is satisfied that the inclusion of the terms in the agreement before it is justified in the particular circumstances of the case.

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

- (a) of its own motion;
- (b) without a hearing;

if—

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

except as is otherwise prescribed by subsection (8).

(10) A reference in this section to “**general Full Bench Principles**” is a reference to principles established by a Full Bench of the Industrial Commission that apply in relation to the determination of wages and conditions of employment, other than principles that apply in relation to the approval of agreements under this section.

### **Agreement subjected to conditions**

**124.** If the Industrial Commission, of its own motion or on the

application of—

- (a) the Crown; or
- (b) the Industrial Registrar; or
- (c) a person bound by an award; or
- (d) a person aggrieved by the industrial agreement in question;

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

- (e) it may impose such conditions in relation to an industrial agreement as it considers just and equitable;
- (f) it may prohibit an industrial organisation of employees, or an employer or industrial organisation, or association, of employers, from enforcing an industrial agreement, to the extent that it is, or has become, inconsistent with an award or a general ruling.

### **Registration of agreement**

**125.** The Industrial Registrar is to register in the Industrial Registrar's Office every industrial agreement approved by the Industrial Commission.

### **Requirements of agreement**

**126.(1)** An industrial agreement—

- (a) is in force for the term specified therein, not exceeding 3 years from the date of its making;
- (b) is limited in its effect to the particular locality specified therein;
- (c) must truly state therein the date of its making and the names of all the original parties thereto.

**(2)** The date of making of an industrial agreement is the date on which it is executed by the party thereto who is first to execute it.

### **Continuance of agreement**

**127.** At the end of its term, an industrial agreement continues in force, and to be binding on—

- (a) all parties thereto, except any party who has retired from the agreement as permitted by section 129;
- (b) all other persons on whom the agreement is binding pursuant to section 128, subject to any relevant award.

### **Persons bound by agreement**

**128.** Upon its registration, an industrial agreement extends to and is binding on—

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

subject to sections 90 and 314.

### **Retirement of parties from agreement**

**129.(1)** A party to an industrial agreement, at any time after the expiry of the agreement, or within 30 days immediately preceding the day on which the agreement is to expire, may file in the Industrial Registrar's Office a notice in accordance with the rules of court signifying an intention to retire from the agreement at the end of a specified period of at least 30 days from the date of such filing.

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

### **Addition of parties to agreement**

**130.** At any time when an industrial agreement is in force, any industrial organisation or employer, subject to the consent thereto of—

- (a) the Industrial Commission; and
- (b) such of the original parties to the agreement as are still parties

thereto, or their representatives;

may become a party to the agreement by filing in the Industrial Registrar's Office a notice in accordance with the rules of court signifying a concurrence with the industrial agreement.

#### ***Division 4—Powers relevant to awards and industrial agreements***

##### **Powers of Commission re awards**

**131.(1)** The Industrial Commission may, of its own motion, or on application made as prescribed by subsection (2)—

- (a) vary any award;
- (b) otherwise deal with any award as the Commission considers just;
- (c) rescind any award;
- (d) substitute a fresh award for any award.

**(2)** Application to the Industrial Commission for exercise of powers under subsection (1) may be made by—

- (a) the Minister;
- (b) an industrial organisation;
- (c) an employer;
- (d) a person who satisfies the Commission—
  - (i) that the person is not an officer of an association that is eligible to be, but is not, registered under this Act; and
  - (ii) that in making the application, the person is not acting on behalf of an association that is eligible to be, but is not, registered under this Act;

as an industrial organisation.

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



**Powers of Commission re agreements**

**132.(1)** The Industrial Commission may, of its own motion, or on application made as prescribed by subsection (2)—

- (a) vary an industrial agreement;
- (b) rescind an industrial agreement.

**(2)** Application to the Industrial Commission for exercise of a power under subsection (1) may be made by—

- (a) the Minister;
- (b) a party to the industrial agreement;
- (c) an industrial organisation whose members are bound or claim to be affected or aggrieved by the industrial agreement;
- (d) a person who is bound or claims to be affected or aggrieved by the industrial agreement and who satisfies the Commission—
  - (i) that the person is not an officer of an association that is eligible to be, but is not, registered under this Act; and
  - (ii) that in making the application, the person is not acting on behalf of an association that is eligible to be, but is not, registered under this Act;

as an industrial organisation.

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

**Agreement may be declared a common rule**

**133.(1)** The Industrial Commission may, in accordance with this section, declare that an industrial agreement other than one that contains terms considered to be inconsistent with general Full Bench Principles has the effect of an award and is a common rule for any calling or callings to which the agreement relates.

**(2)** Before making a declaration under subsection (1), the Industrial Commission is to give to all parties who, in its opinion, are likely to be affected by the declaration notice (by advertisement or otherwise) of its proposal to make the declaration, and is to hear any of the parties desiring to

be heard in opposition to the proposal.

(3) Upon the Industrial Commission duly making a declaration under subsection (1), the industrial agreement so declared becomes binding on all employers and employees (whether or not members of an industrial organisation) engaged, at any time while the agreement is in force, in any calling to which the agreement relates within the locality specified in the agreement.

### **Agreement may be renewed, varied etc.**

**134.(1)** Subject to subsection (2), an industrial agreement may be renewed, varied, amended, modified or cancelled by an industrial agreement subsequently made by all the parties to the first mentioned agreement but so that while an industrial agreement is in force, a party thereto cannot be deprived of a benefit thereunder by a subsequent industrial agreement to which that party is not a party.

(2) If the industrial agreement is one to which a declaration made under section 133(1) relates, a subsequent agreement that purports to vary, amend, modify or cancel that agreement has, to that extent, no effect except by leave of the Industrial Commission.

### *Division 5—Provisions common to awards and industrial agreements*

#### **Components of wage rates**

**135.(1)** Each rate of wages provided for by an award, industrial agreement or certified agreement (whether existing at the commencement of this Act or made thereafter) as payable to adult employees, or employees who are seniors, is taken to consist of, and to be expressed by reference to, the guaranteed minimum wage declared at the time the award or agreement is or was made and a margin, or, where subsequently to the making of the award or agreement there has been made a declaration of a general ruling that varies the guaranteed minimum wage, the guaranteed minimum wage as varied by the declaration last made and a margin.

(2) Subsection (1) does not apply to a rate of wages provided for by an award or agreement that immediately before the commencement of this Act provides for a rate of wages equal to or less than the guaranteed minimum

wage contained in the declaration of a general ruling last made before such commencement, until the rate of wages provided for by that award or agreement becomes greater than the guaranteed minimum wage last declared before such greater rate is provided for.

### **Preservation of percentage rate values**

**136.** If an award, industrial agreement or certified agreement (whether existing at the commencement of this Act or made thereafter) provides for a rate of wages as a percentage or fraction of a rate of wages and in addition contains a quantitative statement in terms of money of that rate purporting to be calculated as such percentage or fraction, the award or agreement is to be construed as if the quantitative statement in terms of money of the rate did not appear therein.

### **Enforceability of awards and agreements**

**137.** Action cannot be commenced to enforce an award or industrial agreement until the expiry of 21 days following the date of its publication in the Industrial Gazette.

### **Effect of appeal decisions on awards or agreements**

**138.** If a decision of the Industrial Court—

- (a) on appeal from a decision of the Industrial Commission; or
- (b) on a case stated by the Industrial Commission;

or a decision of a Full Bench of the Commission on appeal from a single Commissioner affects any award, industrial agreement or certified agreement, the Commission is to forthwith vary the award or agreement to give effect to the Court's or Commission's decision.

### **Inconsistency between awards, agreements and contracts**

**139.(1)** Any award, industrial agreement or certified agreement prevails over any contract of service that is in force when the award or agreement becomes enforceable, or that is made at any time while the award or agreement continues in force, to the extent of any inconsistency between the

award, or agreement, and the contract.

(2) The contract is to be construed, and takes effect, as if it were varied so far as is necessary to make it conform to the award or agreement.

(3) For the purposes of this section, there is not an inconsistency between an award or agreement and a contract by reason that the contract provides for conditions of employment more favourable to the employee than does the award or agreement.

## **PART 11—GENERAL CONDITIONS OF EMPLOYMENT**

### *Division 1—Conditions other than leave conditions*

#### **Hours of work**

**140.(1)** Except if an industrial organisation, or association, of employers, or an employer, and an industrial organisation of employees otherwise agree in respect of a particular award, industrial agreement or certified agreement, or the Industrial Commission otherwise determines, every award, industrial agreement or certified agreement is taken to make provision to the effect of each of the subsections of this section, to the extent that the subsection is relevant to a calling to which the award or agreement relates.

(2) The periods for which an employee is required to work must not exceed the following periods—

- (a) 6 days in any period of 7 consecutive days;
- (b) 40 hours in any period of 6 consecutive days;
- (c) 8 hours in any day.

(3) The rate at which an employee is to be paid for overtime—being time worked in excess of the times or hours prescribed by subsection (2) or before or after the fixed or recognised times for starting or finishing work on any day in a calling is—

- (a) not less than double time in a calling in or in connection with which more than 1 shift per day is worked;
- (b) not less than time and a half in any other calling.

(4) If the employee is paid a rate of wages in excess of the minimum rate thereof provided for by any award, industrial agreement or certified agreement binding on the employee, the rate referred to in subsection (3) is to be calculated on the actual weekly rate of wages payable to the employee at the relevant time and not on such minimum rate.

(5) Subsections (3) and (4) do not apply in relation to employees in any department of government whose rates of salary exceed an annual rate of wages for the time being declared for the purposes of this subsection by the Governor in Council.

(6) Compensation, in respect of overtime worked, for an employee to whom subsection (5) does not apply is in the discretion of the chief executive of the department of government in which the employee is employed.

(7) Where practicable, an employee is entitled to a rest pause of not less than 10 minutes duration during each period of 4 hours working time on any day.

(8) Such rest pause (or pauses, if more than 1)—

- (a) is taken to be part of the employee's working time; and
- (b) is to be taken at such time (or times, if more than 1) as does not interfere with continuity of work, if continuity is necessary.

(9) Where an employee is engaged in an underground occupation or an occupation in which the conditions as to temperature, ventilation, lighting, and limitation of approaches are similar to those obtaining in an underground occupation—

- (a) the working time of the employee—
  - (i) is to include permitted intervals for rest and meals; and
  - (ii) is to be reckoned from bank to bank; and
  - (iii) without prejudice to the provisions of the *Coal Mining Act 1925*, is not to exceed 6 hours per day unless—
    - (A) a temperature less than 28.3°C, using a wet bulb, is

maintained for at least three-quarters of the period of the working shift in the working place where the employee is occupied; or

(B) the working place where the employee is occupied is thoroughly ventilated during the whole of the period of the working shift (or half-shift, as the case may be) by a current of air moving at a rate not less than that which can be measured with the instruments ordinarily used for that purpose; and

(b) the employee is to be paid as for a full shift (or half-shift, as the case may be).

### **Public holidays**

**141.(1)** Except if an industrial organisation, or association, of employers, or an employer, and an industrial organisation of employees otherwise agree in respect of a particular award, industrial agreement or certified agreement, or the Industrial Commission otherwise determines, every award, industrial agreement or certified agreement is taken to make provision to the effect of each of the subsections of this section.

(2) The exceptions provided for by subsection (1) do not apply in respect of Labour Day (the first Monday in May) or any day appointed under the *Holidays Act 1983* to be a holiday in substitution for that day.

(3) All work performed on any of the following days—

New Year's Day (1 January);

Australia Day (26 January);

Good Friday;

Easter Saturday (the day following Good Friday);

Easter Monday (the Monday following Good Friday);

Anzac Day (25 April);

Labour Day (the first Monday in May);

Sovereign's birthday (the second Monday in June);

Christmas Day (25 December);

Boxing Day (26 December);

or any day appointed under the *Holidays Act 1983* to be a holiday in substitution for any of those days is to be paid for at the rate of double time and a half with a minimum of 4 hours.

(4) All work performed in a district for the time being specified by the Minister, by notification published in the Industrial Gazette, on the day appointed under the *Holidays Act 1983* as a holiday in relation to an annual agricultural, horticultural or industrial show held in that district is to be paid for at a rate of double time and a half, with a minimum of 4 hours.

(5) Subsection (4) is not to be construed to confer on an employee, while continued in employment by the same employer, or taken to be continued in such employment pursuant to this Part, an entitlement to be paid at a rate therein prescribed for work performed on a day, such as is referred to in that subsection, on more than 1 occasion in each calendar year.

(6) For the purposes of subsection (3) or (4), if a rate of wages is a weekly rate, the expression “**double time and a half**” means 1.5 days wages in addition to the weekly rate provided for by the relevant award, industrial agreement or certified agreement, and pro rata if there be more or less than a day.

(7) All time worked on a holiday for which the employee is entitled to be paid at a rate prescribed by subsection (3) or (4) outside the period between the ordinary starting and ordinary finishing times provided for by the relevant award, industrial agreement or certified agreement for the day of the week on which the holiday falls is to be paid for at double the rate provided for by the award or agreement for such time when worked outside such period on an ordinary working day.

(8) The Industrial Commission may, by its order, confer on an employee an entitlement to additional annual leave on full pay, in lieu of an entitlement to extra payment for work performed as prescribed by subsection (3) or (4).

(9) An employee, other than a casual employee, in a calling governed by the relevant award, industrial agreement or certified agreement who would ordinarily be required to perform work as an employee in the calling on the day on which Labour Day (the first Monday in May), or other day appointed under the *Holidays Act 1983* to be a holiday in substitution for that day, falls is entitled to be paid a wage at ordinary rates for the time for which the employee would ordinarily have been required to perform work

on that day between the ordinary starting and ordinary finishing times provided for by the relevant award, industrial agreement or certified agreement, notwithstanding that work is not performed on that day.

### **Employee stood down in December, re-employed in January**

**142.** An employee, other than a casual employee within the meaning of the relevant award, industrial agreement or certified agreement, who is dismissed or stood down by the employer during December and is re-employed by that employer before the end of January next following, if the employee was employed by that employer for a continuous period of 2 weeks at least immediately before being so dismissed or stood down, is entitled to receive, and the employer is bound to pay, payment at the ordinary rate of wages payable to the employee immediately before the dismissal or stand down for such of the holidays—Christmas Day, Boxing Day, and New Year’s Day—as occur during the period between the dismissal or stand down and the re-employment as aforesaid.

### **Stand down of employee**

**143.** Notwithstanding any provision of this Act or of any award, industrial agreement or certified agreement, an employer may stand down any employee without pay on any day, or for part of any day, on which the employee cannot be usefully employed because of the occurrence of anything for which the employer is not responsible or over which the employer has no control.

### **Employees working both in and outside State**

**144.** If an employer has a place of employment in Queensland, or is for the time being present in Queensland, and engages there an employee whose employment is not wholly performed in Queensland but, with the knowledge and consent of the employer, is in part performed in any other State or a Territory of the Commonwealth, any award, industrial agreement or certified agreement that is binding on the employer and employee in respect of the part of the employment performed by the employee in Queensland is equally binding on them in respect of the part of the employment performed by the employee outside Queensland.



**Student's work permit**

**145.(1)** On application, the Industrial Registrar and, on appeal from the registrar, the Commission, may grant to a student participating in a tertiary study course a permit to work for a period in a calling.

(2) The student must provide satisfactory proof on the application that the period of work in the calling is necessary to complete the course.

(3) The registrar or Commission granting the permit must determine and specify in the permit—

- (a) the period of work; and
- (b) the rate of the student's wage.

(4) When a permit is granted, the Industrial Registrar is to notify immediately the secretary of the industrial organisation of employees in the calling of the grant of the permit and the permit's conditions.

(5) This section applies despite any award, industrial agreement or certified agreement.

**Aged or infirm persons**

**146.(1)** An aged or infirm person alleged to be unable to earn the minimum wage provided for by any award, industrial agreement or certified agreement applicable to the calling in which the person wants to be employed, or an Industrial Inspector on behalf of the person, may apply to an Industrial Magistrate for a permit to work in the relevant calling for less than such minimum wage.

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

(3) Upon receipt of an application made under subsection (1) an Industrial Magistrate is to forthwith give written notice of the application to the secretary of the industrial organisation of employees in the calling in which the person to whom the application relates wants to be employed, and by such notice appoint a time, being not less than 3 days or more than 7 days from the date of the notice, at which the Industrial Magistrate will hear any objection to the grant of the permit applied for.

(4) At the time so appointed, or at any time to which the matter is adjourned, the Industrial Magistrate is to hear objections from any authorised representative of such industrial organisation of employees.

(5) At any time after the grant of a permit on an application made under subsection (1) the industrial organisation of employees to which notice of the application was given may apply in the manner provided for by the rules of court to an Industrial Magistrate to revoke or cancel the permit.

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

### **Preference**

**147.(1)** If in proceedings in the Industrial Commission, it is agreed by the parties or is considered by the Commission to be advisable, that preference should be granted, either generally or to a particular industrial organisation of employees, the preference is to be granted subject to—

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

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

- (a) an employer is required to give preference to a member of an industrial organisation over another person only when all factors relevant to the particular case are otherwise equal;
- (b) an employer is not required to give preference to a member of an industrial organisation over a person in respect of whom there is in force a certificate under section 255;
- (c) preference means preference at the point of engagement and preference at the point of retrenchment.

### **Grievance or dispute settling procedures**

**148.(1)** Every award or industrial agreement, whether made before or after the commencement of this Act, must make provision for a grievance or dispute settling procedure.

(2) Subject to subsection (6), the form of such procedure is a matter to be agreed on by the parties to the award or industrial agreement, except that, if

the parties cannot so agree, the Industrial Commission is to insert into the award or agreement provision for an appropriate such procedure.

(3) As soon as is practicable after the commencement of this Act, the Industrial Commission is to nominate a period within which the parties bound by an award or industrial agreement, which, at the commencement of this Act, does not make provision as required by subsection (1), are to have taken all steps necessary to ensure that the award or agreement does make such provision.

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

(5) If at the end of the period so nominated an award or agreement does not make provision as required by subsection (1), it is to be presumed conclusively that the parties bound by the award or agreement cannot agree on the form of procedure to be provided for, and the Commission is entitled to insert into the award or agreement suitable provision for an appropriate procedure.

(6) Without limiting the nature or scope of a grievance or dispute settling procedure, provisions for such a procedure must express the following requirements—

- (a) matters to be dealt with under the procedure must include all industrial matters within the meaning of this Act and all other matters that the parties agree on, and are to be specified in the provisions;
- (b) a grievance or dispute is to be dealt with initially as close to its source as possible, with graduated steps provided for further discussions and resolution at higher levels of authority;
- (c) reasonable limits of time are to be allowed for discussion at each level of authority;
- (d) while a procedure is being followed, normal work is to continue, except in a case of a genuine safety issue;
- (e) the status quo existing before the emergence of a grievance or dispute is to continue while a procedure is being followed;
- (f) matters that cannot be resolved by the parties to a grievance or dispute are to be referred to the Industrial Commission or an Industrial Magistrate in accordance with section 187.

***Division 2—Conditions for sick and annual leave*****Sick leave**

**149.(1)** Except if an industrial organisation, or association, of employers, or an employer, and an industrial organisation of employees otherwise agree in respect of a particular award, industrial agreement or certified agreement, or the Industrial Commission otherwise determines, every award, industrial agreement or certified agreement is taken to make provision to the effect that every employee bound by the award or agreement (other than a casual employee within the meaning of the award or agreement) is entitled to sick leave in accordance with this Division.

**(2)** Every employee is entitled to at least 1 weeks sick leave for each completed year of the employee's employment with an employer.

**(3)** For each completed period of employment with an employer less than 1 year every employee is entitled to 1 days sick leave for each completed 2 months of the period.

**(4)** Every employee absent from work through illness is entitled, subject to this section, to payment in full for all time the employee is so absent from work (not exceeding the accumulated sick leave to which the employee is entitled) if—

- (a)** the employee has produced to the employer a certificate of a legally qualified medical practitioner as to the nature of the employee's illness and the period, or approximate period, during which the employee will be unable to work, or other evidence of illness to the employer's satisfaction; and
- (b)** the employee has promptly notified the employer of the illness and of the approximate period during which the employee will be unable to work.

**(5)** A failure to comply with subsection (4)(a) does not affect an employee's entitlement to payment as prescribed if the absence from work on account of illness does not exceed 2 days.

**(6)** An employee is not entitled to receive, and an employer is not bound to make, payment for more than 7 weeks absence from work through illness in any year.

**Sick leave accumulated during apprenticeship or traineeship**

**150.(1)** If an employer to whom an employee has been apprenticed, or with whom an employee has been a trainee, continues to employ that employee on the completion of the apprenticeship or traineeship, accumulated sick leave is to be taken into account for the purpose of calculating the employee's entitlement to be paid by that employer pursuant to section 149 for time absent from work through illness during the continued employment.

(2) Subsection (1) does not prejudice the operation of section 149(6).

(3) For the purposes of subsection (1)—

- (a) the expression “**accumulated sick leave**” means the aggregate of the apprentice's or trainee's entitlement to sick leave over the term of the apprenticeship or traineeship (accrued before or after the commencement of this Act), being in respect of each year of the apprenticeship or traineeship the period of sick leave entitlement prescribed by or under the *Employment, Vocational Education and Training Act 1988* or any Act repealed by that Act, less the aggregate of all sick leave for which the apprentice or trainee was paid by the employer during the apprenticeship or traineeship;
- (b) an employer who re-employs an employee at any time within 3 months following the completion of the employee's apprenticeship to, or traineeship with, that employer is taken to have continued to employ that employee on the completion of the apprenticeship or traineeship.

**Calculation of sick leave**

**151.(1)** For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 149 or pursuant to any award, industrial agreement or certified agreement—

- (a) if the calling in which the employee is engaged is transmitted, or before the commencement of this Act has been transmitted, from the employer to another person (either by operation of law or by agreement) that transmission is taken not to break or otherwise affect the continuity of employment of the employee, whose service is, or has been, transmitted from the one employer to the

other employer;

- (b) the periods of employment of the employee with each of the employers from or to whom the calling is, or has been, so transmitted are to be taken into account in calculating the length of continuous employment had by the employee with the person to whom the employee's service is, or has been, transmitted.

(2) For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 149 or pursuant to any award, industrial agreement or certified agreement—

- (a) employment of the employee by an employer who becomes a member of a partnership and employment of the employee with the partnership is employment with the same employer;
- (b) employment of the employee with a partnership and—
  - (i) employment of the employee by 1 or more of the former partners, on dissolution of the partnership; or
  - (ii) employment of the employee with the partnership as reconstituted, on dissolution of the partnership;

is employment with the same employer;

- (c) the continuity of employment of the employee in a calling transmitted from one employer to another employer is taken not to have been broken by reason that—
  - (i) within 1 month immediately preceding the date on which the calling is so transmitted, the employee was dismissed, or stood down, by the employer from whom the calling is transmitted; or
  - (ii) on the date on which the calling is so transmitted, the employee is dismissed, or stood down, by either employer;

if, within 3 months following the dismissal or stand down, the employee is re-employed by the employer to whom the calling is so transmitted.

(3) For the purposes of subsections (1) and (2)—

**“transmission”** includes, without limiting the generality of its meaning, transfer, assurance, conveyance, assignment and succession, and a

derivative of the term has a corresponding meaning.

(4) For the purpose of calculating an employee's entitlement to sick leave, pursuant to section 149 or pursuant to any award, industrial agreement or certified agreement, where a body corporate is a subsidiary of another, or is a subsidiary of a body corporate that is a subsidiary of that other, periods of employment had by the employee with each of those bodies corporate, which periods would constitute unbroken continuous employment with an employer if those bodies corporate were the same employer, are to be taken into account in calculating the length of continuous employment of the employee by that 1 of those bodies corporate by which the employee is employed for the time being and is taken to be employment had by the employee with that last mentioned body corporate.

(5) For the purposes of subsection (4) a body corporate is to be taken to be a subsidiary of another if, according to the Companies (Queensland) Code, it would be taken to be such a subsidiary, whether or not in a particular case that Code is relevant.

### **Annual leave**

**152.(1)** Except as is otherwise determined by the Industrial Commission, every award, industrial agreement or certified agreement must make provision to the effect of the provisions of this section.

(2) Every employee bound by an award, industrial agreement or certified agreement, other than an employee engaged at piecework rates or a casual employee within the meaning of the award or agreement, becomes entitled, at the end of each year of employment by the same employer, to annual leave on full pay for a period determined or approved by the Industrial Commission.

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

(4) In calculating a year of employment for the purposes of subsection (2)—

- (a) a period exceeding 3 months during which an employee has been absent on leave without pay granted by the employer is not to be taken into account;
- (b) a period during which an employee has been absent without pay

and without the employer's authority, other than a period of absence not exceeding 3 months on account of illness or injury certified to by a legally qualified medical practitioner, is not to be taken into account.

(5) If an employee and employer so agree, annual leave may be taken wholly or partly in advance before the employee has become entitled to annual leave.

(6) An employee who has taken in advance the whole of the annual leave that would be due at the end of a year of employment, is not entitled to any further annual leave at the end of that year of employment.

(7) An employee who has taken in advance part of the annual leave that would be due at the end of a year of employment, becomes entitled at the end of that year of employment to the part of the annual leave not already taken.

(8) If in respect of any award, industrial agreement or certified agreement the Industrial Commission has not determined or approved the period of annual leave to which an employee is to become entitled, an employee bound by that award or agreement is to become entitled to annual leave as prescribed by this section for a period of leave to which the employee would have become entitled under a declaration of a general ruling of 9 November 1973 made by the Industrial Commission under the *Industrial Conciliation and Arbitration Act 1961* as amended and in force for the time being.

(9) An employer and employee may agree as to the time when and the manner in which the employee's annual leave is to be given and taken.

(10) Unless an employer and employee otherwise agree, an employer may give to an employee notice, which must be of at least 14 days, of the date on and from which the employee's annual leave is to be taken, and the employee is to comply with such notice.

### **Leave accumulated during apprenticeship or traineeship**

**153.(1)** If an employer to whom an employee has been apprenticed or with whom an employee has been a trainee continues to employ the employee on completion of the apprenticeship or traineeship, leave accumulated on account of annual leave during the period of apprenticeship



or traineeship and taken during, or paid for on termination of, the continued employment is taken to be accumulated annual leave.

(2) Except as otherwise directed by the Industrial Commission, in calculating for the purposes of this section, the amount of leave accumulated on account of annual leave during an apprenticeship or traineeship—

- (a) any limitation of that amount imposed by or under the *Employment, Vocational Education and Training Act 1988* is to be taken into account; and
- (b) any limitation imposed by the relevant award, industrial agreement or certified agreement of the amount of leave that may be accumulated on account of annual leave during the employment continued on completion of the apprenticeship or traineeship is not to be taken into account.

(3) Subsections (1) and (2) are not to be construed to prejudice or affect the entitlement of an employee to annual leave in addition to the employee's entitlement (if any) to leave as prescribed by those subsections.

### **Payment for annual leave**

**154.** Annual leave is to be paid for by the employer in advance—

- (a) in the case of an employee who immediately before taking such leave is in receipt of ordinary pay at a rate in excess of the ordinary rate payable under the relevant award, industrial agreement or certified agreement—at the rate of such ordinary pay;
- (b) in the case of any other employee—at the ordinary rate payable to the employee under the relevant award, industrial agreement or certified agreement immediately before such leave is taken.

### **Payment in lieu of annual leave**

**155.** If the employment of an employee who has become entitled to annual leave provided for by sections 152 and 153 is terminated by the employer or the employee, and the employee has not taken the whole of that leave, the employee is presumed to have taken the leave or, as the case may be, the remainder of the leave on and from the date of the termination of the

employment and the employer is to forthwith pay to the employee (in addition to all other sums due to the employee) the employee's ordinary pay for the period of the leave or, as the case may be, the remainder of the leave and for all public holidays that would occur during that period.

### **Pro rata annual leave**

**156.(1)** Every award, industrial agreement or certified agreement, other than an award or agreement to which this section does not apply pursuant to a determination of the Industrial Commission, must make provision, as determined or approved by the Commission, for payment for pro rata annual leave in respect of every period of employment less than 1 year, if the employment of an employee by an employer is terminated.

(2) Any such period must be computed from the date of commencement of the employment or, if the employee has, during the employment, become entitled to annual leave provided for by sections 152 and 153, from the date on which the employee last became entitled to such leave.

### *Division 3—Conditions for long service leave*

#### **Source of long service leave entitlement**

**157.(1)** Except as prescribed by subsection (2), the entitlement to long service leave on full pay of employees who have such entitlement under any award, industrial agreement or certified agreement is as prescribed by this Division, notwithstanding the terms of the award or agreement.

(2) The entitlement to benefits in the nature of long service leave of employees who have the entitlement under any industrial agreement duly approved by the Industrial Commission under section 158, or under an industrial agreement duly approved by the Commission under the *Industrial Conciliation and Arbitration Act 1961* as amended and in force at the time of such approval, is as provided by the industrial agreement.

(3) The entitlement to long service leave of employees who have the entitlement under an Act, other than this Act, is as prescribed by or under that other Act.

(4) The entitlement to long service leave of employees who have the

entitlement—

- (a) under an order in council made pursuant to section 170; or
- (b) under section 171;

is as is prescribed by the order or, as the case may be, section 171.

### **Commission's jurisdiction to approve conditions for long service leave**

**158.(1)** On application therefor, the Industrial Commission is to insert in any award, industrial agreement or certified agreement provisions entitling employees to long service leave on full pay as prescribed by this Division, except if the Commission is excused from doing so by this section.

**(2)** An award or industrial agreement that, before the commencement of this Act, contained provisions for an entitlement to long service leave of employees is to be construed to confer, on and from the commencement of this Act, the entitlement on employees bound by the award or agreement to whom an entitlement to long service leave is extended by this Act.

**(3)** The Industrial Commission may approve as an industrial agreement or certified agreement an agreement under which employees bound thereby are entitled to benefits in the nature of long service leave that, in the Commission's opinion, are not less favourable to employees than the entitlement to long service leave as prescribed by this Division, which the employees would have if the Commission made the insertion in the agreement under subsection (1).

**(4)** The Industrial Commission is not to exercise its jurisdiction under subsection (3) unless it is satisfied—

- (a) that every employer who is a party to the agreement has concurred in the agreement's provisions that confer the benefits in the nature of long service leave on employees bound by the agreement; and
- (b) that the community in general will not be prejudiced by conferral of the benefits.

**(5)** If the Industrial Commission duly exercises its jurisdiction under subsection (3), it is not to make the insertion prescribed by subsection (1), while the conferral of such benefits in the nature of long service leave under the industrial agreement in question subsists.

**Entitlement to long service leave**

**159.(1)** Subject to adjustments made for a seasonal employee under sections 169 and 170, the entitlement of an employee to long service leave on full pay as prescribed by this Division—

- (a) is nil—if the employee has an entitlement to benefits in the nature of long service leave pursuant to any law, award, industrial agreement, certified agreement, or other agreement or arrangement, which entitlement is not less favourable to the employee than the entitlements prescribed by this Division;
- (b) in any other case—is in respect of the employee’s continuous service with the same employer (whether wholly in the State, or partly in and partly outside the State), and is—
  - (i) in the case of an employee who has completed 15 years continuous service with the same employer—13 weeks;
  - (ii) in the case of an employee who has completed 10 years continuous service, but less than 15 years continuous service with the same employer, and whose service has been terminated—
    - (A) by the employee’s death;
    - (B) by the employee;
    - (C) by the employer, for a cause other than serious misconduct;  
a period that bears to 13 weeks the proportion that the employee’s period of such continuous service (expressed in years, and a fraction of a year where necessary) bears to 15 years;
- (c) in the case of an employee who, having completed the first, or a subsequent, 15 years continuous service with the same employer, continues that service until the completion of a further 15 years continuous service with that employer—is a further 13 weeks;
- (d) in the case of an employee who, having completed the first, or a subsequent, 15 years continuous service with the same employer, continues that service until the completion of a further 5 years continuous service, but less than 15 years continuous service,

with that employer and whose service has been terminated—

- (i) by the employee's death;
- (ii) by the employee;
- (iii) by the employer, for a cause other than serious misconduct;

a further period that bears to 13 weeks the proportion that the employee's further period of such continuous service (expressed in years, and a fraction of a year where necessary) bears to 15 years.

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

### **Continuity of service generally**

**160.(1)** For the purpose of calculating an employee's entitlement to long service leave under this Division—

- (a) service with an employer who becomes a member of a partnership and service with the partnership is service with the same employer;
- (b) service with a partnership and—
  - (i) service with 1 or more of the former partners on dissolution of the partnership; and
  - (ii) service with the partnership as reconstituted, on dissolution of the partnership;

is service with the same employer;

- (c) continuity of an employee's service with an employer is not broken, and never has been broken, by—
  - (i) absence from work on leave granted by the employer, including such absence through illness or injury on leave so granted;
  - (ii) the employee's being dismissed or stood down by the employer, or the employee's terminating employment with the employer, because of illness or injury, if—
    - (A) the employee is re-employed by the same employer;

and

- (B) the employee has not engaged in a calling (whether on the employee's own account or as an employee) between the dismissal, stand down or termination and the re-employment;
- (iii) the employee's being dismissed or stood down by the employer, or the employee's terminating employment with the employer, for a period not exceeding 3 months, if the employee is re-employed by the same employer;
- (iv) any interruption or termination of the employee's service with the employer, if the interruption or termination—
  - (A) has been effected by the employer with an intention of avoiding an obligation imposed on the employer by this Division, an award, an industrial agreement or a certified agreement; or
  - (B) has arisen directly or indirectly from an industrial dispute; or
  - (C) has been effected by the employer because of slackness in trade or business;if, in the case referred to in sub-subparagraph (B) or (C), the employee is re-employed by the same employer;
- (v) transmission (either by operation of law or by agreement and either before or after the commencement of this Act) of the calling in which the employer is engaged from the employer to another person, if the employee's service is thereby transmitted from the employer to the other person as employer;
- (vi) the employee's being dismissed or stood down by the employer, or the employee's terminating employment with the employer, on the date on which the calling in which the employer is engaged is transmitted from the employer to another person (either by operation of law or by agreement and either before or after the commencement of this Act), or within 1 month immediately preceding that date, if the employee is re-employed by the person to whom the calling

is transmitted within 3 months following the dismissal, stand down or termination;

- (d) periods of continuous service of an employee with each of the employers from or to whom the calling in which the employer is engaged is transmitted (either by operation of law or by agreement and either before or after the commencement of this Act) are to be taken into account in determining the length of the employee's continuous service with the employer to whom the employee's service is thereby transmitted.

(2) For the purposes of subsection (1)—

“**transmission**” includes, without limiting the generality of its meaning, transfer, assurance, conveyance, assignment and succession, and a derivative of the term has a corresponding meaning.

### **Determination of length of continuous service**

**161.(1)** Where an employee's entitlement to long service leave is referable to employment by an employer before the commencement of this Act—

- (a) the determination of the length of the employee's continuous service before such commencement; and
- (b) the calculation of the employee's entitlement to long service leave in respect of continuous service before such commencement;

are to be made in accordance with the provisions of sections 17, 18, 19 or 20 of the *Industrial Conciliation and Arbitration Act 1961*, (whichever provisions are relevant for the purpose) which provisions are taken to continue in force for this purpose.

(2) For the purpose of determining the length of an employee's continuous service, a period of the employee's absence from work that pursuant to—

- (a) section 160(1)(c)(ii); or
- (b) section 160(1)(c)(iv)(B) or (C);

does not break the continuity of the employee's service is not to be taken into account by reason only of such of them, that section and those

provisions, as is relevant.

(3) For the purpose of determining the length of an employee's continuous service, if the employee's service is, or has been before the commencement of this Act, temporarily lent or let on hire by one employer ("**the first employer**") to another employer ("**the second employer**"), the period of service had by the employee with the second employer is taken to be service had by the employee with the first employer, and is to be taken into account in determining the length of the employee's continuous service with the first employer.

(4) For the purpose of determining the length of an employee's continuous service, if the employee's service is, or has been before the commencement of this Act, transferred by one employer ("**the first employer**") to another employer ("**the second employer**") the period of service had by the employee with each of the employers, which service would be continuous service if the 2 employers were the same employer, is taken to be service had by the employee with the second employer.

(5) In determining the length of the employee's continuous service with the second employer, the period of service had by the employee with the first employer, except for any part thereof in respect of which the employee has taken long service leave on full pay before commencing service with the second employer, is to be taken into account.

(6) For the purpose of determining the length of an employee's continuous service with an employer that is a corporation, if a corporation is a subsidiary of another corporation, or is a subsidiary of a corporation that is a subsidiary of that other corporation, periods of service had by the employee with each of those corporations, which service would be continuous service if those corporations were the same employer, are to be taken into account in determining the length of the employee's continuous service with that corporation by which the employee is employed for the time being.

(7) Such aggregate service is taken to be service had by the employee with such last mentioned corporation, except for any period of service had by the employee with any of those corporations in respect of which the employee has taken long service leave on full pay.

(8) For the purposes of subsections (6) and (7), a corporation is to be taken to be a subsidiary of another if, according to the Companies



(Queensland) Code, it would be taken to be such a subsidiary, whether or not in a particular case that Code is relevant.

### **Service performed in apprenticeship or traineeship**

**162.(1)** If an employer to whom an employee has been apprenticed, or with whom an employee has been a trainee, continues or, before the commencement of this Act, has continued to employ the employee on the completion of the apprenticeship or traineeship, the period of apprenticeship or traineeship is to be taken into account in determining the length of the employee's continuous service with the employer for the purpose of calculating the employee's entitlement to long service leave under this Division.

**(2)** For the purposes of this section, an employer who re-employs a person at any time within 3 months following completion of the person's apprenticeship or traineeship with that employer is taken to have continued to employ the person on completion of the apprenticeship or traineeship.

### **Service in Defence Forces**

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

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

### **Continuous service of casual employees**

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

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

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

### **Time and manner of taking long service leave**

**165.(1)** Subject to section 159, the Industrial Commission may insert in any award, industrial agreement or certified agreement such provisions as the Commission considers necessary or desirable—

- (a) in relation to the time when, the manner in which and the conditions on which long service leave may be given and taken;
- (b) to the effect that leave taken as a benefit in the nature of long service leave by an employee bound by the award or agreement before insertion in the award or agreement of provisions for long service leave on full pay is to be deducted from the long service leave to which an employee becomes entitled pursuant to such insertion and this Division (other than this paragraph).

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

(3) Subject to the award, industrial agreement or certified agreement as to the time when long service leave may be given to and taken by employees bound by the award or agreement, such time may be agreed between an industrial organisation of employees of which such employees are members and the employer.

(4) If the relevant award, industrial agreement or certified agreement does not provide as to—

- (a) the time when; or

(b) the manner in which;

long service leave may be given and taken, and if an employee (or an industrial organisation of which the employee is a member) and the employer fail to agree on those matters, the employer may give to the employee 3 months notice at least of the date on and from which the employee is required to take at least 4 weeks long service leave, and the employee is to comply with such notice.

### **Payment for long service leave**

**166.(1)** Long service leave is to be paid for by the employer as ordinary time, which, for the purpose of making such payment, is taken to be worked continuously by the employee during the period of the employee's long service leave.

(2) If, immediately before commencing long service leave, an employee is being paid for ordinary time worked at a rate in excess of the rate payable under the relevant award, industrial agreement or certified agreement for ordinary time, the employee's long service leave is to be paid for at the rate at which the employee is being paid as ordinary time, which, for the purpose of making such payment at that rate, is taken to be worked continuously by the employee during the period of long service leave.

(3) However—

- (a) if during the employee's long service leave the rate payable for ordinary time under the relevant award or agreement is increased to a rate greater than the rate at which the employee is entitled to be paid under subsection (2)—the employee is to be paid at that increased rate for the part of the period of leave during which that increased rate is the rate for ordinary time payable under the relevant award or agreement;
- (b) if during the employee's long service leave the rate payable for ordinary time under the relevant award or agreement is decreased—the employee may be paid at the rate at which the employee is entitled to be paid under subsection (2) before the decrease, less the whole or any portion of the amount of the decrease, for any part of the period of leave during which that decreased rate is the rate for ordinary time payable under the relevant award or agreement.

(4) If the Industrial Commission is satisfied that an employer has decreased the rate at which an employee is being paid for ordinary time before the employee commences a period of long service leave, being a rate in excess of the rate for ordinary time payable under a relevant award, industrial agreement or certified agreement, with intent to avoid the obligation of an employer under subsection (2), the Commission may order that employee's long service leave to be paid for at the rate at which the employee was being paid immediately before such decrease, whereupon that subsection applies in respect of that employee as if the employee were being paid such last mentioned rate for ordinary time worked immediately before the employee commenced the period of long service leave.

(5) The amount of payment for long service leave taken by an employee such as is referred to in section 164(1) is to be calculated in accordance with the formula—

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

where—

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

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

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

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

(6) In the event of a dispute between an employee who is paid at piecework rates and the employer as to the rate for ordinary time at which the employee should be paid for a period of long service leave, the Industrial Commission may determine the payment that should be made, and the employee is entitled to that payment accordingly.

(7) An employer and employee may agree on the times when and the manner in which the employee will be paid for a period of long service leave, and the Industrial Commission may determine any matter relating to such payment on which they fail to agree.

- (8)** A sum payable for long service leave becomes payable—
- (a) on cessation of the employee's employment with the employer;
  - (b) in a case to which section 167 applies—on the death of the employee;
  - (c) subject to paragraphs (a) and (b), at a time agreed between the employer and the employee or, failing such agreement, determined by the Industrial Commission.

### **Payment in lieu of long service leave**

**167.(1)** Except upon termination of an employee's employment, an employer is not to make, and an employee is not to accept, payment in lieu of long service leave.

- (2)** If an employee entitled to long service leave dies—
- (a) before taking such leave; or
  - (b) after commencing, but before completing, such leave;

then, unless the sum hereinafter in this subsection referred to has been already paid to, or on account of, the employee, the employer is to pay to the employee's legal personal representative the sum payable as prescribed by section 166 for long service leave in respect of the whole of the employee's entitlement to long service leave or, as the case may require, that part of such entitlement in respect of which payment as prescribed by section 166 has not been made.

**(3)** Without prejudice to any other mode of recovery, the employee's legal personal representative may recover the sum payable under subsection (2), and unpaid, as unpaid wages due and owing to the employee by the employer, and may make application therefor under section 409(1) and (3).

### **Inquiry upon re-employment of employee during long service leave**

**168.(1)** If—

- (a) an employee's service with an employer is terminated by either the employer or the employee; and

- (b) the employer makes payment for long service leave to which the employee is entitled, or any part thereof; and
- (c) the employer re-employs the employee before the end of a period, commencing on the date of termination of the employee's service, equal to the period of long service leave for which payment was made;

then, on application therefor made by an Industrial Inspector or an industrial organisation of employees of which the employee is a member, an Industrial Magistrate may inquire into the matter.

(2) If upon an inquiry under subsection (1) the Industrial Magistrate is satisfied that the employer and the employee arranged such termination, payment and re-employment in order to avoid the giving by the employer and the taking by the employee of long service leave in accordance with the employee's entitlement as prescribed, or a part thereof, the Industrial Magistrate may make such order or orders as the Industrial Magistrate considers just, having regard to the objective of this Division that long service leave is to be given by an employer, and taken by an employee, in accordance with the employee's entitlement thereto.

### **Long service leave in meat works and sugar industry**

**169.(1)** In this section—

**“actual service”**, in relation to an employee to whom this section applies, means the period of actual service the employee is taken to have had with an employer under the rules in subsection (5);

**“continuous service”**, in relation to an employee to which this section applies, means the period of continuous service the employee is taken to have had with an employer under the rules in subsection (5) for the purpose of section 159;

**“owners”** of a meat works includes any person who carries on the business of the works;

**“period between seasons”** includes—

- (a) the period between the termination of one season and the start of the next season; and
- (b) in relation to a particular employee—the period between the day

on which the employee ceases employment in one season and the day on which the employee starts employment in the next season;

**“season”** means—

- (a) in relation to the sugar industry—a period, whether falling—
  - (i) completely in one calendar year; or
  - (ii) partly in one calendar year and partly in the next calendar year;
 during which—
  - (iii) sugar cane is taken delivery of and crushed at a sugar mill; or
  - (iv) harvesting of sugar cane, or farm work, is performed in the sugar industry; and
- (b) in relation to a meat works—a period, whether falling—
  - (i) completely in one calendar year; or
  - (ii) partly in one calendar year and partly in the next calendar year;
 during which stock are taken delivery of and slaughtered at a meat works;

**“seasonal employment”** means employment related to season;

**“seasonal entitlement”**, in relation to each period of long service leave provided under section 159, means the period of long service leave to which an employee to whom this section applies is entitled by using the formula in subsection (6);

**“unadjusted entitlement”** means the period of long service leave to which an employee would be entitled under section 159 if—

- (a) the rules in subsection (5) for calculating the period of continuous employment with the employer for the purpose of the section 159 were applied; but
- (b) the adjustment of the entitlement by using the formula in subsection (6) were not made.

(2) This section applies to an employee who is entitled to a period of long service leave because the Commission has conferred, under section 158, an

entitlement to long service leave on full pay on—

- (a) employees employed in seasonal employment in the sugar industry; or
- (b) employees employed in or about meat works in seasonal employment by the meat works owners.

(3) The object of this section is to prescribe the entitlement to long service leave of an employee to which it applies by—

- (a) determining under subsection (5)—
  - (i) how the employee's period of continuous service with an employer must be calculated for the purpose of calculating the employee's unadjusted entitlement; and
  - (ii) how the employee's period of actual service with an employer must be calculated; and
- (b) determining by the formula in subsection (6) how the employee's unadjusted entitlement must be adjusted to take into account the employee's actual service.

(4) The rules in subsection (5) apply for the purpose of determining, in relation to an employee—

- (a) the employee's period of continuous service with an employer for the purpose of section 159; and
- (b) the employee's period of actual service with the employer.

(5) The rules are—

- (a) the employee's service with an employer (the "**employer**") is taken not to be broken (and never has been broken) by a period when the employee was not employed by the employer between seasons if—
  - (i) in one season, the employee's service with the employer continued until the termination of the season or until an earlier day on which the employee's employment was terminated by the employer; and
  - (ii) in the next season, the employee's service with the same employer started on the opening of the season or on a later day in that season on which the employer required the



- employee to start employment; and
- (b) subject to paragraph (c), service before the commencement of this subsection is to be treated in the same way as service after the commencement; and
  - (c) if the employee is engaged in the calling of the harvesting of sugar cane or farm work in the sugar industry, service had by the employee with the employer before 23 June 1990 is not to be taken into account; and
  - (d) any period between seasons, during which period the employee is not in employment with the employer—
    - (i) must be taken into account for the purpose of calculating the employee's period of continuous service with an employer for the purpose of section 159; and
    - (ii) must not to be taken into account for the purpose of calculating the length of the employee's actual service; and
  - (e) times in a period between seasons when the employee is employed by the employer are to be taken into account; and
  - (f) long service leave to which an employee is entitled, or any part of that leave—
    - (i) may be given to, and taken by, the employee during the period between seasons; and
    - (ii) if taken during the period between seasons—is taken to have started on the last cessation of the employee's employment by the employer.

(6) In relation to each period of long service leave provided for under section 159, the seasonal entitlement of an employee to whom this section applies is the period obtained by using the following formula—

$$\frac{\text{unadjusted entitlement} \times \text{actual service}}{\text{continuous service}}$$

### **Long service leave for other seasonal workers**

**170.(1)** The Governor in Council, by order in council, may from time to time declare that the provisions of—

- (a) sections 159 to 168, inclusive; and
- (b) section 169(2) and (3);

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

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

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

**(3)** An order in council under subsection (1)—

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

### **Long service leave for employees not governed by awards etc.**

**171.(1)** This section applies in relation to employees who, in their employment, are not bound by—

- (a) any award, industrial agreement or certified agreement within the meaning of this Act; or
- (b) any award or agreement or determination or order that makes provision for long service leave for employees, made, registered, approved or certified under a law of the Commonwealth relating

to industrial relations; or

- (c) an Act, other than this Act, or a law of the Commonwealth, by or under which entitlement to benefits in the nature of long service leave is conferred on them.

(2) Every employee in relation to whom this section applies is entitled to long service leave on full pay in accordance with—

- (a) sections 159 to 168, inclusive; and
- (b) this section.

(3) In respect of an employee in relation to whom this section applies a reference in any of the provisions of sections 159 to 168, inclusive, to any award, industrial agreement or certified agreement, being a reference relevant to the application of the provision, is to be read as including reference to an award, agreement, determination or order made, registered, approved or certified under a law of the Commonwealth relating to industrial relations, which applies to the employee and is relevant to the application of the provision.

(4) Subject to subsection (2), the Industrial Commission may determine all matters and questions as to the time when, the manner in which and the conditions on which long service leave may be given to and taken by an employee in relation to whom this section applies.

(5) Without limiting the jurisdiction of the Commission conferred by subsection (4), that jurisdiction extends to the declaration of general rulings by a Full Bench of the Industrial Commission.

(6) If an employee in relation to whom this section applies is employed in or about meat works by the owners thereof in employment that is seasonal as defined by section 169, then for the purposes of this section—

- (a) the continuity of the employee's service with an employer is not broken, and never has been broken, by the employee's not being employed by that employer between seasons if—
  - (i) in one season, the employee's service with the employer continued until the termination of the season or until an earlier date on which the employee's employment was terminated by the employer; and
  - (ii) in the next following season, the employee's service with the

same employer commenced on the opening of the season or on a later date in that season on which the employer required the employee to commence employment;

- (b) any period between seasons, during which period the employee is not in employment with an employer, is not to be taken into account for the purpose of determining the length of continuous service had by the employee with the employer, but times in such period when the employee is employed by the employer are to be taken into account for that purpose;
- (c) long service leave to which an employee is entitled, or any part thereof, may be given to, and taken by, the employee during the period between seasons, and leave so taken is taken to have commenced upon the last cessation of the employee's employment by the employer in or about meat works.

(7) In subsection (6)—

“**owners**”, in relation to meat works, includes any person who carries on the business of the works;

“**period between seasons**” includes—

- (a) the period between the termination of one season and the commencement of the next following season; and
- (b) in relation to a particular employee—the period between the date on which the employee ceases employment in one season and the date on which the employee commences employment in the next following season.

### **Recognition of certain exemptions**

**172.(1)** The provisions of this Division that provide for long service leave for employees do not apply in respect of an employer to whom the Industrial Commission, pursuant to the *Industrial Conciliation and Arbitration Act 1961*, as amended and in force for the time being, has granted an exemption from the application of—

- (a) any award or industrial agreement; or
- (b) the provisions of that Act;

in respect of the provision of long service leave for employees, if the exemption remains in force at the commencement of this Act.

(2) On application therefor, the Industrial Commission may revoke an exemption, such as is referred to in subsection (1), that remains in force whereupon the provisions of this Division apply in respect of the employer whose exemption is revoked.

### **Person may be “employer” and “employee”**

**173.** If in performance of duties in a calling a person is an employee the person has an entitlement as prescribed to long service leave notwithstanding that because of engagement in the calling, or the position held by the person in the calling, the person is defined to be an employer for the purposes of this Act.

## ***Division 4—Reinstatement and re-employment***

### **Application for reinstatement, re-employment or compensation**

**174.(1)** If an employee is dismissed from employment, application for relief under section 175 may be made to the Commission—

- (a) within 21 days after the dismissal; or
- (b) within a longer period after the dismissal that the Commission may allow at any time in the circumstances of the case.

(2) An application may be made by—

- (a) the employee; or
- (b) an industrial organisation of employees of which the employee is a member, acting on behalf of the employee and with the employee’s consent.

(3) An application cannot be made if the dismissal is subject to appeal or review under another Act or law.

(4) Before the Commission hears an application, a conference of the parties to the application must be held—

- (a) to explore the possibility of resolving the matters at issue by

conciliation; and

- (b) to ensure that the parties are fully informed of the possible consequences of further proceedings on the application.

### **Orders on application**

**175.(1)** If the Commission on hearing an application for relief from dismissal considers that the dismissed employee should be reinstated or re-employed, the Commission may order—

- (a) that the employee be reinstated by the employer in the employee's former position without prejudice to the former employment conditions; or
- (b) if the Commission considers that reinstatement would be inappropriate, for example, because the employer could not practically reinstate the employee—that the employee be re-employed by the employer in some other position, if available, on any conditions that may be determined by the Commission; or
- (c) if the Commission considers that an order under paragraph (a) or (b) is inappropriate—that the employer pay the employee an amount of compensation determined by the Commission.

**(2)** An order that an employee be reinstated or re-employed may specify when the reinstatement or re-employment is to start.

**(3)** Under subsection (1)(c), the Commission must not determine an amount of compensation that exceeds the amount obtained in accordance with the formula—

**average monthly wages X years of employment**

where—

**“average monthly wages”** means the employee's average monthly wages—

- (a) over the period of the employment by the employer; or
- (b) over the period of 1 year before the day the dismissal took effect; whichever period is less;

**“years of employment”** means the number of years that the employee was

employed by the employer, including a fraction of a year, if necessary.

(4) If the Commission makes an order under subsection (1), it may also order the employer to pay to the employee an amount it considers appropriate as remuneration for wages lost by the employee between the day the dismissal took effect and the day on which the Commission's order is complied with.

(5) The remuneration must not exceed the actual amount of loss to the employee because of not receiving wages from the employer, after taking into account any employment benefits or other wages received by the employee during the period for which remuneration is being assessed.

(6) If the Commission makes an order under subsection (1), it may also order the repayment by the employee of any amounts paid to the employee by or on account of the employer on termination of the employee's employment.

### **Effect of dismissal relief order on leave**

**176.** If the Commission makes an order under section 175(1), the interruption to the employee's continuity of service caused by the dismissal to which the order relates is to be disregarded for the purpose of determining the employee's entitlement to sick leave, annual leave or long service leave.

### **Costs for frivolous or vexatious applications**

**177.** If the Commission considers that an application for relief under section 175 is frivolous or vexatious, the costs it may order against the applicant include costs in respect of representation by counsel, solicitor or agent whether or not the Commission has certified as prescribed by section 84.

### **Further orders against employer**

**178.(1)** If an employer wilfully fails to comply with an order made against the employer under section 175 (the "**relief order**"), the Commission may—

(a) further order the employer to pay to the employee an amount of

not more than the monetary value of 50 penalty units together with a further amount as remuneration for lost wages; and

- (b) may make the further order from time to time until the employer complies with the relief order.

(2) This section does not affect any other provision of this Act allowing proceedings to be taken against the employer.

### *Division 5—Protection of injured employees*

#### **Interpretation of Division**

**179.** In this Division—

**“dismissed”**, in relation to an injured employee—

- (a) includes a case where—
  - (i) the employer imposes any unreasonable condition of employment which is designed to make the employee leave the employment; and
  - (ii) the employee leaves the employment; and
- (b) does not include a case where the dismissal happens before, but takes effect after, the commencement of this section;

**“former position”**, in relation to an injured employee, means—

- (a) the position from which the injured employee was dismissed; or
- (b) if the employee was transferred to a less advantageous position before dismissal—the position held by the employee when the employee became unfit for employment in the former position;

at the option of the employee;

**“injured employee”** means an employee who receives an injury;

**“injury”** means an injury within the meaning of the *Workers’ Compensation Act 1990* in relation to which workers’ compensation is payable under the Act.



**Wages to be paid for the day employee injured**

**180.(1)** An injured employee is entitled to be paid by the employee's employer full wages for the day on which the injury happens.

**(2)** Subsection (1) has effect despite any award, industrial agreement, certified agreement or contract of employment.

**Application to employer for reinstatement after dismissal**

**181.(1)** If an injured employee is dismissed because of unfitness for employment in a position because of the injury, the employee may apply to the employer for reinstatement to the employee's former position.

**(2)** Subject to section 184, application must be made within 21 days after the dismissal.

**(3)** The employee must produce to the employer a certificate given by a medical practitioner to the effect that the employee is fit for employment in the former position.

**Application to Commission for reinstatement order**

**182.(1)** If an employer fails to reinstate immediately an employee who applies under section 181 to be reinstated, the employee may apply to the Commission for a reinstatement order.

**(2)** An application may be made by—

- (a)** the employee; or
- (b)** an industrial organisation of employees of which the employee is a member applying on behalf of the employee and with the employee's consent.

**Commission order to reinstate**

**183.(1)** If the Commission is satisfied that an employee, in relation to whom an application under section 182 is made, is fit for employment in the employee's former position, the Commission may order the employer to reinstate the employee.

(2) The order may specify terms of reinstatement, for example, the day on which reinstatement is to take effect.

### **Extension of time for application**

**184.** The Commission may order an employer to reinstate an employee under section 183 even if the employee applied to the employer to be reinstated more than 21 days after the dismissal, if the Commission considers that this would be appropriate in the circumstances of the case.

### **Dismissal an offence in certain cases**

**185.(1)** An employer must not dismiss an injured employee solely or principally because the employee is not fit for employment in a position because of the injury within 3 months after the employee becomes unfit.

(2) A person who contravenes subsection (1) commits an offence against this Act.

Maximum penalty—40 penalty units

(3) This section applies to a dismissal after the commencement of this section even if the employee mentioned in subsection (1) became unfit before the commencement.

### **Preservation of employee's rights**

**186.(1)** This Division does not affect any other right of a dismissed employee under any Act or law.

(2) This Division cannot be affected by any contract or agreement.

## **PART 12—PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES**

### **Action on industrial dispute on notification or in public interest**

**187.(1)** An Industrial Commissioner is not to take action under this section unless—

- (a) notification of an industrial dispute has been received by the Industrial Registrar under subsection (2) or (8); or
- (b) the Commissioner is of the opinion that taking such action is in the public interest.

**(2)** If an industrial dispute exists between—

- (a) an industrial organisation of employers, or employer, of the one part; and
- (b) an industrial organisation of employees, or employee, of the other part;

and remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, each party to the dispute is to forthwith give notification of the existence of the dispute—

- (c) to the Industrial Registrar, if the dispute exists within the area of the City of Brisbane; or
- (d) the Industrial Registrar or the nearest Industrial Magistrate, if the dispute exists outside of the City of Brisbane.

**(3)** Any such notification may be given by letter, telex, facsimile transmission, or electronic mail, or other means of written communication, and must specify the parties to the dispute, the place where the dispute exists and the subject matter thereof.

**(4)** An Industrial Commissioner who proposes taking action under this section, having first ascertained (in a case where notification under subsection (2) or (8) has not been received by the Industrial Registrar) the identities of the parties to the industrial dispute and the subject matter of the dispute, is to take such steps as the Commissioner thinks fit for the prevention or prompt settlement of the dispute, by conciliation in the first instance, and by arbitration if the Commissioner is satisfied that conciliation

has failed.

(5) Without limiting the Commissioner's powers under subsection (4), the Commissioner may—

- (a) remit the matter of the dispute to an Industrial Magistrate for hearing and determination, or for exercise of such of the Industrial Magistrate's jurisdiction and powers under this Act for the prevention or prompt settlement of the dispute as the Commissioner thinks fit;
- (b) exercise the Commission's powers under section 41, without application therefor required by that section and without any application seeking directions, and may make an order in the nature of an interim injunction *ex parte*.

(6) If the Minister is aware of the existence of an industrial dispute the Minister may give notification thereof to an Industrial Commissioner or the Industrial Registrar, but a Commissioner is not to take action under this section on the basis of that notification unless, in the Commissioner's opinion, such action is desirable in the public interest.

(7) If an Industrial Commissioner is of the opinion that it is desirable in the public interest to do so, whether or not a notification has been given under subsection (2), the Commissioner is to make all such orders and give all such directions of an interlocutory nature and may exercise therein such of the powers of the Industrial Commission as the Commissioner considers necessary or expedient with a view to the prevention or the prompt settlement of an industrial dispute.

(8) An Industrial Magistrate—

- (a) if notified of an industrial dispute pursuant to subsection (2)—
  - (i) is to forthwith communicate to the Industrial Registrar the particulars specified in the notification and, if the Industrial Magistrate thinks fit, convene a compulsory conference under section 189;
  - (ii) if the parties to the dispute agree—is to forthwith hear and determine the matter of the dispute or exercise such of the Industrial Magistrate's jurisdiction and powers for the prevention or prompt settlement of disputes, as the case may require;

- (iii) may, or, if directed by the Industrial Commission to do so, must remit the matter of the dispute to the Commission at any stage of proceedings in relation to the dispute;
- (iv) is to keep informed the Industrial Registrar of the progress and outcome of proceedings conducted in relation to the dispute;
- (b) if in receipt of the matter of an industrial dispute by way of remission from an Industrial Commissioner—
  - (i) is to forthwith hear and determine the matter of the dispute or exercise such of the Industrial Magistrate's jurisdiction and powers for the prevention or prompt settlement of disputes, as the case may require;
  - (ii) may, or, if directed by the Industrial Commission to do so, must remit the matter of the dispute to the Commission at any stage of proceedings in relation to the dispute;
  - (iii) is to keep informed the Industrial Commissioner who remitted the matter of the progress and outcome of proceedings conducted in relation to the dispute.

**(9)** For the purposes of proceedings in respect of an industrial dispute to which this section relates—

- (a) the Industrial Commission may name a party to the dispute as having carriage of the proceedings before it;
- (b) an Industrial Magistrate may name a party to the dispute as having carriage of the proceedings before the Industrial Magistrate;

and the party so named has the carriage of the proceedings accordingly.

**(10)** This section is to be construed so as not to affect the operation of provisions of any award, industrial agreement or certified agreement that impose a duty on a party to the award or agreement or confer or impose a power or duty on an Industrial Magistrate.

### **Mediation by Commissioner or Industrial Magistrate**

**188.** An Industrial Commissioner or an Industrial Magistrate may act as

mediator in any industrial cause, whether or not it is within the jurisdiction of the Industrial Commission or an Industrial Magistrate—

- (a) on the request of the parties directly involved in the cause to do so; or
- (b) if it appears that mediation is desirable in the public interest.

### **Compulsory conference**

**189.(1)** An Industrial Commissioner or Industrial Magistrate who is duly taking action under section 187 may summon any person to attend at a time and place specified in the summons at a conference presided over by the Commissioner or Industrial Magistrate, if the holding of a conference is desirable for the purpose of preventing or settling the industrial dispute in relation to which such action is being taken.

**(2)** A person may be summoned under subsection (1) notwithstanding that the person is not directly involved in the dispute, if the Industrial Commissioner or Industrial Magistrate thinks that the person's presence at the conference is likely to be conducive to the prevention or prompt settlement of the dispute.

**(3)** A person summoned to attend a conference pursuant to this section is to attend as directed by the summons and continue to attend as directed by the presiding Industrial Commissioner or Industrial Magistrate.

**(4)** A conference may be held in public or in private, or partly in public and partly in private, at the discretion of the Industrial Commissioner or Industrial Magistrate.

**(5)** A person summoned to attend a conference pursuant to this section and who attends as required by subsection (3) is entitled to be paid by the Crown an amount certified by the Industrial Commissioner or Industrial Magistrate to be reasonable recompense for the person's expenses and loss of time.

### **Secret ballot on strike action**

**190.(1)** If a strike occurs, or it appears to the Industrial Commission or to any person or persons who may make application to the Commission under this subsection that a strike is likely to occur—

- (a) the Commission may—
  - (i) of its own motion; or
  - (ii) on application made to it by any employer or industrial organisation of employers; or
  - (iii) on application made to it by or on behalf of 5% of the number of employees engaged on or in the project, establishment, undertaking or calling concerned, or by 250 of those employees, whichever is less, but being, in any case, not fewer than 4; or
- (b) the Commission must—
  - (i) on application made to it by an industrial organisation of employees; or
  - (ii) if directed by the Minister to do so;

direct the Industrial Registrar or an Industrial Magistrate to conduct a secret ballot of such employees, or of such members of an industrial organisation of employees, as the Commission thinks fit and specifies in its direction, in such manner, on such date, and at such place or places as the Commission specifies in its direction, with a view to ascertaining the number of such employees, or members, who are in favour of the strike.

**(2)** A direction given under subsection (1) may require the conduct of separate secret ballots of members of different industrial organisations of employees, and the Industrial Registrar or Industrial Magistrate to whom a direction under subsection (1) is directed—

- (a) is to conduct a secret ballot directed by the Industrial Commission in accordance with the terms of the direction; and
- (b) in relation to the conduct of a secret ballot—is to take such steps and do such things as are provided for by the rules of court.

**(3)** All officers of the public service are to assist the Industrial Registrar or an Industrial Magistrate, as the registrar or magistrate may direct or require, in the exercise of powers or the discharge of duties conferred or imposed on the registrar or magistrate in relation to the conduct of a secret ballot pursuant to a direction given under subsection (1).

**(4)** The Industrial Registrar or Industrial Magistrate is to cause the result

of the secret ballot to be published by advertisement in any newspaper or newspapers circulating in the locality concerned.

### **Consequence of ballot adverse to strike**

**191.(1)** If a secret ballot conducted pursuant to a direction of the Industrial Commission given under section 190(1) indicates that a majority of employees, or members, of whom the ballot was directed to be conducted is not in favour of the strike, then—

- (a) if the strike exists at the time the ballot is taken; or
- (b) if the strike appeared at that time likely to occur, and occurs in respect of the same issue within 1 month following the publication under section 190(4) of the result of the ballot;

the Industrial Registrar or Industrial Magistrate who conducted the ballot is to cause to be published a date, not less than 7 days after the date of publication thereof, on or before which the employees, or members of an industrial organisation of employees, who are on strike, are required to discontinue the strike.

(2) Such publication must be by advertisement in any newspaper or newspapers circulating in the locality concerned, and may be included in the advertisement published pursuant to section 190(4).

(3) Every employee, or member of an industrial organisation of employees, being one of the employees or members of whom a secret ballot was required to be conducted is to comply with the requirement referred to in subsection (1).

(4) Any such employee, or member, who fails to discontinue the strike on or before the date published under subsection (1) is taken to have terminated, on and from that date, the employment in which the employee, or member, was engaged when the strike commenced, unless the employee, or member, proves that the failure was due to reasonable cause.

(5) For the purposes of subsection (4), disagreement by a person with the result of a secret ballot conducted pursuant to a direction of the Industrial Commission does not constitute reasonable cause.



**Nonparticipation in strike or lockout**

**192.(1)** Any industrial organisation of employees or other person (whether or not any officer, employee or member of an industrial organisation) is not—

- (a) to incite, advise or encourage any person to act to the prejudice of an employee who has refused or failed to participate in a strike; or
- (b) to impose or threaten to impose a penalty, forfeiture or disability of any kind on any employee, or member of an industrial organisation of employees, because the employee, or member, has refused or failed to participate in a strike.

**(2)** Any industrial organisation of employers or other person (whether or not any officer, employee or member of an industrial organisation) is not—

- (a) to incite, advise or encourage any person to act to the prejudice of an employer who has refused or failed to participate in a lockout; or
- (b) to impose or threaten to impose a penalty, forfeiture or disability of any kind on any employer, or member of an industrial organisation of employers, because the employer, or member, has refused or failed to participate in a lockout.

**(3)** If, in proceedings for an offence consisting in a contravention of subsection (1)(b) or (2)(b), it is proved that an imposition or threat has occurred on or to a person who has refused or failed to participate in a strike or lockout, as the case may be, it is to be presumed that the reason for the imposition or threat is such refusal or failure, unless the contrary be proved.

**Indemnity against agent's unauthorised actions**

**193.** An industrial organisation or an association of persons is not liable to any suit or action, and its funds are not chargeable in any way, in respect of any word spoken or written, or action done, during or in connection with a strike or lockout by an agent thereof, if it be shown that the agent has acted therein without the knowledge of the governing body of the industrial organisation or association and that the governing body could not, by the exercise of reasonable diligence have prevented the action.

## **PART 13—INDUSTRIAL ORGANISATIONS**

### *Division 1—Registration*

#### **Applicants for registration**

**194.(1)** An association that may make application for registration as an industrial organisation is—

- (a) an association of whose members all or some are employers, and, where some only are such employers, the other members are—
  - (i) officers of the association; or
  - (ii) persons who carry on business otherwise than as employees; or
  - (iii) persons who were employers when admitted to membership of the association and whose membership has not been terminated, by resignation or otherwise;
- (b) an association of whose members all or some are employees, and, where some only are such employees, the other members are officers of the association.

**(2)** An association of whose members some are persons referred to in subsection (1)(a)(ii) or (iii) is not one authorised by that subsection to make application unless the association is effectively representative of persons who are employers.

#### **Application for registration**

**195.(1)** An application for registration as an industrial organisation must be in the form provided for by the rules of court, signed by the president and secretary of the association, and made to the Industrial Commission.

**(2)** Notice of every such application must be published as prescribed.

**(3)** An application for registration as an industrial organisation of employers must be accompanied by—

- (a) particulars of the name of each employer who is a member of the

association and of the place or places in which each such employer carries on business;

- (b) a list of persons holding appointment as the following officers of the association—
  - (i) president;
  - (ii) secretary;
  - (iii) members of the committee of management or executive committee;
  - (iv) trustees (if any);
  - (v) other officers, and their official designations;
- (c) 2 copies of the association's rules;
- (d) in the case of an association consisting of more than 1 person—a copy of a resolution passed in accordance with the association's rules by a majority of the employers who are members of the association (or by other competent authority within the association) in favour of registration of the association under this Act;
- (e) a list of the callings in which employees are employed by the members of the association who are employers;
- (f) particulars of the control of the association's property and of the investment of its funds, as distinct from the property and funds of the member or members of the association;
- (g) the appropriate fee provided for by the rules of court.

**(4)** An application for registration as an industrial organisation of employees must be accompanied by—

- (a) a list of the members of the association;
- (b) a list of the persons holding appointment as the following officers of the association—
  - (i) president;
  - (ii) secretary;
  - (iii) members of the committee of management or executive committee;

- (iv) trustees (if any);
- (v) other officers, and their official designations;
- (c) 2 copies of the association's rules;
- (d) a copy of a resolution passed in accordance with the association's rules by a majority of its members present at a general meeting of the association (or by other competent authority within the association) in favour of registration of the association under this Act;
- (e) a list of callings of its members or to which its eligibility rules relate;
- (f) the name of the localities in which its members exercise their callings;
- (g) the appropriate fee provided for by the rules of court.

### **Criteria for registration**

**196.(1)** In this section—

**“industry-based association”** means an association of employees whose eligibility rules restrict eligibility for membership to persons who are employees in relation to the same kind of calling of employers.

**(2)** On application made to it in accordance with section 195, the Industrial Commission may approve registration of an association as an industrial organisation if—

- (a) the association is an association of a description referred to in section 194 and exists for furthering or protecting the interests of its members;
- (b) in the case of an association of employers—
  - (i) its members who are employers have, in the aggregate, employed on an average taken per month at least 1 000 employees throughout the period of 6 months immediately preceding the date of the application; or
  - (ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's registration as an industrial organisation;

- (c) in the case of an association of employees—
    - (i) the association has at least 1 000 members who are employees; or
    - (ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's registration as an industrial organisation;
  - (d) in the case of an association of employees—
    - (i) the association is an industry-based association; or
    - (ii) the Industrial Commission is satisfied that special circumstances exist, which justify the association's registration as an industrial organisation;
  - (e) the association's rules make provision required by this Act to be made by the rules of an industrial organisation and the certificate of the Certifying Barrister issued pursuant to section 213 exists in respect of the rules;
  - (f) the association's name is not the same as that of any industrial organisation or so similar to that of any industrial organisation as to be likely to cause confusion;
  - (g) registration of the association would further the objects of this Act;
  - (h) there is no industrial organisation to which the association's members might conveniently belong.
- (3) The provisions of subsection (2)(d) do not apply in respect of—
- (a) an association proposed to be registered as an industrial organisation under a proposed amalgamation under Division 8;
  - (b) an association previously registered as an industrial organisation whose registration has been cancelled according to law.

### **Continued registration of small industrial organisations**

**197.(1)** In this section—

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

commencement;

**“small industrial organisation”** means an industrial organisation of employees that has fewer than 1 000 members who are employees.

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

(3) The Industrial Commission—

- (a) in exercise of its authority under subsection (2), in respect of an industrial organisation that is a small industrial organisation at the beginning of the relevant period, is to comply with subsection (4);
- (b) subject to subsection (5), may exercise its authority under this subsection after the end of the relevant period, whenever the Commission considers it appropriate.

(4) If an industrial organisation is a small industrial organisation at the beginning of the relevant period, the Industrial Commission—

- (a) is to start to consider the justification for its continued registration during the relevant period; and
- (b) is to finish considering that matter as soon as is practicable;

unless, when the Commission proposes to start considering that matter, the industrial organisation is no longer a small industrial organisation.

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

(6) If, on exercising the authority conferred by subsection (2), the Industrial Commission is not satisfied that special circumstances exist that justify the continued registration of a small industrial organisation in the public interest, the Commission is to cancel the registration of the industrial organisation.

### **Registration of several industrial organisations for the same calling**

**198.(1)** If 2 or more associations exist in respect of a calling, any 2 or more of them may apply for joint registration as an industrial organisation.

(2) If an association applies for registration for a calling for which an industrial organisation is already registered, the Industrial Commission may approve the application and, if it does so approve, is to thereupon bracket together, in respect of the calling, the registration of the industrial organisations.

(3) Subsection (2) applies in relation to any subsequent application for registration by any other association in respect of the same calling.

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

(5) An industrial organisation given notice under subsection (4) is entitled to be heard as prescribed before the Commission in opposition to the approval of the application.

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

(7) In proceedings before the Industrial Court, Industrial Commission, an Industrial Magistrate, or the Industrial Registrar such industrial organisations may appear jointly or separately.

### **Change of callings**

**199.** On application therefor made by an industrial organisation in the manner prescribed, the Industrial Commission may alter the calling or callings in respect of which the industrial organisation is registered.

### **Determination of application**

**200.(1)** Any person having a proper interest in the matter may, within the prescribed time and in the prescribed manner, by notice to the Industrial Commission, oppose an application for registration as an industrial organisation.

(2) On receipt of a notice of opposition to an application for registration, the Industrial Commission—

- (a) is to fix a date for hearing any objection to the application;

- (b) is to cause notification of the date to be given as prescribed;
- (c) on the date notified, or other date to which the matter is adjourned, is to hear and determine the matter of the application and any objection thereto.

(3) If the Industrial Commission grants an application by an association for registration as an industrial organisation, the Industrial Registrar is to forthwith register the association as an industrial organisation.

(4) On registration of an industrial organisation, the Industrial Registrar is to issue to the industrial organisation a certificate of registration under this Act in the form provided for by the rules of court, and may at any time issue to an industrial organisation a copy of, or a certificate as a replacement for, the certificate of registration.

### **Industrial organisations corporate bodies**

**201.** An industrial organisation, in its registered name—

- (a) is a body corporate;
- (b) has perpetual succession;
- (c) has power to purchase, take on lease or hire, hold, sell, lease, let, mortgage, exchange, accept or dispose of by way of gift, own, possess, and otherwise deal with any real or personal property;
- (d) must have a common seal;
- (e) may sue and be sued.

### **Registered name of industrial organisation**

**202.(1)** The registered name of an industrial organisation registered after the commencement of this Act—

- (a) if it is an industrial organisation of employers—must include the words ‘industrial organisation of employers’ or ‘industrial union of employers’;
- (b) if it is an industrial organisation of employees—must include the words ‘industrial organisation of employees’ or ‘industrial union of employees’.



(2) On application therefor by or on behalf of a union of employers or employees registered at the commencement of this Act, the Industrial Registrar may so alter the registered name of the union that the name contains reference to the words 'industrial organisation' in lieu of reference to the word 'union'.

(3) The registered name of every industrial organisation of employers or employees must contain reference to the locality in which the majority of its members reside or engage in their business or calling.

### *Division 2—Rules of industrial organisations*

#### **Requirement for rules**

**203.(1)** Every industrial organisation must have rules that make provision as prescribed.

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

#### **General requirements for rules**

**204.** The rules of an industrial organisation—

- (a) must not fail to make provision required by this Act;
- (b) must not be contrary to—
  - (i) this Act;
  - (ii) an award, industrial agreement or certified agreement;
  - (iii) law;
- (c) must not be such as to prevent or hinder members of the industrial organisation from or in—
  - (i) observing the law, the provisions of an award, industrial agreement or certified agreement, or other decision of the Industrial Court or Industrial Commission; or
  - (ii) entering into written agreements under an award or other decision of the Industrial Commission;

- (d) must not impose on applicants for membership, or on members, of the industrial organisation conditions, obligations or restrictions that, having regard to the objects of this Act and the purposes of registration of industrial organisations under this Act, are oppressive, unreasonable or unjust.

### **Subject matter of rules**

**205.(1)** In this section—

“**committee**”, used in relation to an industrial organisation or branch thereof, means a body of the members or officers of the industrial organisation or branch that has powers of the kind referred to in paragraph (b) of the definition “office” in section 5.

**(2)** The rules of an industrial organisation—

- (a) must specify the purposes for which the industrial organisation is formed, and the conditions of eligibility for membership, and may specify the industry in respect of which the industrial organisation is formed;
- (b) must make provision for—
  - (i) the powers and duties of the committees of the industrial organisation and of its branches, and the powers and duties of holders of office in the industrial organisation and in its branches;
  - (ii) the manner of summoning meetings of members of the industrial organisation and of its branches, and meetings of the committees of the industrial organisation and of its branches;
  - (iii) the removal of holders of office in the industrial organisation and in its branches;
  - (iv) the control of committees of the industrial organisation and of its branches by the members of the industrial organisation and of its branches respectively;
  - (v) the manner in which documents may be executed by or on behalf of the industrial organisation;

- (vi) the notification of the Industrial Commission, in the prescribed manner, of the existence or likelihood of industrial disputes by the holder or holders of the office or offices in the industrial organisation specified in the rules as authorised to give such notification;
- (vii) the times when, and the terms on which persons become or cease (otherwise than by resignation) to be members;
- (viii) the resignation of members;
- (ix) the manner in which property of the industrial organisation is to be controlled and its funds invested;
- (x) the conditions under which funds of the industrial organisation may be spent;
- (xi) the yearly or other more frequent audit of the industrial organisation's accounts;
- (xii) the keeping of a register of the members, arranged, if there are branches of the industrial organisation, according to branches;
- (xiii) the manner in which the rules may be altered;
- (c) may provide for the removal of a person elected to an office in the industrial organisation only if the person has been found guilty, under the rules, of—
  - (i) misappropriation of the industrial organisation's funds; or
  - (ii) a substantial breach of the rules; or
  - (iii) gross misbehaviour or gross neglect of duty;or has ceased to be eligible under the rules to hold the office;
- (d) must require the industrial organisation to inform applicants for membership, in writing, of—
  - (i) the financial obligations arising from membership; and
  - (ii) the circumstances and the manner in which a member may resign from the industrial organisation;
- (e) may make such other provision as is not inconsistent with this Act.

**Rules to provide for election of officers**

**206.(1)** The rules of an industrial organisation—

- (a) must provide for the election of the holder of each office in the industrial organisation by—
  - (i) a direct voting system; or
  - (ii) a collegiate electoral system; and
- (b) must provide for the conduct of every such election (including the acceptance or rejection of nominations) by a returning officer who is not the holder of any office in, or an employee of, the industrial organisation or any of its branches;
- (c) must provide that a returning officer conducting an election who finds a nomination to be defective, before rejecting the nomination, is to notify the person concerned of the defect and, where practicable, give the person the opportunity of remedying the defect within such period as is applicable under the rules, which period, where practicable, must be not less than 7 days after the person is notified;
- (d) must provide for—
  - (i) the manner in which persons may become candidates for election;
  - (ii) the duties of returning officers;
  - (iii) the declaration of the result of an election;
- (e) must provide that any ballot required is to be a secret ballot, and must make provision for—
  - (i) absent voting;
  - (ii) the conduct of the ballot;
  - (iii) the appointment, conduct and duties of scrutineers to represent the candidates at the ballot;
- (f) must be such as to ensure, as far as is practicable, that no irregularities can occur in relation to an election;
- (g) may provide for compulsory voting in any ballot required.

**(2)** The rules of an industrial organisation relating to elections for office

must relate to elections for all offices in the industrial organisation, including offices in the branches of the industrial organisation.

(3) The reference in subsection (1)(c) to a nomination being defective does not include reference to a nomination of a person that is defective because the person is not qualified to hold the office to which the nomination relates.

(4) In this section—

**“collegiate electoral system”** means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and 1 subsequent stage at which persons are elected by and from a body of persons consisting of persons elected at the first stage.

### **Rules to provide for elections by secret postal ballot**

**207.(1)** If the rules of an industrial organisation provide for election to an office in the industrial organisation or any of its branches to be by a direct voting system, the rules must also provide that, where taking a ballot is necessary, it is to be a secret postal ballot.

(2) An industrial organisation may lodge with the Industrial Registrar an application for an exemption from subsection (1), accompanied by particulars of proposed alterations of the rules of the industrial organisation to provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot.

(3) If the Industrial Registrar is satisfied, on application of an industrial organisation under subsection (2), that—

- (a) the proposed alterations of the rules—
  - (i) are not contrary to this Act (other than subsection (1)) or to law; and
  - (ii) have been duly decided on according to the rules of the industrial organisation; and
- (b) the taking of a ballot under the rules of the industrial organisation as proposed to be altered—
  - (i) is likely to result in a greater participation by members of the

industrial organisation in the ballot than would result from a postal ballot; and

- (ii) will afford members entitled to vote with an adequate opportunity of voting without intimidation;

the Industrial Registrar may grant to the industrial organisation an exemption from subsection (1), and the industrial organisation is so exempt accordingly while the exemption remains in force.

(4) Proposed alterations of the rules of an industrial organisation referred to in subsection (2) take effect if and when the Industrial Registrar grants to the industrial organisation an exemption from subsection (1).

(5) An exemption under subsection (3) remains in force until it is revoked under subsection (6).

(6) The Industrial Registrar may revoke an exemption of an industrial organisation granted under subsection (3)—

- (a) on application therefor by the industrial organisation, if the Industrial Registrar is satisfied that the rules of the industrial organisation comply with subsection (1); or
- (b) if the Industrial Registrar is no longer satisfied—
  - (i) that the rules of the industrial organisation provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot; or
  - (ii) of a matter referred to in subsection (3)(b);

and the Industrial Registrar has given the industrial organisation the opportunity, as prescribed, to show cause why the exemption should not be revoked.

(7) If the Industrial Registrar revokes an exemption of an industrial organisation on a ground specified in subsection (6)(b), the registrar may, by instrument, after giving the industrial organisation the opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the industrial organisation as are, in the registrar's opinion, necessary to bring them into conformity with subsection (1).

(8) An alteration of the rules of an industrial organisation, determined under subsection (7), takes effect on the date of the instrument of determination.

**Rules to provide for term of office**

**208.(1)** In this section—

**“retirement age”**, in relation to an office, means the retirement age applicable to the office under the rules of the industrial organisation concerned or, if the rules provide for a minimum retirement age and a maximum retirement age in relation to the office, means the maximum retirement age.

**(2)** The rules of an industrial organisation—

- (a) subject to paragraph (b) and subsection (4), must provide for terms of office for officers in the industrial organisation or its branches, being terms no longer than 4 years without re-election;
- (b) may provide that, if a person elected to a full-time office will attain retirement age within 12 months following the end of the term for which the person is elected, the person may hold the office, without being re-elected until attaining retirement age.

**(3)** If the rules of an industrial organisation provide as permitted by subsection (2)(b), the rules must further provide that if a candidate duly nominated for election to a full-time office is a person who, if elected, could hold the office in the circumstances provided for by that subsection, the ballot papers for the election must indicate the maximum term for which such a candidate, if elected, could hold office.

**(4)** The rules of an industrial organisation may provide for the extension of a term of office in the industrial organisation or its branches for a specified period, if the extension is for the purpose of synchronising elections for offices in the industrial organisation or, as the case may be, a branch.

**(5)** However, a term of office as so extended will not in any case exceed 5 years.

**(6)** Rules may be made to provide as permitted by subsection (4) so as to apply in relation to a term of office that began before the commencement of this Act.

**Rules may provide for filling casual vacancies**

**209.(1)** In this section—

**“ordinary election”** means an election held under rules that comply with section 206;

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

- (a) the provisions of this Act (other than this section); and
- (b) the rules of the industrial organisation (other than rules such as are permitted by subsection (2) to be made) providing for the filling of a casual vacancy in an office otherwise than by an ordinary election;

**“term”**, in relation to an office, means the total period for which the person last elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (disregarding any rule, such as is permitted by section 208(2)(b), that has been made, but having regard to any rule, such as is permitted by section 208(4), (5) and (6) that has been made) to hold the office without being re-elected.

**(2)** The rules of an industrial organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section, in any other manner provided by the rules.

**(3)** Rules permitted by subsection (2) to be made must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds—

- (a) 12 months; or
- (b) three-quarters of the term of office;

whichever is the greater.

**(4)** If, under rules such as are permitted by subsection (2) to be made, a vacancy in an office in an industrial organisation or any of its branches is filled otherwise than by an ordinary election, the person filling the vacancy is taken for the purposes of the relevant provisions, to have been elected to the office under the relevant provisions.



**Rules to provide conditions for loans, grants and donations**

**210.(1)** In this section—

**“relevant committee of management”**, in relation to an industrial organisation, or branch of an industrial organisation, means the committee of management of the industrial organisation or, as the case may be, branch.

(2) The rules of an industrial organisation must provide that expenditure by way of loan, grant or donation to any recipient of an amount exceeding, or in the aggregate exceeding, \$1 000 is not to be made by the industrial organisation or any of its branches unless the relevant committee of management has satisfied itself—

- (a) that the making of the loan, grant or donation would be in accordance with the other rules of the industrial organisation; and
- (b) in the case of a loan—that the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for repayment of the loan are satisfactory;

and has approved the making of the loan, grant or donation.

(3) Notwithstanding subsection (2), the rules of an industrial organisation may provide for a person authorised by the rules to make expenditure by way of loan, grant or donation to a member of the industrial organisation of an amount not exceeding, or in the aggregate not exceeding, \$3 000 if the loan, grant or donation—

- (a) is for the purpose of relieving the member or any of the member’s dependants from severe financial hardship; and
- (b) is subject to a condition to the effect that, if the relevant committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it is to be repaid as determined by the committee.

(4) In considering whether to approve a loan, grant or donation made under subsection (3), the relevant committee of management is to have regard to—

- (a) whether the loan, grant or donation was made under the rules of the industrial organisation; and
- (b) in the case of a loan—whether the security (if any) given for

repayment of the loan is adequate and the arrangements for repayment of the loan are satisfactory.

(5) Nothing in subsection (2) requires the rules of an industrial organisation to make provision of the kind referred to in that subsection in relation to payments made by the industrial organisation or any of its branches by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the industrial organisation or branch.

### **Model rules, adoption by industrial organisations**

**211.(1)** Rules that accord with the requirements prescribed in relation to rules of an industrial organisation may be published in the Industrial Gazette as model rules for industrial organisations.

(2) Such published rules are referred to in this section as “**the model rules**”.

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

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

(4) On receipt by the Industrial Registrar of notification by the secretary of the industrial organisation that a resolution adopting model rules without modification has been duly approved the registrar is to register the notification as an alteration of the rules of the industrial organisation, whereupon the model rules so adopted become, and are, the rules of the industrial organisation in relation to the matters to which the adopted rules relate, in lieu of any rules of the industrial organisation that immediately before such registration related to those matters.

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

(6) At any time—

- (a) after the commencement of this Act; and
- (b) before the end of 12 months following the publication of the model rules, or of such longer period as the Industrial Registrar

allows in a particular case;

every industrial organisation—

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

(7) If an industrial organisation does not comply with subsection (6), and does not take action permitted by subsection (3), then, at the end of the time limited by subsection (6) for compliance by that industrial organisation, the model rules become and are the rules of the industrial organisation in relation to the matters to which the model rules relate, in lieu of any rules of the industrial organisation at that time relating to those matters.

(8) If an industrial organisation adopts the eligibility rules of the model rules without necessary modification, for the purpose of giving practical effect to such adoption the eligibility rules as adopted are to be taken as specifying the same persons as eligible for membership of the industrial organisation following such adoption as were eligible for membership of the industrial organisation under its eligibility rules immediately before such adoption.

(9) If an industrial organisation complies with subsection (6) but, on submission to the Certifying Barrister, the rules are not approved by the Certifying Barrister as conforming to the requirements of this Division, the Industrial Registrar is to require the industrial organisation to lodge with the registrar, within a time specified by the registrar, a complete set of its rules, altered so as to conform to the requirements of this Division.

(10) If an industrial organisation to which the Industrial Registrar's requisition under subsection (9) is directed—

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

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

- (c) the expiry of the time specified by the Industrial Registrar, in the case referred to in paragraph (a);
- (d) the refusal of the Certifying Barrister's approval, in the case referred to in paragraph (b).

### **Change of name or alteration of eligibility rules of industrial organisation**

**212.(1)** In this section—

**“industry-based industrial organisation”** means an industrial organisation of employees whose eligibility rules restrict membership to persons who are employees in relation to the same kind of calling of employers.

**(2)** This section does not apply to a change in the name, or an alteration of the eligibility rules, of an industrial organisation that is a change or alteration—

- (a) made by the Industrial Registrar under section 202(2); or
- (b) determined by the Industrial Commission under section 44(5) or 215(7); or
- (c) proposed to be made for the purposes of an amalgamation under Division 8.

**(3)** A change in the name of an industrial organisation, or an alteration of the eligibility rules of an industrial organisation, does not take effect unless the Industrial Commission consents to the change or alteration.

**(4)** The Industrial Commission may consent to a change in the name of an industrial organisation or an alteration of the eligibility rules in whole or part, but is not to consent unless the Commission is satisfied that the change or alteration has been made under the rules of the industrial organisation.

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

- (a) is not the same as the name of another industrial organisation; and
- (b) is not so similar to the name of another industrial organisation as to be likely to cause confusion.

(6) The Industrial Commission is not to consent to an alteration of the eligibility rules of an industrial organisation if, in relation to persons who would be eligible for membership because of the alteration, there is, in the opinion of the Commission, another industrial organisation to which those persons might conveniently belong.

(7) The Industrial Commission is not to consent to an alteration of the eligibility rules of an industrial organisation that is an industry-based industrial organisation if, because of the alteration, the industrial organisation would cease to be an industry-based industrial organisation, unless the Commission is satisfied that there are special circumstances justifying the alteration.

### **Approval and registration of rules**

**213.(1)** The Industrial Registrar is to submit to the Certifying Barrister—

- (a) the rules of every association that seeks registration as an industrial organisation;
- (b) all proposed alterations of the rules of an industrial organisation other than—
  - (i) alterations consisting in the adoption without modification of model rules referred to in section 211;
  - (ii) alterations ordered, directed or determined under this Act and, in any such case, prepared by—
    - (A) the Industrial Court;
    - (B) the Industrial Commission or an Industrial Commissioner;
    - (C) the Industrial Registrar;acting in exercise of jurisdiction or authority conferred by this Act;

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

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

- (a) the rules, or proposed alterations, are not contrary to this Act, or

to law; and

- (b) the proposed alterations are made in accordance with the rules of the industrial organisation in question;

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

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

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

(5) Alterations of rules of an industrial organisation that consist in model rules referred to in section 211, without modification, take effect on and from the time prescribed by that section at which such rules become and are the rules of the industrial organisation.

(6) Except as prescribed by subsections (4) and (5) proposed alterations of rules of an industrial organisation take effect when they are registered by the Industrial Registrar.

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

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

### **Certain alterations of rules to be recorded**

**214.** If there has been a change in the name of an industrial organisation, or an alteration of the eligibility rules of an industrial organisation, under this Act, the Industrial Registrar—

- (a) is to immediately enter, in the register kept under section 58(1) particulars of the change or alteration; and

- (b) in the case of a change of name—as soon as is practicable after the industrial organisation produces its certificate of registration to the registrar, is to amend the certificate accordingly and return it to the industrial organisation.

### *Division 3—Validity and performance of rules*

#### **Rules contravening s.204**

**215.(1)** In this section—

**“appropriate authority”** means—

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

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

(3) An order under this section may declare that the whole or a part of a rule of an industrial organisation contravenes section 204 or that the rules of an industrial organisation contravene section 204 in a particular respect.

(4) An industrial organisation in relation to which an application is made under this section is to be given an opportunity of being heard by the Industrial Court.

(5) The Industrial Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the industrial organisation an opportunity to alter its rules.

(6) If an order under this section declares that the whole or a part of a rule contravenes section 204, the rule or that part of the rule, as the case may be, is taken to be void from the date of the order.

(7) If—

- (a) the Industrial Court makes a declaratory order under

subsection (3); and

- (b) at the end of 3 months following the making of the order, the rules of the industrial organisation have not been altered in a manner that, in the opinion of the appropriate authority, brings them into conformity with section 204 in relation to the matters that gave rise to the order;

the appropriate authority, after giving the industrial organisation an opportunity to be heard, is to determine, by instrument, such alterations of the rules as will, in the appropriate authority's opinion, bring them into conformity with that section in relation to those matters.

(8) The appropriate authority may, on the application of the industrial organisation made within the period of 3 months referred to in subsection (7) or within any extension of the period, extend, or further extend, the period.

(9) In proceedings under this section, the Industrial Court may make such interim orders as it considers appropriate in relation to a matter to which the matter of the proceedings is relevant.

(10) An order made under subsection (9) continues in force until the completion of the proceedings in which it is made, or until the end of a shorter period for which the order is expressed to operate, or until it is discharged, whichever event is the first to occur.

### **Directions for performance of rules**

**216.(1)** In this section—

**“election”** includes a putative election that is a nullity;

**“order under this section”** means an order giving directions for the performance or observance of any of the rules of an industrial organisation by any person who is under an obligation to perform or observe those rules.

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

(3) An industrial organisation in relation to which an application is made under this section and every person against whom an order is sought therein



is to be given an opportunity of being heard by the Industrial Court.

(4) The Industrial Court may refuse to deal with an application under this section unless it is satisfied that the applicant has taken all reasonable steps to have the subject matter of the application resolved within the industrial organisation.

(5) In proceedings under this section, the Industrial Court may make such interim orders as it considers appropriate, and, in particular, orders intended to further the resolution within the industrial organisation concerned of the subject matter of the application.

(6) An order made under subsection (5) continues in force until the completion of the proceedings in which it is made, or until the end of a shorter period for which the order is expressed to operate, or until it is discharged, whichever event is the first to occur.

(7) An order under this section is not to be made if it would have the effect of treating as invalid an election to an office in an industrial organisation or a step in relation to such an election.

(8) If the Industrial Court, in considering an application under this section, finds that the whole or a part of a rule of an industrial organisation contravenes section 204 or that the rules of an industrial organisation contravene that section in a particular respect, the Court may, by order, make a declaration to that effect.

(9) Section 215 (other than subsections (2) to (5) thereof inclusive) applies in relation to an order made under subsection (8) as if the order had been made under section 215.

### **Financial assistance for application under this Division**

**217.(1)** A member of an industrial organisation who proposes to take, is taking, or has taken proceedings under section 215 or 216 may apply to the Minister for a grant of financial assistance at any time before the end of 3 months following the completion of the proceedings.

(2) If it appears to the Minister that—

- (a) there are, or were, reasonable grounds for taking the proceedings; and
- (b) the proceedings are proposed to be, or were, taken in good faith;

the Minister may direct that financial assistance be given by the State to the member in respect of the cost of those proceedings in such amount or amounts as the Industrial Registrar determines should be paid to or on behalf of the member accordingly.

(3) Subject to appropriation by Parliament, all amounts determined by the Industrial Registrar under subsection (2) to be payable are to be paid out of Consolidated Revenue.

#### *Division 4—Conduct of elections for office*

##### **Conduct by Electoral Commission**

**218.(1)** Each election for an office in an industrial organisation or branch of an industrial organisation is to be conducted by the Electoral Commission.

(2) Subsection (1) does not apply to an election for an office in an industrial organisation or branch if an exemption granted to the organisation or branch under section 221 is in force in relation to elections in the organisation or branch or an election for the particular office.

##### **Application for industrial organisation or branch to conduct its elections**

**219.(1)** A committee of management of an industrial organisation or branch of an industrial organisation may file in the Industrial Registrar's Office an application for the organisation or branch, as the case may be, to be exempted from section 218(1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.

(2) An application may be made by a committee of management of an industrial organisation or branch of an industrial organisation only if the committee of management—

- (a) has resolved to make the application; and
- (b) has notified the members of the organisation or branch, as prescribed, of the making of the resolution.

(3) The application must be accompanied by a statutory declaration by a

member of the committee of management stating that subsection (2) has been complied with.

(4) On the filing of an application, the Industrial Registrar must publish as prescribed, a notice setting out details of the application for the purpose of bringing the notice to the attention of members of the industrial organisation or branch concerned.

(5) If the rules of an industrial organisation require an office to be filled by an election by the members, or by some of the members, of a single branch of the organisation, an election to fill the office is taken to be an election for the branch.

### **Objections to application to conduct elections**

**220.(1)** Objection may be made to an application under section 219(1) by a member of the industrial organisation or branch of the industrial organisation in relation to which the application was made.

(2) The Industrial Registrar is to hear, in the way prescribed, the application and any objections properly made.

### **Registrar may permit industrial organisation or branch to conduct its elections**

**221.(1)** If an application in relation to an industrial organisation or branch has been filed under section 219(1) and, after any objections properly made have been heard, the Industrial Registrar is satisfied—

- (a) that the rules of the industrial organisation or branch comply with the requirements of this Act relating to the conduct of elections; and
- (b) that, if the organisation or branch is exempted from section 218(1), the elections for the organisation or branch, or the election for the particular office, will be conducted—
  - (i) under the rules of the organisation or branch, as the case may be, and this Act; and
  - (ii) in a way that will afford members entitled to vote at the elections or election an adequate opportunity of voting without intimidation;

the Industrial Registrar may exempt the organisation or branch from section 218(1) in relation to elections for the organisation or branch, or the election for the particular office, as the case may be.

(2) The Industrial Registrar may revoke an exemption granted to an industrial organisation or branch under subsection (1)—

- (a) on application by the committee of management of the organisation or branch; or
- (b) if the registrar—
  - (i) is no longer satisfied as mentioned in subsection (1); and
  - (ii) has given the committee of management of the organisation or branch an opportunity, as prescribed, to show cause why the exemption should not be revoked.

### **Industrial Registrar to arrange for conduct of elections**

**222.(1)** An industrial organisation or branch of an industrial organisation (other than an organisation or branch to which the Industrial Registrar has, under section 221, granted an exemption) must file the prescribed information in relation to an election in the Industrial Registrar's Office before the prescribed day or any later day the registrar allows.

(2) If—

- (a) the prescribed information is filed in the Industrial Registrar's Office by the industrial organisation or branch (whether or not before the prescribed day or the later day allowed by the Industrial Registrar); and
- (b) the Industrial Registrar is satisfied that an election is required to be held under the rules of the organisation or branch;

the registrar must arrange for the conduct of the election by the Electoral Commission.

### **Provisions applicable to elections conducted by Electoral Commission**

**223.(1)** If an electoral official is conducting an election, or taking a step in relation to an election, for an office in, or in a branch of, an industrial organisation, the electoral official—

- (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and
- (b) may, despite anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary—
  - (i) to ensure that no irregularities happen in relation to the election; or
  - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules.

(2) An election conducted by an electoral official, or a step taken in relation to such an election, is not invalid merely because of a breach of the rules of the industrial organisation or branch because of—

- (a) action taken under subsection (1); or
- (b) an act done in compliance with a direction under subsection (1).

(3) If an electoral official conducting an election, or taking a step in connection with an election—

- (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
- (b) ceases to be qualified to conduct the election or to take the step;

the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

### **Expenses of election ballot**

**224.(1)** The expenses (other than the expenses mentioned in subsection (2)) of a ballot conducted by the Electoral Commission under this Division are payable by the State.

(2) The industrial organisation in relation to which the ballot is held must pay for the printing, postage and distribution costs incurred by the Electoral Commission in the conduct of the ballot.

(3) The industrial organisation must pay to the State the costs mentioned in subsection (2) within 1 month after receiving a written request from the Electoral Commission to do so.

(4) An amount payable by an industrial organisation under this section may be recovered by the State as a debt payable to it.

### **Death of candidate**

**225.(1)** If—

- (a) 2 or more candidates are nominated for an election in relation to an office in an industrial organisation or branch; and
- (b) one of the candidates dies before the close of the ballot;

the election must be discontinued and a new election must be held.

(2) Subsection (1) has effect despite anything in the rules of an industrial organisation or branch.

### **Ballot papers etc. from elections to be preserved**

**226.(1)** If—

- (a) an election for an office is held under this Division; and
- (b) the election is conducted by the Electoral Commission;

the industrial organisation or branch of the industrial organisation concerned, every officer of the organisation or branch who is in a position to do so, and the Electoral Commission, are to take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the election are preserved and kept by the Electoral Commission for a period of 1 year after the election.

(2) If—

- (a) an election for an office is held under this Division; and
- (b) the election is conducted by the industrial organisation or branch;

the industrial organisation or branch of the industrial organisation concerned, and every officer of the organisation or branch who is in a position to do so, are to take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the election are preserved and kept by the industrial organisation or branch for a period of 1 year after the election.

(3) Subsections (1) and (2) have effect despite anything in the rules of the industrial organisation or branch concerned.

### **No action for defamation in certain cases**

**227.(1)** A proceeding (whether civil or criminal) for defamation does not lie against—

- (a) the State; or
- (b) an electoral official; or
- (c) a person acting at the request or direction of an electoral official;

in relation to the printing or publication of a document by the official or person in the course of the conduct of an election under this Division.

(2) In this section—

“**document**” means a document or a copy of a document authorised by, or on behalf of, a candidate in the election.

### ***Division 5—Disqualification from holding office in industrial organisation***

#### **Interpretation**

**228.(1)** In this Division the expression—

“**prescribed offence**” means—

- (a) an offence under an Act or under a law of the Commonwealth, a State or Territory of the Commonwealth, or another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more;
- (b) an offence under section 434, 436, 437, 438 or 442;
- (c) an offence in relation to the formation, registration or management of an association or industrial organisation;
- (d) an offence under an Act or under a law of the Commonwealth, a State or Territory of the Commonwealth, or another country, involving the intentional—

- (i) use of violence towards another person;
- (ii) causing of death or injury to any person;
- (iii) damage or destruction of property.

(2) A reference in this Division to a person having been convicted of a prescribed offence includes a reference to a person having been convicted before the commencement of this Act of an offence such that it is a prescribed offence.

(3) A reference in this Division to a person being convicted of a prescribed offence does not include a reference to a person being convicted, otherwise than on indictment, of an offence referred to in subsection (1)(c).

(4) A reference in this Division to a person being convicted of a prescribed offence does not include a reference to a person being convicted of an offence referred to in subsection (1)(d) unless the person has served, or is serving, a term of imprisonment in relation to the offence.

### **Eligibility for office in industrial organisation**

**229.(1)** A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an industrial organisation unless—

- (a) on an application made under section 230 or 231 in relation to the conviction of the person for the prescribed offence—
  - (i) the person was granted leave to hold office in industrial organisations; or
  - (ii) the person was refused leave to hold office in industrial organisations but, under section 230(2)(b) or section 231(2)(b), the Industrial Court specified a period for the purposes of this section, and the period has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison; or
- (b) in any other case—a period of 5 years has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed



offence, since the person was released from prison.

(2) If a person who holds an office in an industrial organisation is convicted of a prescribed offence, the person ceases to hold the office at the end of the period of 28 days following the conviction unless, within the period, the person makes an application to the Industrial Court under section 230 or 231.

(3) If a person who holds an office in an industrial organisation makes an application to the Industrial Court under section 230 or 231 and the application is not determined—

- (a) except in a case to which paragraph (b) applies—within the period of 3 months following the date of the application; or
- (b) if the Court, on application by the person, has extended the period—within that period as extended;

the person ceases to hold the office at the end of the period of 3 months or the period as extended, as the case may be.

(4) The Industrial Court, under subsection (3)(b), is not to extend a period for the purposes of that subsection unless—

- (a) the application for the extension is made before the end of the period of 3 months referred to in subsection (3)(a); or
- (b) if the Industrial Court has previously extended the period under subsection (3)(b)—the application for the further extension is made before the end of the period as extended.

(5) An industrial organisation, a member of an industrial organisation or the Industrial Registrar may apply to the Industrial Court for a declaration whether, because of the operation of this section or section 230 or 231—

- (a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the industrial organisation; or
- (b) a person has ceased to hold an office in the industrial organisation.

(6) The granting to a person, on an application made under section 230 or 231 in relation to a conviction of the person for a prescribed offence, of leave to hold office in industrial organisations does not affect the operation of this section or section 230 or 231 in relation to another conviction of the

person for a prescribed offence.

**Application for leave to hold office in industrial organisation by prospective candidate for office**

**230.(1)** A person who—

- (a) wants to be a candidate for election, or to be appointed, to an office in an industrial organisation; and
- (b) has been, within the immediately preceding period of 5 years, convicted of a prescribed offence or released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence;

may, subject to subsection (4), apply to the Industrial Court for leave to hold office in industrial organisations.

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

- (a) grant the person leave to hold office in industrial organisations;
- (b) refuse the person leave to hold office in industrial organisations and specify, for the purposes of section 229(1), a period less than 5 years;
- (c) refuse a person leave to hold office in industrial organisations.

**(3)** A person who—

- (a) holds an office in an industrial organisation; and
- (b) is convicted of a prescribed offence; and
- (c) on an application made under subsection (1) in relation to the conviction for the prescribed offence, is refused leave to hold office in industrial organisations;

ceases to hold the office in the industrial organisation.

**(4)** A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or under section 231 in relation to the conviction.

**Application for leave to hold office in industrial organisation by office holder**

**231.(1)** If a person who holds an office in an industrial organisation is convicted of a prescribed offence, the person may, subject to subsection (4), within 28 days following the conviction, apply to the Industrial Court for leave to hold office in industrial organisations.

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

- (a) grant the person leave to hold office in industrial organisations;
- (b) refuse the person leave to hold office in industrial organisations and specify, for the purposes of section 229(1), a period less than 5 years;
- (c) refuse the person leave to hold office in industrial organisations.

**(3)** A person who, on an application made under subsection (1), is refused leave to hold office in industrial organisations ceases to hold the office held at the time of making the application.

**(4)** A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or section 230 in relation to the conviction.

**Court to have regard to certain matters**

**232.** For the purposes of exercising the power under section 230 or 231 to grant or refuse leave to a person who has been convicted of a prescribed offence to hold office in industrial organisations, the Industrial Court is to have regard to—

- (a) the nature of the prescribed offence;
- (b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence;
- (c) the general character of the person;
- (d) the fitness of the person to be involved in the management of industrial organisations, having regard to the conviction for the prescribed offence;

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

### **Action by Court**

**233.(1)** Notwithstanding anything in the rules of an industrial organisation, the Industrial Court may make such order to give effect to a declaration made under section 229(5) as it considers appropriate.

**(2)** If an application is made to the Industrial Court under section 229(5)—

- (a) the person whose eligibility, or whose holding of office, is in question is to be given an opportunity of being heard by the Court; and
- (b) if the application is made otherwise than by the industrial organisation concerned—the industrial organisation is to be given an opportunity of being heard by the Court.

**(3)** If an application is made to the Industrial Court under section 230 or 231, the industrial organisation concerned is to be given an opportunity of being heard by the Court.

### ***Division 6—Disputed elections in industrial organisation***

#### **Application for election inquiry**

**234.(1)** If a financial member of an industrial organisation, or a person who, within the preceding 12 months, has been a financial member of an industrial organisation, claims that there has been an irregularity in, or in connection with, an election for an office in the industrial organisation, or in a branch of the industrial organisation, the person may make application for an inquiry by the Industrial Commission into the matter.

**(2)** An application under subsection (1) must—

- (a) be in writing in the form provided for by the rules of court;
- (b) be lodged with the Industrial Registrar before the completion of the election, or within 6 months following the completion of the election, or, in special circumstances, within such extended period as the Industrial Registrar allows;

- (c) specify the election in respect of which the application is made and the irregularity that is claimed to have occurred, and state the facts relied on in support of the application;
- (d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant's knowledge and belief, true.

### **Action by Industrial Registrar in respect of election inquiry**

**235.(1)** If on lodgment of an application under section 234 the Industrial Registrar is satisfied that—

- (a) there are reasonable grounds for an inquiry into the question whether there has been an irregularity in or in connection with the election, which may have affected, or may affect, the result of the election; and
- (b) the circumstances of the matter justify an inquiry by the Industrial Commission under this Division;

the registrar is to grant the application and refer the matter to the Industrial Commission, but otherwise the registrar is to refuse the application and inform the applicant accordingly.

**(2)** The Industrial Registrar may exercise powers under subsection (1) on the basis of the matters stated in the application, but may also take into account any relevant information of which the registrar has knowledge.

**(3)** At any time after lodgment with the Industrial Registrar of an application under section 234 for an inquiry in connection with an election, the Industrial Commission may authorise the Industrial Registrar—

- (a) to inspect any ballot papers, envelopes or records that have been used in connection with, or are relevant to, the election;
- (b) for the purpose of any such inspection, to enter with such assistance as the registrar considers necessary, any premises used or occupied by the industrial organisation, or a branch of the industrial organisation, in which the registrar believes any such ballot papers, envelopes or records to be;
- (c) to require a person to deliver to the registrar, in accordance with the requisition, any such ballot papers, envelopes or records in the

possession, or under the control, of that person;

- (d) to take possession of any such ballot papers, envelopes or records;
- (e) to retain any ballot papers, envelopes or records delivered to the registrar, or of which possession has been taken, until the completion of the proceedings arising out of the application, or until such earlier time as the Industrial Commission orders.

(4) If the Industrial Commission exercises power conferred on it by subsection (3), the Industrial Registrar may act in accordance with the terms of the authority thereby conferred, or may authorise another person to so act on the registrar's behalf, in which event this subsection is to be construed as if every reference to the registrar included reference to that other person.

(5) Before authorising any action under subsection (3), the Industrial Commission is to give to any person who in the Commission's opinion should be heard the opportunity to be heard by the Commission.

### **Commission to conduct inquiry**

**236.(1)** Upon reference of a matter to the Industrial Commission under section 235, the inquiry is taken to have been instituted in the Commission.

(2) On institution of an inquiry, the Industrial Commission is to fix a time and place for conducting the inquiry, and may give such directions as it considers necessary to ensure that all persons who are, or may be, justly entitled to appear, or be represented, at the inquiry are notified of the time and place so fixed.

### **Commission may make interim orders**

**237.(1)** At any time after the institution of an inquiry under section 235, the Industrial Commission may, if it thinks fit, make 1 or more of the following orders—

- (a) an order that no further steps be taken in the conduct of the election in question or in carrying into effect the result of the election;
- (b) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, being an office to

which the inquiry relates, not act in that office;

- (c) an order that a person who holds, or who last held before the election in question, an office to which the inquiry relates, act or continue to act in that office;
- (d) if the Commission considers that an order under paragraph (c) would not be practicable or would be prejudicial to the efficient conduct of the affairs of the industrial organisation, or branch of the industrial organisation, or would be inappropriate having regard to the nature of the inquiry, an order that a member of the industrial organisation or branch, or another person specified in the order, act in an office to which the inquiry relates;
- (e) an order incidental or supplementary to an order made under this subsection;
- (f) an order varying or discharging an order made under this subsection.

(2) If the Industrial Commission orders that a person act, or continue to act, in an office, that person, while the order remains in force, and notwithstanding any provision of the rules of the industrial organisation, or branch of the industrial organisation, is taken, for all purposes, to hold the office.

(3) An order made under this section continues in force until the completion of the proceedings in the Industrial Commission in connection with the election and of all matters ordered (otherwise than under this section) by the Commission in those proceedings, or until the end of any shorter period for which the order is expressed to operate, or the order is discharged, whichever event is the first to occur.

### **Procedure at inquiry into election**

#### **238.(1) The Industrial Commission—**

- (a) is to grant to all persons who apply therefor and appear to the Commission to be justly entitled to do so, leave to appear, or be represented, at an inquiry in connection with an election;
- (b) may order any person to appear, or be represented, at an inquiry in connection with an election.

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

### **Functions and powers of Commission at inquiry**

**239.(1)** At an inquiry in connection with an election the Industrial Commission is to inquire into and determine the question whether any irregularity has occurred in, or in connection with, the election, and such further questions concerning the conduct and results of the election as the Commission considers necessary.

(2) The Industrial Commission may make such orders (including an order for recounting votes) as the Commission considers necessary for the purposes of an inquiry in connection with an election.

(3) If the Industrial Commission finds that an irregularity has occurred, or is likely to occur, in connection with the election, the Commission may, subject to subsection (4), make 1 or more of the following orders—

- (a) an order directing, notwithstanding any provision of the rules of the industrial organisation, or branch of the industrial organisation, the taking of such safeguards as the Commission considers necessary against irregularities in or in connection with the election;
- (b) an order declaring the election, or any step taken in connection with the election, to be void;
- (c) an order declaring a person supposed to have been elected not to have been elected;
- (d) an order declaring another person to have been elected in place of a person declared not to have been elected;
- (e) an order directing the holding of a fresh election and in connection therewith the taking again of any step (including the calling for and submission of nominations) in accordance with the rules of the industrial organisation, or branch of the industrial organisation, or in accordance with those rules as varied or added to in such manner as the Industrial Commission considers necessary to rectify procedural defects therein that appear to the Commission to exist;



- (f) an order directing the holding of a fresh election and, notwithstanding any provision of the rules of the industrial organisation, or branch of the industrial organisation, the taking or taking again of any step (including the calling for and submission of nominations) and, in connection therewith, the taking of such safeguards as the Commission considers necessary against irregularities;
- (g) an order appointing and authorising a person to act as returning officer, in conjunction with the returning officer (if any) under the rules of the industrial organisation, or branch of the industrial organisation, in connection with the election or any fresh election, and to exercise such powers as the Industrial Commission specifies in its order;
- (h) an order incidental or supplementary to an order made under this subsection.

(4) The Industrial Commission is not to declare an election or any step taken in connection with an election to be void, or that a person has not been elected, unless the Commission is of opinion that, having regard to the irregularity found and to the likelihood that similar irregularities have occurred or may occur, the result of the election may have been affected or may be affected by irregularity.

### **Enforcement of orders under this Division**

**240.** The Industrial Commission may make such orders in the nature of injunctions (either mandatory or restrictive) as the Commission considers necessary for the effectual exercise of its powers and functions, and the enforcement of its orders, under this Division.

### **Validation of certain acts**

**241.(1)** If the Industrial Commission declares void the election of a person who has, since the election, purported to act in the office to which the person is supposed to have been elected, all acts done by the person while so purporting to act, and which could validly have been done by the person if duly elected, are, unless the Commission orders otherwise, valid and effectual for all purposes.

(2) The Industrial Commission may, if it considers it desirable to do so, declare any such act to have been void, and thereupon that act is taken, for all purposes, to be, and to have been at all times void and of no effect.

(3) Any election held, or step in or in connection with an election taken, in compliance with an order of the Industrial Commission, is not invalidated by reason only of a departure from the rules of an industrial organisation, or branch of an industrial organisation, for the purpose of complying with the order of the Commission.

### **Inquiry costs**

**242.(1)** If, on an inquiry, the Industrial Commission finds that an irregularity has occurred, and if the Minister considers the circumstances justify expenditure by the State, the Minister may authorise payment by the State, to the person who applied for the inquiry, of the whole or a part of the person's costs and expenses (including expenses of witnesses).

(2) If, on an inquiry, the Industrial Commission does not find that an irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Minister may authorise payment by the State to that person of the whole or a part of the person's costs and expenses (including expenses of witnesses).

(3) If the Minister is satisfied that, having regard to the findings of the Industrial Commission on an inquiry, it is not just that a person (other than the one who applied for the inquiry) should be required to bear, or to bear in full, expenses (including expenses of witnesses) incurred by the person in connection with the inquiry, the Minister may authorise payment by the State of the whole or a part of those expenses.

(4) Nothing in this section limits the power of the Industrial Commission to make an order as to the costs and expenses (including expenses of witnesses) of proceedings before the Commission in or in connection with an inquiry.

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

**Registrar to conduct elections on request**

**243.(1)** An industrial organisation, or branch of an industrial organisation, may, in writing, request the Industrial Registrar that an election (other than an election conducted under section 218 or Division 8) for an office in the industrial organisation or, as the case may be, the branch be conducted under this section with a view to ensuring that no irregularity occurs in or in connection with the election.

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

- (a) by or on behalf of the committee of management of the industrial organisation or of the branch of the industrial organisation, as the case may be; or
- (b) by a number, being not less than 5% or 250, whichever is less, of the members of the industrial organisation or of the branch of the industrial organisation, as the case may be.

**(3)** The regulations may make provision with respect to the times at which requests may be made under this section.

**(4)** On receipt of a request purporting to be made under this section, if the Industrial Registrar, after making any enquiries that the registrar considers necessary, decides that the request has been duly made—

- (a) the registrar is to notify the industrial organisation, or branch of the industrial organisation, accordingly; and
- (b) the registrar is to make arrangements with the Electoral Commissioner for the conduct of the election by an electoral official.

**(5)** When the Industrial Registrar has given the notification prescribed by subsection (4)(a), any election already held, being an election to which the request made and notification given are relevant, is void and of no effect.

**(6)** Notwithstanding anything contained in the rules of the industrial organisation, or branch of the industrial organisation, the person conducting the election pursuant to subsection (4)(b) may take such action and give such directions as the person considers necessary to ensure that no irregularities occur in or in connection with the election or to remedy any procedural defects that appear to the person to exist in those rules.

(7) This Division does not authorise the conduct of an inquiry in relation to an election conducted under this section.

(8) An election conducted under this section is not invalid by reason only of an irregularity in the request as a consequence of which the election was conducted, or by reason of a breach of the rules of the industrial organisation, or branch of the industrial organisation, arising from an act done under this section or in compliance with a direction given under this section.

### **Conduct of election of Industrial Registrar's own motion**

**244.(1)** If the Industrial Registrar is satisfied, on reasonable grounds, that there is a likelihood of irregularity in connection with an election for an office in an industrial organisation, or a branch of an industrial organisation, then, notwithstanding that a request under section 243 has not been made, the registrar may act as prescribed by section 243(4) as if such a request had been made and had been found to have been duly made.

(2) When the Industrial Registrar has given the notification prescribed by section 243(4)(a), the provisions of section 243 apply, and any election already held, which is affected by the irregularity, is void and of no effect.

### **Expenses in connection with elections under this Division**

**245.(1)** If—

- (a) the Industrial Commission orders—
  - (i) a fresh election to be held; or
  - (ii) any step in connection with an election to be taken again; or
  - (iii) any safeguards, not provided for in the rules of the industrial organisation, or branch of the industrial organisation, to be observed in connection with any election or any uncompleted steps in an election; or
- (b) an election is conducted under section 243 or 244;

the expenses of compliance with the order of the Commission, or of the election so conducted, are, to the extent prescribed by this section, to be paid by the State.

(2) The State is to pay—

- (a) the wages, salary or other remuneration of an employee of the State who performs any duty for the purpose of complying with the Industrial Commission's order or conducting the election, whether the duty is the employee's sole duty or is performed in conjunction with other duties; and
- (b) expenses in connection with the provision or use of premises provided by the State for the purpose of complying with the Industrial Commission's order or conducting the election, whether the premises are provided or used solely for that purpose or in conjunction with other purposes.

(3) If the membership of the industrial organisation, or branch of the industrial organisation, concerned is not more than 1 500, the State is to pay the whole of the expenses in connection with the provision of ballot papers, envelopes and records required for the purpose of complying with the order of the Industrial Commission or of conducting the election and the dispatch and return by post of any of those ballot papers, envelopes and records.

(4) If the membership of the industrial organisation, or branch of the industrial organisation, concerned is more than 1 500, the State is to pay one-half of the expenses specified in subsection (3).

(5) Subject to appropriation by Parliament, all expenses prescribed by this section to be paid by the State are to be paid out of Consolidated Revenue.

### *Division 7—Membership of industrial organisations*

#### **Entitlement to membership**

**246.** A person who—

- (a) by the nature of the person's occupation or employment engages in a calling that is a registered calling of an industrial organisation; and
- (b) has the qualifications required by the eligibility rules of the industrial organisation; and
- (c) is not of general bad character;

is entitled to be admitted to membership of the industrial organisation, and to remain a member thereof, and enjoy all advantages of membership for as long as the person complies with the rules of the industrial organisation.

### **Disputes concerning membership cognisable by Court**

**247.(1)** A question or dispute—

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

unless it be previously resolved, is to be determined by the Industrial Court.

**(2)** On a hearing of a question or dispute referred to in subsection (1), the Industrial Court may, by its order—

- (a) determine that an applicant for membership of an industrial organisation is or is not entitled to membership, and, if it determines that the applicant is so entitled, direct that the applicant be admitted forthwith to membership thereof;
- (b) declare that a person is or is not a member of an industrial organisation;
- (c) direct that the rules of an industrial organisation be altered or annulled in a particular case to secure their conformity with what the Court declares to be reasonable in that case;

as the case may require, and, where the Court directs as prescribed by paragraph (c), the relevant rules of the industrial organisation are taken to have been thereby altered or annulled accordingly.

### **Membership of persons under 18**

**248.(1)** A person is not to require or compel an employee who has not attained the age of 15 years to become or remain a member of an industrial organisation.

- (2) A person who has not attained the age of 18 years—
- (a) may be a member of an industrial organisation, unless the rules of the organisation provide to the contrary;
  - (b) subject to the rules of an industrial organisation and this Division, may enjoy all the rights of a member of the industrial organisation;
  - (c) may execute all instruments and give all acquittances required by the rules of an industrial organisation;

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

### **Register of members and officers**

**249.(1)** Every industrial organisation is to keep in respect of each year a register of its members and a register of its officers, and is to enter therein—

- (a) the name of every member or officer and—
  - (i) in the case of a person who is an individual—the person's ordinary place of residence;
  - (ii) in the case of a corporation that is a member of an industrial organisation of employers—the address of its registered office;
  - (iii) in the case of a person who, at the date of becoming a member, or renewing membership, is residing elsewhere than at the member's ordinary place of residence—that place and the place where the member is residing at that date;
- (b) the date on which each person is entered in the register as a member or, as the case may be, an officer;
- (c) the date on which each person ceases to be a member or, as the case may be, an officer during the year for which the register is kept.

(2) A register required by subsection (1) may be kept in the form of a book or books (bound or loose leaf) or a computer print-out.

(3) Particulars required by subsection (1) to be entered in a register are to

be entered therein opposite and relative to the name of the person to whom they relate, or otherwise in a manner such that the person to whom they relate is easily identified.

(4) An industrial organisation that has a number of members greater than 100 whose register of members is not in such a form as to be an alphabetical index itself, is to keep an index in alphabetical order of the names of its members, or former members, which index may be in a loose leaf, computer print-out or card index form.

### **Filing of registers with Industrial Registrar**

**250.(1)** Unless it is duly exempted for the time being pursuant to this Division, an industrial organisation, within 7 days following its registration under this Act, or within such extended period as the Industrial Commission allows in a particular case, is to file with the Industrial Registrar a true copy of the register of its members, and of the register of its officers, each as at the date of such filing.

(2) Unless it is duly exempted for the time being pursuant to this Division, an industrial organisation—

- (a) not later than 31 March in each year or such later date as the Industrial Registrar allows in a particular case, is to file with the registrar a true copy of the register of its members, and of the register of its officers, each as at 31 December last preceding the date of filing;
- (b) within 30 days following the appointment or resignation of an officer of the industrial organisation, is to notify the registrar, in writing, of such appointment or resignation.

### **Exemption from filing registers etc.**

**251.(1)** If the Industrial Registrar is satisfied that the register of members of an industrial organisation is maintained as required by section 250, the registrar may issue to the industrial organisation a certificate exempting the industrial organisation wholly, or in relation to a branch thereof, from the application of section 250.

(2) While such certificate remains in force—



- (a) if it exempts an industrial organisation wholly—section 250 does not apply to the industrial organisation;
- (b) if it exempts an industrial organisation in relation to a branch of the industrial organisation—section 250 applies to the industrial organisation as if the portion of the register of members, that relates to the branch did not form part of the register and as if the members or officers of the branch were not members of the industrial organisation.

**(3)** If it appears to the Industrial Registrar—

- (a) that the register of members of an industrial organisation to which a certificate of exemption relates, or of a branch of the industrial organisation to which a certificate of exemption relates, is no longer maintained as required by section 250;
- (b) that an industrial organisation to which a current certificate of exemption is issued refuses or has failed to give to the registrar information or facilities required by the registrar for the purpose of deciding whether the exemption should be continued;

the registrar may revoke the certificate by notice in writing given to the industrial organisation.

**(4)** If a certificate of exemption is revoked the industrial organisation concerned, within 30 days following the revocation or within such extended period as the Industrial Registrar allows in a particular case, is to file with the registrar a true copy of the register of its members, as at the date of filing, or, if the certificate of exemption related to a branch of the industrial organisation, a true copy of the portion of such register that relates to the membership of that branch.

### **Registers subject to rectification by Commission and access by Industrial Registrar**

**252.(1)** The Industrial Commission may, at any time, order such rectification of the register of members, or of officers, of an industrial organisation as it considers necessary to ensure that the registers are a true record as required by section 250 of the persons who are members, or who are officers, of the industrial organisation at the time.

**(2)** Rectification is to be made of the register or registers of the industrial

organisation to which the Commission's order relates, and also of the copy of the register or registers filed with the Industrial Registrar, in accordance with the order.

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

- (a) the industrial organisation to which the order is directed;
- (b) the president of such industrial organisation;
- (c) the secretary of such industrial organisation;

and, if rectification of the industrial organisation's register or registers is not made in accordance with the order, each of such persons is taken to have failed to comply with the order and is liable to be dealt with as prescribed for failing to comply with an order of the Industrial Commission.

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

- (a) the Industrial Registrar or any person authorised by the registrar in writing;
- (b) any member of the industrial organisation or any person authorised by the member in writing;

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

**(5)** Subject to subsection (7), the Industrial Registrar may, by notice in writing, direct an industrial organisation to deliver the register of its members, or of its officers, and the relevant index, to the registrar or a person named by the registrar at a time and place specified in the notice, and the industrial organisation is to comply with the direction.

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

- (a) the industrial organisation to which the order is directed;
- (b) the president of such industrial organisation;
- (c) the secretary of such industrial organisation;

and if the direction is not complied with each of such persons is taken to have failed to comply with the direction and is liable to be dealt with as

prescribed for such failure.

(7) A direction is not to be given under subsection (5) unless the register and index, are required—

- (a) for the purpose of taking a ballot under this Act;
- (b) for any other purpose, if the Industrial Court or the Industrial Commission so orders.

### **Industrial organisation to keep butts of documents issued**

**253.(1)** In this section—

“**butt**” includes a duplicate original or copy of a union ticket issued to a member;

“**union ticket**” means any receipt, document or writing that acknowledges a person to be a member of an industrial organisation, or to have renewed membership thereof, or to have paid any subscription, dues or other moneys payable in respect of membership thereof or the renewal of such membership.

(2) An industrial organisation is to keep a butt of every union ticket issued to a member of the industrial organisation during the last preceding period of 12 months and upon the butt is to record the ordinary place of residence of the member and, if the member is, at the time, residing elsewhere than at the member’s ordinary place of residence, the address of the place where the member is then residing.

### **Resignation of member of membership of industrial organisation**

**254.(1)** The manner of terminating membership of an industrial organisation prescribed by this section is in addition to any manner provided for by the rules of the industrial organisation for terminating membership thereof.

(2) A termination of membership of an industrial organisation effected as prescribed by this section is effectual regardless of the rules of the industrial organisation.

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

industrial organisation.

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

- (a) it is left at the registered office of the industrial organisation; or
- (b) it is addressed to the industrial organisation, or any officer thereof, and sent by post to the registered office of the industrial organisation.

(5) If a person who wants to terminate membership of an industrial organisation specifies in a notification of resignation a day on which, or a time at which, the resignation is to be effective, being a day or time subsequent to the time when the notification is duly given, the person's membership of the industrial organisation terminates on the day, or at the time, as specified, and not before.

### **Conscientious objection to membership of industrial organisation**

**255.(1)** In this section—

**“conscientious beliefs”** means the beliefs held by an individual based on the individual's moral values, or on the individual's fundamental religious beliefs, and does not include beliefs founded wholly or principally on objections to policies of industrial organisations generally, or of a particular industrial organisation.

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

- (a) an Industrial Magistrate; or
- (b) the Industrial Registrar;

for exemption from membership of any industrial organisation of employees on the ground of the person's conscientious beliefs.

(3) On receipt of an application under subsection (2), the Industrial Magistrate or, as the case may be, Industrial Registrar is to forthwith notify, in writing—

- (a) the applicant; and
- (b) the industrial organisation of employees that, in the magistrate's or registrar's opinion, is the appropriate industrial organisation for the calling in which the applicant is, or is seeking to be, employed;

of the time (being not less than 2 clear days following the date of the notification) and place at which the magistrate or registrar will interview the applicant.

(4) At an interview of the applicant—

- (a) the Industrial Magistrate or, as the case may be, Industrial Registrar; and
- (b) the applicant; and
- (c) 1 member or officer of the industrial organisation notified under subsection (3);

and no other person, may attend.

(5) The member or officer of such industrial organisation in attendance at the interview may participate therein, by relevant questions of the applicant and relevant submissions to the magistrate or, as the case may be, registrar.

(6) If the Industrial Magistrate or, as the case may be, Industrial Registrar is satisfied that the applicant's claimed conscientious beliefs are genuinely held by the applicant, the magistrate or registrar, on the applicant's paying into the office of the appropriate Clerk of the Magistrates Court, or, as the case may be, the Industrial Registrar's Office an amount equivalent to the subscription required by the rules of the industrial organisation notified under subsection (3) in respect of membership of the industrial organisation, is to issue to the applicant a certificate of exemption, in the form provided for in the rules of court, from membership of any industrial organisation of employees.

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

(8) A certificate issued under subsection (6) is in force for 12 months following a date specified for the purpose in the certificate.

(9) Moneys paid as required by subsection (6) are to be paid into Queensland Treasury for the Consolidated Fund.

## *Division 8—Amalgamation of industrial organisations*

### *Subdivision A—General*

**Application of objects to Division etc.**

**256.** It is the intention of the Parliament—

- (a) that, in the application to this Division of the objects of this Act, particular regard should be had to the attainment of the objects mentioned in section 3(g) and (h); and
- (b) that this Act should be applied in relation to the amalgamation of industrial organisations in a way that, to the greatest extent that is consistent with the attainment of the objects mentioned in section 3(d), (e) and (f), is fair, practical, quick and non-legalistic.

**Interpretation**

**257.** In this Division—

**“alternative provision”** means a provision of the kind mentioned in section 262(1);

**“amalgamated organisation”**, in relation to a completed amalgamation, means the industrial organisation of which members of the deregistered industrial organisations have become members under section 291(3)(d);

**“amalgamation day”**, in relation to a completed amalgamation, means the day fixed under section 291(2) in relation to the amalgamation;

**“asset”** means property of any kind, and includes any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

**“authorised person”**, in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation;

**“charge”** means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise);

**“closing day”** for a ballot for a proposed amalgamation means the day, from time to time, fixed under section 278 as the closing day of the

ballot;

**“commencing day”** for a ballot for a proposed amalgamation means the day, from time to time, fixed under section 278 as the commencing day of the ballot;

**“completed amalgamation”** means a proposed amalgamation that has taken effect;

**“debenture”** has the same meaning as in Division 4 of Part 7.12 of the Corporations Law;

**“defect”** includes a nullity, omission, error and irregularity;

**“deregistered organisation”**, in relation to a completed amalgamation, means an industrial organisation that has been deregistered under this Division;

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

**“holder”** of a charge includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement;

**“instrument”** means an instrument of any kind, and includes—

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing;

**“instrument to which this Division applies”**, in relation to a completed amalgamation, means an instrument—

- (a) to which a deregistered organisation is a party; or
  - (b) that was given to, by or in favour of a deregistered organisation;
- or

- (c) in which a reference is made to a deregistered organisation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a deregistered organisation;

**“interest”**, in relation to a company, includes a prescribed interest made available by the company within the meaning of the Corporations Law;

**“invalidity”** includes a defect;

**“irregularity”** includes a breach of the rules of an industrial organisation, but in Subdivision G does not include an irregularity in relation to a ballot;

**“proceeding to which this Division applies”**, in relation to a completed amalgamation, means a proceeding to which a deregistered organisation was a party immediately before the amalgamation day;

**“proposed alternative amalgamation”**, in relation to a proposed amalgamation, means an amalgamation proposed to be made under an alternative provision;

**“proposed amalgamated organisation”**, in relation to a proposed amalgamation, means the industrial organisation or proposed industrial organisation of which members of the proposed deregistering organisations are proposed to become members under this Division;

**“proposed amalgamation”** means the proposed carrying out of arrangements in relation to 2 or more industrial organisations under which—

- (a) an industrial organisation is, or 2 or more industrial organisations are, to be deregistered under this Division; and
- (b) members of the industrial organisation or organisations to be deregistered are to become members of another industrial organisation (whether existing or proposed);

**“proposed deregistering organisation”**, in relation to a proposed amalgamation, means an industrial organisation that is to be deregistered under this Division;

**“proposed principal amalgamation”**, in relation to a proposed amalgamation, means—



- (a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or
- (b) in any other case—the proposed amalgamation.

**Procedure to be followed for proposed amalgamation etc.**

**258.(1)** For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Division is to be followed.

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

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

is sought for the purposes of a proposed amalgamation, the Commission may perform the act only in accordance with this Division.

**(3)** If any difficulty arises, or appears likely to arise, in the application of this Act for the purpose of implementing the scheme for a proposed amalgamation, the Commission may give directions and make orders to resolve the difficulty.

**(4)** Directions and orders under subsection (3)—

- (a) have effect subject to any order of the Court; and
- (b) have effect despite anything in—
  - (i) the regulations or the rules of court; or
  - (ii) the rules of an industrial organisation or any association proposed to be registered as an industrial organisation.

***Subdivision B—Preliminary matters***

**Federations**

**259.(1)** The existing industrial organisations concerned in a proposed amalgamation may jointly file in the Industrial Registrar's Office an application for recognition as a federation.

**(2)** The application must—

- (a) be filed before an application is filed under section 265 in relation to the amalgamation; and
- (b) include such particulars as are prescribed.

**(3)** If the Commission is satisfied that the industrial organisations intend to file an application under section 265 in relation to the amalgamation within the prescribed period, the Commission must grant the application for recognition as a federation.

**(4)** If the application is granted, the Industrial Registrar must enter in the register kept under section 58(1)(b) the prescribed details in relation to the federation.

**(5)** On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Act.

**(6)** Subsection (5) does not authorise the federation to become a party to an award, industrial agreement or certified agreement.

**(7)** After the federation is recognised, it may vary its composition by—

- (a) including, with the approval of the Commission, another industrial organisation within the federation if the other industrial organisation intends to become concerned in the amalgamation; or
- (b) releasing, with the approval of the Commission, an industrial organisation from the federation.

**(8)** The federation ceases to exist—

- (a) on the day on which the amalgamation takes effect; or
- (b) if an application under section 265 is not filed in relation to the amalgamation within the prescribed period—on the day after the end of the period; or

- (c) if it appears to a Full Bench, on an application by a prescribed person, that the industrial conduct of the federation, or an industrial organisation belonging to the federation, is preventing or hindering the attainment of an object of this Act—on the day the Full Bench so determines.

(9) Nothing in this section limits the right of an industrial organisation belonging to a federation to represent itself or its members.

### **Use of resources to support proposed amalgamation**

**260.(1)** An existing industrial organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if—

- (a) the committee of management of the organisation has resolved that the organisation should so use its resources; and
- (b) the committee of management has given reasonable notice of its resolution to the members of the organisation.

(2) Subsection (1) does not limit any power that the existing industrial organisation has, apart from that subsection, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

### ***Subdivision C—Commencement of amalgamation procedure***

### **Scheme for amalgamation**

**261.(1)** There is to be a scheme for every proposed amalgamation.

(2) The scheme must contain the following matters—

- (a) a general statement of the nature of the amalgamation, identifying the existing industrial organisations concerned and indicating—
  - (i) if 1 of the existing industrial organisations is the proposed amalgamated organisation—that fact; and
  - (ii) if an association proposed to be registered as an industrial

organisation is the proposed amalgamated organisation—that fact and the name of the association; and

- (iii) the proposed deregistering industrial organisations;
- (b) if it is proposed to change the name of an existing industrial organisation—particulars of the proposed change;
- (c) if it is proposed to alter the eligibility rules of an existing industrial organisation—particulars of the proposed alterations;
- (d) if it is proposed to alter any other rules of an existing industrial organisation—particulars of the proposed alterations;
- (e) if an association is proposed to be registered as an industrial organisation—the eligibility and other rules of the association;
- (f) such other matters as are prescribed.

(3) Subsection (2) does not limit the matters that the scheme may contain.

### **Alternative scheme for amalgamation**

**262.(1)** If 3 or more existing industrial organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if—

- (a) the members of 1 or more of the organisations do not approve the amalgamation; and
- (b) the members of 2 or more of the organisations (the “**approving organisations**”) approve, in the alternative, the amalgamation so far as it involves—
  - (i) the other of the approving organisations; or
  - (ii) 2 or more of the other approving organisations; and
- (c) if 1 of the existing organisations is the proposed amalgamated organisation—that organisation is 1 of the approving organisations;

there is to be an amalgamation involving the approving organisations.

(2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of—

- (a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and
- (b) the differences between the rules of any association proposed to be registered as an industrial organisation, and any proposed alterations of the rules of the existing industrial organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

### **Approval by committee of management**

**263.(1)** The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing industrial organisation concerned in the amalgamation.

(2) Despite anything in the rules of an existing industrial organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

### **Community of interest declaration**

**264.(1)** The existing industrial organisations concerned in a proposed amalgamation may jointly file in the Industrial Registrar's Office an application for a declaration under this section in relation to the amalgamation.

(2) The application must be filed—

- (a) before an application has been filed under section 265 in relation to the amalgamation; or
- (b) with the application that is filed under section 265 in relation to the amalgamation.

(3) If the application is filed before an application has been filed under section 265 in relation to the amalgamation, the Commission—

- (a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and

- (b) must ensure that all industrial organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

(4) If, at the conclusion of the hearing arranged under subsection (3) or section 273 in relation to the proposed amalgamation, the Commission is satisfied that there is a community of interest between the existing industrial organisations in relation to their industrial interests, the Commission must declare that it is so satisfied.

(5) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations of employees in relation to their industrial interests if the Commission is satisfied that a substantial number of members of 1 of the organisations are—

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

(6) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations of employers in relation to their industrial interests if the Commission is satisfied that a substantial number of members of 1 of the organisations are—

- (a) eligible to become members of the other organisation or each of the other organisations; or

- (b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or
- (c) bound by the same awards as members of the other organisation or each of the other organisations; or
- (d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

(7) Subsections (5) and (6) do not limit the circumstances in which the Commission may be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations in relation to their industrial interests.

(8) If—

- (a) an application for a declaration under this section in relation to a proposed amalgamation is filed before an application has been filed under section 265 in relation to the amalgamation; and
- (b) a declaration is made under this section in relation to the amalgamation; and
- (c) an application is not filed under section 265 in relation to the amalgamation within 6 months after the declaration is made;

the declaration ceases to be in force.

(9) The Commission may revoke a declaration under this section if the Commission is satisfied that there is no longer a community of interest between the industrial organisations concerned in relation to their industrial interests.

### **Application for approval for submission of amalgamation to ballot**

**265.(1)** The existing industrial organisations concerned in a proposed amalgamation, and any association proposed to be registered as an industrial organisation under the amalgamation, must jointly file in the Industrial Registrar's Office an application for approval for the submission of the amalgamation to ballot.

(2) The application must be accompanied by—

- (a) a copy of the scheme for the amalgamation; and
- (b) a written outline of the scheme.

(3) Subject to section 282, the outline must, in no more than 3 000 words, provide sufficient information on the scheme to enable members of the existing industrial organisations to make informed decisions in relation to the scheme.

### **Holding office after amalgamation**

**266.(1)** The rules of—

- (a) an association proposed to be registered as an industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation; or
- (b) an existing industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation;

may, despite section 206, make provision in relation to—

- (c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed deregistering organisations immediately before the amalgamation takes effect; and
- (d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the proposed amalgamated organisation immediately before the amalgamation takes effect;

but the rules may not permit an office to be held under subsection (1)(c) or (d) for longer than—

- (e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or
- (f) the period that ends 2 years after that day;

whichever ends last, without an ordinary election being held in relation to the office.

(2) If—



- (a) a person holds an office in an industrial organisation under rules made under subsection (1); and
- (b) the organisation is involved in a proposed amalgamation;

the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

(3) The rules of an industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under subsection (1)(c) with elections for other offices in the organisation.

(4) Section 208 does not apply to an office held under rules made under subsection (1).

(5) Section 209 applies to an office held under rules made under subsection (1)(c).

(6) In this section—

“**ordinary election**” means an election held under rules that comply with section 206.

### **Application for exemption from ballot**

**267.(1)** The proposed amalgamated organisation under a proposed amalgamation may file in the Industrial Registrar’s Office an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

(2) The application must be filed with the application that is filed under section 265 in relation to the amalgamation.

### **Application for ballot not conducted under s.285**

**268.(1)** An existing industrial organisation concerned in a proposed amalgamation may file in the Industrial Registrar’s Office an application for

approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 285.

(2) The application must be filed with the application that is filed under section 265 in relation to the amalgamation.

### **Lodging “yes” case**

**269.(1)** Subject to section 280, an existing industrial organisation concerned in a proposed amalgamation may file a written statement of not more than 2 000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.

(2) The statement must be filed with the application that is filed under section 265 in relation to the amalgamation.

### ***Subdivision D—Role of the Electoral Commission***

#### **Ballots to be conducted by the Electoral Commission**

**270.** All ballots under this Division are to be conducted by the Electoral Commission.

#### **Notification of Electoral Commission**

**271.(1)** If an application is filed under section 265 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the Electoral Commission of the application.

(2) On being notified of the application, the Electoral Commission must immediately take the action that it considers necessary or desirable to enable it to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

#### **Officer of industrial organisation to provide information for ballot etc.**

**272.** An electoral official who is authorised, in writing, by the Electoral Commission for the purposes of a proposed amalgamation may, if it is reasonably necessary for the purposes of any ballot that may be required or

is required in relation to the amalgamation, by written notice, require an officer or employee of the industrial organisation concerned or a branch of the industrial organisation concerned—

- (a) to give to the electoral official, within a reasonable period of not less than 7 days, and in a reasonable way, specified in the notice, any information within the knowledge or in the possession of the person; and
- (b) to produce or make available to the electoral official, at a reasonable time and place specified in the notice, any documents—
  - (i) in the custody or under the control of the person; or
  - (ii) to which the person has access.

***Subdivision E—Procedure for approval of amalgamation***

**Fixing hearing in relation to amalgamation etc.**

**273.** If an application is filed under section 265 in relation to a proposed amalgamation, the Commission—

- (a) must immediately fix a time and place for hearing submissions in relation to—
  - (i) the granting of an approval for the submission of the amalgamation to ballot; and
  - (ii) if an application for a declaration under section 264 was filed with the application—the making of a declaration under the section in relation to the amalgamation; and
  - (iii) if an application was filed under section 267 for exemption from the requirement that a ballot be held in relation to the amalgamation—the granting of the exemption; and
  - (iv) if an application was filed under section 268 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 285—the granting of the approval; and
- (b) must ensure that all industrial organisations are promptly notified

of the time and place of the hearing; and

- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

### **Submissions at amalgamation hearings**

**274.(1)** Submissions at a hearing arranged under section 264(3) or 273 may only be made under this section.

(2) Submissions may be made by the applicants.

(3) Submissions may be made by another person only with the leave of the Commission and may be made by the person only in relation to a prescribed matter.

### **Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.**

**275.(1)** If, at the conclusion of the hearing arranged under section 273 in relation to a proposed amalgamation, the Commission is satisfied—

- (a) that the amalgamation does not involve the registration of an association as an industrial organisation; and
- (b) that a person who is not eligible for membership of an existing industrial organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and
- (c) that any proposed alteration of the name of an existing industrial organisation concerned in the amalgamation will not result in the organisation having a name that—
  - (i) is the same as the name of another industrial organisation or an organisation within the meaning of the Commonwealth Act; or
  - (ii) is so similar to the name of another industrial organisation or an organisation within the meaning of the Commonwealth Act as to be likely to cause confusion;

without the written permission of the other organisation; and

- (d) that any proposed alterations of the rules of an existing industrial organisation comply with, and are not contrary to, this Act and awards, industrial agreements and certified agreements and are not contrary to law; and
- (e) that any proposed deregistration of an existing industrial organisation complies with this Act and is not otherwise contrary to law;

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

**(2)** If the Commission is not satisfied, the Commission must, subject to subsections (3) and (7), refuse to approve, under this section, the submission of the amalgamation to ballot.

**(3)** If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may—

- (a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

**(4)** A permission under subsection (3)(a)—

- (a) may, despite anything in the rules of an existing industrial organisation concerned in the proposed amalgamation, authorise the industrial organisation to alter the scheme (including any proposed alterations of the rules of the industrial organisation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

(5) If—

(a) the Commission—

(i) gives a permission under subsection (3)(a) subject to conditions; or

(ii) accepts an undertaking under subsection (3)(b); and

(b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;

the Commission may—

(c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the proposed amalgamation; or

(d) give directions and orders—

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

(6) Subsection (5) does not limit the powers that the Commission has apart from that subsection.

(7) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.

(8) Subsection (7) does not limit the power of the Commission to adjourn the proceeding at any stage.

### **Objections in relation to amalgamation involving extension of eligibility rules etc.**

**276.(1)** Objection to a matter involved in a proposed amalgamation may only be made to the Commission under this section.

(2) Objection may be made to a Full Bench in relation to the amalgamation only if the Commission has refused to approve, under section 275, the submission of the amalgamation to ballot.

(3) Objection may be made by a prescribed person on a prescribed ground.

(4) The Commission is to hear, as prescribed, all objections properly made to the amalgamation.

**Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.**

**277.(1)** If, after the prescribed time allowed for making objections under section 276 in relation to a proposed amalgamation and after hearing any objections properly made to the amalgamation, the Commission—

- (a) finds that no properly made objection is justified; and
- (b) is satisfied that, so far as the amalgamation involves—
  - (i) the registration of an association; or
  - (ii) a change in the name of an industrial organisation; or
  - (iii) an alteration of the rules of an industrial organisation; or
  - (iv) the deregistration of an industrial organisation under this Division;

it complies with, and is not contrary to, this Act and awards, industrial agreements and certified agreements and is not otherwise contrary to law;

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

(2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

(3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may—

- (a) permit the applicants to alter the scheme for the amalgamation, including—
  - (i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

- (ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including—
  - (i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
  - (ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

**(4)** A permission under subsection (3)(a)(i)—

- (a) may, despite anything in the rules of any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation, authorise the existing industrial organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite anything in the rules of the existing industrial organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
- (c) may be given subject to conditions.

**(5)** A permission under subsection (3)(a)(ii)—

- (a) may, despite anything in the rules of an existing industrial organisation concerned in the proposed amalgamation, authorise the industrial organisation to alter the scheme (including any proposed alterations of the rules of the industrial organisation, but not including the scheme so far as it affects any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by



the committee of management in that regard; and

(c) may be given subject to conditions.

**(6)** If—

(a) the Commission—

(i) gives a permission under subsection (3)(a) subject to conditions; or

(ii) accepts an undertaking under subsection (3)(b); and

(b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;

the Commission may—

(c) amend the scheme for the amalgamation, including—

(i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or

(d) give directions and orders—

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

**(7)** Subsection (6) does not limit the powers that the Commission has apart from that subsection.

**(8)** If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.

**(9)** Subsection (8) does not limit the power of the Commission to adjourn the proceeding at any stage.

### **Fixing commencing and closing days of ballot**

**278.(1)** If the Commission approves, under section 275 or 277, the submission of a proposed amalgamation to ballot, the Commission must,

after consulting with the Electoral Commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.

(2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless—

- (a) the Commission is satisfied that the Electoral Commission requires a longer period to make the arrangements necessary to enable it to conduct the ballot; or
- (b) the existing industrial organisations concerned in the amalgamation request the Commission to fix a later day.

(3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.

(4) The Commission may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

(5) Subsection (4) does not limit the powers of the person conducting a ballot under this Division.

### **Roll of voters for ballot**

**279.** The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the Commission fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later)—

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

### **“Yes” case and “no” case for amalgamation**

**280.(1)** If an existing industrial organisation concerned in a proposed

amalgamation files a statement under section 269 in relation to the amalgamation, the Commission may permit the organisation to alter the statement.

(2) Not later than 7 days before the day fixed under section 273 for hearing submissions in relation to the amalgamation, members of the industrial organisation (whose number is at least the required minimum number) may file in the Industrial Registrar's Office a written statement of not more than 2 000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

(3) The Commission may permit a statement filed under subsection (2) to be altered.

(4) Subject to subsections (5), (6) and (7), a copy of the statements mentioned in subsections (1) and (2), or, if the statements have been altered or amended, the statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

(5) If 2 or more statements in opposition to the amalgamation are properly filed in the Industrial Registrar's Office under subsection (2)—

- (a) the Commission must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who filed each of the statements, a written statement of not more than 2 000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and
- (b) the statement prepared by the Commission must accompany the ballot paper for the amalgamation as if it had been the sole statement filed under subsection (2).

(6) The Commission may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Act.

(7) A statement mentioned in subsection (1) or (2) may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(9) Subsections (4) and (5)(b) do not apply to a ballot that is not conducted under section 285.

(10) In this section—

**“required minimum number”**, in relation to an industrial organisation, means—

- (a) 5% of the total number of members of the industrial organisation on the day on which the application was filed under section 265 in relation to the proposed amalgamation concerned; or
  - (b) 1 000;
- whichever is the lesser.

### **Alteration and amendment of scheme**

**281.(1)** The Commission may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing industrial organisations concerned in the amalgamation to alter the scheme for the amalgamation, including—

- (a) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
- (b) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation.

(2) A permission under subsection (1)(a)—

- (a) may, despite anything in the rules of any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation, authorise the existing industrial organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite anything in the rules of the existing industrial organisations or the rules of the association, may be followed, or is to be followed, by

the committees of management in that regard; and

(c) may be given subject to conditions.

**(3)** A permission under subsection (1)(b)—

(a) may, despite anything in the rules of an existing industrial organisation concerned in a proposed amalgamation, authorise the industrial organisation to amend the scheme (including any proposed alterations of the rules of the industrial organisation, but not including the scheme so far as it affects any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

**(4)** If—

(a) the Commission gives a permission under subsection (1) subject to conditions; and

(b) the conditions are breached;

the Commission may—

(c) amend the scheme for the amalgamation, including—

(i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or

(d) give directions and orders—

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

**(5)** Subsection (4) does not limit the powers that the Commission has apart from that subsection.

(6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

### **Outline of scheme for amalgamation**

**282.(1)** The outline of the scheme for a proposed amalgamation may, if the Commission approves, consist of more than 3 000 words.

(2) The outline may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(3) The Commission—

- (a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing industrial organisations concerned in the amalgamation to alter the outline; and
- (b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Act.

### **Exemption from ballot**

**283.(1)** If—

- (a) an application was filed under section 267 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and
- (b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant industrial organisation on the day on which the application was filed;

the Commission must, at the conclusion of the hearing arranged under section 273 in relation to the amalgamation, grant the exemption unless the Commission considers that, in the special circumstances of the case, the exemption should be refused.

(2) If the exemption is granted, the members of the applicant industrial organisation are taken to have approved the proposed principal

amalgamation and each proposed alternative amalgamation (if any).

### **Approval for ballot not conducted under s.285**

#### **284. If—**

- (a) an application was filed under section 268 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 285; and
- (b) the proposal provides for—
  - (i) the ballot to be by secret ballot of the members of the industrial organisation; and
  - (ii) the ballot to be held at duly constituted meetings of the members; and
  - (iii) the ballot to be conducted by the Electoral Commission; and
  - (iv) the members to be given at least 21 days notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and
  - (v) the distribution or publication of—
    - (A) the outline of the scheme for the amalgamation; and
    - (B) the statements mentioned in section 280(1) and section 280(2) or (5); and
  - (vi) absent voting; and
  - (vii) the ballot to be otherwise conducted in accordance with the regulations; and
- (c) the Commission is satisfied, after consulting with the Electoral Commissioner—
  - (i) that the proposal is practicable; and
  - (ii) that approval of the proposal is likely—
    - (A) to result in participation by members of the industrial organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 285; and

- (B) to give the members of the industrial organisation an adequate opportunity to vote on the amalgamation without intimidation;

the Commission must, at the conclusion of the hearing arranged under section 273 in relation to the amalgamation, approve the proposal.

### **Secret postal ballot of members**

**285.(1)** If the Commission approves, under section 275 or 277, the submission of a proposed amalgamation to ballot, the Electoral Commission must, in relation to each of the existing industrial organisations concerned in the amalgamation, conduct a secret postal ballot of the members of the industrial organisation on the question whether they approve the proposed principal amalgamation.

(2) If the scheme for the amalgamation contains a proposed alternative provision, the Electoral Commission must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing industrial organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

(3) If, under subsection (2), the Electoral Commission is required to conduct 2 or more ballots of the members of an industrial organisation at the same time, the same ballot paper is to be used for both or all the ballots.

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

(5) A copy of the outline of the scheme for the amalgamation as filed under this Division, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

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

(7) This section does not apply to an existing industrial organisation concerned in the amalgamation if—



- (a) the Commission has granted the industrial organisation an exemption under section 283 from the requirement that a ballot be held in relation to the proposed amalgamation; or
- (b) the Commission has approved under section 284 a proposal by the industrial organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

### **Determination of approval of amalgamation by members**

**286.** If the question of a proposed amalgamation is submitted to a ballot of the members of an existing industrial organisation concerned in the amalgamation, the members of the industrial organisation approve the amalgamation if, and only if—

- (a) if a declaration under section 264 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or
- (b) in any other case—
  - (i) at least 25% of the members on the roll of voters cast a vote in the ballot; and
  - (ii) more than 50% of the formal votes cast are in favour of the amalgamation.

### **Further ballot if amalgamation not approved**

**287.(1)** If—

- (a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing industrial organisation; and
- (b) the members of the industrial organisation do not approve the amalgamation;

the existing industrial organisations concerned in the amalgamation may jointly file in the Industrial Registrar's Office a further application under section 265 for approval for the submission of the amalgamation to ballot.

**(2)** If the application is filed within 1 year after the result of the ballot is declared, the Commission may order—

- (a) that any step in the procedure provided by this Division be dispensed with in relation to the proposed amalgamation; or
- (b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;

and the Commission may give such directions and make such further orders as it considers necessary or desirable.

(3) Subsection (2) does not by implication require a further application under section 265 to be filed within the 1 year period mentioned in that subsection.

### **Inquiries into irregularities**

**288.(1)** Not later than 30 days after the result of a ballot under this Division is declared, application may be made to the Commission, as prescribed, for an inquiry by the Commission into alleged irregularities in relation to the ballot.

(2) If the Commission finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Commission may—

- (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
- (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;

and may make such further orders as it considers necessary or desirable.

(3) A regulation may make provision with respect to the procedure for inquiries by the Commission into alleged irregularities in relation to ballots under this Division, and for matters relating to, or arising out of, inquiries.

### **Approval of amalgamation**

**289.(1)** If the members of each of the existing industrial organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Division.

(2) If—

- (a) the scheme for a proposed amalgamation contains an alternative provision; and
- (b) the members of 1 or more of the existing industrial organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and
- (c) the members of 2 or more of the industrial organisations (the “**approving organisations**”) approve a proposed alternative amalgamation; and
- (d) if 1 of the existing industrial organisations is the proposed amalgamated organisation—that organisation is 1 of the approving organisations;

the proposed alternative amalgamation is approved for the purposes of this Division.

### **Expenses of ballot**

**290.** The expenses of a ballot conducted by the Electoral Commission under this Division are payable by the State.

### *Subdivision F—Amalgamation taking effect*

### **Action to be taken after ballot**

**291.(1)** The scheme of a proposed amalgamation that is approved for the purposes of this Division takes effect in accordance with this section.

**(2)** If the Commission is satisfied—

- (a) that the period, or the latest of the periods, within which application may be made to the Commission under section 288 in relation to the amalgamation has ended; and
- (b) that any application to the Commission under section 288 has been disposed of, and the result of any fresh ballot ordered by the Commission has been declared; and
- (c) that there are no proceedings (other than civil proceedings) pending against any of the existing industrial organisations

concerned in the amalgamation in relation to—

- (i) contraventions of this Act or another law; or
- (ii) breaches of—
  - (A) awards, industrial agreements or certified agreements;  
or
  - (B) orders made under this or another Act;

the Commission must, after consultation with the existing industrial organisations, by notice published as prescribed, fix a day as the day on which the amalgamation is to take effect.

**(3)** On the amalgamation day—

- (a) if the proposed amalgamated organisation is not already registered, the Industrial Registrar must enter, in the register kept under section 58(1)(b), the prescribed particulars in relation to the organisation, and the date of the entry; and
- (b) any proposed alteration of the rules of an existing industrial organisation concerned in the amalgamation takes effect; and
- (c) the Commission must deregister the proposed deregistering industrial organisations; and
- (d) the persons who, immediately before that day, were members of a proposed deregistering industrial organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

### **Assets and liabilities of deregistered industrial organisation become assets and liabilities of amalgamated organisation**

**291.(1)** On the amalgamation day, all assets and liabilities of a deregistered industrial organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.

**(2)** For all purposes and in all proceedings, an asset or liability of a deregistered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

**Effect of amalgamation on existing decisions of Commission**

**293.** On and from the amalgamation day—

- (a) a decision of the Commission that was, immediately before that day, binding on a proposed deregistering industrial organisation and its members becomes, by force of this section, binding on the proposed amalgamated organisation and its members; and
- (b) the decision has effect for all purposes (including the obligations of employers and industrial organisations of employers) as if references in the decision to a deregistered organisation included references to the amalgamated organisation.

**Instruments**

**294.(1)** On and after the amalgamation day, an instrument to which this Division applies continues, subject to subsection (2), in full force and effect.

(2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or happening on or after that day as if a reference in the instrument to a deregistered organisation were a reference to the amalgamated organisation.

**Pending proceedings**

**295.** If, immediately before the amalgamation day, a proceeding to which this Division applies was pending in a court or before the Commission—

- (a) the amalgamated organisation is, on that day, substituted for each deregistered organisation as a party; and
- (b) the proceeding is to continue as if the amalgamated industrial organisation were, and had always been, the deregistered organisation.

**Subdivision applies despite laws and agreements prohibiting transfer etc.**

**296.(1)** This Subdivision applies, and must be given effect to, despite anything in—

- (a) any other Act; or
- (b) any contract, deed, undertaking, agreement or other instrument.

(2) Nothing done by this Subdivision, and nothing done by a person because of, or for a purpose connected with or arising out of this Subdivision—

- (a) is to be regarded as—
  - (i) placing an industrial organisation or other person in breach of contract or confidence; or
  - (ii) otherwise making an industrial organisation or other person guilty of a civil wrong; or
- (b) is to be regarded as placing an industrial organisation or other person in breach of—
  - (i) any Act; or
  - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
- (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.

(3) Without limiting subsection (1), if, but for this section, the consent of a person would be necessary in order to give effect to this Subdivision in a particular respect, the consent is taken to have been given.

### **Amalgamated organisation to take steps necessary to carry out amalgamation**

**297.(1)** The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Subdivision in relation to the amalgamation, are fully effective.

(2) The Commission may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

**Certificates in relation to land and interests in land**

**298.(1)** If land or an interest in land becomes, under this Subdivision, land or an interest in land of the amalgamated organisation, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the land or interest, whether by reference to a map or otherwise; and
- (c) states that the land or interest has, under this Subdivision, become land or an interest in land of the amalgamated organisation;

is evidence that the land or interest is an asset of the amalgamated organisation.

**(2)** If the certificate is filed with the Registrar of Titles, the registrar must—

- (a) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State.

**(3)** If the certificate is filed with the person or authority who has, under the law of another State or a Territory, responsibility for keeping a register dealing with land registration, the person or authority may, if the person or authority is permitted by law to do so—

- (a) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State or Territory.

**Certificates in relation to charges**

**299.(1)** If the amalgamated organisation under an amalgamation becomes, under this Subdivision, the holder of a charge, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the charge; and
- (c) states that the amalgamated organisation has, under this Subdivision, become the holder of the charge;

is evidence that the charge is an asset of the amalgamated organisation.

**(2)** If the certificate is filed with the Australian Securities Commission, the Commission may, if it is permitted by law to do so—

- (a) register the matter in the same way as assignments of charges are registered; and
- (b) deal with, and give effect to, the certificate;

as if it were a notice of assignment of the charge that had been properly filed with that Commission.

**Certificates in relation to shares etc.**

**300.(1)** If the amalgamated organisation becomes, under this Subdivision, the holder of a share, debenture or interest in a company, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the share, debenture or interest; and
- (c) states that the amalgamated organisation has become, under this Subdivision, the holder of the share, debenture or interest;

is evidence that the share, debenture or interest is an asset of the amalgamated organisation.

**(2)** If the certificate is delivered to the company, the company may—

- (a) register the matter in the same way as transfers of shares, debentures or interests, as the case may be, in the company are registered; and
- (b) complete all the appropriate certificates, debentures or other



documents in relation to the matter; and

- (c) deliver the completed certificates, debentures or other documents to the amalgamated organisation;

as if the certificate were a proper instrument of transfer.

### **Certificates in relation to other assets**

**301.(1)** If an asset (other than an asset to which section 298, 299 or 300 applies) becomes, under this Subdivision, an asset of the amalgamated organisation, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the asset; and
- (c) states that the asset has, under this Subdivision, become an asset of the amalgamated organisation;

is evidence that the asset is an asset of the amalgamated organisation.

**(2)** If the certificate is given to the person or authority who has, under a law of the State, responsibility for keeping a register in relation to assets of that kind, the person or authority must—

- (a) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

**(3)** If the certificate is given to the person or authority who has, under a law of another State, a Territory or the Commonwealth, responsibility for keeping a register in relation to assets of that kind, the person or authority may, if the person or authority is permitted by law to do so—

- (a) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

**Commission may resolve difficulties**

**302.(1)** If any difficulty arises in relation to the application of this Subdivision to a particular matter, the Commission may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.

**(2)** An order made under subsection (1) has effect despite anything contained in this Act or another Act.

***Subdivision G—Validation*****Validation of certain acts done in good faith**

**303.(1)** Subject to this section and to section 305, an act done in good faith for the purposes of a proposed or completed amalgamation by—

- (a) an industrial organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association;

is valid despite any invalidity that may later be discovered in or in connection with the act.

**(2)** For the purposes of this section—

- (a) an act is treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
- (c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and

- (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.

**(3)** This section applies—

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done to or by an association before it became an industrial organisation.

**(4)** Nothing in this section affects—

- (a) the operation of an order of the Court or the Commission made before the commencement of this section; or
- (b) the operation of section 210, 249, 250, 251, 252, 288, 297 or 302.

### **Validation of certain acts after 4 years**

**304.(1)** Subject to subsection (2) and section 305, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by—

- (a) an industrial organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association;

the act is taken to have complied with this Division and the rules of the industrial organisation or association.

**(2)** The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar act of the Court, any other court or the Commission made before the end of that 4 years.

**(3)** This section applies—

- (a) to an act whenever done (including an act done before the commencement of this section); or
- (b) to an act done to or by an association before it became an industrial organisation.

**Orders affecting application of s.303 or 304**

**305.(1)** If, on an application for an order under this section, the Commission is satisfied that the application of section 303 or 304 (the “**relevant section**”) in relation to an act would do substantial injustice, having regard to the interests of—

- (a) the industrial organisation or association concerned; or
- (b) members or creditors of the industrial organisation or association concerned; or
- (c) persons having dealings with the industrial organisation or association concerned;

the Commission must, by order, declare accordingly.

**(2)** If the declaration is made, the relevant section does not apply, and is taken never to have applied, in relation to the act specified in the declaration.

**(3)** The Commission may make an order under subsection (1) on the application of the industrial organisation or association concerned, a member of the industrial organisation or association concerned or any other person having a sufficient interest in relation to the industrial organisation or association concerned.

**Commission may make orders in relation to consequences of invalidity**

**306.(1)** An industrial organisation or association, a member of an industrial organisation or association or any other person having a sufficient interest in relation to an industrial organisation or association may apply to the Commission for a determination of the question whether an invalidity has happened in a proposed or completed amalgamation concerning the industrial organisation or association.

**(2)** On an application under subsection (1), the Commission may make such declaration as it considers proper.

**(3)** If, in a proceeding under subsection (1), the Commission finds that an invalidity of the kind mentioned in that subsection has happened, the Commission may make such orders as it considers appropriate—

- (a) to rectify the invalidity or cause it to be rectified; or

- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
- (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.

(4) If an order is made under subsection (3), the Commission may give such ancillary or consequential directions as it considers appropriate.

(5) The Commission must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to—

- (a) the industrial organisation or association concerned; or
- (b) any member or creditor of the industrial organisation or association concerned; or
- (c) any person having dealings with the industrial organisation or association concerned.

(6) This section applies—

- (a) to an invalidity whenever happening (including an invalidity that happened before the commencement of this section); and
- (b) to an invalidity happening in relation to an association before it became an industrial organisation.

### *Subdivision H—Miscellaneous*

#### **Ballot papers etc. from ballots to be preserved**

**307.** If a ballot for a proposed amalgamation is held under this Division, the Electoral Commission must take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the ballot are preserved and kept by the Electoral Commission for a period of 1 year after the ballot.

#### **No action for defamation in certain cases**

**308.(1)** A proceeding (whether civil or criminal) for defamation does not lie against—

- (a) the State; or
- (b) an electoral official; or
- (c) a person acting at the request or direction of an electoral official;

in relation to the printing or publication of a document by the official or person in the course of the conduct of a proposed amalgamation under this Division.

(2) In this section—

“**document**” means a document or a copy of a document authorised by, or on behalf of, an industrial organisation or association that is seeking amalgamation.

### *Division 9—Cancellation of registration*

#### **Cancellation of registration for industrial conduct**

**309.(1)** Any industrial organisation, person interested, the Industrial Registrar, or the Minister, may apply to the Full Industrial Court for an order cancelling the registration of an industrial organisation on the ground that—

- (a) the conduct of—
  - (i) the industrial organisation (in relation to its continued breach of any award, order of the Industrial Commission, industrial agreement or certified agreement, or its continued failure to ensure that its members comply with and observe an award or such an order or agreement, or in any other respect); or
  - (ii) a substantial number of the members of the industrial organisation, or of a section or class of members of the industrial organisation (in relation to their continued breach of any award, order of the Industrial Commission, industrial agreement or certified agreement, or in any other respect);

has prevented or hindered the achievement of any of the objects of this Act; or
- (b) the industrial organisation, or a substantial number of the members of the industrial organisation, or of a section or class of

members of the industrial organisation, has engaged in industrial action that has prevented, hindered or interfered with trade or commerce or the provision of any public service; or

- (c) the industrial organisation, or a substantial number of the members of the industrial organisation, or of a section or class of members of the industrial organisation, has been, or is, engaged in industrial action that has had, is having, or is likely to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community.

(2) An industrial organisation in relation to which an application is made under subsection (1) is to be given an opportunity of being heard by the Full Industrial Court.

(3) If the Full Industrial Court—

- (a) finds that a ground of the application has been established; and
- (b) does not consider that it would be unjust to do so, having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the industrial organisation in relation to the matters;

the Court, subject to subsection (4) and section 310, is to cancel the registration of the industrial organisation.

(4) If—

- (a) the Full Industrial Court finds that a ground of the application has been established; and
- (b) that finding is made, wholly or mainly because of the conduct of a section or class of members of the industrial organisation;

the Court may, if it considers it just to do so, instead of cancelling the registration of the industrial organisation under subsection (3), by order—

- (c) determine alterations of the eligibility rules of the industrial organisation so as to exclude from eligibility for membership of the industrial organisation persons belonging to the section or class; or
- (d) exclude any person from membership of the industrial organisation.

(5) If the Full Industrial Court cancels the registration of an industrial organisation, the Court may direct that an application by the former industrial organisation to be registered as an industrial organisation is not to be dealt with under this Act before the end of a specified period.

### **Orders where cancellation of registration deferred**

**310.(1)** If the Full Industrial Court finds that a ground of an application under section 309 has been established, the Court may, if it considers it just to do so, instead of cancelling the registration of the industrial organisation concerned under that section, or making an order under that section, exercise 1 or more of the powers prescribed by subsection (2) of this section.

(2) The powers that may be exercised by the Full Industrial Court, by order, under subsection (1) are as follows—

- (a) the power to suspend, to the extent specified in the order, any of the rights, privileges or capacities of the industrial organisation, or of all or any of its members, as such members, under this Act or under awards, orders made under this Act, industrial agreements or certified agreements;
- (b) the power to give directions as to the exercise of any rights, privileges or capacities that have been suspended;
- (c) the power to make provision restricting the use of the funds or property of the industrial organisation, or a branch of the industrial organisation, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.

(3) Where the Full Industrial Court exercises a power prescribed by subsection (2), it is to defer the determination of the question whether to cancel the registration of the industrial organisation concerned until—

- (a) the orders made in the exercise of the power cease to be in force; or
- (b) on application by a party to the proceedings, the Full Industrial Court considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of any order and to any other relevant



circumstance;

whichever is earlier.

(4) An order made in the exercise of a power prescribed by subsection (2) has effect notwithstanding the rules of the industrial organisation concerned, or branch of the industrial organisation.

(5) An order made in the exercise of a power prescribed by subsection (2)—

- (a) may be revoked by further order of the Full Industrial Court, on application by a party to the proceedings in which the first order was made; and
- (b) unless sooner revoked, ceases to be in force—
  - (i) at the end of 6 months after it comes into force; or
  - (ii) at the end of such longer period after it comes into force as is ordered by the Full Industrial Court on application by a party to the proceedings, made while the order remains in force.

### **Cancellation of registration on other grounds**

**311.** The Full Industrial Court may cancel the registration of an industrial organisation—

- (a) upon the happening of any event declared by the industrial organisation's rules to be the termination of the industrial organisation; or
- (b) on application by any industrial organisation or person interested, or the Minister, if the Full Industrial Court is satisfied that—
  - (i) the industrial organisation was registered by mistake; or
  - (ii) the rules of an industrial organisation—
    - (A) do not provide for admission of members to the industrial organisation with reasonable facility; or
    - (B) impose unreasonable conditions on continuance of any person's membership of the industrial organisation;
 or the rules are, or the manner in which they are administered is, tyrannical or oppressive; or

- (iii) a majority of the members of the industrial organisation consent to the cancellation of the registration of the industrial organisation; or
- (c) on the motion of the Industrial Registrar, if the Full Industrial Court is satisfied that the industrial organisation is defunct.

### **Directions as to cancellation**

**312.** If the Full Industrial Court cancels the registration of an industrial organisation pursuant to the provisions of section 90, 309 or 311, it may give such directions to give effect to the cancellation as it thinks fit.

### **Cancellation to be recorded**

**313.** Where the registration of an industrial organisation is cancelled, the Industrial Registrar is to enter the cancellation, and the date of cancellation, in the register kept under section 58(1).

### **Consequences of cancellation of registration**

**314.** The cancellation of the registration of an industrial organisation has the following consequences—

- (a) the industrial organisation ceases to be an industrial organisation and a body corporate, but does not, because of the cancellation, cease to be an association;
- (b) the cancellation does not relieve the association or any of its members from any penalty or liability incurred by the industrial organisation or those members before the cancellation;
- (c) on and from the cancellation, the association and its members are not entitled to the benefits of an award, order of the Industrial Commission, industrial agreement or certified agreements that was binding on the association, as an industrial organisation, and on its members;
- (d) the Industrial Commission may, on application by an industrial organisation or person interested, make such order as the Commission considers appropriate about the other effects (if any)

of an award, order of the Commission, industrial agreement or certified agreements on the association and its members;

- (e) subject to any order made under paragraph (d), an award, order of the Industrial Commission, or industrial agreement that was binding on the association, as an industrial organisation, and on its members ceases in all other respects to have effect in relation to the association and its members at the end of 21 days following the cancellation;
- (f) the Full Industrial Court may, on application by a person interested, make such order as it considers appropriate in relation to the satisfaction of the debts and liabilities of the industrial organisation out of the property of the association;
- (g) the property of the industrial organisation is, subject to any order made under paragraph (f), the property of the association and is to be held and applied for the purposes of the association under the rules of the industrial organisation so far as they can still be carried out or observed.

### ***Division 10—Accounts and audit***

#### **Application of Division**

**315.(1)** Every industrial organisation to which the Companies (Queensland) Code applies is to lodge with the Industrial Registrar, within 14 days following the date of the annual general meeting of the industrial organisation, a true copy of the industrial organisation's—

- (a) annual report;
- (b) annual accounts;
- (c) auditor's report;

for the preceding financial year of the industrial organisation.

**(2)** Except as is prescribed by subsection (1), this Division applies to all industrial organisations, other than industrial organisations to which the Companies (Queensland) Code applies.

**Interpretation of Division**

**316.(1)** If the rules of an industrial organisation change the period that is the financial year of the industrial organisation, the period between the commencement of the first financial year after the change and the end of the preceding financial year is, for the purposes of this Division, to be taken to be a financial year of the industrial organisation.

**(2)** This Division does not apply, in relation to an association that becomes registered as an industrial organisation, in relation to any financial year before the first financial year of the industrial organisation that begins after the date of registration.

**Application of this Division to industrial organisations with branches**

**317.(1)** This Division, other than this section and sections 326(5) and 329, applies in relation to an industrial organisation, and to every branch of the industrial organisation, as if—

- (a) the financial affairs (including transactions) of a branch did not form part of the financial affairs of the industrial organisation; and
- (b) the branch were an industrial organisation.

**(2)** For the purposes of the application of this Division, in accordance with subsection (1)(b), in relation to a branch of an industrial organisation—

- (a) the members of the industrial organisation constituting the branch are to be taken to be members of the branch;
- (b) employees of the industrial organisation employed in relation to the branch (whether or not they are also employed in relation to any other branch) are to be taken to be employees of the branch;
- (c) a journal published by the industrial organisation is taken to be a journal published by the branch.

**(3)** On application by an industrial organisation that has branches, if the Industrial Registrar is satisfied—

- (a) that the committee of management of the industrial organisation has, by the rules of the industrial organisation or established practice not inconsistent with the rules, the management and control of the assets of the industrial organisation (including

assets of the branches of the industrial organisation) or otherwise has effective control over the financial management of the industrial organisation; and

- (b) that, if subsections (1) and (2) did not apply in relation to the industrial organisation, it would be able to comply with the requirements of this Division;

the Industrial Registrar may issue to the industrial organisation a certificate to that effect, and, until the certificate is revoked under subsection (4), subsections (1) and (2) do not apply in relation to the industrial organisation.

(4) The Industrial Registrar may at any time, by notice in writing, revoke a certificate issued to an industrial organisation under subsection (3) if the registrar is no longer satisfied, in relation to the industrial organisation, of the matters referred to in that subsection.

### **Industrial organisation to keep proper accounting records**

**318.(1)** An industrial organisation—

- (a) is to keep such accounting records as correctly record and explain the transactions and financial position of the industrial organisation, including such records as are prescribed; and
- (b) is to keep its accounting records in such a manner as will enable accounts and statements to be prepared from them under section 319; and
- (c) is to keep its accounting records in such a manner as will enable the accounts of the industrial organisation to be conveniently and properly audited under this Division.

(2) Accounting records of an industrial organisation may, so far as they relate to the income and expenditure of the industrial organisation, be kept on a cash basis or accrual basis, at the option of the industrial organisation.

(3) If an industrial organisation keeps the accounting records referred to in subsection (1) on an accrual basis, it may keep the accounting records for its membership subscriptions separately on a cash basis.

(4) An industrial organisation is to retain the accounting records kept under subsection (1) for a period of 7 years following the completion of the

transactions to which they relate.

### **Industrial organisation to prepare accounts**

**319.(1)** As soon as is practicable after the end of each financial year of the industrial organisation, an industrial organisation—

- (a) is to cause to be prepared from the accounting records kept by it under section 318(1) in relation to the financial year, such accounts and other statements, in relation to the financial year, as are prescribed; and
- (b) is to include in the accounts (other than accounts prepared in relation to the first financial year of the industrial organisation to which this Division applies) the relevant figures from the accounts prepared by the industrial organisation, under this subsection, in relation to the preceding financial year.

(2) The regulations may provide for the giving of certificates in, or in relation to, accounts or other statements prepared under subsection (1).

### **Information to be provided to members**

**320.(1)** Application may be made to an industrial organisation by—

- (a) a member of the industrial organisation;
- (b) the Industrial Registrar, at the request of a member of the industrial organisation;

for such prescribed information in relation to the industrial organisation as is specified in the application.

(2) On application made under subsection (1) an industrial organisation is to make available to the applicant such prescribed information as is specified in the application in such manner and within such time as is prescribed.

(3) If the Industrial Registrar is an applicant under subsection (1), the registrar is to provide to the member at whose request the application was made all information made available to the registrar pursuant to the application.

(4) Accounts prepared under section 319 must include a notice drawing

attention to subsections (1), (2) and (3) and setting out those subsections.

### **Duties of officers of industrial organisation**

**321.(1)** An officer of an industrial organisation is to furnish to the Industrial Registrar such information with respect to the funds and accounts of the industrial organisation as the registrar requires of the officer and is to comply with the requirements of the registrar in relation to—

- (a) the books and forms of account kept, or to be kept;
- (b) the entries made, or to be made, therein;
- (c) the manner in which such entries are made, or are to be made, therein.

**(2)** The Industrial Registrar may at any time require an officer of an industrial organisation to produce to the registrar, or to an auditor or auditors appointed by the registrar, any books of the industrial organisation and such officer is to comply with the registrar's requisition.

### **Auditors of industrial organisations**

**322.(1)** In this section—

**“competent person”** means, for the purpose of an audit and audit report—

- (a) in relation to an industrial organisation whose financial year income is more than \$10 000—a person—
  - (i) who is a registered company auditor; and
  - (ii) who is not an officer or a member of the industrial organisation; and
  - (iii) who is not employed for the purposes of the industrial organisation in any capacity other than that of auditor; or
- (b) in relation to any other industrial organisation—a person—
  - (i) who is—
    - (A) a registered company auditor; or
    - (B) certified by the Industrial Registrar as having had sufficient experience in keeping or auditing accounts;

and

- (ii) who is not an officer or a member of the industrial organisation;

**“financial year income”** of an industrial organisation, for the purpose of deciding who is a competent person to perform an audit and prepare an audit report, means the industrial organisation’s income for the financial year immediately before the financial year for which the audit is to be carried out.

(2) An industrial organisation is to ensure that there is an auditor of the industrial organisation at any time when an auditor is required for the purposes of the operation of this Division in relation to the industrial organisation.

(3) An industrial organisation is to ensure that the person who actually performs the audit of the industrial organisation’s accounts and financial statements, and prepares the report thereon, for the purposes of this Division, is a competent person.

(4) A person—

- (a) is not to accept; or
- (b) continue in;

an appointment to actually perform the audit of an industrial organisation’s accounts and financial statements, and to prepare the report thereon, for the purposes of this Division, unless the person is a competent person.

(5) A person who actually performs an audit, and prepares a report thereon, in relation to an industrial organisation is to comply with the provisions of this Act that are applicable to the person in the capacity of auditor.

### **Powers and duties of auditors**

**323.(1)** An auditor of an industrial organisation is to inspect and audit the accounting records kept by the industrial organisation in relation to each financial year and, within the prescribed period following the end of the year, is to make a report in relation to the year to the industrial organisation in accordance with this section.



(2) An auditor, or a person authorised by an auditor for the purposes of this subsection, is—

- (a) entitled at all reasonable times to full and free access to all records of the industrial organisation relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the industrial organisation; and
- (b) entitled to seek from any officer or employee of the industrial organisation such information and explanations as the auditor or authorised person wants for the purposes of the audit.

(3) Where an auditor authorises a person for the purposes of subsection (2), the auditor is to serve on the industrial organisation a notification that sets out the name and address of the person.

(4) An auditor, in a report under this section in relation to a financial year, is to state—

- (a) whether in the auditor's opinion—
  - (i) there were kept by the industrial organisation in relation to the year satisfactory accounting records, including—
    - (A) records of the sources and nature of the income of the industrial organisation (including income from members); and
    - (B) records of the nature and purposes of the expenditure of the industrial organisation; and
  - (ii) the accounts and statements prepared under section 319 in relation to the year were properly drawn up so as to give a true and fair view of—
    - (A) the financial affairs of the industrial organisation as at the end of the year; and
    - (B) the income and expenditure, and any surplus or deficit, of the industrial organisation for the year; and
- (b) whether all the information and explanations that, under subsection (2), officers or employees of the industrial organisation were required to provide were provided;

and, in addition, the auditor is to state in the report particulars of any

deficiency, failure or shortcoming in relation to a matter referred to in paragraph (a) or (b).

(5) If—

- (a) an auditor, in the course of performing duties as auditor of an industrial organisation, becomes aware that there has been a breach of this Act; and
- (b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report;

the auditor is to immediately report the matter, in writing, to the Industrial Registrar.

### **Fees and expenses of auditors**

**324.** An industrial organisation is to pay the reasonable fees and expenses of an auditor of the industrial organisation.

### **Removal of an auditor from office**

**325.** An auditor of an industrial organisation may only be removed during the term of appointment as auditor—

- (a) if the auditor was appointed by the committee of management of the industrial organisation—by resolution passed at a meeting of the committee by an absolute majority of the members of the committee; or
- (b) if the auditor was appointed by a general meeting of the members of the industrial organisation—by resolution passed at a general meeting by a majority of the members of the industrial organisation voting at the meeting.

### **Copies of report and audited accounts to be provided to members and presented to meetings**

**326.(1)** An industrial organisation is to provide free of charge to its members—

- (a) a copy of the report of the auditor in relation to the inspection and

audit of the accounting records kept by the industrial organisation in relation to a financial year; and

- (b) a copy of the accounts and statements prepared under section 319 to which the report relates.

(2) If, under the rules of the industrial organisation, the committee of management of the industrial organisation resolves to provide to the members of the industrial organisation a summary of the report, accounts and statements, the industrial organisation may comply with subsection (1) by providing free of charge to its members a copy of the summary if—

- (a) the industrial organisation lodges a copy of the summary with the Industrial Registrar; and
- (b) the auditor certifies that the summary is, in the auditor's opinion, a fair and accurate summary of the report, accounts and statements; and
- (c) the summary contains a statement to the effect that the industrial organisation will provide a copy of the report, accounts and statements free of charge to any member who so requests; and
- (d) where particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 323(4) are set out in the report—the summary contains the particulars.

(3) The copies referred to in subsection (1), or the summary referred to in subsection (2), must be provided within 56 days (or such longer period as the Industrial Registrar allows) after the making to the industrial organisation of the report concerned.

(4) If an industrial organisation publishes a journal of the industrial organisation that is available to the members of the industrial organisation free of charge, the industrial organisation may comply with subsection (1)—

- (a) by publishing in the journal the report, accounts and statements referred to in that subsection; or
- (b) by preparing a summary that accords with subsection (2), by complying with that subsection in respect of the summary, and by publishing the summary in the journal.

(5) If a branch of an industrial organisation publishes a journal of the

branch that is available to the members of the branch free of charge, the industrial organisation may comply with subsection (1) in relation to those members—

- (a) by publishing in the journal the report, accounts and statements referred to in that subsection; or
- (b) by preparing a summary that accords with subsection (2), by complying with that subsection in respect of the summary, and by publishing the summary in the journal.

(6) Subject to subsection (7), an industrial organisation is to cause the report, accounts and statements referred to in subsection (1) to be presented—

- (a) to a general meeting of the members of the industrial organisation, or a meeting of the committee of management of the industrial organisation, held within the period commencing on the eighth day after the report, accounts and statements referred to in subsection (1), or the summary referred to in subsection (2), become or becomes available to be supplied to the members (whichever time is relevant) and ending 28 days (or such longer period as the Industrial Registrar allows) after the end of the period referred to in subsection (3)—such first mentioned period being referred to in this subsection and subsection (7) as “**the relevant period**”; or
- (b) if such a meeting is not due to be held within the relevant period—to the first meeting of the committee of management held after the relevant period.

(7) If—

- (a) the report sets out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 323(4); and
- (b) neither a general meeting of the members of the industrial organisation nor a meeting of the committee of management of the industrial organisation is due to be held within the relevant period;

the industrial organisation, within the relevant period, is to cause the report, accounts and statements referred to in subsection (1) to be presented to a

meeting of the committee of management convened for the purpose.

### **Reports to be lodged with Industrial Registrar**

**327.(1)** An industrial organisation, within 14 days (or such longer period as the Industrial Registrar allows) after the relevant meeting referred to in section 326(6) or (7) (whichever is applicable), is to lodge with the registrar—

- (a) copies of the report, accounts and statements presented to the meeting; and
- (b) a certificate by the president or secretary of the industrial organisation that the documents lodged are copies of the documents presented to the meeting.

**(2)** Subject to subsection (3)—

- (a) if the documents lodged with the Industrial Registrar under subsection (1) include a report of an auditor setting out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 323(4); or
- (b) if for any other reason a matter revealed in the documents lodged with the registrar under subsection (1) should, in the registrar's opinion, be investigated;

the registrar is to investigate the deficiency, failure or shortcoming or, as the case may be, the matter.

**(3)** The Industrial Registrar is not required to investigate the deficiency, failure or shortcoming if—

- (a) it consists solely in the fact that the industrial organisation concerned has kept accounting records for its membership subscriptions separately on a cash basis as provided in section 318(3); or
- (b) after consultation with the industrial organisation concerned and the auditor, the registrar is satisfied that the deficiency, failure or shortcoming is trivial or will be remedied in the following financial year.

**(4)** If, having regard to matters that have been brought to notice in the

course of, or because of, an investigation under subsection (2), the Industrial Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the industrial organisation concerned, the registrar may make the further investigation.

(5) When documents have been lodged with the Industrial Registrar under subsection (1), request may be made, in writing, of the registrar by—

- (a) at least 250 members of the industrial organisation concerned, if the industrial organisation has more than 5 000 members;
- (b) at least 5% of the members of the industrial organisation concerned, in any other case;

to investigate the finances and the financial administration of the industrial organisation.

(6) On receipt of a request under subsection (5), the Industrial Registrar is to investigate the finances and the financial administration of the industrial organisation concerned.

(7) For the purpose of making an investigation under subsection (2), (4) or (6), the Industrial Registrar may, by notice in writing, require an officer or employee of the industrial organisation concerned—

- (a) to provide the registrar with specified information relevant to the investigation; or
- (b) to attend before the registrar, so that the registrar may put to the officer or employee questions relating to matters relevant to the investigation, and to produce to the registrar all records in the custody, or under the control, of the officer or employee relating to the matters under investigation;

and the officer or employee to whom the notice is given is to comply with the notice in all respects.

(8) If, at the conclusion of an investigation under subsection (2), (4) or (6), the Industrial Registrar is satisfied that the industrial organisation concerned has contravened—

- (a) subsection (1) or any other provision of this Division or a provision of the regulations; or
- (b) a rule of the industrial organisation relating to the finances or financial administration of the industrial organisation;

the registrar is to notify the industrial organisation accordingly, and include in the notification a request that the industrial organisation take specified action, within a specified period, to rectify the matter.

(9) If the Industrial Registrar has given a notification to an industrial organisation under subsection (8), the registrar is not to take proceedings under this Act against the industrial organisation in relation to a matter to which the notification relates unless the industrial organisation has refused or failed to comply with the request made in the notification.

### **Examination and audit by Industrial Registrar's auditor**

**328.(1)** If the Industrial Registrar is dissatisfied with—

- (a) the manner in which an inspection and audit of the accounting records of an industrial organisation have been made; or
- (b) the report, accounts and statements presented to a relevant meeting in accordance with section 326(6) or (7);

the registrar may engage the services of an auditor to examine the accounting records of the industrial organisation.

(2) The Industrial Registrar is to provide to each person engaged under subsection (1) a notification in writing that—

- (a) evidences the engagement of the person as auditor for the purposes of this section; and
- (b) specifies the industrial organisation whose accounting records are to be examined by the person.

(3) An auditor who examines the accounting records of an industrial organisation for the purposes of this section is to report thereon to the Industrial Registrar.

(4) If, upon receipt of an auditor's report under subsection (3), the Industrial Registrar has reason to believe that—

- (a) the industrial organisation concerned does not keep accounting records as required by section 318; or
- (b) in respect of the industrial organisation concerned there is a deficiency, failure or shortcoming in relation to any matter referred to in section 323(4); or

- (c) property of the industrial organisation concerned has been misappropriated or otherwise improperly applied; or
- (d) the industrial organisation concerned, or an officer of the industrial organisation, has committed an offence in relation to the property of the industrial organisation;

the registrar may authorise the auditor in writing to conduct an audit of the accounts, accounting records and affairs of the industrial organisation concerned in relation to a period nominated by the registrar.

**(5)** In respect of an examination made or audit conducted for the purposes of this section—

- (a) the auditor, or a person authorised by the auditor for the purposes of this section, has the powers and entitlements, and, subject to paragraph (c), has the duties, prescribed by section 323 for an auditor, or, as the case may be, such authorised person, referred to in that section, which is to be construed as if a reference therein to a financial year were a reference to the period nominated by the Industrial Registrar under subsection (4);
- (b) any officer or employee of the industrial organisation concerned and any person having custody of any records relating to the affairs of the industrial organisation is to furnish to the auditor, or a person authorised by the auditor for the purposes of this section, all information that is required by the auditor for the purposes of the examination or audit and that is within the knowledge or control of the officer, employee or person;
- (c) the auditor is to report on the audit to the Industrial Registrar instead of the industrial organisation.

**(6)** The costs of or associated with an examination or audit conducted under authority conferred by this section are to be paid by the industrial organisation concerned.

**(7)** The Industrial Registrar may recover by action in a court of competent jurisdiction any such costs incurred by the registrar and not paid to the registrar upon demand made of the industrial organisation concerned, as a debt due and owing to the registrar by the industrial organisation and unpaid.



**Industrial organisation may lodge accounts of all branches**

**329.(1)** In this section—

**“relevant branch”**, in relation to a relevant industrial organisation, means each part of an industrial organisation to which this Division (other than this section, section 317 and section 326(5)) applies under section 317(1)(a) or (b), other than, in relation to a particular financial year, a part of the industrial organisation in relation to which a certificate has been issued under section 333(1) in relation to the year;

**“relevant day”**, in relation to a relevant industrial organisation, means the day on which relevant documents in relation to a relevant branch of the industrial organisation in relation to a financial year are presented to a general meeting of the members, or a committee of management, of the branch under section 326(6) or (7), whichever is applicable, being a day on or before which relevant documents in relation to the financial year are or have been so presented by each of the other relevant branches of the industrial organisation;

**“relevant documents”**, in relation to a relevant branch, means the report, accounts and statements referred to in section 326(1);

**“relevant industrial organisation”** means an industrial organisation that has branches, other than an industrial organisation in relation to which a certificate issued by the Industrial Registrar under section 317(3) is in force.

(2) The rules of a relevant branch of a relevant industrial organisation may provide that this section applies in relation to the branch, or otherwise provide for the relevant documents of the branch to be lodged under subsection (4).

(3) If the rules of each relevant branch of the industrial organisation provide as referred to in subsection (2) and the financial years in relation to all the relevant branches end on the same day—

- (a) the following provisions of this section apply in relation to the industrial organisation; and
- (b) section 327(1) does not apply to a relevant branch of the industrial organisation.

(4) The industrial organisation, within 14 days (or such longer period as the Industrial Registrar allows) after the relevant day, is to lodge with the

registrar—

- (a) copies of the relevant documents of each relevant branch of the industrial organisation that were presented to a meeting of the committee of management, or general meeting of members, of the branch under section 326(6) or (7); and
- (b) a certificate by the president or secretary of the branch that the documents lodged are copies of the relevant documents that were presented.

(5) If the industrial organisation fails to comply with subsection (4), each relevant branch of the industrial organisation, within 14 days (or such longer period as the Industrial Registrar allows) after the end of the period referred to in that subsection, is to lodge with the registrar—

- (a) copies of the relevant documents of the branch that were presented to a meeting of the committee of management, or general meeting of members, of the branch under section 326(6) or (7); and
- (b) a certificate by the president or secretary of the branch that the documents lodged are copies of the relevant documents that were presented.

(6) Section 327(2) to (9) apply in relation to a relevant branch of the industrial organisation as if the references therein to documents lodged with the Industrial Registrar under section 327(1) were references to relevant documents in relation to the branch lodged—

- (a) where subsection (5) of this section does not apply in relation to the branch—by the industrial organisation under subsection (4) of this section; or
- (b) where subsection (5) of this section applies in relation to the branch—by the branch under that subsection.

### **Industrial organisation to forward notices to auditor**

**330.** An industrial organisation is to forward to the auditor of the industrial organisation a notice of, and any other communication relating to, a meeting of the industrial organisation, or the committee of management of the industrial organisation, at which the report of the auditor, or any

accounts or statements to which the report relates, are to be presented, being a notice or other communication that a member of the industrial organisation, or the committee of management of the industrial organisation, as the case may be, would be entitled to receive.

### **Auditor entitled to attend meetings**

**331.(1)** An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of an industrial organisation, or the committee of management of an industrial organisation, at which—

- (a) the report of the auditor, or any accounts or statements to which the report relates, are to be presented or considered; or
- (b) there is to be conducted any business of the meeting that relates to—
  - (i) the auditor in that capacity; or
  - (ii) a person authorised by the auditor, in the capacity of a person so authorised;

as the case may be.

**(2)** If an auditor authorises a person for the purposes of this section, the auditor is to serve on the industrial organisation a notification that sets out the name and address of the person.

### **Auditors and other persons to enjoy qualified privilege in certain circumstances**

**332.(1)** It is lawful for—

- (a) an auditor of an industrial organisation; or
- (b) an auditor engaged by the Industrial Registrar under section 328;

to make in good faith, orally or in writing, in the course of performing the duties as an auditor for the purposes of this Act, a statement or comment relevant to those duties that is defamatory.

**(2)** It is lawful for any person to publish in good faith, a document prepared by—

- (a) an auditor of an industrial organisation; or
- (b) an auditor engaged by the Industrial Registrar under section 328;

in the course of performing the duties as an auditor for the purposes of this Act and required by this Act to be lodged with or made to the registrar, notwithstanding that the document contains matter that is defamatory.

### **Accounts and audit where income of industrial organisation less than certain amount**

**333.(1)** If, on the application of an industrial organisation made after the end of a financial year, the Industrial Registrar is satisfied that the income of the industrial organisation for the year did not exceed \$10 000 or, in the case of a financial year that, because of section 316(1), is a period other than 12 months, did not exceed such amount as the registrar considers appropriate in the circumstances, the registrar is to issue to the industrial organisation a certificate to that effect.

**(2)** If a certificate is issued under subsection (1) in relation to an industrial organisation in relation to a financial year—

- (a) the following provisions of this section apply in relation to the industrial organisation in relation to the year; and
- (b) except as provided in paragraph (c), this Division continues to apply in relation to the industrial organisation in relation to the year; and
- (c) sections 319, 326 and 327(1) do not apply in relation to the industrial organisation in relation to the year.

**(3)** This Division (other than this section) applies to the industrial organisation in relation to the year as if—

- (a) a reference to accounts and statements prepared or to be prepared under section 319 were a reference to accounts and statements prepared under subsection (5) of this section; and
- (b) the reference in section 320(4) to accounts prepared under section 319 were a reference to accounts prepared under subsection (5) of this section; and
- (c) the reference in section 327(2) and (5) to section 327(1) were a

reference to subsection (9) of this section.

(4) Section 446 (other than subsection (1)) and section 447 apply to the industrial organisation in relation to the financial year as if—

- (a) a reference in section 446(3) and (4) to section 326(6) and (7) were a reference to subsection (7) of this section; and
- (b) the reference in section 447 to section 326(1) were a reference to subsection (7) of this section; and
- (c) there were omitted from section 447 the words ‘or in a summary of the kind referred to in section 326(2)’.

(5) As soon as is practicable after the issue of the certificate under subsection (1), the industrial organisation—

- (a) is to cause to be prepared, from the accounting records kept under section 318(1) in relation to the year, the prescribed accounts and other statements in relation to the year; and
- (b) is to include in the accounts (other than accounts prepared in relation to the first financial year of the industrial organisation to which this Division applies) the relevant figures from the accounts prepared by the industrial organisation, under this subsection or section 319(1), in relation to the preceding financial year.

(6) The regulations may make provision with respect to the giving of certificates in, or in relation to, accounts or other statements prepared under subsection (5).

(7) After the making to the industrial organisation of the report of the auditor under section 323 in relation to the auditor’s inspection and audit of the accounting records kept by the industrial organisation in relation to the year, and before the end of the financial year immediately following the year, the industrial organisation is to cause a copy of the report, together with copies of the accounts and statements prepared under subsection (5) to which the report relates, to be presented to a meeting of the members of the industrial organisation.

(8) If a member of an industrial organisation requests the industrial organisation to provide to the member a copy of the report, accounts and statements referred to in subsection (7), the industrial organisation is to provide a copy of each of the documents to the member, free of charge,

within 14 days following receipt of the request.

(9) The industrial organisation, within 90 days (or such longer period as the Industrial Registrar allows) following the making to the industrial organisation of the report under section 323, is to lodge with the registrar copies of the report and the accounts and statements referred to in subsection (7) of this section together with a certificate by the president or secretary of the industrial organisation that the information contained in the accounts and statements is correct.

### *Division 11—Presumed validity of industrial organisations’ actions*

#### **Interpretation**

**334.** In this Division—

“**collective body**”, in relation to—

- (a) an industrial organisation, means the committee of management or a conference, council, committee, panel or other body of, or within, the industrial organisation;
- (b) a branch of an industrial organisation, means the committee of management or a conference, council, committee, panel or other body of, or within, the branch;

“**invalidity**” includes nullity, and includes invalidity or nullity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that—

- (a) any of the persons purporting to act as members of a collective body of an industrial organisation, or of a branch of an industrial organisation, or purporting to hold an office in an industrial organisation, or branch of an industrial organisation—
  - (i) is not duly elected or appointed; or
  - (ii) is not, or was not at a material time, entitled to be elected or appointed or to hold office; or
  - (iii) is not, or was not at a material time, a member of the industrial organisation or branch; or
  - (iv) claims to have been elected or appointed by means of an

alleged election or appointment where any of the persons who participated in that election or appointment was not entitled to do so; or

- (b) any persons, not entitled to do so, took part in the alleged making of a rule, or an alteration to the rules, of an industrial organisation, or branch of an industrial organisation, as an officer, a voter or otherwise.

### **Validation of action taken in good faith**

**335.(1)** Subject to this section, all actions done in good faith by persons purporting to act as a collective body of an industrial organisation, or of a branch of an industrial organisation, are valid notwithstanding any invalidity discovered later in—

- (a) the election or appointment of the collective body, or of any of the persons purporting to act as the collective body; or
- (b) the making of a rule, or an alteration to the rules, of the industrial organisation or branch.

**(2)** Subject to this section, all actions done in good faith by a person purporting to hold an office in an industrial organisation, or in a branch of an industrial organisation, are valid notwithstanding any invalidity discovered later in—

- (a) the election or appointment of the person;
- (b) the making of a rule, or an alteration to the rules, of the industrial organisation or branch.

**(3)** For the purposes of this section—

- (a) a person is not taken to purport to act as a member of a collective body of, or as the holder of an office in, an industrial organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the industrial organisation as being, such a member or the holder of the office;
- (b) a person is not taken to purport to act as a member of a collective body of, or as the holder of an office in, a branch of an industrial organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the branch as

being, such a member or the holder of the office.

**(4)** For the purposes of this section—

- (a) an action is taken as done in good faith until the contrary is proved;
- (b) a person who has purported to be a member of a collective body of an industrial organisation, or of a branch of an industrial organisation, is taken to have done so in good faith until the contrary is proved;
- (c) knowledge of facts from which an invalidity arises is not, of itself, to be treated as knowledge that the invalidity exists;
- (d) an invalidity in—
  - (i) the election or appointment of a collective body of a branch of an industrial organisation, or of any person who purports to be a member of such a collective body; or
  - (ii) the election or appointment of a person who purports to hold an office in a branch of an industrial organisation; or
  - (iii) the making, or alteration, of a rule of a branch of an industrial organisation;

is not taken as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the persons purporting to act as the committee of management of the branch;

- (e) an invalidity in any other election or appointment, or in the making, or alteration, of a rule to which this section applies is not taken as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the persons purporting to act as the committee of management of the industrial organisation.

**(5)** This section—

- (a) does not affect the operation of Division 4;
- (b) does not validate the expulsion or suspension of, or the imposition of a fine or other penalty on, a member of an industrial organisation that would not have been valid if this



section had not been enacted;

- (c) applies to an action whenever done, including one done before the commencement of this Act, or done in relation to an association before it became an industrial organisation.

### **Validation of action after 4 years**

**336.(1)** Subject to this section, at the end of 4 years from—

- (a) the doing of an action by persons purporting to act as a collective body of an industrial organisation, or of a branch of an industrial organisation and purporting to exercise power conferred by or under the rules of the industrial organisation or branch;
- (b) the doing of an action by a person purporting to hold an office in an industrial organisation, or in a branch of an industrial organisation, and purporting to exercise power conferred by or under the rules of the industrial organisation or branch;
- (c) the alleged election or alleged appointment of a person to an office in an industrial organisation, or in a branch of an industrial organisation;
- (d) the alleged making, or alleged alteration, of a rule of an industrial organisation, or of a branch of an industrial organisation;

the action, election, appointment or making or alteration of the rule is taken to have been done, or to have occurred in accordance with the rules of the industrial organisation or, as the case may be, the branch.

**(2)** This section—

- (a) does not affect the validity, operation or enforcement of any judgment, order, declaration, direction or sentence or other judicial act of the Industrial Court or any other court made or imposed before the end of the 4 years referred to in subsection (1);
- (b) extends to an action, alleged election, alleged appointment or alleged making or alteration of a rule, whenever done or occurring, including one done or occurring before the commencement of this Act, or done or occurring in relation to an association before it became an industrial organisation.

***Division 12—Miscellaneous*****Registered office of industrial organisation**

**337.(1)** Every industrial organisation is to have a registered office to which all communications and notices may be addressed.

**(2)** Notice of the situation of such registered office, and of any change therein, is to be given to the Industrial Registrar, and is to be recorded by the registrar, and until such notice is given the industrial organisation is taken to have not complied with this section.

**Documents open to inspection**

**338.(1)** The list of members and officers, and the rules of an industrial organisation filed with the Industrial Registrar are open to inspection by any person on payment of the fee prescribed by the rules of court.

**(2)** A copy of its rules is to be given by an industrial organisation, or a branch of an industrial organisation, to every person, on request and payment of a sum not exceeding an amount determined from time to time by order in council.

**Industrial organisations to notify particulars of loans, grants and donations**

**339.(1)** As soon as is practicable after the end of each financial year, an industrial organisation is to lodge with the Industrial Registrar a statement showing the relevant particulars of expenditure, by way of loan, grant or donation, made by the industrial organisation to any recipient in an amount exceeding, or in the aggregate exceeding, \$1 000 during the financial year.

**(2)** A statement lodged with the Industrial Registrar under subsection (1) must be signed by an officer of the industrial organisation.

**(3)** A statement lodged with the Industrial Registrar under subsection (1) may be inspected, during office hours, by a member of the industrial organisation concerned.

**(4)** The relevant particulars, in relation to a loan made by an industrial organisation, are—

- (a) the amount of the loan;
- (b) the purpose for which the loan was required;
- (c) the security given in relation to the loan;
- (d) except where the loan was made to relieve a member of the industrial organisation, or a dependant of a member of the industrial organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.

(5) The relevant particulars, in relation to a grant or donation made by an industrial organisation, are—

- (a) the amount of the grant or donation;
- (b) the purpose for which the grant or donation was made;
- (c) except where the grant or donation was made to relieve a member of the industrial organisation, or a dependant of a member of the industrial organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.

(6) If an industrial organisation has branches—

- (a) this section applies in relation to the industrial organisation as if expenditure, by way of loan, grant or donation, made by a branch of the industrial organisation were not made by the industrial organisation;
- (b) this section applies in relation to each of the branches as if the branch were an industrial organisation.

(7) For the purposes of the application of this section in accordance with subsection (6) in relation to a branch of an industrial organisation, the members of the industrial organisation constituting the branch are taken to be members of the branch.

## **Nomination**

**340.(1)** A member of an industrial organisation may, by writing delivered at or sent by post to the registered office of the industrial organisation, nominate any person, not being an officer or employee of the

industrial organisation (unless such officer or employee of the industrial organisation is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), to whom any moneys payable on the member's death are to be paid in that event, and may from time to time revoke or vary such nomination in like manner.

(2) On receiving satisfactory proof of the death of a nominator the industrial organisation is to pay to the nominee the amount due and payable in the event of the nominator's death.

### **Recovery of moneys due to industrial organisation**

**341.(1)** Subject to this section, all subscriptions, fees, dues, fines, levies and other moneys payable to an industrial organisation under its rules by a member, or former member, of the industrial organisation may be sued for and recovered in an Industrial Magistrates Court, and not otherwise.

(2) When membership of an industrial organisation—

- (a) is terminated as prescribed by section 254; or
- (b) has been terminated as prescribed by section 48 of the *Industrial Conciliation and Arbitration Act 1961*;

the former member—

- (c) continues to be liable to pay any subscription, fee, dues, fine, levy or other moneys that first became payable before termination of such membership and that are recoverable in accordance with this section;
- (d) is not liable to pay any subscription, fee, dues, fine, levy or other moneys that first becomes, or become, payable after termination of such membership.

(3) Proceedings to recover any subscription, fee, dues, fine, levy or other moneys due and payable to an industrial organisation from a member or former member must be commenced—

- (a) within 3 years following the time when the subscription, fee, dues, fine, levy or other moneys in question becomes, or become, due and payable, if the same first becomes or become due and payable after the commencement of this Act;

- (b) within 1 year following the time when the subscription, fee, dues, fine, levy or other moneys in question became due and payable, if the same first became due and payable before the commencement of this Act;

and if proceedings for the recovery thereof are not so commenced, the subscription, fee, dues, fine, levy or other moneys in question is, or are, not recoverable.

### **Prejudice of employee by reason of membership of industrial organisation**

**342.(1)** An employer is not to refuse employment to any person, or dismiss an employee, or injure an employee in employment, or alter an employee's position to the employee's prejudice, by reason that the person or employee—

- (a) is an officer or member of an industrial organisation, or of an association that has applied to be registered as an industrial organisation;
- (b) is a Health and Safety Representative appointed under the *Workplace Health and Safety Act 1989*;
- (c) is entitled to, or has claimed, the benefit of any award, industrial agreement or certified agreement;
- (d) has appeared as a witness, or has given evidence, in proceedings under this Act or under the repealed Acts;
- (e) being a member of an industrial organisation that is seeking better industrial conditions, is dissatisfied with employees' conditions;
- (f) has been absent from work without leave if—
  - (i) the absence was for the purpose of carrying out duties or exercising rights as an officer of an industrial organisation; and
  - (ii) application for leave was made before such absence and leave was unreasonably refused or withheld.

**(2)** An employer is not to threaten to dismiss an employee, or to injure an employee in employment, or to alter an employee's position to the

employee's prejudice—

- (a) by reason that the employee is, or proposes to become, an officer or member of an industrial organisation, or of an association that has applied to be registered as an industrial organisation, or that the employee proposes to appear as a witness or to give evidence in proceedings under this Act; or
- (b) with the intent to dissuade or prevent the employee from becoming such officer or member or from so appearing or giving evidence.

(3) A person is not to engage, or threaten to engage, in conduct that would be likely to have the effect, directly or indirectly, of prejudicing in employment an employee by reason that the employee is a member of an industrial organisation.

### **Prejudice of employee by reason of non-membership of industrial organisation**

**343.(1)** Except where membership of an industrial organisation is a condition of a contract of employment, an employer is not—

- (a) to dismiss, or threaten to dismiss, an employee;
- (b) to injure, or threaten to injure, an employee in employment;
- (c) to alter, or threaten to alter, an employee's position to the employee's prejudice;

by reason that the employee is not a member of an industrial organisation or intends to terminate membership of an industrial organisation.

(2) A person is not—

- (a) to engage, or threaten to engage, in conduct that would be likely to have the effect, directly or indirectly, of prejudicing in employment an employee by reason that the employee is not a member of an industrial organisation; or
- (b) to demand from another person who is not a member of an industrial organisation, with threats of injury or detriment of any kind to be caused to that other person if the demand is not met, that any action be done or procured to be done, or any omission

be made or procured to be made, being any action or omission that is for the benefit, direct or indirect, of an industrial organisation or of a person acting on behalf of an industrial organisation.

(3) Subsection (2) does not apply in relation to an employer's conduct to which subsection (1) applies.

(4) Subsection (2) does not make a person liable to punishment by reason of engaging in conduct, which apart from that subsection is lawful, for the purpose of remedying a breach of a provision of any award, industrial agreement or certified agreement that requires an employee to be a member of an industrial organisation.

### **Conduct in relation to holder of conscientious objector's certificate**

**344.(1)** This section applies in relation to a person or employee who is the holder of a current certificate issued under section 255, and so applies notwithstanding any other provision of this Division, any Act, award, industrial agreement or certified agreement.

(2) An employer is not—

- (a) to refuse employment to a person to whom this section applies by reason that the person is not a member of an industrial organisation;
- (b) to dismiss an employee to whom this section applies, injure such an employee in employment or alter such an employee's position to the employee's prejudice by reason that the employee is not a member of an industrial organisation;
- (c) to threaten—
  - (i) to dismiss an employee to whom this section applies;
  - (ii) to injure such an employee in employment;
  - (iii) to alter such an employee's position to the employee's prejudice;

with intent to coerce the employee to become a member of an industrial organisation.

(3) A person is not to cause a person to whom this section applies to gain

an advantage, or suffer a detriment, that such last mentioned person would not have gained or suffered, if such person were a member of an industrial organisation.

- (4) An industrial organisation is not—
- (a) to advise, encourage or incite an employer to take action that would be a contravention of subsection (2) or (3);
  - (b) to take, or threaten to take, industrial action in relation to an employer with intent to coerce the employer to take action that would be a contravention of subsection (2) or (3);
  - (c) to take, or threaten to take, action having the effect, directly or indirectly, of prejudicing in employment an employee to whom this section applies, with intent to coerce the employee to become a member of an industrial organisation.

### **Prejudice of employer by reason of membership of industrial organisation**

**345.** An industrial organisation is not to engage in, or threaten to engage in, a strike against an employer because the employer is an officer, delegate or member of an industrial organisation or an association that has applied to be registered as an industrial organisation.

### **Conduct in relation to independent contractors**

**346.(1)** In this section—

**“discriminatory action against an eligible person”** means—

- (a) refusal to use, or to agree to use, a service offered by the eligible person; or
- (b) refusal to supply, or to agree to supply, goods or services to the eligible person;

**“eligible person”** means a person who—

- (a) engages in a calling or an industry otherwise than as an employee; and
- (b) because of so engaging would be eligible, if the person were an



employee, to become a member of an industrial organisation of employees.

(2) An industrial organisation is not—

- (a) to advise, encourage or incite any person to take discriminatory action against an eligible person because the eligible person is not a member of an industrial organisation; or
- (b) to take, or threaten to take, action against an employer with the intent of coercing the employer to take discriminatory action against an eligible person because the eligible person is not a member of an industrial organisation; or
- (c) take, or threaten to take, action against an eligible person with the intent of coercing that person to become, or to remain, a member of an industrial organisation.

### **When conduct presumed that of industrial organisation**

**347.** For the purposes of sections 344, 345 and 346, action, or a threat of action—

- (a) by or at the instigation of the committee of management of an industrial organisation or of a branch of an industrial organisation;
- (b) by an officer, employee or agent of an industrial organisation, or of a branch of an industrial organisation, acting in that capacity;
- (c) by a group of members of an industrial organisation;
- (d) by a member of an industrial organisation who performs a function of dealing with an employer on behalf of—
  - (i) members of the industrial organisation; or
  - (ii) that member;acting in that capacity;

is taken to be action taken, or threat made, by the industrial organisation, and the intent of the person or persons who—

- (e) takes, take or instigate the action; or
- (f) makes, make or instigate the threat;

is taken to be the intent of the industrial organisation.

## **PART 14—INDUSTRIAL INSPECTORS**

### **Appointment of Industrial Inspectors**

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

**(2)** From time to time there may be appointed under and subject to the *Public Service Management and Employment Act 1988* such number of Industrial Inspectors and other persons as is necessary for the effectual administration of this Act.

**(3)** A person who immediately before the commencement of this Act holds an appointment as Industrial Inspector (including that of Chief Industrial Inspector) continues to hold the appointment until the person ceases to hold the appointment.

**(4)** Every Industrial Inspector, by virtue of appointment as such, is an inspector for the purposes of—

- (a) the *Trading Hours Act 1990*;
- (b) the *Factories and Shops Act 1960*;
- (c) the *Pastoral Workers Accommodation Act 1980*;
- (d) the *Workers' Accommodation Act 1952*;

for as long as the inspector holds the appointment.

**(5)** The Minister and the Minister responsible for the Commonwealth Act may enter into arrangements under which a person appointed as an inspector under the Commonwealth Act may be appointed as an inspector for the purposes of this Act.

**(6)** A person appointed as an inspector under arrangements mentioned in subsection (5) may be appointed by the Minister.

**Evidence of appointment**

**349.(1)** Notification of every appointment to be an Industrial Inspector is to be published in the Industrial Gazette, and judicial notice is to be taken of every appointment so notified.

**(2)** As far as is practicable, every person appointed to be an Industrial Inspector is to be provided with a certificate of appointment signed by the Minister or the Chief Industrial Inspector.

**(3)** Upon seeking to enter any place pursuant to a power conferred by this Act an Industrial Inspector, if required to do so by the occupier of the place, is to produce to the occupier such certificate of appointment or, if the inspector has not been provided with such a certificate, the writing by which the inspector was informed of the appointment as an Industrial Inspector.

**Extent of Industrial Inspector's jurisdiction**

**350.** An Industrial Inspector—

- (a) may exercise the powers and perform the duties of an Industrial Inspector under this Act throughout Queensland;
- (b) is to perform the duties of an Industrial Inspector under this Act subject to the general supervision and direction of the Chief Industrial Inspector.

**Validity of Industrial Inspector's conduct despite administrative breach**

**351.(1)** Failure of an Industrial Inspector to observe the requirement of section 349(3) or the administrative arrangement prescribed by section 350(b) does not affect the lawfulness or effect of any action done or omission made by the inspector for the purposes of this Act.

**(2)** A failure, such as is referred to in subsection (1), renders the Industrial Inspector concerned liable to disciplinary action only.

**Duty of Industrial Inspector**

**352.** It is the duty of an Industrial Inspector to ensure, as far as possible, that the provisions of awards, industrial agreements, certified agreements,

permits and orders of the Industrial Commission are duly observed.

### **Powers of Industrial Inspector**

**353.(1)** An Industrial Inspector may—

- (a) at any time enter, inspect and examine any place in or on which the inspector suspects on reasonable grounds that a calling is, has been, or is about to be carried on;
- (b) call in aid a police officer if the inspector reasonably apprehends any obstruction to, or hindrance in, the exercise of the inspector's powers, or performance of the inspector's duties, under this Act;
- (c) make such examination and enquiry as is necessary to ascertain whether the provisions of this Act, any relevant award, industrial agreement, certified agreement, permit or order are being, have been, or will be complied with in respect of a calling by any employer or employee in that calling, or should be given operation in relation to a calling;
- (d) at any time during business operations or working hours, require an employer in a calling to produce for the inspector's examination time sheets, pay sheets and other records relating to employees in the calling, and make copies of or extracts from such sheets and records;
- (e) at any time during business operations or working hours, question with respect to matters under this Act or under any relevant award, industrial agreement, certified agreement, permit or order—
  - (i) an employer in a calling;
  - (ii) any person found in or on any place, in or on which the inspector suspects on reasonable grounds that a calling is, has been or is about to be carried on;

to ascertain whether the provisions of this Act or any relevant award, industrial agreement, certified agreement, permit or order are being, have been or will be complied with, or should be given operation in relation to the calling, and require such employer or person questioned to answer the questions put, and to sign a

statutory declaration (which any justice is authorised to take) as to the truth of the answers;

- (f) require a person whom the inspector is authorised by this Act to question, or whose name and address are, in the inspector's opinion, reasonably required for the purposes of this Act, to state that person's name and address and, if the inspector suspects on reasonable grounds that the name or address, or both, as stated, to be false, require evidence of the correctness thereof;
- (g) institute proceedings under this Act and apply to the Industrial Commission for interpretation of any award, industrial agreement, certified agreement, permit or order;
- (h) exercise such other powers as are prescribed.

(2) The power conferred on an Industrial Inspector by subsection (1) to question an employee includes power to question the employee out of the hearing of the employer or any supervisor, deputy, manager, or other superior officer, or any other employee with respect to any matter.

(3) An Industrial Inspector is not empowered by this Act to enter premises used as a private dwelling house or land used in connection with such use of the premises, unless there is carried on in the premises or the land some calling in which at least 1 employee is employed.

(4) If proceedings in the Industrial Commission for interpretation of an award, industrial agreement, certified agreement or order relate to an alleged ambiguity therein, the Commission is to hear and determine the proceedings in the absence of a statement of agreed facts.

### **Obstruction of Industrial Inspector**

**354.(1)** A person is not—

- (a) to assault, resist, obstruct or hinder an Industrial Inspector in exercise of powers or performance of duties under this Act, or attempt to do so;
- (b) to use any threat or abusive or insulting language to an Industrial Inspector or to any other person in connection with any inspection, examination or questioning under this Act;
- (c) to fail to answer a question put for the purposes of this Act by an

Industrial Inspector, or give a false or misleading answer to any such question;

- (d) to fail to comply in all respects with a lawful requisition directed to the person by an Industrial Inspector pursuant to this Act;
- (e) when required by an Industrial Inspector pursuant to this Act to furnish assistance (other than aid sought under section 353(1)(b)) or information, to fail to furnish such assistance or information or, when information is sought, to furnish information that is false or misleading;
- (f) to directly or indirectly obstruct or hinder a person from appearing before or being questioned by an Industrial Inspector, or attempt to do so.

(2) Subsection (1) does not apply so as to render liable to punishment as for an offence, other than an offence that consists in the supply of an answer or information that is false or misleading, a person who fails to supply an answer or information on the ground that to do so would tend to incriminate the person.

### **Confidentiality of information**

**355.** An Industrial Inspector or officer appointed for the purposes of this Act is not to disclose to any person information acquired in the exercise of powers or performance of duties, under this Act unless the disclosure is made—

- (a) for the purposes of this Act and in performance of a duty under this Act; or
- (b) with the Minister's permission first obtained; or
- (c) under the authority of an order of any court for the purposes of the hearing and determination of any proceeding before the court.

### **Protection from liability**

**356.** An Industrial Inspector or a person acting in aid of an inspector does not incur any liability in law on account of any action or omission—

- (a) done or made by the inspector or person pursuant to this Act; or

- (b) done or made, in good faith and without negligence, by the inspector or person purporting to act pursuant to this Act.

### **Assistance in exercise of Industrial Inspector's powers**

**357.** A person being—

- (a) an owner or a person entitled to immediate possession of any place in or on which a calling is carried on; or
- (b) an employer carrying on a calling in or on any place;

is to furnish to an Industrial Inspector, as required by the inspector, all reasonable assistance and all information that the person is capable of furnishing for the purpose of the inspector's exercise of powers and performance of duties in respect of such place.

### **Payment of employee's wages etc. to Industrial Inspector**

**358.(1)** A demand such as is referred to in this section may be made in respect of—

- (a) an employee of an employer;
- (b) a person who was an employee of an employer;

and in subsections (2) and (3) the expression "**employee**" includes a former employee.

**(2)** Upon demand duly made therefor by an Industrial Inspector an employer is to pay to the inspector—

- (a) in respect of any employee—the amount of wages due and payable to the employee, or payable on account of the employee, and unpaid;
- (b) in respect of any eligible employee—a sum comprised of—
  - (i) the amount of contribution payable by the employer to an approved occupational superannuation scheme or fund under any relevant award, industrial agreement or certified agreement on behalf of the employee, and unpaid; and
  - (ii) an amount based on the return that would have accrued in respect of such contribution had it been duly paid to such

scheme or fund.

(3) A demand, such as referred to in subsection (1), must not be made, and if made need not be complied with, if—

- (a) the demand would relate, or relates, to an amount of unpaid wages that had become due and payable at a time such that an order for their recovery could not be made on an application under section 409; or
- (b) the demand would relate, or relates, to wages unpaid in respect of an entitlement to long service leave of an employee whose employment with the employer has ceased and 3 years have passed since the date on which the employment ceased.

(4) A court that hears and determines a complaint against an employer for an offence against subsection (2)(a)—

- (a) apart from any penalty order that it may make; and
- (b) whether or not it convicts the employer;

may order the employer to pay to the employee to whose wages the complaint relates the amount the court finds, on the balance of probabilities, to be due and payable to the employee, or on account of the employee, as the case may be.

(5) A court that convicts an employer of an offence against subsection (2)(b) may make in relation to the employer any order that an Industrial Magistrate is authorised by section 53 to make on an application made under the section.

(6) If an order is made under subsection (5), the provisions of section 53 apply to the order in the same way they apply in relation to an order made under section 53.

### **Industrial Inspector's obligation for moneys paid on demand**

**359.(1)** In this section—

“**employee**” includes a former employee.

(2) An Industrial Inspector to whom moneys are paid on demand under section 358 is to give to the payer a receipt therefor, forthwith upon payment.



(3) The receipt of an Industrial Inspector for such moneys is a full discharge to the employer in question for the amount specified in the receipt.

(4) Subject to subsections (5) and (6), an Industrial Inspector to whom moneys are paid on demand under section 358 is to account for the moneys as follows—

- (a) if the moneys are in respect of—
  - (i) an employer's contribution to an approved occupational superannuation scheme or fund to the credit of an eligible employee, which was unpaid; or
  - (ii) an amount such as is referred to in section 358(2)(b)(ii);  
they are to be paid to—
    - (iii) an approved occupational superannuation scheme or fund under any award, industrial agreement or certified agreement relevant to the employee's employment as an eligible person; or
    - (iv) in a case to which subsection (6)(b) applies—to a superannuation scheme or fund nominated by the employee;
- (b) if the moneys are not moneys referred to in paragraph (a)—they are to be paid to the employee to whose credit they were paid to the inspector.

(5) If at the end of 30 days following receipt of moneys paid on demand under section 358 an Industrial Inspector has not accounted for the moneys as prescribed by subsection (4), the inspector is to pay the moneys forthwith to the department to the credit of the approved occupational superannuation scheme or fund or, as the case may be, the employee.

(6) Notwithstanding subsection (4), if an employee to whose credit moneys, such as are referred to in subsection (4)(a), are paid to an Industrial Inspector is no longer in employment with the employer upon whom the demand was made, the inspector is to account for such moneys as follows—

- (a) if the amount thereof is less than the amount of total benefits that may revert to the employee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth (or

that Act as amended and in force for the time being)—the moneys are to be paid—

- (i) to the employee; or
  - (ii) to a superannuation scheme or fund nominated by the employee;
- (b) if the amount thereof equals, or is more than, the amount of total benefits that may revert to the employee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth (or that Act as amended and in force for the time being)—the moneys are to be paid to a superannuation scheme or fund nominated by the employee.

(7) If, at the end of 30 days after receiving moneys that are—

- (a) mentioned in subsection (4)(a); and
- (b) required to be accounted for under subsection (6);

the Industrial Inspector has not accounted for the moneys under subsection (6), the Industrial Inspector must pay the moneys to the department.

(8) Subject to subsection (9), the department must account for moneys given to it by an Industrial Inspector under subsection (7) in the way specified for the inspector under subsection (6).

(9) If—

- (a) moneys are paid to the department under subsection (7); and
- (b) the employee in relation to whom the moneys are to be paid—
  - (i) cannot be located after all reasonable inquiries; or
  - (ii) fails to nominate a superannuation scheme or fund for the purpose of subsection (4);

the department is to pay the moneys into the Unclaimed Moneys Fund in the Treasury.

## **PART 15—FACILITATION OF ADMINISTRATION**

***Division 1—Maintenance and inspection of employers' records*****Interpretation**

**360.** In this Division—

**“authorised industrial officer”** means an officer or employee of an industrial organisation, or branch of an industrial organisation, who is the holder for the time being of an authority issued under section 361 that is in force, or issued under section 136 of the *Industrial Conciliation and Arbitration Act 1961* that is in force;

**“similar record”** includes a computer print-out if—

- (a) its contents relevant to this Division are separate from all other material contained in the print-out; and
- (b) it provides particulars required by this Division accurately and in a manner and form convenient for the purpose of inspection under this Division.

**Issue of authorisation**

**361.(1)** An industrial organisation that wants a person to be, or to continue as, an authorised industrial officer is to make application to the Industrial Registrar for an authorisation under this section to be issued to the person nominated in the application.

**(2)** On application for an authorisation under this section, the Industrial Registrar may issue the authorisation if the registrar is satisfied that the applicant is a person of a description of person defined in section 360 as one who may be an authorised industrial officer.

**(3)** An authorisation under this section—

- (a) must be applied for as prescribed by the regulations;
- (b) is for a term specified therein in each case by the Industrial Registrar, unless it sooner ceases to be in force as prescribed;
- (c) ceases to be in force—
  - (i) at the end of its term;
  - (ii) upon its revocation;

- (iii) upon its suspension, for the period of suspension;
- (iv) upon its holder ceasing to be an officer or, as the case may be, employee of the industrial organisation that made application for the authorisation or ceasing to be an authorised industrial officer acceptable to the industrial organisation.

(5) When an authorisation under this section ceases to be in force the industrial organisation that made application for the authorisation—

- (a) is to notify the Industrial Registrar thereof within 14 days following the authorisation's so ceasing;
- (b) upon request of the registrar, surrender to the registrar the authorisation issued on the application.

### **Time and wages record of award employees**

**362.(1)** Every employer is to keep and have available for inspection, during the hours of operation of the employer's business, by an Industrial Inspector, by an authorised industrial officer, and as required by section 371, a time and wages book or similar record that accords with subsection (3) in respect of all persons who—

- (a) are for the time being in the employer's employment and working under any award, industrial agreement, certified agreement or permit; or
- (b) were in the employer's employment and working under any award, industrial agreement, certified agreement or permit at any time within 6 years before the date of an inspection of such book or record.

(2) Notwithstanding subsection (1)(b), subsection (1) does not require an employer to keep such book or record in respect of any person whose employment with the employer ceased at least 3 years before the commencement of this Act.

(3) Subject to subsection (4), a time and wages book or similar record referred to in subsection (1) must contain, in respect of each employee in respect of whom such book or record is required by subsection (1) to be kept, the following particulars—

- (a) the full name and full address of each person who is employed, or was employed by the employer;
- (b) the date of birth of each employee;
- (c) in respect of each pay period—
  - (i) the designation of each employee and the name of the award, industrial agreement or certified agreement under which the employee is, or was, working;
  - (ii) the number of hours worked by each employee during each day and week and, subject to subsection (4), the times during each of those periods at which each employee started and ceased work, and details of any work breaks including meal periods;
  - (iii) if the relevant award, industrial agreement, certified agreement or permit provides for—
    - (A) a weekly, daily or hourly rate of wage—details of the rate of wages per week, per day, or per hour, as the case may be, at which each employee is paid; or
    - (B) piecework rates—details of the piecework performed and the rate at which payment is made to each employee;
  - (iv) the gross and net amounts of wages paid to each employee, together with details of deductions made from those wages;
  - (v) contributions made by the employer to an occupational superannuation scheme or fund;
- (d) details of sick leave credited or granted, and sick leave payments to each employee;
- (e) the date on which each employee commenced employment with the employer and, where appropriate, the date of termination of such employment;
- (f) such other particulars as are necessary to show that the hours of work, rates of pay and general conditions of employment provided for by the relevant award, industrial agreement, certified agreement or permit are being complied with in every particular.

(4) If an award, industrial agreement or certified agreement does not provide for a limitation of the daily or weekly working hours of an employee who works under it, particulars of the employee's times of starting and ceasing work each day need not be contained in the time and wages book or similar record as required by subsection (3)(c)(ii), unless the award or agreement requires an employer to record such particulars.

(5) If an employer keeps in the one book or record particulars that an authorised industrial officer is authorised by section 369(2) to inspect and other particulars, the employer is not required to make available for inspection by that officer those other particulars.

(6) An authorised industrial officer who inspects a time and wages book or similar record may make a copy of or extract from the book or record, but is not entitled to require any assistance from the employer in the making thereof.

### **Wages record of non-award employees**

**363.(1)** Every employer is to keep and have available for inspection, during the hours of operation of the employer's business, by an Industrial Inspector and as required by section 371, a wages book or similar record that accords with subsection (3) in respect of all persons who—

- (a) are for the time being in the employer's employment and working otherwise than under any award, industrial agreement, certified agreement or permit; or
- (b) were in the employer's employment and working otherwise than under any award, industrial agreement, certified agreement or permit at any time within 6 years before the date of an inspection of such book or similar record.

(2) Notwithstanding subsection (1)(b), subsection (1) does not require an employer to keep such book or record in respect of the employment of any person whose employment with the employer ceased at least 3 years before the commencement of this Act.

(3) A wages book or similar record referred to in subsection (1) must contain, in respect of each employee in respect of whom such book or record is required by that subsection to be kept, the following particulars in relation to each pay period—

- (a) the employee's designation;
- (b) the employee's rate of wages;
- (c) the gross amount of wages payable to or on account of the employee;
- (d) the amount of deductions made from the employee's wages;
- (e) the net amount of wages payable to or on account of the employee.

### **Register of employees**

**364.(1)** Every employer is to keep and have available for inspection during the hours of operation of the employer's business, by the Industrial Registrar or a person authorised by the registrar, a book or similar record that is a register of the employees of that employer containing the following particulars—

- (a) the full name and full residential address of each employee;
- (b) in the case of a person who is residing elsewhere than at the person's permanent residence at the date on which the person becomes an employee—both the permanent residential address and the address of residence as at that date;
- (c) the calling in which each employee is engaged;
- (d) the date on which each employee became an employee of the employer;
- (e) where appropriate, the date on which each employee ceased employment with the employer.

**(2)** All such particulars are to be entered in the register opposite and relative to the name of the employee to which they relate.

**(3)** If the register of employees of an employer who has more than 100 employees is not in such a form as to be an alphabetical index itself, the employer is to keep and have available for inspection during the hours of operation of the employer's business, by the Industrial Registrar or a person authorised by the registrar, an index in alphabetical order of the names of the employees of the employer, which index may be in a loose leaf, computer print-out or card index form.

(4) Within 14 days following a change in the calling of an employee, the employer is to enter in the register opposite and relative to the employee's name particulars of the change and the date on which the change occurred.

(5) An employee—

- (a) whenever requested by the employer to do so, is to inform the employer of the residential address of the employee;
- (b) whenever a change in the employee's residential address occurs, is to inform the employer forthwith of the new address.

(6) If an employer carries on business at more than 1 place this section requires the employer to keep a register of employees and, as prescribed by subsection (3), an index in respect of each such place.

### **Records to be kept in English**

**365.** Particulars required by sections 362 to 364 to be recorded must be recorded, and an index required by section 364 to be kept must be kept, in the English language.

### **Failure to keep records a composite offence**

**366.** A complaint for an offence consisting in a failure to comply with section 362, 363 or 364 is not bad for duplicity or uncertainty, because it charges the defendant with having failed to 'keep and have available for inspection' the prescribed book, similar record, register or index.

### **Notation of wages details**

**367.(1)** Upon payment of wages to or on account of an employee, the employer is to indicate, or cause to be indicated, by noting on the pay envelope, or by statement in writing, given to the employee, at the time payment of the wages is made, how the payment is made up.

(2) The noting or statement must include the following particulars—

- (a) the date of payment;
- (b) the period covered by the payment;
- (c) the number of hours covered by the payment at—



- (i) ordinary rate of pay;
- (ii) overtime rate of pay;
- (d) the ordinary hourly rate and the amount paid at that rate;
- (e) the overtime hourly rate and the amount paid at that rate;
- (f) the gross amount of wages payable;
- (g) the net amount of wages paid;
- (h) details of any deductions made;
- (i) the amount of contribution paid to an occupational superannuation scheme or fund.

### **Inspection of employer's record by Industrial Inspector**

**368.(1)** An Industrial Inspector may inspect at the place of business of an employer, during the hours of operation of the employer's business, the book or similar record required to be kept and had available by the employer by section 362 or 363.

**(2)** If such book or similar record is not produced to the Industrial Inspector or if an inspection thereof is obstructed, the inspector may give notice in writing to the employer directing production of the book or similar record to the inspector for inspection—

- (a) at a place of business of the employer specified therein or, if the employer has no official place of business, at a reasonably convenient place nominated by the inspector; and
- (b) at a time, which is reasonable in the circumstances, specified therein.

**(3)** If a book or similar record of an employer is not produced as required by a notice given under subsection (2), it is to be taken, without further or other proof, that the employer has failed to keep and have available for inspection the book or similar record required of the employer by section 362 or, as the case may be, section 363.

**(4)** A notice is taken to be duly given under subsection (2) if—

- (a) it is served personally on the person to whom it is directed; or
- (b) it is left at the place of residence or business of the person to

- whom it is directed last known to the person who gives it; or
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

### **Inspection by authorised industrial officer**

**369.(1)** An authorised industrial officer is entitled to enter, as prescribed by this section, any place in or on which a person carries on a calling that is a registered calling of the industrial organisation of which the authorised industrial officer is an officer or employee.

**(2)** The authorised industrial officer—

- (a) may enter any such place at any time when the relevant calling is being carried on therein or thereon;
- (b) may interview or converse with the employer, or with any of the employees during any lunch hour or non-working time during the hours of operation of the employer's business;
- (c) is not to wilfully obstruct or hinder the employer or any of the employees during the employee's working time;
- (d) may inspect at the place of business of the employer, during the hours of operation of the employer's business, the book or similar record required to be kept and had available by the employer by section 362.

**(3)** Subsection (2) is subject to subsection (4).

**(4)** A person who is an authorised industrial officer is not authorised as prescribed by subsection (2) in respect of—

- (a) a place where the person is required to be, in the course of the person's employment with an employer other than the industrial organisation, or branch of an industrial organisation, of which the person is an officer or employee;
- (b) any ship, vessel or aircraft that is in a place referred to in paragraph (a).

**(5)** An authorised industrial officer who enters any place pursuant to authority conferred by this section, forthwith upon such entry and before the

officer exercises any authority conferred on the officer by this Act, is to give notice of the officer's presence to the employer or the employer's representative, and is to produce the officer's written authorisation if required.

(6) An authorised industrial officer who is present in or on any place for the purposes of this Act without having given notice or produced the written authorisation as prescribed by subsection (5) is a trespasser and may be ejected and proceeded against accordingly.

(7) Subsection (5) is subject to subsection (8).

(8) Subsection (5) does not apply in a case where—

- (a) due to the remoteness of any place it is impracticable for the authorised industrial officer to give to an employer or the employer's representative notice of the presence of the officer therein or thereon;
- (b) upon entering any place, the authorised industrial officer discovers that neither the employer nor any employer's representative having charge of the place is present.

### **Inspection by Industrial Registrar**

**370.(1)** The register of employees, and index (if any), required by section 364 to be kept is open to inspection by the Industrial Registrar or a person authorised, in writing, by the registrar, at the place of business of the employer whose register or index it is, at all times while the place is open for business.

(2) If—

- (a) the Industrial Registrar requires a register of employees, or an index, for the purposes of taking a ballot; or
- (b) the Industrial Court or Industrial Commission so orders for any other purpose;

the registrar may, by notice in writing, direct the employer, who is required to keep and have available the register or index to deliver the register or index to the registrar, or to a person nominated by the registrar, at a time and place specified in the direction.

(3) An employer to whom a direction is duly given under subsection (2) is to comply with the direction in all respects.

### **Inspection by employees**

**371.(1)** Subject to this section, any employee is entitled—

(a) to inspect; or

(b) at the discretion of the employer, to be furnished, in writing, with; such of the particulars contained in the book or similar record required by section 362 to be kept and had available by the employer as relate to the employee's employment.

(2) An entitlement prescribed by subsection (1)—

(a) is not available for exercise by any employee at intervals less than 12 months; and

(b) is restricted to particulars relating to an employee's employment during the period of 12 months, immediately preceding the occasion of exercising the entitlement.

(3) An entitlement prescribed by subsection (1) to inspect a book or similar record is available for exercise—

(a) only during the employer's hours of business;

(b) only at times other than the employee's working time, except with the employer's consent first obtained.

### **Revocation and suspension of industrial officer's authorisation**

**372.** If, upon application by an employer, it is proved to the Industrial Commission that an authorised industrial officer has—

(a) in a case to which section 369(5) applies—failed to comply with that section; or

(b) exercised the officer's entitlement to enter in an unreasonable or vexatious manner; or

(c) made unreasonable, vexatious or improper use of information obtained from inspection of any book or record made available

because of the officer's authority as an authorised industrial officer;

the Commission may—

- (d) revoke the officer's authorisation; or
- (e) suspend the officer's authorisation for such period as it thinks fit; or
- (f) attach such conditions to the officer's authorisation as it thinks fit.

### *Division 2—Other facilitating provisions*

#### **Copy of award and industrial agreement to be displayed**

**373.** Every employer is to keep affixed in some conspicuous place at or near the entrance of each factory, workroom, shop or other premises in which an award, industrial agreement or certified agreement has application, in such a position as to be easily read by the employees therein, a true copy of the award, industrial agreement or certified agreement.

#### **Incorporation of variations in reprint of award, industrial agreement or certified agreement**

**374.** If an award, industrial agreement or certified agreement made or taken to have been made under this Act has been varied, before or after the commencement of this Act, the Government Printer, if and when required so to do by the Industrial Registrar, is to reprint the award, industrial agreement or certified agreement in a form certified as correct by the registrar.

#### **Obsolete award or industrial agreement**

**375.(1)** The Industrial Registrar, after such enquiry as the registrar thinks sufficient, may notify in the Industrial Gazette an intention to declare that an award or industrial agreement made or continued in force under this Act and specified in the notification, is obsolete.

**(2)** Any person may, within the time and in the manner specified in the notification of intention given under subsection (1), lodge with the Industrial

Commission notice of objection to the proposal, and the Commission is to hear and determine the objection.

(3) Where no objection is lodged within the prescribed time, or all objections lodged are dismissed, the Industrial Registrar may notify in the Industrial Gazette that the award or industrial agreement in respect of which notification of intention was given under subsection (1) is obsolete, whereupon that award or industrial agreement ceases to have any force or effect.

### **Certificate of employment on termination**

**376.** An employer, upon request of a person whose employment with the employer has been terminated (by the employer or the employee), is to give to that person a certificate, signed by the employer, as to the prescribed particulars.

### **False pretences relating to employment**

**377.(1)** A person is not—

- (a) to pretend that another has been in the person's employment for a period, or in a capacity, other than that for, or in, which the other was in the person's employment;
- (b) to assert in writing that another has been in the person's employment for a period, or in a capacity, knowing the assertion to be false;
- (c) to assert in writing any other matter relating to the person's employment of another, knowing the assertion to be false in a material particular.

**(2)** A person is not—

- (a) to forge a certificate, or other document, that purports to be a discharge from, or a record of previous employment;
- (b) to use a certificate, or other document, that purports to be a discharge from, or a record of, previous employment, knowing the certificate or document to be not genuine or false;
- (c) to pretend, or falsely claim, for the purpose of seeking

employment, to be a person named in a genuine certificate, or other document, of a description referred to in paragraph (b) as a person to whom the certificate or document was issued;

- (d) to seek to obtain employment by assuming the name of another, living or dead, with intent to deceive.

(3) If under an award, industrial agreement or certified agreement relevant to a calling the amount of wages payable to an employee depends wholly or partly on the age, experience or duration of previous employment of the employee, a person—

- (a) when seeking employment in that calling; or
- (b) while an employee in that calling;

is not to give information, or make a statement, relating to any such particulars that is false to the person's knowledge.

### **Certifying Barrister**

**378.(1)** The Governor in Council may appoint a barrister of the Supreme Court to be the Certifying Barrister under this Act.

(2) A Certifying Barrister is to be paid the fees that the Minister determines.

### **Stamp duty**

**379.** Notwithstanding the provisions of any other Act, no stamp duty is payable in respect of—

- (a) an instrument evidencing a transfer of property from trustees of an industrial organisation to the industrial organisation, or any agreement relating to such a transfer; or
- (b) any certificate, agreement, order, statutory declaration, power of attorney or instrument executed pursuant to or to give effect to this Act.

### **Payments to financially distressed**

**380.(1)** The Governor in Council may, on the recommendation of the

Minister, authorise payment from the Unclaimed Moneys Fund in the Treasury to a person who—

- (a) is suffering hardship because an employer has failed to pay to or on account of the person the whole or part of wages; and
- (b) is unlikely to be able to recover by lawful means the whole or a substantial part of the unpaid wages;

of an amount, not exceeding the amount that the person is unlikely to recover, as the Governor in Council determines.

(2) A payment made under subsection (1) does not relieve an employer from liability to pay wages due and payable to or on account of an employee.

(3) If a person to whom payment is made under subsection (1) subsequently receives remuneration, in money or in kind, in satisfaction or part satisfaction of the liability of an employer in relation to which the payment was made, the person is to forthwith pay to the department (to be paid to the Unclaimed Moneys Fund in the Treasury) an amount equal to—

- (a) the value of the remuneration received as conclusively assessed by the Minister; or
- (b) the amount of the payment made to the person under subsection (1) and not previously repaid by the person to the department under this subsection;

whichever amount is less.

(4) An amount payable to the department under subsection (3) is a debt due and owing to the department and may be recovered on its account by action in a court of competent jurisdiction.

## **Regulations**

**381.(1)** The Governor in Council may make regulations not inconsistent with this Act, with respect to all matters that are required or permitted by this Act to be prescribed and in respect of which no other manner of prescription is specified, or with respect to all matters that are necessary or expedient to be prescribed for the proper administration of this Act or for achieving the objects and purposes of this Act.



(2) A regulation may impose a penalty for any breach of that or another regulation, including different penalties for successive breaches, but no such penalty is to exceed 20 penalty units.

### **Parliamentary supervision of orders in council**

**382.** Section 28A (Tabling of regulations) of the *Acts Interpretation Act 1954* applies in relation to orders in council made under this Act as if such orders were regulations.

### **Inaccurate descriptions**

**383.** No misnomer, inaccurate description or omission in or from any proclamation, order in council, regulation, rule, award, industrial agreement, certified agreement, permit, order, notice or other document issued under this Act prevents or abridges the operation of this Act with respect to the subject matter of that misnomer, inaccurate description or omission, provided the same is designated so as to be understood.

## **PART 16—EMPLOYEES IN EMPLOYMENT OF STATE**

### **Application of Act to Crown**

**384.(1)** This Act other than Part 14 binds the Crown, except in relation to—

- (a) a matter (other than one of a description referred to in paragraph (b)) as to which an Act, other than this Act, prescribes a means by which that matter must, or may, be determined, and a determination of that matter has been made by that means and is in force;
- (b) a matter as to which an Act, other than this Act, prescribes a process or procedure by which to pursue the matter and does not allow for jurisdiction of the Industrial Court or Industrial Commission in respect of the matter;

- (c) a matter as to which an Act, other than this Act, excludes the jurisdiction of the Industrial Court or Industrial Commission or the application of any decision within the meaning of this Act in respect of the matter.

(2) In no case is the Crown liable to prosecution in respect of an offence against this Act.

### **Conflict between award etc. and statutory determination**

**385.** If an award, industrial agreement, certified agreement or other decision of the Industrial Court or Industrial Commission is in force in relation to a matter in respect of which an Act, other than this Act—

- (a) prescribes a means by which that matter must, or may, be determined; and
- (b) does not prescribe to the effect that in determining that matter any relevant award or decision of the Commission or industrial agreement or certified agreement must be observed, or complied with;

and a determination made in relation to that matter in accordance with that other Act is inconsistent with any such award, industrial agreement, certified agreement or other decision, the determination prevails to the extent of the inconsistency and, to that extent, the award, agreement or decision ceases to have operation.

### **Protection of public property and officers**

**386.(1)** In no case is execution or attachment, or process in the nature thereof, to be issued against property or revenues of—

- (a) the Crown;
- (b) any department of government;

to enforce an award, industrial agreement or certified agreement or other decision of the Industrial Court, Industrial Commission or an Industrial Magistrate.

(2) In no case is a person in a department of government, who is an employer of employees therein, or is taken to be an employer of employees

therein for the purposes of this Act, personally liable under any relevant award, industrial agreement or certified agreement or in respect of any breach thereof.

### **Ambit of reference to Crown**

**387.(1)** This Act binds any instrumentality or body that is not a department of government or part thereof but that by any Act, or otherwise pursuant to law, is taken—

- (a) to be, or to represent, the Crown; or
- (b) to have the rights, privileges or immunities of the Crown;

as it binds any employer, other than the Crown.

**(2)** The application of this Act prescribed by section 384 does not include the application of this Act to an instrumentality or body such as is referred to in subsection (1).

**(3)** A reference in section 386 to the Crown does not include reference to an instrumentality or body such as is referred to in subsection (1).

### **Representation of public sector units**

**388.(1)** In this section, and in section 389—

**“unit of the public sector”** has the meaning assigned to the expression by the *Public Sector Management Commission Act 1990*.

**(2)** A unit of the public sector, or any person in such a unit, that is concerned as an employer in any industrial cause must be represented in the Industrial Court or Industrial Commission or an Industrial Magistrates Court by 1 of the following persons, or where this Act so permits, by counsel, solicitor or agent on behalf of 1 of the following persons, to the exclusion of all other persons—

- (a) the chief executive of the department or an officer of the department who is nominated for the purpose generally or in a particular case by such chief executive, unless the Minister of the Crown for the time being responsible for the unit of the public sector concerned as an employer in the industrial cause furnishes to the Minister for the time being responsible for the

administration of the department a request in writing that such representation be in accordance with paragraph (b);

- (b) if a request referred to in paragraph (a) is so furnished, the chief executive, or officer in charge, of the unit of the public sector concerned as an employer in the industrial cause, or a person employed in the unit who is nominated for the purpose by such chief executive or officer in charge.

### **Industrial cause affecting diverse employees**

**389.(1)** If the Minister determines an industrial cause to be one that affects, or is likely to affect, employees in more than one unit of the public sector, the chief executive of the department is taken to be the employer of all employees who are, or are likely to be, so affected and to be a party to the cause and to proceedings in the Industrial Court, Industrial Commission or an Industrial Magistrates Court in the cause, in lieu of all other persons who, but for this subsection, would be employers of those employees or any of them.

**(2)** Any—

- (a) agreement made by the chief executive of the department as employer pursuant to subsection (1); or
- (b) order made in proceedings to which the chief executive of the department is a party pursuant to subsection (1);

is binding on all persons, and their employees, to whom the agreement or order purports to apply.

## **PART 17—WAGES**

### *Division 1—Protection for wages*

#### **Interpretation**

**390.(1)** In this Division—

**“employer”** means the person with whom a prime contractor has contracted for performance of work by that person or who has obligations to a prime contractor for performance of work;

**“prime contractor”** means a person who contracts with another person for the performance of work by that other person, or at whose request, or on whose credit or behalf and with whose knowledge and consent, work is performed and includes any person claiming under such first mentioned person, whose rights are acquired after commencement of the work;

**“subcontractor”** means a person who contracts with an employer for the performance of work that is in discharge of the employer’s obligation to a prime contractor.

(2) A reference in this Part to service on a person includes reference to service on the person’s agent.

### **Wages are first charge on moneys due to employer**

**391.(1)** Wages due to employees employed on any work are, subject to the prime contractor’s rights as prescribed, a first charge on the moneys due to the employer by the prime contractor in respect of the work performed, or under the contract or undertaking in performance of which the work is or is to be performed.

(2) Until service on the prime contractor of notice of attachment provided for by section 394, the prime contractor is at liberty to pay to the employer all moneys that have become due and payable by the prime contractor to the employer in respect of the work performed, or under the contract or undertaking in performance of which the work is or is to be performed.

### **Assignment etc. of moneys due and payable ineffectual against claims for wages**

**392.(1)** An assignment, disposition, or charge (legal or equitable) made or given by an employer of or on moneys that have become, or are to become, due and payable to the employer by a prime contractor in respect of work performed, or under a contract or undertaking in performance of which work is or is to be performed, is of no force or effect as against wages due or to become due to employees employed by the employer in

performance of the work.

(2) Subsection (1) does not apply where the assignment, disposition or charge is one made or given to the employees employed by the employer in performance of the work concerned for wages due or to become due to them for performing the work.

### **Moneys due to or received by employer to be applied in payment of wages due or to become due**

**393.(1)** Moneys—

- (a) due and payable to an employer by a prime contractor; or
- (b) received by an employer from a prime contractor;

in respect of work performed, or under a contract or undertaking in performance of which work is or is to be performed, are not liable to be attached or charged, except by employees such as are referred to in subsection (3), until all wages due and payable, or to become due and payable, to such employees have been duly paid to them or have been secured to them in a manner to the satisfaction of an Industrial Magistrate.

(2) The employer is to apply all such moneys received, so far as is necessary, in payment of wages due and payable, or to become due and payable, to employees employed by the employer in performance of work in respect of which the moneys are received.

(3) The employer—

- (a) is to keep a full and true account in writing of all such moneys received from the prime contractor, and of the manner in which the moneys have been disbursed or disposed of; and
- (b) on the application of any of the employees referred to in subsection (2), whose wages are more than 8 days in arrears and are not paid when demanded, is to produce the account to the employee for inspection, and permit the employee to make a copy of or an extract from the account.

### **Notice of attachment**

**394.** An employee whose wages remain unpaid for 24 hours after they

have become due and payable and have been demanded by the employee, may serve the prime contractor with a notice of attachment in or to the effect of the prescribed form.

### **Consequences of notice of attachment**

**395.(1)** When notice of attachment is served on the prime contractor—

- (a) the prime contractor is to retain such part of the moneys due and payable, or to become due and payable, by the prime contractor to the employer as is sufficient to satisfy the claim for wages to which the notice relates and all further claims for wages to which relate all like notices of attachment served on the prime contractor within 7 days following the service of the first such notice;
- (b) at the end of such period of 7 days the amount claimed as wages in all such notices are attached in the prime contractor's hands, and must be retained by the prime contractor until—
  - (i) an Industrial Magistrate orders to whom, and in what manner, the amount is to be paid; or
  - (ii) the prime contractor deals with the amount in accordance with subsection (2); or
  - (iii) all such notices are withdrawn.

**(2)** A prime contractor may, at any time after being served with a notice of attachment, pay the amount to which the notice relates to a Clerk of the Magistrates Court to abide—

- (a) the order of an Industrial Magistrate; or
- (b) the withdrawal as prescribed of the notice of attachment.

**(3)** Payment under subsection (2)—

- (a) must be accompanied by the notice of attachment or a true copy thereof;
- (b) is a full discharge of the prime contractor from liability in respect of the amount paid and costs of proceedings in relation to the amount.

**(4)** Moneys paid to a Clerk of the Magistrates Court under subsection (2) are not to be paid out except—

- (a) on the order of an Industrial Magistrate; or
- (b) on withdrawal as prescribed of the relevant notice of attachment.

(5) A prime contractor who fails to retain, or to pay in accordance with subsection (2), an amount required by subsection (1) to be retained is personally liable to each employee in the amount of the employee's claim for wages specified in the employee's notice of attachment served on the prime contractor.

(6) An employee who has served a notice of attachment on a prime contractor may at any time withdraw the notice of attachment by giving written notice of withdrawal—

- (a) to the prime contractor; and
- (b) to the employer to whom moneys are due and payable, or are to become due and payable, by the prime contractor.

### **Orders for payment by prime contractor or clerk of the court**

**396.(1)** If the employee who has served a notice of attachment on a prime contractor obtains judgment against the employer in respect of the claim for wages the employee is entitled to an order, in the prescribed form, of the Industrial Magistrate who has given judgment in the cause for payment of an amount determined by the Industrial Magistrate—

- (a) by the prime contractor; or
- (b) if the prime contractor has paid moneys to a Clerk of the Magistrates Court in respect of the employee's claim for wages, by the clerk of the court;

or both such orders, if the case requires it.

(2) In determining the amount that should be ordered to be paid under subsection (1) in respect of an employee's claim for wages, the Industrial Magistrate is to take into account the existence of claims for wages of other employees of the employer of which the magistrate has knowledge.

(3) Unless an appeal against the Industrial Magistrate's decision is duly instituted and notice thereof is served on the prime contractor or Clerk of the Magistrates Court (or both of them) on whom an order is made under subsection (1), the prime contractor or, as the case may be, clerk of the



court is to pay the amount stated in the relevant order to the employee from the moneys attached and retained in the hands of the prime contractor or, as the case may be, paid to the clerk of the court under section 395(2).

(4) Payment required by subsection (3) to be made is to be made at the end of 21 days following service of a copy of the order made under subsection (1) on the prime contractor or, as the case may be, clerk of the court.

(5) If an appeal is duly instituted and notice thereof served as referred to in subsection (3), the prime contractor or clerk of the court is to continue to retain or hold the moneys from which payment is to be made to satisfy the order made on the contractor or, as the case may be, clerk under subsection (1) to await—

- (a) the determination of the appeal and any proceedings consequent thereon; or
- (b) the withdrawal or discontinuance of the appeal;

whichever event occurs.

(6) In no case is the prime contractor who has been served with any order or orders referred to in subsection (1) liable to a greater extent than the sum that is actually due and payable by the prime contractor to the employer—

- (a) at the time of service of such order or orders; or
- (b) at the time of payment under the order or orders;

whichever is the greater.

### **Employees to be paid according to time at which notices of attachment are served**

**397.(1)** Subject to sections 394 to 396 inclusive and to subsection (2), moneys attached as prescribed in the hands of a prime contractor, or paid to a Clerk of the Magistrates Court as prescribed, are to be paid in priority according to the order of the service of the relevant notices of attachment.

(2) For the purposes of this section, all notices of attachment served within 7 days following the service of the first such notice are taken to have been served simultaneously with the first such notice, so as to secure an

equal priority to distribution of the moneys attached, or paid, among all employees whose notices are so served simultaneously.

(3) The claims for wages of all employees who are taken to have served notices of attachment simultaneously as prescribed must be paid in full unless the moneys attached in the hands of the prime contractor or held by the Clerk of the Magistrates Court are insufficient for the purpose, in which case those claims are to abate in equal proportions among themselves.

### **Employee may sue prime contractor**

**398.(1)** If a prime contractor is served with a copy of the Industrial Magistrate's order duly made under section 396(1), and the amount stated in the order is not paid as prescribed the employee in whose favour the order is made may, in an Industrial Magistrates Court and in the employee's own name, sue for and recover from the prime contractor the amount stated in the order, or so much thereof as is unpaid, by way of all actions and proceedings that the employer could have brought against the prime contractor—

- (a) had there been no attachment of moneys under this Part; and
- (b) had the moneys required by the attachment under section 394 to be retained been due and payable to the employer and unpaid.

(2) Jurisdiction is hereby conferred on every Industrial Magistrate to hear and determine proceedings commenced in an Industrial Magistrates Court pursuant to this section, irrespective of the amount in issue.

(3) The entitlement of an employee under subsection (1) is subject to the prime contractor's right to set off against the employee's claim—

- (a) all moneys properly paid by the prime contractor to the employer in accordance with the provisions of section 391(2); and
- (b) all moneys that the employer was, at the time the notice of attachment was served on the prime contractor, liable to pay to the prime contractor on account of any breach, or non-performance, of the contract or undertaking in performance of which the relevant work is or is to be performed.

**Cessation of attachment not to prejudice prime contractor**

**399.** If an attachment of moneys under section 394 in connection with an employee's claim for wages to which an order under section 396 relates ceases to operate by reason of—

- (a) satisfaction of the employee's claim; or
- (b) the setting aside of the order;

a prime contractor who has made payment in good faith in accordance with such order served on the contractor, before receiving notice of such satisfaction or setting aside, is not to be prejudiced in respect of such payment because of such cessation of operation.

**Discharge by employee for payment received**

**400.** An employee who receives payment of an amount on account of a claim for wages to which an order under section 396 relates, on request of the person making the payment and at the time of receiving payment, is to sign a discharge therefor in the prescribed form.

**Remedy of employees of subcontractor**

**401.(1)** If an employer has let the performance of any work to a subcontractor every employee employed by the subcontractor in that work has the same rights and remedies in respect of a claim for wages against such employer as are conferred by this Division on an employee of such employer against a prime contractor.

**(2)** For the purpose of giving effect to subsection (1), in construing the provisions of this Division (other than section 390 and this section) the term 'employer' is substituted for the term 'prime contractor' and the term 'subcontractor' is substituted for the term 'employer'.

**Prime contractor's right to reimbursement.**

**402.(1)** If a prime contractor has paid a claim for wages due to an employee of the employer, in satisfaction of the prime contractor's obligations under this Division, then in the event of—

- (a) winding-up proceedings being commenced against the employer,

being a corporation; or

- (b) distribution of the employer's assets in insolvency of, or a composition with creditors of, the employer, being an individual;

the prime contractor is taken to have a claim for wages against the employer's assets, which is a preferential claim, as if the prime contractor were an employee of the employer to whom wages were due and payable by the employer.

(2) This section applies in the case referred to in subsection (1)(a) or (b) only to the extent that a law of the State may validly apply to the distribution of assets in such a case.

### **Mode of service**

**403.** A notice of attachment or a copy of an Industrial Magistrate's order under section 396 to be served on any person for the purposes of this Division is taken to have been duly served if—

- (a) it is given personally to such person; or
- (b) it is left at the place of residence or registered place of business of such person last known to the person who seeks to serve it; or
- (c) it is sent by post addressed to the place of residence or the registered place of business of such person last known to the person who seeks to serve it.

### **Industrial Magistrate may hear claim for wages ex parte**

**404.** An Industrial Magistrate may hear and determine proceedings in respect of a claim for wages in the absence of any person to whom the originating process is directed upon proof on oath or affirmation of the service thereof in a manner prescribed.

## ***Division 2—Payment and recovery of wages***

### **Payment of wages**

**405.(1)** An employer who employs an employee to perform work for a

price or rate as fixed by any award, industrial agreement, certified agreement or permit is to pay to the employee or, with the employee's consent in writing, on account of the employee, the price or rate so fixed, without deduction except such as is authorised by the award, agreement, this Division, or the consent in writing of the employee.

(2) An employer who employs an employee to perform work for a price or rate as agreed between the employer and the employee and either—

- (a) the price or rate for such work is not fixed by any relevant award, industrial agreement, certified agreement or permit; or
- (b) the price or rate so agreed exceeds the price or rate fixed by any relevant award, industrial agreement, certified agreement or permit;

is to pay to the employee, or, with the employee's consent in writing, on account of the employee, the price or rate so agreed without deduction except such as is authorised by this Division or the consent in writing of the employee.

(3) Subsections (1) and (2) do not affect a contract made, or a transaction entered into, before the commencement of this Act that is of a description referred to in section 28 of the *Wages Act 1918*.

(4) Wages payable to an employee must be paid—

- (a) to the employee in Australian units of currency and parts thereof, or as authorised by subsection (6);
- (b) at least monthly.

(5) If—

- (a) wages are payable to an employee in cash; and
- (b) the amount is not a multiple of 5 c;

the amount may be rounded to the nearest amount that is a multiple of 5 c, even if this involves a reduction.

(6) Wages may be paid—

- (a) with the employee's consent in writing, wholly or partially to the employee's credit in an account nominated by the employee with a financial institution; or

- (b) with the employee's consent in writing, by cheque of a description prescribed by subsection (7), draft, money order or electronic fund transfer; or
- (c) by any means (including means referred to in paragraph (a) or (b)) provided by an award, industrial agreement or certified agreement.

(7) If wages are paid otherwise than by payment in cash they are to be paid in such amount that the employee receives or is credited with the full amount of wages to which the employee is entitled in accordance with this Division, free and clear of all charges made on account of the method of payment of the wages.

(8) A cheque by which wages are paid—

- (a) must be one that is payable to a bearer thereof on demand; and
- (b) must not be crossed;

except with the employee's consent in writing first obtained.

(9) If wages are due to an employee at a time when the employee ceases employment with the employer, such wages are to be paid to the employee, or, as authorised by the employee's consent in writing, on account of the employee, within 3 days after the employee ceases such employment, unless—

- (a) the case is one to which section 408 applies; or
- (b) the employer has complied with an Industrial Inspector's demand made under section 358 in respect of such wages.

(10) If in relation to payment of wages an employee accepts a cheque, draft or money order that is dishonoured, the employee is entitled to recover from the employer a reasonable sum on account of damages sustained by the employee in consequence of such dishonour, by action in a court of competent jurisdiction as a debt due and payable to the employee, in addition to any wages due and payable to or on account of the employee.

### **Provision for payment of wages contrary to s.405 void**

**406.** A provision of a contract, or an authority, to the extent that it provides—

- (a) for payment of wages otherwise than in accordance with section 405; or
- (b) for the making of any deduction from wages in contravention of section 405;

is void.

### **Contract not to stipulate mode of expending wages**

**407.(1)** Subject to this Division, an employer is not, directly or indirectly, to impose as a condition, express or implied, of the employment of an employee, a provision as to the place at which, manner in which, or person with whom wages of an employee, or any part thereof, are to be expended.

**(2)** An employer is not to dismiss an employee from employment because wages of the employee, or any part thereof, are expended, or are not expended, at any place, in any manner, or with any person.

### **Payment of unpaid wages etc. where employee's whereabouts unknown**

**408.(1)** If an employer is unable to comply with section 405(9) because the whereabouts of the former employee are unknown to the employer and cannot be ascertained by the employer with reasonable diligence, and such inability continues for 30 days after cessation of employment by the former employee, the employer, forthwith at the end of that period, is to pay the wages due and payable to the former employee to the nearest Clerk of the Magistrates Court on account of the former employee.

**(2)** The receipt of the clerk of the court for a payment made under subsection (1) is a full discharge to the employer for the amount specified therein.

**(3)** The clerk of the court to whom payment under subsection (1) is made is to pay the moneys received to the former employee on whose account the moneys were paid to the clerk, if the former employee's whereabouts are ascertained, but if at the end of a further period of 30 days, the moneys have not been paid to the former employee, the clerk of the court is to pay the moneys into the funds of the department on account of the former employee.

(4) This section does not apply if the employer has complied with an Industrial Inspector's demand made under section 358 in respect of such wages.

### **Recovery of wages etc.**

**409.(1)** An application may be made to an Industrial Magistrate for an order for payment of wages due and payable to an employee, or payable on account of an employee, and unpaid.

(2) An application may be made by—

- (a) the employee; or
- (b) an industrial organisation of employees of which the employee is a member, acting on behalf of the employee; or
- (c) a person acting on behalf of the employee and authorised by the employee to make the application; or
- (d) an Industrial Inspector.

(3) An application under subsection (1) for payment of wages in respect of long service leave must be made within 3 years following the time when the wages become due and payable.

(4) An application under subsection (1) may be made—

- (a) if, when the application is made, the employee whose wages are applied for is in employment with the employer to whom the application relates—in respect of wages that have become due and payable within 6 years preceding the making of the application;
- (b) if, when the application is made, the employee whose wages are applied for has ceased employment with the employer to whom the application relates—in respect of wages that have become due and payable within 6 years preceding the time when the employee ceased such employment.

(5) Notwithstanding subsection (3) an employer's liability on an application under subsection (1)—

- (a) in respect of an employee who ceased employment with the employer to whom the application relates in the 12 months preceding the commencement of this Act—does not extend to



wages that became due and payable earlier than 12 months before such cessation;

- (b) in respect of an employee who is in employment with the employer to whom the application relates at the commencement of this Act—does not extend to wages that became due and payable earlier than 12 months before such commencement.

(6) Upon the hearing and determination of an application under subsection (1) the Industrial Magistrate—

- (a) is to order the employer to make payment to the employee of such amount as the Industrial Magistrate finds to be due and payable to the employee or, as the case may be, payable on account of the employee;
- (b) is authorised to make an order for such payment notwithstanding any express or implied provision of any agreement to the contrary;
- (c) may order the payment to be made on such terms as the Industrial Magistrate considers just;
- (d) may award costs to either party in an amount assessed by the Industrial Magistrate.

### **Enforcement of Industrial Magistrate's order**

**410.(1)** An order of an Industrial Magistrate for payment by an employer of—

- (a) wages found to be due and payable; or
- (b) contributions to an approved superannuation scheme or fund found to be due and payable; or
- (c) costs in proceedings relating to unpaid sums mentioned in paragraph (a) or (b);

is enforceable under the *Justices Act 1886* as an order for payment of money made by justices under that Act.

(2) If an order, such as is referred to in subsection (1), is made—

- (a) the amount ordered to be paid (including an amount of costs) constitutes a debt due and owing to the person, in whose favour

- the order is made, by the employer;
- (b) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*;
  - (c) upon being so filed, the order is taken to be an order duly made by a Magistrates Court constituted under such Act and, in addition to the means of enforcement prescribed by subsection (1), may be enforced as an order so made.

### **Recovery from employee of amounts overpaid**

**411.(1)** No provision of this Division is to be construed to prevent the recovery of any amount paid by an employer to or on account of an employee but to which the employee is not entitled because of absence from work at any time.

**(2)** Without limiting the employer's right to recover any such amount from the employee, the amount may be recovered by the employer's commencing, within 12 months following the payment of the amount in question, and no later, to make from the employee's wages for any subsequent pay period or periods a deduction that accords with subsection (4).

**(3)** Deductions duly commenced may extend over a period of 6 years following the payment of the amount in question.

**(4)** In no case is a deduction to be made under this section in an amount that would reduce the amount of wages due and payable in respect of the employee for any pay period to less than—

- (a) in the case of an employee who has no dependant—two-thirds of the guaranteed minimum wage for each week of the period;
- (b) in the case of an employee who has a dependant—the guaranteed minimum wage for each week of the period, or one-third of the employee's gross wages for the period, whichever is the greater.

### **Deduction in default of notice of termination**

**412.** If a contract of employment is governed by an award, industrial agreement or certified agreement that provides for notice of termination of the employment for a specified period and an employee ceases such

employment without giving to the employer such notice for the period so specified, the employer is entitled to deduct from wages due and payable by the employer to or on account of the employee any amount stated by the award or agreement to be forfeited or payable to the employer in the event that notice of termination is not given by an employee for the period specified.

### **Minor may sue**

**413.** A person under 18 years of age may sue, or bring other proceedings under this Division, in respect of wages due and payable in respect of the person as an employee, in the same manner and to the same extent as if the person were of the age of 18 years.

### *Division 3—Wages in rural and mining industries*

#### **Interpretation**

**414.** In this Division—

“**mortgagee**” means a person entitled to payment under the security of an instrument of mortgage, a crop lien, a stock mortgage or a bill of sale;

“**mortgagor**” means a person liable to make payment to a mortgagee under an instrument of mortgage, a crop lien, a stock mortgage or a bill of sale.

#### **Wages recoverable against mortgagee where mortgagor defaults**

**415.(1)** If an employee has performed work—

- (a) in cultivating or otherwise improving land that is subject to mortgage; or
- (b) in cultivating or otherwise in connection with a crop that is subject to a lien; or
- (c) in connection with animal or vegetable matter prepared or manufactured by machinery that is subject to a bill of sale; or
- (d) in tending, feeding, driving, or otherwise in connection with stock

that is subject to a mortgage;

and is prevented from, or hindered in, recovering wages for the work from the mortgagor as employer because the mortgagee has entered into, or taken possession of the land, crop, machinery or stock or is taken to have done so, or has sold the same, pursuant to the mortgagee's security, or because any cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee then—

- (e) the mortgagee is taken to be the employer of the employee for the performance of the work;
- (f) the mortgagor is taken, in engaging the employee for the work, to have acted as the duly authorised agent of the mortgagee.

(2) Subsection (1) and the presumptions therein prescribed do not affect appropriate accounting as between the mortgagor and the mortgagee.

(3) A mortgagee is not liable, pursuant to subsection (1), for wages of the employee that have become due and payable—

- (a) more than 6 months before the employee first applies to the mortgagee for payment of the wages; or
- (b) more than 6 months before the mortgagee takes possession of or sells the land, crop, machinery, or, as the case may be, stock;

whichever period is earlier.

(4) The liability imposed on a mortgagee by this section is in addition to the mortgagor's liability for the employee's wages and does not affect the rights, liabilities, powers and duties as between the mortgagor and the employee.

(5) If an employee brings proceedings against a mortgagor for payment of wages (whether or not the employee obtains an order for payment against the mortgagor) and, for a cause referred to in subsection (1), fails to obtain payment of the wages, or some portion thereof, from the mortgagor, the employee does not thereby lose any right to bring proceedings against the mortgagee pursuant to this section for payment of the wages, or the unpaid portion thereof, and costs of the proceedings against the mortgagee.

**Distress warrant levied on property of mortgagor or mortgagee**

**416.(1)** A warrant of distress issued to enforce an order for payment of wages due and payable to or on account of an employee in respect of work performed in connection with property referred to in section 415(1), so far as such land (and fixtures thereon), crop, machinery or stock is concerned—

- (a) authorises distress on and sale of property of the mortgagee and also property of the mortgagor;
- (b) may be executed on the mortgaged land (and fixtures thereon) or the encumbered crop, machinery, or stock notwithstanding that the mortgagee has entered into or taken possession of the land (and fixtures thereon), crop, machinery or stock, or is taken to have done so, pursuant to the mortgagee's security.

**(2)** Any sums paid by or recovered from the mortgagee in respect of wages referred to in subsection (1) are taken to be advances made by the mortgagee to or on account of the mortgagor under the mortgagee's security and may be recovered by the mortgagee under the security.

**Application of ss.415 and 416 to mines**

**417.(1)** If an employee has performed work in or about—

- (a) a mine (including fixtures therein or thereon) that is subject to a mortgage; or
- (b) machinery or apparatus, used in or in connection with a mine, that is subject to a bill of sale;

and is prevented from, or hindered in, recovering wages for the work, or earnings in respect of the work, from the mortgagor as employer—

- (c) because the mortgagee has entered into, or taken possession of the mine, machinery or apparatus, or is taken to have done so, or has sold the same, pursuant to the mortgagee's security; or
- (d) because any cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee;

then, subject to this section, the provisions of sections 415 and 416 apply in relation to the case, with any necessary adaptation.

(2) A mortgagee is not liable, pursuant to the application of sections 415 and 416 as prescribed by subsection (1), for wages or earnings of the employee that have become due and payable—

- (a) more than 1 month before the employee first applies to the mortgagee for payment of the wages or earnings; or
- (b) more than 1 month before the mortgagee takes possession of, or sells, the mine, machinery or apparatus;

whichever period is earlier.

### **Priority in payment of wages etc. earned in mine**

**418.(1)** An amount of wages or other earnings due and payable in respect of employees in relation to employment in or about a mine, not exceeding 4 weeks such wages or earnings in respect of each such employee, is a first charge on the claim or land in or on which the mine is situated, notwithstanding that the claim or land is mortgaged or charged to secure payment of other moneys, or that there is a lien thereon.

(2) In the winding-up of a corporation formed for or engaged in working a mine, an amount of wages or other earnings that, at the date on which the order for such winding-up is made, is due and payable in respect of employees of the corporation in relation to employment in or about the mine, not exceeding 4 weeks such wages or earnings in respect of each such employee, is to be paid in priority to all other debts, secured or unsecured, of the corporation.

(3) Subsection (2) applies only to the extent that a law of the State may validly apply to the distribution of assets in a winding-up.

### **Provisions concerning application of ss.417 and 418**

**419.(1)** In sections 417 and 418—

“**mine**” means a mine within the meaning of the *Mines Regulation Act 1964*.

(2) Where a first charge exists in accordance with section 418(1), the amount that is so charged includes—

- (a) all sums awarded by a court as costs against an employer in

proceedings brought by or on behalf of any employee or employees to recover the wages or earnings referred to in that section; and

- (b) the amount of costs, charges and expenses reasonably incurred in attempting to enforce any order or orders for payment of such wages or earnings.

(3) The debts that are a first charge in accordance with section 418(1) or that are to be paid in priority to all other debts in a winding-up in accordance with section 418(2) rank equally among themselves and, if necessary, abate in equal proportions among themselves.

## **PART 18—OFFENCES**

### **Contempt of Court**

**420.(1)** The Industrial Court has all the protection, powers, jurisdiction and authority possessed by the Supreme Court in respect of contempt of that court, and in the exercise thereof by the Industrial Court the Rules of the Supreme Court relating to contempt of court apply, *mutatis mutandis*, and are to be observed.

(2) A motion for an order that a person be committed to prison for contempt of the Industrial Court may be made by the Industrial Registrar or any officer of the Court.

(3) The jurisdiction of the Industrial Court to punish a contempt of the Court committed in the face and hearing of the Court may be exercised by the President sitting alone, of the President's own motion.

(4) In all other cases the jurisdiction of the Industrial Court to punish a contempt of the Court is to be exercised by the Full Industrial Court.

(5) The Industrial Court has jurisdiction to punish in respect of an action or omission as a contempt of the Court, although a penalty is prescribed in respect of that action or omission.

**Offence to disobey certain orders**

**421.** A person who disobeys an order of the Industrial Court or the Industrial Commission that provides for payment of a penalty in the event of disobedience thereof commits an offence against this Act and is liable to a penalty in the amount so provided for.

**Obstruction of power of entry etc.**

**422.** If an Industrial Commissioner, or an officer of the Industrial Commission or other person, authorised as prescribed by section 49, is seeking to exercise a power conferred by section 49, any person who—

- (a) refuses or unduly delays entry to any place;
- (b) fails to answer any question in relation to a matter referred to in that section;
- (c) wilfully furnishes information or makes a statement that is false;

commits an offence against this Act, unless, in the case referred to in paragraph (b), the person has lawful excuse for the failure to answer.

Maximum penalty—40 penalty units or 12 months imprisonment.

**Obstruction or hindrance of officers generally**

**423.(1)** In this section—

“**officer**” means an officer of the Industrial Court or the Industrial Commission.

**(2)** A person who—

- (a) obstructs, hinders or resists any officer in the exercise of any power, or performance of any duty, under this Act;
- (b) being lawfully required by an officer to produce or exhibit any document, or to allow any document to be examined, fails to comply with the requisition;
- (c) wilfully misleads any officer in any particular likely to affect the performance of the officer’s duty;
- (d) being lawfully asked a question for the purposes of this Act by



any officer, fails to answer truthfully to the best of the person's knowledge, information and belief;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(3) Subsection (2) does not apply in a case provided for by section 422.

### **Improper conduct towards Industrial Commissioner, Industrial Magistrate or Industrial Registrar**

424.(1) In this section—

**“industrial authority”** means the Industrial Commission, or an Industrial Magistrates Court, or the Industrial Registrar acting in the official capacity as registrar;

**“prescribed person”** means an Industrial Commissioner, an Industrial Magistrate or the Industrial Registrar.

(2) A person who—

- (a) wilfully insults or disturbs a prescribed person who is acting in exercise of jurisdiction or powers or in performance of duties under this, or any other, Act;
- (b) interrupts the proceedings of an industrial authority;
- (c) uses insulting language towards a prescribed person who is acting in exercise of jurisdiction or powers or in performance of duties under this, or any other, Act;
- (d) by writing or speech uses words calculated—
  - (i) to improperly influence a prescribed person in exercise of jurisdiction or powers or performance of duties under this, or any other, Act; or
  - (ii) to improperly influence a witness before an industrial authority; or
  - (iii) to bring a prescribed person or an industrial authority into disrepute;

commits an offence against this Act.

Maximum penalty—

- (a) if the offender is an industrial organisation or other corporation—200 penalty units;
- (b) if the offender is an individual—20 penalty units or imprisonment for 12 months.

(3) A person who commits an offence defined in subsection (2) in the face of an industrial authority may, by order of the authority, be excluded from the place where the authority is sitting, but without affecting the offender's liability to be punished for the offence.

(4) A police officer, or a person acting under the authority of the industrial authority, may enforce the order of the authority, using therein such reasonable force as is necessary.

### **Disturbances near tribunals**

**425.** A person who creates a disturbance or takes any part in creating or continuing a disturbance in or near any place in which the Industrial Court, the Industrial Commission, an Industrial Magistrates Court or the Industrial Registrar is sitting for the purposes of this, or any other, Act commits an offence against this Act.

Maximum penalty—40 penalty units or 12 months imprisonment.

### **Contempt by witness**

**426.(1)** In this section—

**“industrial authority”** means the Industrial Court, the Industrial Commission, an Industrial Magistrates Court or the Industrial Registrar conducting proceedings under this, or any other, Act.

(2) A person—

- (a) who, having been summoned to appear as a witness before an industrial authority, disobeys the summons; or
- (b) who, having appeared as a witness before an industrial authority, whether in response to a summons or not—
  - (i) refuses to be sworn or to make affirmation or declaration as

a witness; or

- (ii) refuses to answer any question that the person is required by the authority to answer; or
- (iii) refuses to produce any records that the person is required by the authority to produce;

commits an offence against this Act, unless the person has lawful excuse for the disobedience or refusal.

Maximum penalty—40 penalty units.

### **Disclosure of confidential material tendered in evidence**

**427.** A person who—

- (a) gives as evidence; or
- (b) publishes;

any material in contravention of section 77 or of any direction given under that section commits an offence against this Act.

Maximum penalty—16 penalty units.

### **Avoiding Act's obligations**

**428.(1)** An employer who dismisses or stands down an employee with intent to avoid any obligations imposed on the employer by this Act, any award, industrial agreement or certified agreement in respect of payment to or on account of the employee for any public holiday, or leave due or accruing to the employee by way of annual leave, sick leave or long service leave, commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** The court that convicts a defendant of the offence defined in subsection (1) in relation to long service leave, apart from any penalty order it may make, is to order the defendant to pay to the employee dismissed or stood down a proportionate amount of long service leave on the basis of 13 weeks leave for 15 years service.

**(3)** A person who enters into arrangements referred to in section 168 commits an offence against this Act and an Industrial Magistrate exercising

jurisdiction under that section may, in addition to any other order made under that section, order the person to pay a fine not exceeding 16 penalty units.

**Offence re long service leave for employees not governed by awards etc.**

**429.** A person who fails to comply with any determination or general ruling made or declared by the Industrial Commission under section 171, commits an offence against this Act.

Maximum penalty—16 penalty units.

**Offence re compulsory conference**

**430.** A person who fails to comply with any provision of section 189 commits an offence against this Act.

Maximum penalty—40 penalty units.

**Offence re secret ballot**

**431.(1)** In subsection (2)—

“**secret ballot**” means a secret ballot conducted pursuant to section 190.

**(2)** A person—

- (a) is not to resist or obstruct, or attempt to resist or obstruct, an Industrial Magistrate, the Industrial Registrar, an officer of the public service, or other person acting under the direction or authority of an Industrial Magistrate or the Industrial Registrar, in the performance of any duty imposed, or of any action so directed or authorised to be done, with respect to the taking of a secret ballot;
- (b) at or near the place where a secret ballot is being taken—
  - (i) is not to threaten or intimidate, or attempt to threaten or intimidate, or obstruct, or attempt to obstruct, the free passage of an employee proceeding to or attending at that place for the purpose of voting at that ballot;

- (ii) is not to threaten or intimidate, or attempt to threaten or intimidate, an employee not to vote or to vote in a particular manner at that ballot;
- (c) is not to obstruct or attempt to obstruct an employee or other person in the performance of an action directed or authorised to be done with respect to the taking of a secret ballot;
- (d) is not, by any threat or intimidation, to prevent or attempt to prevent an employee or other person from performing an action directed or authorised to be done with respect to the taking of a secret ballot;
- (e) is not to vote or attempt to vote at a secret ballot unless the person is entitled to vote thereat, and has received from the Industrial Magistrate or Industrial Registrar charged with taking the ballot a ballot paper;
- (f) is not to vote or attempt to vote at a secret ballot in the name of another person;
- (g) who is entitled to vote at a secret ballot, is not to mark a ballot paper that relates to that ballot, other than the ballot paper received by the person from the Industrial Magistrate or Industrial Registrar charged with taking the ballot.

Maximum penalty—40 penalty units.

(3) A police officer may arrest without warrant a person found by the officer committing any offence specified in subsection (2)(a), (b), (c) or (d) and may institute a prosecution in respect of such offence.

(4) To the extent that this section is inconsistent with section 534 of the Criminal Code this section prevails and the provisions of section 534 of the Criminal Code, to the extent of the inconsistency, are of no force or effect.

### **Failure to comply with direction for performance of rules of industrial organisation**

**432.** A person who fails to comply with an order of the Industrial Court made under section 216 commits an offence against this Act.

Maximum penalty—40 penalty units.

**Offence re property of industrial organisation**

**433.(1)** A person who—

- (a) by any false representation, or any imposition, obtains possession of moneys, securities, records or effects of an industrial organisation; or
- (b) having in possession any such thing—
  - (i) wilfully withholds it from a person entitled to possession of it; or
  - (ii) fraudulently misapplies it; or
  - (iii) wilfully applies it to a purpose other than the purposes expressed or directed in the rules of the industrial organisation;

commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** The court by which a defendant is convicted of an offence defined in subsection (1), apart from any penalty order it may make, may order the defendant—

- (a) to deliver up as directed by the order all moneys, securities, records or effects to which the conviction relates;
- (b) to repay as directed by the order the amount found by the court to have been withheld, fraudulently misapplied or improperly applied;

and further order that in default the defendant be imprisoned for a period not exceeding 12 months.

**Offences re action by Industrial Registrar in respect of election inquiry**

**434.** A person who—

- (a) refuses or fails to comply with a requirement under section 235; or
- (b) obstructs or hinders the Industrial Registrar or any other person in the exercise of powers under section 235;

commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Offences re enforcement of orders concerning disputed elections in industrial organisation**

**435.** A person who obstructs or hinders the carrying out of an order of the Industrial Commission under Division 6 of Part 13 commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Offences re ballot papers and other records**

**436.** A person who fails to comply with section 13.40 commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Offences re elections**

**437.** A person who—

- (a) refuses or fails to comply with a direction given under section 243; or
- (b) obstructs or hinders—
  - (i) a person in the conduct of an election under section 243; or
  - (ii) a person conducting an election under section 244 in taking action under section 243(6); or
  - (iii) a person in carrying out a direction under section 243(6); or
  - (iv) a person conducting an election pursuant to an arrangement under section 266;

commits an offence against this Act.

Maximum penalty—40 penalty units.

**Offences in relation to the conduct of ballots**

**438.(1)** This section applies in relation to the conduct of—

- (a) an election under Division 4 of Part 13; or
- (b) a proposed amalgamation under Division 8 of Part 13.

**(2)** A person who, without lawful authority or excuse—

- (a) impersonates another person with a view to obtaining a ballot paper to which the first person is not entitled; or
- (b) impersonates another person with a view to voting in the ballot for the election or proposed amalgamation; or
- (c) destroys, defaces, alters, takes or interferes with a nomination paper, ballot paper or envelope; or
- (d) puts a ballot paper, or other paper concerning the election or proposed amalgamation into a ballot box or other receptacle in use for ballot purposes; or
- (e) delivers, or puts in the post for delivery, to a person receiving ballot papers for the election or proposed amalgamation a ballot paper, or other paper concerning the election or proposed amalgamation; or
- (f) records a vote having no entitlement to do so; or
- (g) records more than 1 vote; or
- (h) forges a nomination paper, ballot paper or envelope, or utters a nomination paper, ballot paper or envelope knowing it to be forged; or
- (i) provides a ballot paper to another; or
- (j) obtains, or has possession of, a ballot paper; or
- (k) destroys, opens, takes or interferes with a ballot box or other receptacle in use for ballot purposes;

commits an offence.

Maximum penalty—80 penalty units.

**(3)** A person who—

- (a) threatens, offers or suggests; or



- (b) uses, inflicts, causes or procures;  
violence, injury, punishment, damage, loss or disadvantage because of, or to induce—
- (c) a candidature, or withdrawal of a candidature in an election or a proposed amalgamation; or
- (d) a vote, or an omission to vote, in a ballot for an election or a proposed amalgamation; or
- (e) support for, or opposition to, a candidate in an election or a proposed amalgamation; or
- (f) a promise of a vote, omission to vote, support or opposition for or to a candidate or cause in an election or a proposed amalgamation;

commits an offence.

Maximum penalty—80 penalty units.

**(4)** A person who, without lawful authority or excuse—

- (a) requests, requires or induces another—
- (i) to show a ballot paper to the person; or
- (ii) to permit the person to see a ballot paper;

in such a way that the person can see the vote recorded in the ballot paper, while the paper is being marked or after it has been marked; or

- (b) if the person is performing duties for the purposes of the election or proposed amalgamation—shows to another person, or permits another person access to, a ballot paper used in the election or proposed amalgamation otherwise than in the performance of those duties;

commits an offence.

Maximum penalty—80 penalty units.

**(5)** A person who uses, inflicts, causes or procures violence, injury, punishment, damage, loss or disadvantage to another person because the other person has made an application under section 234 commits an offence.

Maximum penalty—80 penalty units.

(6) In subsection (3)—

**“candidate”** means—

- (a) a person standing for office in an election; or
- (b) an industrial organisation or association that is seeking amalgamation under Division 8 of Part 13.

### **Offences re membership of industrial organisation**

**439.(1)** In this section—

**“union ticket”** means a receipt, document or writing acknowledging that the person named therein is a member, or has renewed membership of the industrial organisation or that the person has complied with the rules of the industrial organisation relating to the obtaining or renewal of membership thereof.

(2) An industrial organisation that—

- (a) fails to admit to its membership a person who is entitled to be admitted to membership of the industrial organisation pursuant to section 246—
  - (i) within 3 months following the date of the person’s application in that behalf; or
  - (ii) if a question or dispute within the application of section 247 has within that period of 3 months been referred to the Industrial Court for determination, within 1 month following the date of the Court’s determination that the person is entitled to such membership; or
- (b) fails to provide a person who—
  - (i) is entitled to be admitted to membership of the industrial organisation, or to remain a member thereof, pursuant to the provisions of section 246; and
  - (ii) has complied with the rules of the industrial organisation that relate to obtaining membership thereof or to a renewal of such membership;

with a union ticket in respect of such compliance within 1 month following the date of such compliance;

commits an offence against this Act.

Maximum penalty—100 penalty units and, in addition, 2 penalty units for each day during which the failure constituting the offence continues.

(3) An offence defined in subsection (2) is a continuing offence, which may be charged in 1 complaint from time to time in respect of a period.

### **Offence re young person's membership**

**440.** A person who contravenes the provisions of section 248 commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Offences re register of members and of officers of industrial organisation**

**441.** If default is made in complying with a provision of section 249, 250 or 251, or with a direction of the Industrial Registrar under section 252 each of them—the industrial organisation that is in default and the president and secretary of the industrial organisation—commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Failure to provide information re amalgamation ballot**

**442.** An officer or employee of an industrial organisation, or of a branch of an industrial organisation, who fails to comply with a requisition directed to the officer or employee under section 272 commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Offence re duty of officer of industrial organisation**

**443.** An officer of an industrial organisation who fails to comply with section 321 commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Failure to keep accounts—offences re auditor**

**444.(1)** An industrial organisation that fails to comply with section 318, 319, 320 or 322(2) or (3) commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** A person who contravenes or fails to comply with section 322(4) or (5) commits an offence against this Act.

Maximum penalty—40 penalty units.

**(3)** An auditor of an industrial organisation who—

- (a) makes in a report referred to in section 323(1) a statement that to the auditor's knowledge is false or misleading in a material particular; or
- (b) fails to comply with section 323(5);

commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Obstruction or hindrance of auditor**

**445.(1)** In this section—

“**auditor**” includes—

- (a) in subsection (2)(a) and (b), a person authorised by the auditor for the purposes of section 323(2) or 328;
- (b) in subsection (2) (c) and in subsection (4), a person authorised by the auditor for the purposes of section 331.

**(2)** An officer, employee or member of an industrial organisation who—

- (a) obstructs or hinders the auditor of the industrial organisation, or of the Industrial Registrar, in exercising the entitlement under section 323(2) (a);
- (b) refuses or fails to produce to the auditor of the industrial organisation, or of the Industrial Registrar, a record or other document in the custody or control of the officer, employee or

member that is sought by the auditor under section 323(2)(a);

- (c) obstructs or hinders the auditor of the industrial organisation in attending a part of a meeting that the auditor is entitled under section 331 to attend;

commits an offence against this Act, unless, in the case referred to in paragraph (b), the officer, employee or member has a lawful excuse for such refusal or failure.

(3) An industrial organisation that fails to comply with section 330 commits an offence against this Act.

(4) Where the auditor of an industrial organisation—

- (a) attends a part of a meeting that the auditor is entitled under section 331 to attend; and
- (b) in the course of that part of the meeting indicates to the presiding officer of the meeting a wish to be heard pursuant to the entitlement under that section;

the presiding officer, as soon as is practicable after the indication is given, is to afford the auditor an opportunity to be heard.

(5) A presiding officer who fails to comply with subsection (4) commits an offence against this Act.

(6) A person who commits an offence defined in this section is liable to a penalty of 40 penalty units.

(7) It is a defence to a charge of any offence defined in this section to prove that the defendant did not know, and could not reasonably have known, that the person in respect of whom the offence is alleged to have been committed was an auditor of the industrial organisation or, as the case may be a person authorised by such auditor.

### **Failure to provide and present reports of industrial organisation**

**446.(1)** An industrial organisation that fails to comply with section 326(1) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(2) An industrial organisation that fails to provide a copy of a report, accounts or statements of a kind referred to in section 326(1) to a member of the industrial organisation, in accordance with a statement of a kind referred to in section 326(2)(c), within 14 days after receipt of a request by the member, commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(3) An industrial organisation that fails to comply with section 326(6) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(4) An industrial organisation that fails to comply with section 326(7) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(5) An offence defined in subsection (1), (2), (3) or (4), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

### **Offence re false or misleading statement in s.326 report, accounts or statement**

**447.** If a member of the committee of management of an industrial organisation—

- (a) provides to members of the industrial organisation; or
- (b) publishes in a journal of the industrial organisation or a branch of the industrial organisation; or
- (c) presents to a general meeting of the members of the industrial organisation, or a meeting of the committee of management of the industrial organisation;

comments on a matter dealt with in any report, accounts or statements of a kind referred to in section 326(1), or in a summary of the kind referred to in section 326(2), the member is not to make, in the comments, a statement that is, to the member's knowledge, false or misleading in a material particular.

Maximum penalty—40 penalty units.

### **Failure to lodge accounts with Industrial Registrar**

**448.(1)** An industrial organisation that fails to comply with section 327(1) commits a continuing offence against this Act and is liable to a penalty of 40 penalty units, and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

**(2)** The offence defined in subsection (1), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

### **Offence re investigation by Industrial Registrar**

**449.(1)** A person who—

- (a) refuses or fails—
  - (i) to attend before the Industrial Registrar in accordance with a requisition under section 327(7); or
  - (ii) to provide information, or produce records, that the person is required to provide, or to produce under section 327(7);
- (b) while purporting to comply with a requisition under section 327(7), provides information, or produces any record, that is, to the person's knowledge, false or misleading in a material particular;
- (c) when attending before the Industrial Registrar in accordance with a requisition under section 327(7), makes a statement, orally or in writing, that is, to the person's knowledge, false or misleading in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** A person does not commit an offence defined in subsection (1)(a) only because of a refusal or failure to answer a question.

**(3)** In subsection (1) a reference to section 327(7) includes reference to that section as it applies under section 329(6).

**Offences re lodging accounts**

**450.(1)** If a branch of an industrial organisation fails to comply with section 329(5), the industrial organisation is taken to have committed a continuing offence against this Act and is liable to a penalty of 40 penalty units and, in addition, 5 penalty units for each complete week in the period to which the complaint that charges the offence relates.

(2) The offence defined in subsection (1), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

**Offence re accounts of low income industrial organisation**

**451.** An industrial organisation that fails to comply with section 333(5), (7), (8) or (9) commits an offence against this Act.

Maximum penalty—40 penalty units.

**Failure to have registered office of industrial organisation**

**452.(1)** If an industrial organisation has been established for a period of 7 days and has not complied with section 337, the industrial organisation, and each officer thereof, commits a continuing offence against this Act and is liable to a penalty of 2 penalty units for each complete week after such period of 7 days during which it fails to comply with that section.

(2) The offence defined in subsection (1), being a continuing offence, may be charged in 1 complaint, from time to time, in respect of a period.

**Offences re particulars of loans, grants and donations**

**453.** An industrial organisation that—

- (a) does not comply with section 339(1); or
- (b) lodges under section 339(1) a statement that is, to the knowledge of the signatory thereto, false or misleading in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.



**Offences re prejudice of person because of membership or non-membership of industrial organisation**

**454.(1)** A person who contravenes section 342, 343, 344, 345 or 346 commits an offence against this Act.

Maximum penalty—

- (a) if the offence is a continuing offence, and is charged as a continuing offence—40 penalty units for each day on which the offence has continued;
- (b) if the offence is not one to which paragraph (a) applies—40 penalty units.

**(2)** An offence that consists in a contravention referred to in subsection (1) that continues from day to day is a continuing offence, which may be charged in 1 complaint, from time to time, in respect of a period.

**(3)** In a complaint relating to an offence defined in subsection (1) an allegation or averment as to the reason for, or intent with which, any action was taken or threatened is sufficient proof of the matter alleged or averred until the contrary is proved.

**(4)** The court by which a defendant is convicted of an offence defined in subsection (1), apart from any penalty order it may make—

- (a) if the defendant is an employer convicted of an offence consisting in a contravention of section 342 or 343—may order the defendant—
  - (i) to reimburse the employee or former employee in relation to whom the offence was committed for the amount of wages lost by the employee or former employee because of the offence;
  - (ii) to reinstate the employee or former employee in relation to whom the offence was committed in the position from which the employee or former employee was removed or dismissed in committing the offence, or in a similar position;
- (b) if the defendant is convicted of an offence consisting in a contravention of section 346(2)(c)—is to order the defendant to pay to the person in relation to whom the offence was committed

the amount paid by that person, as a result of the commission of the offence, by way of subscription, fees or dues for admission to, or continuance of, membership of the industrial organisation in question.

(5) If 2 or more defendants are ordered to make a payment referred to in subsection (4)(b) they are jointly and severally liable therefor but the person entitled to such payment cannot recover more than the amount of subscription, fees or dues actually paid for admission to, or continuance of, membership of the industrial organisation in question.

### **Offence of obstruction of Industrial Inspector**

**455.** A person who contravenes section 354 commits an offence against this Act.

Maximum penalty—16 penalty units.

### **Offence of disclosure of information**

**456.** An Industrial Inspector, or other officer appointed for the purposes of this Act, who contravenes section 355 commits an offence against this Act.

Maximum penalty—16 penalty units.

### **Offences re records of time and wages**

**457.(1)** An employer who—

- (a) fails to keep and have available, in accordance with sections 362 and 365, a time and wages book or similar record required by section 362 to be kept;
- (b) fails to keep and have available, in accordance with sections 363 and 365, a wages book or similar record required by section 363 to be kept;
- (c) fails to indicate to an employee as required by section 367 in relation to payment of wages;
- (d) makes, causes to be made, or permits to be made—

- (i) an entry in a book or record referred to in paragraph (a) or (b);
- (ii) an indication to an employee referred to in paragraph (c);  
that is false in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Offences re register of employees**

**458.(1)** An employer who—

- (a) fails to keep and have available, in accordance with sections 364 and 365, a register of employees required by section 364 to be kept and an index, if so required by section 364;
- (b) fails to comply with a direction given by the Industrial Registrar under section 370 in relation to such register or index;
- (c) makes, causes to be made, or permits to be made an entry in such register or index that is false in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) If an offence defined in subsection (1) is committed by a corporation, each person who is charged with the management of the business of the corporation on its behalf is taken to have committed the offence and is liable to be dealt with in respect thereof, in addition to the corporation.

### **Offences re inspections by authorised industrial officers**

**459.(1)** In this section—

“**authorised industrial officer**” has the meaning assigned to the expression by section 360.

(2) A person who resists, obstructs or hinders an authorised industrial officer in the exercise of the officer’s entitlements under section 369 commits an offence against this Act.

Maximum penalty—16 penalty units.

(3) An authorised industrial officer who contravenes, or fails to comply with, any provision of section 369 commits an offence against this Act.

Maximum penalty—16 penalty units.

(4) A person who exercises the entitlements conferred on an authorised industrial officer under section 369 commits an offence against this Act unless the person is the holder of an authorisation issued under section 361 or under section 136 of the *Industrial Conciliation and Arbitration Act 1961* and such authorisation is in force, and the person has exercised the entitlements in accordance with all conditions attached to the authorisation.

Maximum penalty—16 penalty units.

### **Offence re false pretences**

**460.(1)** A person who contravenes section 377(1) or (2) commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) A person who contravenes section 377(3) commits an offence against this Act.

Maximum penalty—4 penalty units.

(3) Liability of a person to be dealt with for an offence defined in subsection (1) or (2) does not affect the person's liability to be dealt with under provisions of the Criminal Code relating to forgery or false pretences for an offence constituted by the person's conduct.

(4) However, the person is not to be dealt with under both this Act and the Criminal Code in respect of the same conduct.

### **Non-payment of wages**

**461.(1)** A person who fails to pay wages due and payable to an employee under any relevant award, industrial agreement, certified agreement or permit commits an offence against this Act.

Maximum penalty—200 penalty units.

(2) A person who fails to pay on account of an employee moneys from wages due and payable to the employee under any award, industrial

agreement, certified agreement or permit in accordance with the consent in writing of the employee relating to payment of such moneys commits an offence against this Act.

Maximum penalty—200 penalty units.

(3) An offence defined in subsection (1) or (2) is a continuing offence, which may be charged in 1 complaint, from time to time, in respect of a period, subject to this section.

(4) Jurisdiction is hereby conferred on every Industrial Magistrate to hear and determine complaints for such an offence.

(5) A complaint for an offence defined in subsection (1) in relation to wages in respect of long service leave may be laid at any time within 3 years following the time when the wages become due and payable, and not thereafter.

(6) A period in respect of which a complaint may be laid for an offence defined in subsection (1) or (2) is limited as follows—

- (a) if, at the time the complaint is laid, the employee to whose wages the complaint relates is in employment with the employer charged in the complaint, the period must not exceed 6 years preceding the laying of the complaint;
- (b) if, at the time the complaint is laid, the employee to whose wages the complaint relates has ceased employment with the employer charged in the complaint, the period must not exceed 6 years preceding the time when the employee ceased such employment.

(7) Notwithstanding subsection (6)—

- (a) in respect of wages—
  - (i) due and payable to; or
  - (ii) payable on account of;

an employee who ceased employment with the employer charged in the complaint in the 12 months preceding the commencement of this Act, the period in respect of which the complaint may be laid must not exceed 12 months before such cessation;

- (b) in respect of wages—
  - (i) due and payable to; or

(ii) payable on account of;

an employee who is in employment with the employer charged in the complaint at the commencement of this Act, the period in respect of which the complaint may be laid must not exceed 12 months before such commencement.

(8) A court that hears and determines a complaint for an offence defined in subsection (1) or (2), apart from any penalty order that it may make—

- (a) if it convicts the defendant—is to order the defendant to pay to the employee to whose wages the complaint relates such amount as the court finds to be due and payable to the employee or, as the case may be, payable on account of the employee;
- (b) if it does not convict the defendant—may order the defendant to pay to the employee to whose wages the complaint relates such amount as the court finds, on the balance of probabilities, to be due and payable to the employee or, as the case may be, payable on account of the employee.

(9) A court may make an order such as is referred to in subsection (8)—

- (a) notwithstanding any express or implied provision of any agreement to the contrary;
- (b) on such terms as the court considers just.

### **Offence of failure to make occupational superannuation contribution**

**462.(1)** An employer who fails to make contribution on behalf of eligible employees to an approved occupational superannuation scheme or fund—

- (a) at a level required by any relevant award, industrial agreement or certified agreement; and
- (b) in accordance with such award or agreement;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) The offence defined in subsection (1) is a continuing offence, which may be charged in 1 complaint, from time to time, in respect of a period.

(3) An employer whose contribution to an approved occupational

superannuation scheme or fund is at a level required by any relevant award, industrial agreement or certified agreement, but to such a scheme or fund other than that required by the award or agreement, does not thereby commit the offence defined in subsection (1) and is not liable to be dealt with as for an offence, unless the employer has knowingly failed to comply in that respect with the award or agreement.

(4) For the purposes of this section, if the Industrial Commission has made a determination and order under section 40(1) in relation to an approved occupational superannuation scheme or fund as the one to which an award, industrial agreement or certified agreement requires contribution to be made, an employer who fails to make such contribution in accordance with such determination and order is taken to fail to make such contribution in accordance with such award or agreement, whether or not the order was directed to that employer.

(5) The court by which a defendant is convicted of an offence defined in subsection (1) may make in relation to the defendant an order that an Industrial Magistrate is authorised by section 53 to make on an application made under that section, and the provisions of that section apply and extend accordingly.

### **Offence to agree to accept reduced wages**

**463.(1)** An employee who enters into an agreement with an employer to accept wages in an amount that, to the employee's knowledge, is less than the wages to which the employee is entitled under any relevant award, industrial agreement, certified agreement or permit commits an offence against this Act.

Maximum penalty—

- (a) for a first offence—4 penalty units;
- (b) for a second or subsequent offence—8 penalty units.

(2) If the offence, being a second or subsequent offence defined in subsection (1), of which an employee stands convicted was committed at a time later than 12 months after the commission of a like offence of which the employee was last previously convicted, the employee is to be taken to stand convicted of a first such offence and to be liable to a penalty for a first offence accordingly.

(3) The return by or on behalf of an employee, to the employer, or to a person on behalf of the employer, of a portion of wages paid in accordance with a relevant award, industrial agreement, certified agreement or permit for work performed by the employee is evidence and, in the absence of evidence to the contrary, conclusive evidence that the employee has entered into an agreement with the employer to accept wages in an amount that, to the employee's knowledge, is less than the wages to which the employee is entitled under the award, industrial agreement, certified agreement or permit.

### **Publication of statement re employment at less than lawful rates**

**464.(1)** A person who publishes or causes to be published a statement that can be reasonably construed to indicate—

- (a) on the part of an employer, that the employer is ready and willing to employ a person; or
- (b) on the part of a person seeking employment, that the person is ready and willing to be employed;

at a rate of wages that is less than the rate provided for in the award, industrial agreement or certified agreement relevant to the employment in question, commits an offence against this Act, unless such less rate is permitted under the terms of a permit held by the person.

Maximum penalty—16 penalty units.

(2) A statement is taken to be published within the meaning of this section if it is—

- (a) inserted in a newspaper or any other publication printed and published in Queensland; or
- (b) publicly exhibited—
  - (i) in, on, over or under any place (whether a public place or not); or
  - (ii) in the air in view of persons in or on any street or public place; or
- (c) contained in a document gratuitously sent or delivered to any person, or thrown onto or left on premises in the occupation of



any person; or

(d) broadcast by radio or television transmission.

(3) A prosecution for an offence defined in subsection (1) is not to be commenced against—

(a) the printer or proprietor of a newspaper;

(b) the distributor or seller of a newspaper;

(c) the printer, maker, operator or proprietor of an advertising device or advertising medium;

(d) the printer of a document uttered for advertising purposes;

(e) any person acting under the authority of any of such persons;

unless—

(f) that person has been warned by an Industrial Inspector that the publication of the statement, or of a statement substantially similar, is an offence against this Act; and

(g) that person has published, or caused the publication of, the statement after receipt of such warning; and

(h) the Minister's consent to the prosecution is first obtained.

(4) For the purposes of subsection (3), a proprietor of a newspaper or advertising medium by means of which an offence defined in subsection (1) has been committed is taken to have published the statement in question with knowledge of its unlawfulness unless the proprietor shows that—

(a) the proprietor had taken all reasonable precautions against committing the offence; and

(b) the proprietor had reasonable grounds to believe, and did believe, the publication of the statement to be lawful; and

(c) the proprietor had no reason to suspect publication of the statement to be unlawful.

### **Offence to offer or accept premiums**

**465.(1)** A person who—

- (a) offers;
- (b) demands;
- (c) requests;
- (d) accepts or agrees to accept;

any consideration, premium, gift, allowance or forbearance in connection with the employment of any person commits an offence against this Act.

Maximum penalty—16 penalty units.

(2) The court by which a defendant is convicted of an offence defined in subsection (1) that consists in the acceptance of any consideration, premium, gift or allowance, apart from any penalty order it may make, is to order the defendant to pay a sum, equivalent to the amount or value of that accepted, to the person from whom the person accepted the same.

### **Breaches of awards etc. generally**

**466.(1)** A person who breaches a relevant award, industrial agreement, certified agreement or permit commits an offence against this Act.

Maximum penalty—

- (a) for a first offence—
  - (i) if the defendant is an employer or industrial organisation—20 penalty units;
  - (ii) if the defendant is an employee—4 penalty units;
- (b) for a second or subsequent offence consisting in a breach of the same provision of the award, agreement or permit—
  - (i) if the defendant is an employer or industrial organisation—40 penalty units;
  - (ii) if the defendant is an employee—8 penalty units.

(2) If the offence, being a second or subsequent offence defined in subsection (1), of which a defendant stands convicted was committed at a time later than 12 months after the commission of a like offence of which the defendant was last previously convicted, the defendant is to be taken to stand convicted of a first such offence and to be liable to a penalty for a first offence accordingly.

(3) An employer who pays (directly or by an agent) to an employee, and an employee who receives from an employer (or the employer's agent) wages less than those to which the employee is entitled under a relevant award, industrial agreement, certified agreement or permit is each taken to have thereby breached the award, agreement or permit.

(4) If an employee returns to an employer (or the employer's agent) any portion of wages paid to the employee in accordance with a relevant award, industrial agreement, certified agreement or permit—

(a) the employee is taken to have received; and

(b) the employer (or the employer's agent) is taken to have paid;

wages less than those to which the employee was entitled under the award, agreement or permit, unless the return is in discharge, or partial discharge, of a lawful debt or obligation of the employee.

### **Injunction restraining breaches**

**467.(1)** If a person has been convicted of an offence consisting in a breach of an award, industrial agreement, certified agreement or permit, the Full Industrial Court, upon application made to it, if it is satisfied that the breach consisted of the wilful action or default of the person, may make an order in the nature of an injunction restraining the person—

(a) from continuing the breach; or

(b) from committing further breaches of the award, agreement or permit, whether similar to or different from the breaches of which the person has been convicted.

(2) A person subject to an injunction ordered under subsection (1) who disobeys the injunction commits an offence against this Act.

Maximum penalty—200 penalty units.

### **Persons considered parties to offences**

**468.(1)** Without prejudice to the operation of section 7 of the Criminal Code, every industrial organisation or other person who—

(a) takes part in the commission of an offence against this Act;

- (b) counsels, procures or aids in the commission of an offence against this Act;
- (c) encourages the commission of an offence against this Act;
- (d) is concerned, directly or indirectly in the commission of an offence against this Act;

is taken to have committed the offence and to be liable to the penalty prescribed for the offence.

(2) If a corporation commits an offence defined in section 461 or 462 each of the following persons is taken to be criminally responsible for the contravention or failure to comply in question, to have committed the offence, may be charged with the offence, in addition to the corporation, and is liable to the prescribed penalty and any other order that may be made on the hearing and determination of the charge—

- (a) the members of the governing body of the corporation, by whatever name called;
- (b) persons who manage or participate in the management or control of the corporation's business in the State.

(3) Notwithstanding the provisions of subsection (2), a person therein referred to is not liable to be punished for an offence for which the person would otherwise be liable to be punished, if it is shown that the contravention or failure to comply occurred without the person's consent or connivance and that the person exercised reasonable diligence to prevent the commission of the offence.

### **General penalty**

**469.(1)** A person who contravenes or fails to comply with any provision of this Act, being a contravention or failure not expressly provided for elsewhere in this Part, commits an offence against this Act.

(2) Subsection (1) does not create an offence consisting in—

- (a) a failure to pay wages due and payable to an employee otherwise than under an award, industrial agreement, certified agreement or permit, or payable at a level greater than that provided for by an award, industrial agreement, certified agreement or permit; or

- (b) a failure to pay moneys on account of an employee from wages such as are referred to in paragraph (a) in accordance with the consent in writing of the employee.

(3) Notwithstanding any provision of this Act, a person is not liable as for an offence (other than an offence that consists in the supply of an answer that is false or misleading) on account of a failure to answer a question asked for the purposes of this Act, if the failure is on the ground that to do so would tend to incriminate the person.

(4) A person who commits an offence against this Act for which a penalty is not expressly prescribed by any other provision of this Act is liable—

- (a) if the offender is an industrial organisation or other corporation—to a penalty of 40 penalty units;
- (b) if the offender is an individual—to a penalty of 4 penalty units.

(5) The whole of all penalties recovered under this Act are to be paid into the Consolidated Fund.

### **Attempt to commit offence**

**470.(1)** A person who attempts to commit an offence—

- (a) defined in this Act; or
- (b) consisting of a contravention of or failure to comply with a provision of this Act;

commits an offence against this Act and is liable to the same penalty as if the offence attempted had been committed.

(2) For the purposes of this Act an attempt to commit an offence is as defined in the Criminal Code.

### **Proceedings generally**

**471.(1)** Prosecution proceedings in respect of an offence against this Act are to be heard and determined by the Industrial Court or an Industrial Magistrate, within the limits of their respective jurisdictions.

- (2) Subject to subsection (3), proceedings before an Industrial Magistrate

are to be taken in a summary manner under the *Justices Act 1886* but the court in which such proceedings are taken is to be constituted by an Industrial Magistrate sitting alone.

(3) If the parties to proceedings commenced, or to be commenced, before an Industrial Magistrate agree, in writing signed by them, or their representatives, that the proceedings should be continued or, as the case may be, taken before an Industrial Magistrate at a particular place in the State (other than the place where the proceedings should be heard and determined under the *Justices Act 1886*) the Industrial Magistrate at that particular place is authorised to hear and determine the proceedings, and jurisdiction is hereby conferred on each Industrial Magistrate accordingly.

(4) If proceedings to which an agreement such as is referred to in subsection (3) relates have been duly commenced before an Industrial Magistrate before the agreement is made, that magistrate, upon being satisfied that the agreement exists—

- (a) is to adjourn the proceedings to the Industrial Magistrate at the place agreed to;
- (b) is to cause the record of the proceedings taken before that magistrate to be sent to the Clerk of the Magistrates Court at the place agreed to;
- (c) for the purpose of the hearing and determination of proceedings adjourned pursuant to this section evidence heard or produced in the proceedings before they were adjourned is taken to have been heard or produced before the Industrial Magistrate to whom the proceedings are adjourned, unless the parties to the proceedings agree to the contrary.

### **Recovery of moneys by industrial organisation**

**472.** Without prejudice to the authority of the Crown or any person to take proceedings in respect thereof, proceedings for—

- (a) breaches of awards, industrial agreements, certified agreements or permits;
- (b) offences against this Act;
- (c) recovery of moneys due to an employee;

may be taken by an industrial organisation in its registered name.

### **Recovery of moneys from industrial organisation**

**473.** For the recovery of—

- (a) any penalty imposed under this Act on an industrial organisation;
- (b) any sum ordered under this Act to be paid by an industrial organisation;

process may be issued and executed against property of which the industrial organisation has legal title, or property in which the industrial organisation has a beneficial interest, to the extent of the interest, whether such property is vested in trustees or is otherwise held on behalf of the industrial organisation, as if the industrial organisation, as a body corporate, were the absolute owner of such property or interest.

## **PART 19—INDUSTRIAL RELATIONS CONSULTATIVE COMMITTEE**

### **Establishment of committee**

**474.(1)** There is to be established as soon as is practicable after the commencement of this Act, and from time to time thereafter, a committee called the ‘Industrial Relations Consultative Committee’.

**(2)** Such committee is referred to in this Part as “**the Committee**”.

### **Membership**

**475.(1)** The Committee consists of—

- (a) the chief executive of the department, who is the presiding officer;
- (b) an officer of the department holding an appointment nominated by the chief executive of the department, who is the deputy presiding officer;
- (c) a person holding an appointment nominated by the Public Sector

Management Commission constituted by the *Public Sector Management Commission Act 1990*;

- (d) 3 persons representative of industrial organisations of employers nominated by all or any of those industrial organisations upon request of the Minister or if at any time more than 3 such persons are so nominated, 3 of the nominees selected by the Minister;
- (e) 3 persons representative of industrial organisations of employees nominated by all or any of those industrial organisations upon the request of the Minister or if at any time more than 3 such persons are so nominated, 3 of the nominees selected by the Minister;
- (f) 2 persons, 1 being representative of employers and 1 being representative of employees, nominated by the Minister;
- (g) 1 person representative of the Queensland Employment, Vocational Education and Training Board constituted under the *Employment, Vocational Education and Training Act 1988*, having responsibilities for training, nominated by the Minister.

(2) The members of the Committee referred to in subsection (1)(a), (b) or (c) are members ex officio.

(3) The member of the Committee referred to in subsection (1)(g) is not entitled to vote on the business of the Committee.

### **Appointment of members**

**476.** The members of the Committee, other than the members ex officio, are to be appointed by the Governor in Council by notification published in the Industrial Gazette.

### **Recommendation of members in absence of nomination by industrial organisations**

**477.(1)** If upon request of the Minister made of them on any occasion, the industrial organisations of employers or employees fail to lodge with the Minister, within the time limited therefor by the Minister, any nominations of persons for appointment to the Committee, or lodge with the Minister an insufficient number of nominations, the Minister may recommend to the Governor in Council for appointment such 1 or more persons, as required,



representative of the industrial organisations in default without further reference on that occasion to any of the industrial organisations in default.

(2) The person or persons so recommended are taken to have been duly nominated as prescribed.

### **Term of office**

**478.(1)** The term of appointment of a member of the Committee is as specified in the notification of the member's appointment, not exceeding 3 years, and any member is eligible for reappointment if nominated or recommended in accordance with this Part.

(2) A member of the Committee—

- (a) may resign the appointment at any time, by writing signed by the member and given to the Minister;
- (b) may be removed from the appointment at any time by the Governor in Council.

### **Deputies of members**

**479.(1)** If any member of the Committee, other than the presiding officer, is at any time, because of absence, illness, or other cause, unable to perform the duties of the appointment, the Governor in Council may, by notification published in the Industrial Gazette, appoint a person to act as the deputy of that member during the period of the member's inability.

(2) While a deputy of a member so acts, the deputy may exercise the powers and is to perform the duties, and has the entitlements of the member.

(3) The provisions of this Part that provide for nomination by industrial organisations of nominees for appointment to the Committee do not apply to the appointment of deputies, but as far as possible a deputy is to be a person representative of the same interests as is the member for whom the deputy is to act.

**Emoluments of Committee members**

**480.** Members of the Committee, other than the members thereof who are officers of the public service, are entitled to such fees and allowances as are approved for the time being by the Governor in Council.

**Proceedings of Committee**

**481.(1)** Meetings of the Committee are to be convened by its presiding officer and are to be held quarterly, as far as is practicable, or more frequently as the Committee determines.

**(2)** The presiding officer is to preside at all meetings of the Committee at which that officer is present and in that officer's absence the deputy presiding officer is to preside.

**(3)** A quorum of the Committee consists of 6 members of whom the presiding officer or deputy presiding officer must be one.

**(4)** Business must not be conducted at a meeting of the Committee unless a quorum is present.

**(5)** Business before a meeting of the Committee at which a quorum is present is to be decided by majority vote of the members who are present.

**(6)** A member present at a meeting who refrains from voting on an item of business before the Committee, except with leave of the presiding officer on the ground of conflict of interests, is taken to have voted in the negative.

**(7)** In the event of an equality of votes on any item of business the presiding officer has a second or casting vote.

**(8)** Minutes of each meeting of the Committee are to be recorded in writing, and the original only of such minutes is to be produced at, or for the purposes of, a meeting.

**(9)** Records of the Committee are in the custody of the presiding officer.

**Functions of Committee**

**482.(1)** The functions of the Committee are—

- (a) to investigate any matter pertinent to industrial relations referred to it by the Minister, or considered by the Committee to be a

matter pertinent to industrial relations appropriate to be brought to the Minister's attention, and to confer with and report to the Minister with respect to the matter;

- (b) to investigate a particular industrial matter that has come to its attention, and report to the Minister with respect thereto;
- (c) to investigate matters that come within the operation of this Act and confer with and report to the Minister with respect thereto;
- (d) to review from time to time the provisions of this Act and their operation;
- (e) to make to the Minister such recommendations as it considers necessary or appropriate concerning any matter within the scope of its functions.

**(2)** In discharging its functions the Committee—

- (a) is to consult with the President on any matter that relates to the exercise or performance of the Industrial Court's jurisdiction, powers and functions, and with the Chief Industrial Commissioner on any matter that relates to the exercise or performance of the Industrial Commission's jurisdiction, powers and functions;
- (b) may consult with any industrial organisation or other association of persons, or any individual;
- (c) at all times is to have regard to the attainment of the objectives of this Act.

## **PART 20—SAVINGS, TRANSITIONAL AND REPEALS**

### **Repeals**

**483.(1)** The repeal of the repealed Acts does not affect—

- (a) the continuity of identity or registration of an industrial union registered as such under any Act in force at any time before the

commencement of this Act; or

- (b) an exemption, granted under, or affirmed by, any of the repealed Acts, of any person or class of person from the operation of the provisions of any award or industrial agreement.

(2) The repeal of the repealed Acts does not render defective any proceedings started by or against an industrial union registered under any of the repealed Acts, or started under or for the purposes of any of the repealed Acts, before the repeal, or cause any such proceeding to abate or to be discontinued.

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

### **Savings**

**484.(1)** Every person of a description of person prescribed by or under any Act to be an employee within the meaning of the repealed Acts continues to be an employee within the meaning of this Act.

(2) Every proclamation, order in council, regulation or rule made under any of the repealed Acts and in force immediately before the commencement of this Act continues in force until it expires by effluxion of time, or is repealed, amended, suspended or cancelled under this Act.

(3) Every such proclamation, order in council, regulation or rule, while it so continues in force, is to be read subject to this Act.

(4) Every award, decision, exemption, judgment, ruling, permit or licence or other act of authority, or industrial agreement made, given, done, granted or approved by the Industrial Court, the Industrial Commission, an Industrial Magistrate or the Industrial Registrar under any of the repealed Acts and in force immediately before the commencement of this Act continues in force as if it had been made, given, done, granted or approved by the Court, Commission, magistrate or registrar, according to their respective functions and jurisdictions, under the corresponding provision of this Act and may be revoked, amended, suspended or modified pursuant to this Act.

(5) All proceedings instituted before the commencement of this Act under or for the purposes of a provision of any of the repealed Acts and

pending at the date of the repeal of the provision may be carried on and prosecuted as if they had been instituted under or for the purposes of the corresponding provision of this Act.

(6) If the proceeding is one in which the person or entity before whom it was instituted had jurisdiction under the *Industrial Conciliation and Arbitration Act 1961* but has not jurisdiction under this Act, then—

- (a) if the proceeding stands part heard at the commencement of this Act—it is to be completed before that person or entity who, for this purpose, is taken to have jurisdiction as if this Act had not been enacted; or
- (b) if the proceeding does not stand part heard at the commencement of this Act—it is to be completed before the person or entity who has jurisdiction under this Act, as if it had been instituted before that person or entity under this Act in the first instance.

(7) A proceeding is taken to be part heard after commencement of the hearing until the decision in the proceeding is pronounced.

### **Demarcation orders and disputes**

**485.(1)** An order in force under section 43 immediately before the commencement is taken, after the commencement, to have been made under section 44.

(2) If a matter is, immediately before the commencement, being dealt with by the Commission under section 43, the matter is to be dealt with, after the commencement, under section 44 as if the matter were being dealt with by the Commission on an application made under section 44.

(3) In this section—

“**commencement**” means the commencement of section 7 of the *Industrial Relations Amendment Act 1992*.

### **Transitional provisions in relation to amalgamations**

**486.(1)** If the scheme for a proposed amalgamation was submitted to ballot under Division 8 of Part 13 (as in force immediately before the commencement), but, before the commencement, the amalgamation had neither taken effect nor been rejected by the members of the industrial

organisations concerned, then subject to subsections (2) and (4), the proposed amalgamation is to continue to be dealt with, and may take effect, as if the *Industrial Relations Amendment Act 1992* had not been enacted.

(2) If, immediately before the commencement, none of the ballots in relation to a proposed amalgamation had been started, Division 8 of Part 13 (as in force after the commencement) applies to the proposed amalgamation as if—

- (a) the submission of the proposed amalgamation to ballot had been approved by the Commission under that Division; and
- (b) the reference in section 286(a) to a declaration having been made under section 264 included a reference to a declaration having been made under section 262 (as in force immediately before the commencement); and
- (c) anything else done under this Act (as in force immediately before the commencement) in relation to the proposed amalgamation had been done under the corresponding provision of this Act (as in force immediately after the commencement).

(3) For the purposes of subsection (2), a ballot is taken to have started when notice of the ballot was published in the *Industrial Gazette* under section 267(2) (as in force immediately before the commencement).

(4) A proposed amalgamation in relation to which an application was lodged with the Industrial Registrar under section 258 (as in force before the commencement), and that has not taken effect before the commencement, may be withdrawn by the bodies that submitted the application at any time before the amalgamation takes effect.

(5) In this section—

**“commencement”** means the commencement of section 24 of the *Industrial Relations Amendment Act 1992*.

## **PART 22—ELECTRICITY INDUSTRY PROVISIONS**

**Saving of decisions etc. of tribunal**

**491.(1)** This Part does not affect the continued operation and binding effect of any decision, determination, order, recommendation or action made or done by the tribunal referred to in section 489(1) having force and effect at the commencement of this Act.

(2) However, if such decision, determination, order, recommendation or action relates to a matter arising under a contract referred to in section 491 its continuance is subject to the continuance in force of the contract.

(3) A decision of the tribunal referred to in section 489(1) in the nature of an award, and an agreement approved by that tribunal in the nature of an industrial agreement, having force and effect at the commencement of this Act, will continue to bind the persons on whom it purports to be binding, to the exclusion of any award of, or industrial agreement approved by, the Industrial Commission that, but for this provision, would be binding on those persons until—

- (a) it is varied by a decision of the Commission; or
- (b) an award of or industrial agreement approved by, the Commission is substituted for it.

**Continuance of existing proceedings**

**492.** Proceedings that at the commencement of this Act are pending before the tribunal referred to in section 489(1)—

- (a) are to be taken as duly commenced in and to be pending before the Industrial Commission; and
- (b) are to be continued and completed before the Commission, which has and may exercise therein all or any of the powers of the Commission as prescribed.

**ENDNOTES****1 Index to Endnotes**

	Page
2 Date to which amendments incorporated .....	383
3 List of Acts .....	383
4 List of annotations .....	384
5 Table of corrected minor errors .....	397
6 Table of renumbered provisions .....	397
7 Table of comparative legislation .....	424

**2 Date to which amendments incorporated**

This is the reprint date mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation on or before 3 August 1993. Future amendments of the *Industrial Relations Act 1990* may be made in accordance with this reprint under section 49 of the *Reprints Act 1992*.

**3 List of legislation****Industrial Relations Act 1990 No. 28**

date of assent 15 June 1990

ss 1.1, 1.2 commenced on date of assent

s 1.4(2) commenced 30 June 1991 (see s 1.2(2))

remaining provisions commenced 23 June 1990 (proc pubd Ind Gaz 23 June 1990 p 324)

as amended by—

**Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 Sch**

date of assent 6 December 1990

commenced on date of assent (see s 2)

**Superannuation (Miscellaneous Acts) Amendment Act 1991 No. 11 Pt 10**

date of assent 15 April 1991

s 10.1 commenced on date of assent

remaining provisions commenced 11 May 1991 (proc pubd Gaz 4 May 1991 p 73)



**Supreme Court of Queensland Act 1991 No. 68 s 111 Sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Anti-Discrimination Act 1991 No. 85 Ch 11**

date of assent 9 December 1991

commenced 30 June 1992 (1992 SL No. 118)

**Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 Sch 1**

date of assent 17 December 1991

commenced on date of assent

**Industrial Relations Amendment Act 1992 No. 62**

date of assent 7 December 1992

ss 5, 20–24, 34, 36 commenced 18 June 1993 (1993 SL No. 221)

s 37 commenced 2 August 1993 (1993 SL No. 288)

remaining provisions commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 Sch 1**

date of assent 3 June 1993

commenced on date of assent

## 4 List of annotations

**Key to abbreviations in list of annotations**

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
exp	=	expired
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

**Note—** s 19B.1 of the Principal Act as inserted by s 37 of Act No. 62 of 1992 renumbers all Parts, Divisions, sections and other provisions of the Act so they bear consecutive arabic numerals. See table of renumbered provisions.

**Objects**

s 3            amd 1992 No. 62 s 4

**Repeals**

s 1.4 om 1992 No. 62 s 5

**Savings**

s 1.5 om 1992 No. 62 s 5

**Meaning of terms**

s 5 def “**bonus payment**” amd 1992 No. 62 s 38 Sch  
 def “**certified agreement**” ins 1992 No. 62 s 6(2)  
 def “**chief executive**” om 1991 No. 97 s 3 Sch 1  
 def “**Commission**” ins 1991 No. 97 s 3 Sch 1  
 def “**Commonwealth Act**” ins 1992 No. 62 s 6(2)  
 def “**Court**” ins 1991 No. 97 s 3 Sch 1  
 def “**decision**” amd 1992 No. 62 s 6(3)  
 def “**demarcation dispute**” om 1992 No. 62 s 6(1)  
 def “**demarcation dispute**” ins 1992 No. 62 s 6(2)  
 def “**electoral official**” ins 1992 No. 62 s 6(2)  
 def “**eligible employee**” amd 1992 No. 62 s 38 Sch  
 def “**industrial agreement**” amd 1992 No. 62 s 6(4); 1993 No. 32 s 3  
 Sch 1  
 def “**Industrial Commission**” ins 1991 No. 97 s 3 Sch 1  
 def “**Industrial Commission**” or “**Commission**” om 1991 No. 97 s 3  
 Sch 1  
 def “**Industrial Court or Court**” om 1991 No. 97 s 3 Sch 1  
 def “**Industrial Gazette**” om 1991 No. 97 s 3 Sch 1  
 def “**Minister**” om 1991 No. 97 s 3 Sch 1  
 def “**party**” amd 1992 No. 62 s 38 Sch  
 def “**registered company auditor**” ins 1992 No. 62 s 6(2)  
 def “**repealed Acts**” ins 1992 No. 62 s 6(2)  
 def “**the department**” om 1991 No. 97 s 3 Sch 1  
 def “**wages**” sub 1991 No. 97 s 3 Sch 1  
 def “**young employee**” amd 1992 No. 62 s 38 Sch

**Industrial matter**

s 6 amd 1992 No. 62 s 38 Sch

**Jurisdiction of Court**

s 13 amd 1992 No. 62 s 38 Sch

**Binding nature of Court’s decision**

s 15 amd 1992 No. 62 s 38 Sch

**Court may refuse to proceed**

s 16 amd 1992 No. 62 s 38 Sch

**Proceedings in Full Industrial Court**

s 17 amd 1992 No. 62 s 38 Sch

**Preservation of Commission**

s 19 amd 1991 No. 97 s 3 Sch 1

**Pension benefits of Commissioners**

s 29 amd 1991 No. 11 s 10.2

**General jurisdiction of Commission**

s 31            amd 1991 No. 85 s 269

**Commission may refuse to proceed**

s 32            amd 1992 No. 62 s 38 Sch

**General rulings**

s 36            amd 1992 No. 62 s 38 Sch

**Statement of policy**

s 37            amd 1992 No. 62 s 38 Sch

**Power to vary or void contracts**

s 39            amd 1992 No. 62 s 38 Sch

**Power to order superannuation contribution to particular fund**

s 40            amd 1992 No. 62 s 38 Sch

**Power to grant injunctions**

s 41            amd 1992 No. 62 s 38 Sch

**Demarcation disputes**

s 43            sub 1992 No. 62 s 7

**Organisation coverage**

s 44            ins 1992 No. 62 s 7

**Power to enter and inspect**

s 49            amd 1992 No. 62 s 38 Sch

**Jurisdiction of Industrial Magistrate**

s 52            amd 1992 No. 62 s 38 Sch

**Power of Industrial Magistrate concerning unpaid superannuation contribution**

s 53            amd 1992 No. 62 ss 8, 38 Sch

**Powers incidental to exercise of jurisdiction**

s 72            amd 1992 No. 62 s 9

**Confidential material tendered in evidence**

s 77            amd 1992 No. 62 s 38 Sch

**Evidentiary value at large of official records**

s 78            amd 1992 No. 62 s 38 Sch

**Proof of certain facts by averment**

s 79            amd 1992 No. 62 s 38 Sch

**Representation of parties**

s 83            amd 1992 No. 62 s 10

**Intervention as of right**

s 85 prov hdg sub 1992 No. 62 s 11

**Remedies on show cause**

s 90            amd 1992 No. 62 s 38 Sch

**Appeal to Supreme Court from Industrial Court**

s 95      amd 1991 No. 68 s 111 Sch 2

**Appeals to Industrial Commission**

s 98      amd 1992 No. 62 s 38 Sch

**Division 2—Certified agreements**

**Div hdg**    ins 1992 No. 62 s 12

**Objects of Division**

s 108      ins 1992 No. 62 s 12

**Definitions**

s 109      ins 1992 No. 62 s 12

**Agreements may be made about industrial matters**

s 110      ins 1992 No. 62 s 12

**Minister may intervene in certain cases**

s 111      ins 1992 No. 62 s 12

**Certification of agreements under this Division**

s 112      ins 1992 No. 62 s 12

**When Commission may refuse to certify agreements**

s 113      ins 1992 No. 62 s 12

**Other options open to Commission**

s 114      ins 1992 No. 62 s 12

**Procedures for preventing and settling disputes**

s 115      ins 1992 No. 62 s 12

**Operation of certified agreements**

s 116      ins 1992 No. 62 s 12

**Party may retire from a certified agreement**

s 117      ins 1992 No. 62 s 12

**Extension of certified agreements**

s 118      ins 1992 No. 62 s 12

**Effect of certified agreements**

s 119      ins 1992 No. 62 s 12

**Certified agreements may be varied or terminated by Full Bench**

s 120      ins 1992 No. 62 s 12

**Certified agreements may be terminated by parties**

s 121      ins 1992 No. 62 s 12

**Enforcement of certified agreements**

s 122      ins 1992 No. 62 s 12

**Powers of Commission re awards**

s 131      amd 1992 No. 62 s 13

**Components of wage rates**

s 135 amd 1992 No. 62 s 38 Sch

**Preservation of percentage rate values**

s 136 amd 1992 No. 62 s 38 Sch

**Effect of appeal decisions on awards or agreements**

s 138 amd 1992 No. 62 s 38 Sch

**Inconsistency between awards, agreements and contracts**

s 139 amd 1992 No. 62 s 38 Sch

**Hours of work**

s 140 amd 1992 No. 62 s 38 Sch

**Two or more classes of work**

s 11.2 amd 1992 No. 62 s 38 Sch  
om (exp 30 June 1991)

**Public holidays**

s 141 amd 1990 No. 88 s 3 Sch; 1992 No. 62 s 38 Sch

**Employee stood down in December, re-employed in January**

s 142 amd 1992 No. 62 s 38 Sch

**Stand down of employee**

s 143 amd 1992 No. 62 s 38 Sch

**Employees working both in and outside State**

s 144 amd 1992 No. 62 s 38 Sch

**Student's work permit**

s 145 sub 1992 No. 62 ss 14, 38 Sch

**Aged and infirm persons**

s 146 amd 1992 No. 62 s 38 Sch

**Reinstatement and re-employment**

s 11.11 om 1992 No. 62 s 15

**Sick leave**

s 149 amd 1992 No. 62 s 38 Sch

**Calculation of sick leave**

s 151 amd 1992 No. 62 s 38 Sch

**Annual leave**

s 152 amd 1992 No. 62 s 38 Sch

**Leave accumulated during apprenticeship or traineeship**

s 153 amd 1992 No. 62 s 38 Sch

**Payment for annual leave**

s 154 amd 1992 No. 62 s 38 Sch

**Pro rata annual leave**

s 156 amd 1992 No. 62 s 38 Sch

**Source of long service leave entitlement**

s 157      amd 1992 No. 62 s 38 Sch

**Commission's jurisdiction to approve conditions for long service leave**

s 158      amd 1992 No. 62 s 38 Sch

**Entitlement to long service leave**

s 159      amd 1992 No. 62 ss 16, 38 Sch

**Continuity of service generally**

s 160      amd 1992 No. 62 s 38 Sch

**Time and manner of taking long service leave**

s 165      amd 1992 No. 62 s 38 Sch

**Payment for long service leave**

s 166      amd 1992 No. 62 s 38 Sch

**Long service leave in meat works and sugar industry**

s 169      sub 1992 No. 62 s 17

**Long service leave for other seasonal workers**

s 170      amd 1992 No. 62 s 38 Sch

**Long service leave for employees not governed by awards etc.**

s 171      amd 1992 No. 62 s 38 Sch

**Division 4—Reinstatement and re-employment**

Div hdg    ins 1992 No. 62 s 18

**Application for reinstatement, re-employment or compensation**

s 174      ins 1992 No. 62 s 18

**Orders on application**

s 175      ins 1992 No. 62 s 18

**Effect of dismissal relief order on leave**

s 176      ins 1992 No. 62 s 18

**Costs for frivolous or vexatious applications**

s 177      ins 1992 No. 62 s 18

**Further orders against employer**

s 178      ins 1992 No. 62 s 18

**Division 5—Protection of injured employees**

Div hdg    ins 1992 No. 62 s 18

**Interpretation of Division**

s 179      ins 1992 No. 62 s 18

**Wages to be paid for the day employee injured**

s 180      ins 1992 No. 62 s 18

**Application to employer for reinstatement after dismissal**

s 181      ins 1992 No. 62 s 18

**Application to Commission for reinstatement order**

s 182 ins 1992 No. 62 s 18

**Commission order to reinstate**

s 183 ins 1992 No. 62 s 18

**Extension of time for application**

s 184 ins 1992 No. 62 s 18

**Dismissal an offence in certain cases**

s 185 ins 1992 No. 62 s 18

**Preservation of employee's rights**

s 186 ins 1992 No. 62 s 18

**Action on industrial dispute on notification or in public interest**

s 187 amd 1992 No. 62 s 38 Sch

**Conciliation by Commissioner or Industrial Magistrate**

s 12.4 om 1992 No. 62 s 19

**General requirements for rules**

s 204 amd 1992 No. 62 s 38 Sch

**Rules to provide for election of officers**

s 206 amd 1992 No. 62 s 20

**Rules to provide for elections by secret postal ballot**

s 207 amd 1990 No. 88 s 3 Sch

**Division 4—Conduct of elections for office**

Div hdg ins 1992 No. 62 s 21

**Conduct by Electoral Commission**

s 218 ins 1992 No. 62 s 21

**Application for industrial organisation or branch to conduct its elections**

s 219 ins 1992 No. 62 s 21

**Objections to application to conduct elections**

s 220 ins 1992 No. 62 s 21

**Registrar may permit industrial organisation or branch to conduct its elections**

s 221 ins 1992 No. 62 s 21

**Industrial Registrar to arrange for conduct of elections**

s 222 ins 1992 No. 62 s 21

**Provisions applicable to elections conducted by Electoral Commission**

s 223 ins 1992 No. 62 s 21

**Expenses of election ballot**

s 224 ins 1992 No. 62 s 21

**Death of candidate**

s 225 ins 1992 No. 62 s 21

**Ballot papers etc. from elections to be preserved**

s 226 ins 1992 No. 62 s 21

**No action for defamation in certain cases**

s 227 ins 1992 No. 62 s 21

**Ballot papers and other records to be preserved**

s 13.40 om 1992 No. 62 s 22

**Registrar to conduct elections on request**

s 243 amd 1992 No. 62 s 23

**Division 8—Amalgamation of industrial organisations**

Div hdg sub 1992 No. 62 s 24

**Subdivision A—General**

Sdiv hdg ins 1992 No. 62 s 24

**Application of objects to Division etc.**

s 256 sub 1992 No. 62 s 24

**Interpretation**

s 257 sub 1992 No. 62 s 24

**Procedure to be followed for proposed amalgamation etc.**

s 258 sub 1992 No. 62 s 24

**Subdivision B—Preliminary matters**

Sdiv hdg ins 1992 No. 62 s 24

**Federations**

s 259 sub 1992 No. 62 s 24

**Use of resources to support proposed amalgamation**

s 260 sub 1992 No. 62 s 24

**Subdivision C—Commencement of amalgamation procedure**

Sdiv hdg ins 1992 No. 62 s 24

**Scheme for amalgamation**

s 261 sub 1992 No. 62 s 24

**Alternative scheme for amalgamation**

s 262 sub 1992 No. 62 s 24

**Approval by committee of management**

s 263 sub 1992 No. 62 s 24

**Community of interest declaration**

s 264 sub 1992 No. 62 s 24

**Application for approval for submission of amalgamation to ballot**

s 265 sub 1992 No. 62 s 24

**Holding office after amalgamation**

s 266 sub 1992 No. 62 s 24



**Application for exemption from ballot**

s 267 sub 1992 No. 62 s 24

**Application for ballot not conducted under s.285**

s 268 sub 1992 No. 62 s 24

**Lodging “yes” case**

s 269 sub 1992 No. 62 s 24

**Subdivision D—Role of the Electoral Commission**

Sdiv hdg ins 1992 No. 62 s 24

**Ballots to be conducted by the Electoral Commission**

s 270 sub 1992 No. 62 s 24

**Notification of Electoral Commission**

s 271 sub 1992 No. 62 s 24

**Officer of industrial organisation to provide information for ballot etc.**

s 272 sub 1992 No. 62 s 24

**Subdivision E—Procedure for approval of amalgamation**

Sdiv hdg ins 1992 No. 62 s 24

**Fixing hearing in relation to amalgamation etc.**

s 273 sub 1992 No. 62 s 24

**Submissions at amalgamation hearings**

s 274 sub 1992 No. 62 s 24

**Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.**

s 275 sub 1992 No. 62 s 24

**Objections in relation to amalgamation involving extension of eligibility rules etc.**

s 276 ins 1992 No. 62 s 24

**Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.**

s 277 ins 1992 No. 62 s 24

**Fixing commencing and closing days of ballot**

s 278 ins 1992 No. 62 s 24

**Roll of voters for ballot**

s 279 ins 1992 No. 62 s 24

**“Yes” case and “no” case for amalgamation**

s 280 ins 1992 No. 62 s 24

**Alteration and amendment of scheme**

s 281 ins 1992 No. 62 s 24

**Outline of scheme for amalgamation**

s 282 ins 1992 No. 62 s 24

**Exemption from ballot**

s 283 ins 1992 No. 62 s 24

**Approval for ballot not conducted under s.285**

s 284 ins 1992 No. 62 s 24

**Secret postal ballot of members**

s 285 ins 1992 No. 62 s 24

**Determination of approval of amalgamation by members**

s 286 ins 1992 No. 62 s 24

**Further ballot if amalgamation not approved**

s 287 ins 1992 No. 62 s 24

**Inquiries into irregularities**

s 288 ins 1992 No. 62 s 24

**Approval of amalgamation**

s 289 ins 1992 No. 62 s 24

**Expenses of ballot**

s 290 ins 1992 No. 62 s 24

**Subdivision F—Amalgamation taking effect**

Sdiv hdg ins 1992 No. 62 s 24

**Action to be taken after ballot**

s 291 ins 1992 No. 62 s 24  
amd 1993 No. 32 s 3 Sch 1

**Assets and liabilities of deregistered industrial organisation become assets and liabilities of amalgamated organisation**

s 292 ins 1992 No. 62 s 24

**Effect of amalgamation on existing decisions of Commission**

s 293 ins 1992 No. 62 s 24

**Instruments**

s 294 ins 1992 No. 62 s 24

**Pending proceedings**

s 295 ins 1992 No. 62 s 24

**Subdivision applies despite laws and agreements prohibiting transfer etc.**

s 296 ins 1992 No. 62 s 24

**Amalgamated organisation to take steps necessary to carry out amalgamation**

s 297 ins 1992 No. 62 s 24

**Certificates in relation to land and interests in land**

s 298 ins 1992 No. 62 s 24

**Certificates in relation to charges**

s 299 ins 1992 No. 62 s 24

**Certificates in relation to shares etc.**

s 300 ins 1992 No. 62 s 24

**Certificates in relation to other assets**

s 301 ins 1992 No. 62 s 24

**Commission may resolve difficulties**

s 302 ins 1992 No. 62 s 24

**Subdivision G—Validation**

Sdiv hdg ins 1992 No. 62 s 24

**Validation of certain acts done in good faith**

s 303 ins 1992 No. 62 s 24

**Validation of certain acts after 4 years**

s 304 ins 1992 No. 62 s 24

**Orders affecting application of s.303 or 304**

s 305 ins 1992 No. 62 s 24

**Commission may make orders in relation to consequences of invalidity**

s 306 ins 1992 No. 62 s 24

**Subdivision H—Miscellaneous**

Sdiv hdg ins 1992 No. 62 s 24

**Ballot papers etc. from ballots to be preserved**

s 307 ins 1992 No. 62 s 24

**No action for defamation in certain cases**

s 308 ins 1992 No. 62 s 24

**Cancellation of registration for industrial conduct**

s 309 amd 1992 No. 62 s 38 Sch

**Orders where cancellation of registration deferred**

s 310 amd 1992 No. 62 s 38 Sch

**Consequences of cancellation of registration**

s 314 amd 1992 No. 62 s 38 Sch

**Auditors of industrial organisations**

s 322 amd 1992 No. 62 s 25

**Prejudice of employee by reason of membership of industrial organisation**

s 342 amd 1992 No. 62 s 38 Sch

**Prejudice of employee by reason of non-membership of industrial organisation**

s 343 amd 1992 No. 62 s 38 Sch

**Conduct in relation to holder of conscientious objector's certificate**

s 344 amd 1992 No. 62 s 38 Sch

**Appointment of Industrial Inspectors**

s 348 amd 1992 No. 62 s 26

**Duty of Industrial Inspector**

s 352 amd 1992 No. 62 s 38 Sch

**Powers of Industrial Inspector**

s 353      amd 1992 No. 62 s 38 Sch

**Payment of employee's wages etc. to Industrial Inspector**

s 358      amd 1992 No. 62 ss 27, 38 Sch

**Industrial Inspector's obligation for moneys paid on demand**

s 359      amd 1992 No. 62 ss 28, 38 Sch

**Issue of authorisation**

s 361      amd (see s 37 RA)

**Time and wages record of award employees**

s 362      amd 1992 No. 62 s 38 Sch

**Wages record of non-award employees**

s 363      amd 1992 No. 62 s 38 Sch

**Copy of award and industrial agreement to be displayed**

s 373      amd 1992 No. 62 s 38 Sch

**Incorporation of variations in reprint of award, industrial agreement or certified agreement**

prov hdg   amd 1992 No. 62 s 38 Sch

s 374      amd 1992 No. 62 s 38 Sch

**False pretences relating to employment**

s 377      amd 1992 No. 62 s 38 Sch

**Certifying Barrister**

s 378      amd 1992 No. 62 s 29

**Inaccurate descriptions**

s 383      amd 1992 No. 62 s 38 Sch

**Conflict between award etc. and statutory determination**

s 385      amd 1992 No. 62 s 38 Sch

**Protection of public property and officers**

s 386      amd 1992 No. 62 s 38 Sch

**Consequences of notice of attachment**

s 395      amd 1992 No. 62 s 38 Sch

**Payment of wages**

s 405      amd 1992 No. 62 ss 30, 38 Sch; 1993 No. 32 s 3 Sch 1

**Recovery of wages etc.**

s 409      amd 1992 No. 62 s 31

**Enforcement of Industrial Magistrate's order**

s 410      amd 1992 No. 62 s 32

**Deduction in default of notice of termination**

s 412      amd 1992 No. 62 s 38 Sch

**Avoiding Act's obligations**

s 428      amd 1992 No. 62 s 38 Sch

**Offences in relation to the conduct of ballots**

s 438 sub 1992 No. 62 s 33

**Failure to provide information re amalgamation ballot**

s 442 amd 1992 No. 62 s 34

**Non-payment of wages**

s 461 amd 1992 No. 62 s 38 Sch

**Offence of failure to make occupational superannuation contribution**

s 462 amd 1992 No. 62 s 38 Sch

**Offence to agree to accept reduced wages**

s 463 amd 1992 No. 62 s 38 Sch

**Publication of statement re employment at less than lawful rates**

s 464 amd 1992 No. 62 s 38 Sch

**Breaches of awards etc. generally**

s 466 amd 1992 No. 62 s 38 Sch

**Injunction restraining breaches**

s 467 amd 1992 No. 62 s 38 Sch

**Persons considered parties to offences**

s 468 amd 1992 No. 62 s 35

**General penalty**

s 469 amd 1992 No. 62 s 38 Sch

**Recovery of moneys by industrial organisation**

s 472 amd 1992 No. 62 s 38 Sch

**PART 20—SAVINGS, TRANSITIONAL AND REPEALS**

Pt hdg ins 1992 No. 62 s 36

**Repeals**

s 483 ins 1992 No. 62 s 36

**Savings**

s 484 ins 1992 No. 62 s 36

**Demarcation orders and disputes**

s 485 ins 1992 No. 62 s 36

**Transitional provisions in relation to amalgamations**

s 486 ins 1992 No. 62 s 36

**PART 21—RENUMBERING OF ACT**

Pt hdg ins 1992 No. 62 s 37

om (see s 37 RA)

**Renumbering of Act**

s 487 ins 1992 No. 62 s 37

om (see s 37 RA)

**Termination of tribunal and appointments**

s 488 om (see s 37 RA)

**Adjustment of jurisdictions**

s 489 om (see s 37 RA)

**Limited continuance of contracts**

s 490 om (see s 37 RA)

**5 Table of corrected minor errors**TABLE OF CORRECTED MINOR ERRORS  
under section 7(1)(j) of *Reprints Act 1992*

Section	Description
s 4(4)	om 'with corresponding' ins 'with a corresponding'
s 305(3)	om 'subsection (1)' ins 'subsection (1)'
s 306(3)	om 'subsection (1)' ins 'subsection (1)'
s 327(2)(a)	om 'matter' ins 'a matter'
s 472(a)	om 'agreements certified' ins 'agreements, certified'

**6 Table of renumbered provisions**TABLE OF RENUMBERED PROVISIONS  
under section 19B.1 of *Industrial Relations Amendment Act 1992*

Original	Renumbered as
1.1	1
1.2	2
1.2(3) (2nd sentence)	2(4)
1.3	3
1.6	4
1.6(1) (2nd sentence)	4(2)
1.6(2)	4(3)
1.6(3)	4(4)
1.6(4)	4(5)
2.1	5
2.2	6
2.3	7
3.1	8
3.2	9
3.2(1) (2nd sentence)	9(2)
3.2(2)	9(3)
3.2(3)	9(4)

3.2(4)	9(5)
3.3	10
3.4	11
3.5	12
3.5(3) (2nd sentence)	12(4)
3.5(4)	12(5)
3.6	13
3.6(1)(b)(iii) (1st dot point)	13(1)(b)(iii)(A)
3.6(1)(b)(iii) (2nd dot point)	13(1)(b)(iii)(B)
3.7	14
3.8	15
3.8 (1st dot point)	15(a)
3.8 (2nd dot point)	15(b)
3.8 (3rd dot point)	15(c)
3.9	16
3.10	17
3.10(a) (1st dot point)	17(a)(i)
3.10(a) (2nd dot point)	17(a)(ii)
3.11 (1st sentence)	18(1)
3.11 (2nd sentence)	18(2)
4.1	19
4.2	20
4.2(2) (2nd sentence)	20(3)
4.2(3)	20(4)
4.2(3) (1st dot point)	20(4)(a)
4.2(3) (2nd dot point)	20(4)(b)
4.2(4)	20(5)
4.3	21
4.4	22
4.5	23
4.5(3) (1st dot point)	23(3)(a)
4.5(3) (2nd dot point)	23(3)(b)
4.5(4) (1st dot point)	23(4)(a)
4.5(4) (2nd dot point)	23(4)(b)
4.6	24
4.7	25
4.7(1) (2nd sentence)	25(2)
4.7(2)	25(3)
4.7(3)	25(4)
4.7(4)	25(5)
4.7(5)	25(6)
4.8 (1st sentence)	26(1)
4.8 (2nd sentence)	26(2)
4.9	27
4.10	28
4.11	29

4.11(2) (2nd sentence)	29(3)
4.11(3)	29(4)
4.11(3) (2nd sentence)	29(5)
4.11(4)	29(6)
4.11(5)	29(7)
4.12	30
4.13	31
4.13(6) (2nd sentence)	31(7)
4.13(7)	31(8)
4.13(8)	31(9)
4.14	32
4.15	33
4.16	34
4.16(4) (2nd sentence)	34(5)
4.17	35
4.18	36
4.18(5) (2nd sentence)	36(6)
4.18(6)	36(7)
4.18(6) (2nd sentence)	36(8)
4.18(6) (3rd sentence)	36(9)
4.19	37
4.20	38
4.21	39
4.21(1) (1st dot point)	39(1)(c)
4.21(1) (2nd dot point)	39(1)(d)
4.21(1) (3rd dot point)	39(1)(e)
4.21(1) (4th dot point)	39(1)(f)
4.22	40
4.22(1) (1st dot point)	40(1)(a)
4.22(1) (2nd dot point)	40(1)(b)
4.23	41
4.23(1) (2nd sentence)	41(2)
4.23(2)	41(3)
4.23(3)	41(4)
4.23(4)	41(5)
4.23(4) (2nd sentence)	41(6)
4.23(5)	41(7)
4.24	42
4.25	43
4.25A	44
4.26	45
4.26(1) (2nd sentence)	45(2)
4.26(2)	45(3)
4.26(3)	45(4)
4.26(4)	45(5)
4.26(4) (1st dot point)	45(5)(a)



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4.26(4) (2nd dot point)	45(5)(b)
4.26(5)	45(6)
4.26(5) (2nd sentence)	45(7)
4.27	46
4.28	47
4.28(2) (2nd sentence)	47(3)
4.29	48
4.29 (1st dot point)	48(a)
4.29 (2nd dot point)	48(b)
4.29 (3rd dot point)	48(c)
4.30	49
5.1	50
5.1 (1st dot point)	50(a)
5.1 (2nd dot point)	50(b)
5.2	51
5.3	52
5.3(a)(i) (1st dot point)	52(a)(i)(A)
5.3(a)(i) (2nd dot point)	52(a)(i)(B)
5.3(a)(iii) (1st dot point)	52(a)(iii)(A)
5.3(a)(iii) (2nd dot point)	52(a)(iii)(B)
5.3(d) (1st dot point)	52(d)(i)
5.3(d) (2nd dot point)	52(d)(ii)
5.3(d) (3rd dot point)	52(d)(iii)
5.4	53
5.4(1) (1st dot point)	53(1)(a)
5.4(1) (2nd dot point)	53(1)(b)
5.4(1) (3rd dot point)	53(1)(c)
5.4(1)(a)	53(1)(d)
5.4(1)(b)	53(1)(e)
5.4(3A)	53(4)
5.4(4)	53(5)
5.5	54
5.6	55
6.1	56
6.2	57
6.2(2) (1st dot point)	57(2)(a)
6.2(2) (2nd dot point)	57(2)(b)
6.3	58
6.4	59
7.1	60
7.2	61
7.2(1) (2nd sentence)	61(2)
7.2(2)	61(3)
7.2(3)	61(4)
7.2(4)	61(5)
7.2(4)(a) (1st dot point)	61(5)(a)(i)

7.2(4)(a) (2nd dot point)	61(5)(a)(ii)
7.3	62
7.3(1)(b) (1st dot point)	62(1)(b)(i)
7.3(1)(b) (2nd dot point)	62(1)(b)(ii)
7.4	63
7.5	64
7.6	65
7.7	66
8.1	67
8.1(1)(a) (1st dot point)	67(1)(a)(i)
8.1(1)(a) (2nd dot point)	67(1)(a)(ii)
8.1(1)(a) (3rd dot point)	67(1)(a)(iii)
8.1(1)(a) (4th dot point)	67(1)(a)(iv)
8.1(1)(a) (5th dot point)	67(1)(a)(v)
8.1(2)(b) (1st dot point)	67(2)(b)(i)
8.1(2)(b) (2nd dot point)	67(2)(b)(ii)
8.2	68
8.2(2)(a) (1st dot point)	68(2)(a)(i)
8.2(2)(a) (2nd dot point)	68(2)(a)(ii)
8.2(2)(a) (3rd dot point)	68(2)(a)(iii)
8.2(2)(a) (4th dot point)	68(2)(a)(iv)
8.2(2)(a) (5th dot point)	68(2)(a)(v)
8.2(2)(a) (6th dot point)	68(2)(a)(vi)
8.2(2)(a) (7th dot point)	68(2)(a)(vii)
8.2(2)(a) (8th dot point)	68(2)(a)(viii)
8.2(2)(a) (9th dot point)	68(2)(a)(ix)
8.2(3) (2nd sentence)	68(4)
8.2(4)	68(5)
8.2(4) (1st dot point)	68(5)(c)
8.2(4) (2nd dot point)	68(5)(d)
8.2(5)	68(6)
8.2(5) (1st dot point)	68(6)(a)
8.2(5) (2nd dot point)	68(6)(b)
8.2(6)	68(7)
8.2(6) (1st dot point)	68(7)(a)
8.2(6) (2nd dot point)	68(7)(b)
8.2(6) (3rd dot point)	68(7)(c)
8.3	69
8.3(2) (2nd sentence)	69(3)
8.4	70
8.4(3) (1st dot point)	70(3)(a)
8.4(3) (2nd dot point)	70(3)(b)
8.5	71
8.6	72
8.7	73
8.7(1)(a) (1st dot point)	73(1)(a)(i)

8.7(1)(a) (2nd dot point)	73(1)(a)(ii)
8.7(2) (1st dot point)	73(2)(a)
8.7(2) (2nd dot point)	73(2)(b)
8.8	74
8.9	75
8.9(1) (1st dot point)	75(1)(c)
8.9(1) (2nd dot point)	75(1)(d)
8.10	76
8.10(1) (1st dot point)	76(1)(c)
8.10(1) (2nd dot point)	76(1)(d)
8.11	77
8.11(1) (2nd sentence)	77(2)
8.11(2)	77(3)
8.11(3)	77(4)
8.11(3) (1st dot point)	77(4)(a)
8.11(3) (2nd dot point)	77(4)(b)
8.11(3) (3rd dot point)	77(4)(c)
8.11(3) (2nd sentence)	77(5)
8.12	78
8.12(2)(a) (1st dot point)	78(2)(a)(i)
8.12(2)(a) (2nd dot point)	78(2)(a)(ii)
8.12(2)(ba)	78(2)(c)
8.12(2)(c)	78(8)(d)
8.12(2)(d)	78(8)(e)
8.12(2)(e)	78(8)(f)
8.12(2)(f)	78(8)(g)
8.13	79
8.14	80
8.15	81
8.15 (1st sentence)	81(1)
8.16	82
8.17	83
8.17(1)(d)(ii) (1st dot point)	83(1)(d)(ii)(A)
8.17(1)(d)(ii) (2nd dot point)	83(1)(d)(ii)(B)
8.17(1)(e) (1st dot point)	83(1)(e)(i)
8.17(1)(e) (2nd dot point)	83(1)(e)(ii)
8.18	84
8.19	85
8.19(1)(b) (1st dot point)	85(1)(b)(i)
8.19(1)(b) (2nd dot point)	85(1)(b)(ii)
8.19(1)(b) (3rd dot point)	85(1)(b)(iii)
8.19(1) (2nd sentence)	85(2)
8.19(2)	85(3)
8.19(2) (2nd sentence)	85(4)
8.20	86
8.21	87

8.21(2) (2nd sentence)	87(3)
8.21(2) (3rd sentence)	87(4)
8.22	88
8.22(2) (2nd sentence)	88(3)
8.22(3)	88(4)
8.23	89
8.23(1)(d) (1st dot point)	89(1)(d)(i)
8.23(1)(d) (2nd dot point)	89(1)(d)(ii)
8.23(1)(d) (3rd dot point)	89(1)(d)(iii)
8.23(1) (2nd sentence)	89(2)
8.23(2)	89(3)
8.23(3)	89(4)
8.23(3) (1st dot point)	89(4)(a)
8.23(3) (2nd dot point)	89(4)(b)
8.24	90
8.24(2)(a) (1st dot point)	90(2)(a)(i)
8.24(2)(a) (2nd dot point)	90(2)(a)(ii)
8.25	91
8.26	92
8.26(1) (1st dot point)	92(1)(a)
8.26(1) (2nd dot point)	92(1)(b)
8.27	93
8.27(1)(l) (1st dot point)	93(1)(l)(i)
8.27(1)(l) (2nd dot point)	93(1)(l)(ii)
8.28	94
9.1	95
9.1(1) (1st dot point)	95(1)(a)
9.1(1) (2nd dot point)	95(1)(b)
9.2	96
9.2(1) (1st dot point)	96(1)(a)
9.2(1) (2nd dot point)	96(1)(b)
9.2(2) (1st dot point)	96(2)(a)
9.2(2) (2nd dot point)	96(2)(b)
9.2(3) (1st dot point)	96(3)(a)
9.2(3) (2nd dot point)	96(3)(b)
9.3	97
9.3 (1st dot point)	97(a)
9.3 (2nd dot point)	97(b)
9.4	98
9.4(1) (1st dot point)	98(1)(a)
9.4(1) (2nd dot point)	98(1)(b)
9.4(1) (2nd sentence)	98(2)
9.4(2)	98(3)
9.4(3)	98(4)
9.4(3) (2nd sentence)	98(5)
9.4(4)	98(6)

---

9.4(4) (1st dot point)	98(6)(a)
9.4(4) (2nd dot point)	98(6)(b)
9.4(5)	98(7)
9.4(5)(b)(iii) (1st dot point)	98(7)(b)(iii)(A)
9.4(5)(b)(iii) (2nd dot point)	98(7)(b)(iii)(B)
9.5 (1st sentence)	99(1)
9.5 (2nd sentence)	99(2)
9.6	100
9.7	101
9.7(2) (2nd sentence)	101(3)
9.8	102
9.8(1) (2nd sentence)	102(2)
9.8(2)	102(3)
9.8(3)	102(4)
9.8(3) (1st dot point)	102(4)(a)
9.8(3) (2nd dot point)	102(4)(b)
9.8(3) (2nd sentence)	102(5)
9.9	103
9.10	104
10.1	105
10.1(2) (1st dot point)	105(2)(a)
10.1(2) (2nd dot point)	105(2)(b)
10.1(2) (3rd dot point)	105(2)(c)
10.1(2) (4th dot point)	105(2)(d)
10.2	106
10.2 (1st dot point)	106(a)
10.2 (2nd dot point)	106(b)
10.2(a)	106(c)
10.2(b)	106(d)
10.2(c)	106(e)
10.2(d)	106(f)
10.2(e)	106(g)
10.2(f)	106(h)
10.3	107
Division 1A	Division 2
10.3A	108
10.3B	109
10.3C	110
10.3D	111
10.3E	112
10.3F	113
10.3G	114
10.3H	115
10.3I	116
10.3J	117
10.3K	118

10.3L	119
10.3M	120
10.3N	121
10.3O	122
Division 2	Division 3
10.4	123
10.4(1) (2nd sentence)	123(2)
10.4(1) (3rd sentence)	123(3)
10.4(2)	123(4)
10.4(2) (2nd sentence)	123(5)
10.4(3)	123(6)
10.4(3) (2nd sentence)	123(7)
10.4(4)	123(8)
10.4(5)	123(9)
10.4(5) (1st dot point)	123(9)(a)
10.4(5) (2nd dot point)	123(9)(b)
10.4(5)(a)	123(9)(c)
10.4(5)(b)	123(9)(d)
10.4(6)	123(10)
10.5	124
10.5 (1st dot point)	124(a)
10.5 (2nd dot point)	124(b)
10.5 (3rd dot point)	124(c)
10.5 (4th dot point)	124(d)
10.5(a)	124(e)
10.5(b)	124(f)
10.6	125
10.7	126
10.8	127
10.8 (1st dot point)	127(a)
10.8 (2nd dot point)	127(b)
10.9	128
10.9 (1st dot point)	128(a)
10.9 (2nd dot point)	128(b)
10.9 (3rd dot point)	128(c)
10.9 (4th dot point)	128(d)
10.10 (1st sentence)	129(1)
10.10 (2nd sentence)	129(2)
10.11	130
10.11 (1st dot point)	130(a)
10.11 (2nd dot point)	130(b)
Division 3	Division 4
10.12	131
10.12(1) (1st dot point)	131(1)(a)
10.12(1) (2nd dot point)	131(1)(b)
10.12(1) (3rd dot point)	131(1)(c)

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10.12(1) (4th dot point)	131(1)(d)
10.13	132
10.13(1) (1st dot point)	132(1)(a)
10.13(1) (2nd dot point)	132(1)(b)
10.14	133
10.15	134
Division 4	Division 5
10.16	135
10.17	136
10.18	137
10.19	138
10.19 (1st dot point)	138(a)
10.19 (2nd dot point)	138(b)
10.20	139
10.20(1) (2nd sentence)	139(2)
10.20(2)	139(3)
11.1	140
11.1(3) (1st dot point)	140(3)(a)
11.1(3) (2nd dot point)	140(3)(b)
11.1(3) (2nd sentence)	140(4)
11.1(3) (3rd sentence)	140(5)
11.1(4)	140(6)
11.1(5)	140(7)
11.1(5) (2nd sentence)	140(8)
11.1(6)	140(9)
11.1(6)(a)(iii) (1st dot point)	140(9)(a)(iii)(A)
11.1(6)(a)(iii) (2nd dot point)	140(9)(a)(iii)(B)
11.3	141
11.3(1) (2nd sentence)	141(2)
11.3(2)	141(3)
11.3(3)	141(4)
11.3(4)	141(5)
11.3(5)	141(6)
11.3(6)	141(7)
11.3(7)	141(8)
11.3(8)	141(9)
11.4	142
11.5	143
11.6	144
11.7	145
11.8	146
11.8(1) (2nd sentence)	146(2)
11.8(2)	146(3)
11.8(2) (2nd sentence)	146(4)
11.8(3)	146(5)
11.8(3) (2nd sentence)	146(6)

11.9	147
11.10	148
11.10(3) (2nd sentence)	148(4)
11.10(3) (3rd sentence)	148(5)
11.10(4)	148(6)
11.12	149
11.12(2) (2nd sentence)	149(3)
11.12(3)	149(4)
11.12(4)	149(5)
11.12(5)	149(6)
11.13	150
11.13(1) (2nd sentence)	150(2)
11.13(2)	150(3)
11.14	151
11.15	152
11.15(2) (2nd sentence)	152(3)
11.15(3)	152(4)
11.15(4)	152(5)
11.15(4) (2nd sentence)	152(6)
11.15(4) (3rd sentence)	152(7)
11.15(5)	152(8)
11.15(6)	152(9)
11.15(6) (2nd sentence)	152(10)
11.16	153
11.17	154
11.18	155
11.19 (1st sentence)	156(1)
11.19 (2nd sentence)	156(2)
11.20	157
11.20(4) (1st dot point)	157(4)(a)
11.20(4) (2nd dot point)	157(4)(b)
11.21	158
11.21(1) (2nd sentence)	158(2)
11.21(2)	158(3)
11.21(3)	158(4)
11.21(4)	158(5)
11.22 (1st sentence)	159(1)
11.22 (1st sentence) (b)(ii) (1st dot point)	159(1)(b)(ii)(A)
11.22 (1st sentence) (b)(ii) (2nd dot point)	159(1)(b)(ii)(B)
11.22 (1st sentence) (b)(ii) (3rd dot point)	159(1)(b)(ii)(C)
11.22 (1st sentence) (d) (1st dot point)	159(1)(d)(i)
11.22 (1st sentence) (d) (2nd dot point)	



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point)	159(1)(d)(ii)
11.22 (1st sentence) (d) (3rd dot point)	159(1)(d)(iii)
11.22 (2nd sentence)	159(2)
11.23	160
11.23(1)(b) (1st dot point)	160(1)(b)(i)
11.23(1)(b) (2nd dot point)	160(1)(b)(ii)
11.23(1)(c)(ii) (1st dot point)	160(1)(c)(ii)(A)
11.23(1)(c)(ii) (2nd dot point)	160(1)(c)(ii)(B)
11.23(1)(c)(iv)A.	160(1)(c)(iv)(A)
11.23(1)(c)(iv)B.	160(1)(c)(iv)(B)
11.23(1)(c)(iv)C.	160(1)(c)(iv)(C)
11.24	161
11.24(1) (1st dot point)	161(1)(a)
11.24(1) (2nd dot point)	161(1)(b)
11.24(2) (1st dot point)	161(2)(a)
11.24(2) (2nd dot point)	161(2)(b)
11.24(4) (2nd sentence)	161(5)
11.24(5)	161(6)
11.24(5) (2nd sentence)	161(7)
11.24(5) (3rd sentence)	161(8)
11.25 (1st sentence)	162(1)
11.25 (2nd sentence)	162(2)
11.26	163
11.27	164
11.28	165
11.28(1) (2nd sentence)	165(2)
11.28(2)	165(3)
11.28(3)	165(4)
11.28(3) (1st dot point)	165(4)(a)
11.28(3) (2nd dot point)	165(4)(b)
11.29	166
11.29(2) proviso	166(3)
11.29(3)	166(4)
11.29(4)	166(5)
11.29(5)	166(6)
11.29(6)	166(7)
11.29(7)	166(8)
11.30	167
11.30(2) (1st dot point)	167(2)(a)
11.30(2) (2nd dot point)	167(2)(b)
11.30(2) (2nd sentence)	167(3)
11.31	168
11.32	169
11.33	170
11.33(1) (1st dot point)	170(1)(a)

11.33(1) (2nd dot point)	170(1)(b)
11.33(1)(a)	170(1)(c)
11.33(1)(b)	170(1)(d)
11.34	171
11.34(2) (1st dot point)	171(2)(a)
11.34(2) (2nd dot point)	171(2)(b)
11.34(4) (2nd sentence)	171(5)
11.34(5)	171(6)
11.34(6)	171(7)
11.35	172
11.35(1) (1st dot point)	172(1)(a)
11.35(1) (2nd dot point)	172(1)(b)
11.36	173
11.37	174
11.38	175
11.39	176
11.40	177
11.41	178
11.42	179
11.43	180
11.44	181
11.45	182
11.46	183
11.47	184
11.48	185
11.49	186
12.1	187
12.1(2) (1st dot point)	187(2)(a)
12.1(2) (2nd dot point)	187(2)(b)
12.1(2)(a)	187(2)(c)
12.1(2)(b)	187(2)(d)
12.1(2) (2nd sentence)	187(3)
12.1(3)	187(4)
12.1(3) (2nd sentence)	187(5)
12.1(4)	187(6)
12.1(5)	187(7)
12.1(6)	187(8)
12.1(7)	187(9)
12.1(8)	187(10)
12.2	188
12.3	189
12.5	190
12.6	191
12.6(1) (2nd sentence)	191(2)
12.6(2)	191(3)
12.6(2) (2nd sentence)	191(4)

12.6(2) (3rd sentence)	191(5)
12.7	192
12.8	193
13.1	194
13.2	195
13.2(1) (2nd sentence)	195(2)
13.2(2)	195(3)
13.2(2)(b) (1st dot point)	195(3)(b)(i)
13.2(2)(b) (2nd dot point)	195(3)(b)(ii)
13.2(2)(b) (3rd dot point)	195(3)(b)(iii)
13.2(2)(b) (4th dot point)	195(3)(b)(iv)
13.2(2)(b) (5th dot point)	195(3)(b)(v)
13.2(3)	195(4)
13.2(3)(b) (1st dot point)	195(4)(b)(i)
13.2(3)(b) (2nd dot point)	195(4)(b)(ii)
13.2(3)(b) (3rd dot point)	195(4)(b)(iii)
13.2(3)(b) (4th dot point)	195(4)(b)(iv)
13.2(3)(b) (5th dot point)	195(4)(b)(v)
13.3	196
13.4	197
13.4(2) (2nd sentence)	197(3)
13.4(3)	197(4)
13.4(4)	197(5)
13.4(5)	197(6)
13.5	198
13.5(2) (2nd sentence)	198(3)
13.5(3)	198(4)
13.5(3) (2nd sentence)	198(5)
13.5(4)	198(6)
13.5(4) (2nd sentence)	198(7)
13.6	199
13.7	200
13.8	201
13.9	202
13.10	203
13.11	204
13.11(b) (1st dot point)	204(b)(i)
13.11(b) (2nd dot point)	204(b)(ii)
13.11(b) (3rd dot point)	204(b)(iii)
13.12	205
13.12(2)(c) (1st dot point)	205(2)(c)(i)
13.12(2)(c) (2nd dot point)	205(2)(c)(ii)
13.12(2)(c) (3rd dot point)	205(2)(c)(iii)
13.12(2)(d) (1st dot point)	205(2)(d)(i)
13.12(2)(d) (2nd dot point)	205(2)(d)(ii)
13.13	206

13.13(1)(d) (1st dot point)	206(1)(d)(i)
13.13(1)(d) (2nd dot point)	206(1)(d)(ii)
13.13(1)(d) (3rd dot point)	206(1)(d)(iii)
13.13(1)(e) (1st dot point)	206(1)(e)(i)
13.13(1)(e) (2nd dot point)	206(1)(e)(ii)
13.13(1)(e) (3rd dot point)	206(1)(e)(iii)
13.14	207
13.15	208
13.15(4) proviso	208(5)
13.15(4) (2nd sentence)	208(6)
13.16	209
13.16(3) (1st dot point)	209(3)(a)
13.16(3) (2nd dot point)	209(3)(b)
13.17	210
13.18	211
13.18(1) (2nd sentence)	211(2)
13.18(2)	211(3)
13.18(2) (1st dot point)	211(3)(a)
13.18(2) (2nd dot point)	211(3)(b)
13.18(2) (2nd sentence)	211(4)
13.18(2) (3rd sentence)	211(5)
13.18(3)	211(6)
13.18(3) (1st dot point)	211(6)(a)
13.18(3) (2nd dot point)	211(6)(b)
13.18(3)(a)	211(6)(c)
13.18(3)(b)	211(6)(d)
13.18(4)	211(7)
13.18(4) (2nd sentence)	211(8)
13.18(5)	211(9)
13.18(6)	211(10)
13.18(6) (1st dot point)	211(10)(c)
13.18(6) (2nd dot point)	211(10)(d)
13.19	212
13.20	213
13.20(1)(b)(ii) (1st dot point)	213(1)(b)(ii)(A)
13.20(1)(b)(ii) (2nd dot point)	213(1)(b)(ii)(B)
13.20(1)(b)(ii) (3rd dot point)	213(1)(b)(ii)(C)
13.20(4) (2nd sentence)	213(5)
13.20(4) (3rd sentence)	213(6)
13.20(5)	213(7)
13.20(6)	213(8)
13.21	214
13.22	215
13.23	216
13.24	217
13.24(2) (1st dot point)	217(2)(a)

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13.24(2) (2nd dot point)	217(2)(b)
Division 3A	Division 4
13.24A	218
13.24B	219
13.24C	220
13.24D	221
13.24E	222
13.24F	223
13.24G	224
13.24H	225
13.24I	226
13.24J	227
Division 4	Division 5
13.25	228
13.25(1) def <b>'prescribed offence'</b> (d) (1st dot point)	228(1) def <b>'prescribed offence'</b> (d)(i)
13.25(1) def <b>'prescribed offence'</b> (d) (2nd dot point)	228(1) def <b>'prescribed offence'</b> (d)(ii)
13.25(1) def <b>'prescribed offence'</b> (d) (3rd dot point)	228(1) def <b>'prescribed offence'</b> (d)(iii)
13.26	229
13.27	230
13.28	231
13.29	232
13.30	233
Division 5	Division 6
13.31	234
13.32	235
13.32(3) (2nd sentence)	235(4)
13.32(4)	235(5)
13.33	236
13.34	237
13.35	238
13.36	239
13.37	240
13.38	241
13.39	242
13.41	243
13.42 (1st sentence)	244(1)
13.42 (2nd sentence)	244(2)
13.43	245
Division 6	Division 7
13.44	246
13.45	247
13.46	248
13.47	249

13.47(1) (2nd sentence)	249(2)
13.47(1) (3rd sentence)	249(3)
13.47(2)	249(4)
13.48	250
13.49	251
13.50	252
13.50(1) (2nd sentence)	252(2)
13.50(2)	252(3)
13.50(2) (1st dot point)	252(3)(a)
13.50(2) (2nd dot point)	252(3)(b)
13.50(2) (3rd dot point)	252(3)(c)
13.50(3)	252(4)
13.50(3) (1st dot point)	252(4)(a)
13.50(3) (2nd dot point)	252(4)(b)
13.50(4)	252(5)
13.50(5)	252(6)
13.50(5) (1st dot point)	252(6)(a)
13.50(5) (2nd dot point)	252(6)(b)
13.50(5) (3rd dot point)	252(6)(c)
13.50(6)	252(7)
13.50(6) (1st dot point)	252(7)(a)
13.50(6) (2nd dot point)	252(7)(b)
13.51	253
13.52	254
13.52(1) (2nd sentence)	254(2)
13.52(2)	254(3)
13.52(3)	254(4)
13.52(3) (1st dot point)	254(4)(a)
13.52(3) (2nd dot point)	254(4)(b)
13.52(4)	254(5)
13.53	255
13.53(2) (1st dot point)	255(2)(a)
13.53(2) (2nd dot point)	255(2)(b)
13.53(3) (1st dot point)	255(3)(a)
13.53(3) (2nd dot point)	255(3)(b)
13.53(4) (1st dot point)	255(4)(a)
13.53(4) (2nd dot point)	255(4)(b)
13.53(4) (3rd dot point)	255(4)(c)
13.53(4) (2nd sentence)	255(5)
13.53(5)	255(6)
13.53(6)	255(7)
13.53(7)	255(8)
13.53(8)	255(9)
Division 7	Division 8
13.54	256
13.55	257

13.56	258
13.57	259
13.58	260
13.59	261
13.60	262
13.61	263
13.62	264
13.63	265
13.64	266
13.65	267
13.66	268
13.67	269
13.68	270
13.69	271
13.70	272
13.71	273
13.72	274
13.73	275
13.73A	276
13.73B	277
13.73C	278
13.73D	279
13.73E	280
13.73F	281
13.73G	282
13.73H	283
13.73I	284
13.73J	285
13.73K	286
13.73L	287
13.73M	288
13.73N	289
13.73O	290
13.73P	291
13.73Q	292
13.73R	293
13.73S	294
13.73T	295
13.73U	296
13.73V	297
13.73W	298
13.73X	299
13.73Y	300
13.73Z	301
13.73ZA	302
13.73ZB	303

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13.73ZC	304
13.73ZD	305
13.73ZE	306
13.73ZF	307
13.73ZG	308
Division 8	Division 9
13.74	309
13.75	310
13.76	311
13.76(b)(ii) (1st dot point)	311(b)(ii)(A)
13.76(b)(ii) (2nd dot point)	311(b)(ii)(B)
13.77	312
13.78	313
13.79	314
Division 9	Division 10
13.80	315
13.80(1) (1st dot point)	315(1)(a)
13.80(1) (2nd dot point)	315(1)(b)
13.80(1) (3rd dot point)	315(1)(c)
13.81	316
13.82	317
13.83	318
13.84	319
13.85	320
13.85(1) (1st dot point)	320(1)(a)
13.85(1) (2nd dot point)	320(1)(b)
13.86	321
13.86(1) (1st dot point)	321(1)(a)
13.86(1) (2nd dot point)	321(1)(b)
13.86(1) (3rd dot point)	321(1)(c)
13.87	322
13.87(4) (1st dot point)	322(4)(a)
13.87(4) (2nd dot point)	322(4)(b)
13.88	323
13.88(4)(a)(i) (1st dot point)	323(4)(a)(i)(A)
13.88(4)(a)(i) (2nd dot point)	323(4)(a)(i)(B)
13.88(4)(a)(ii) (1st dot point)	323(4)(a)(ii)(A)
13.88(4)(a)(ii) (2nd dot point)	323(4)(a)(ii)(B)
13.89	324
13.90	325
13.91	326
13.92	327
13.92(5) (1st dot point)	327(5)(a)
13.92(5) (2nd dot point)	327(5)(b)
13.93	328
13.93(1) (1st dot point)	328(1)(a)



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13.93(1) (2nd dot point)	328(1)(b)
13.93(2) (1st dot point)	328(2)(a)
13.93(2) (2nd dot point)	328(2)(b)
13.93(6) (2nd sentence)	328(7)
13.94	329
13.95	330
13.96	331
13.97	332
13.97(1) (1st dot point)	332(1)(a)
13.97(1) (2nd dot point)	332(1)(b)
13.97(2) (1st dot point)	332(2)(a)
13.97(2) (2nd dot point)	332(2)(b)
13.98	333
Division 10	Division 11
13.99	334
13.100	335
13.100(1) (1st dot point)	335(1)(a)
13.100(1) (2nd dot point)	335(1)(b)
13.100(2) (1st dot point)	335(2)(a)
13.100(2) (2nd dot point)	335(2)(b)
13.100(4)(d) (1st dot point)	335(4)(d)(i)
13.100(4)(d) (2nd dot point)	335(4)(d)(ii)
13.100(4)(d) (3rd dot point)	335(4)(d)(iii)
13.101	336
Division 11	Division 12
13.102	337
13.103	338
13.104	339
13.104(4) (1st dot point)	339(4)(a)
13.104(4) (2nd dot point)	339(4)(b)
13.104(4) (3rd dot point)	339(4)(c)
13.104(4) (4th dot point)	339(4)(d)
13.104(5) (1st dot point)	339(5)(a)
13.104(5) (2nd dot point)	339(5)(b)
13.104(5) (3rd dot point)	339(5)(c)
13.105 (1st sentence)	340(1)
13.105 (2nd sentence)	340(2)
13.106	341
13.106(2) (1st dot point)	341(2)(a)
13.106(2) (2nd dot point)	341(2)(b)
13.106(2)(a)	341(2)(c)
13.106(2)(b)	341(2)(d)
13.107	342
13.108	343
13.109	344
13.109(2)(c) (1st dot point)	344(2)(c)(i)

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13.109(2)(c) (2nd dot point)	344(2)(c)(ii)
13.109(2)(c) (3rd dot point)	344(2)(c)(iii)
13.110	345
13.111	346
13.111(1) def <b>'discriminatory action against an eligible person'</b> (1st dot point)	346(1) def <b>'discriminatory action against an eligible person'</b> (a)
13.111(1) def <b>'discriminatory action against an eligible person'</b> (2nd dot point)	346(1) def <b>'discriminatory action against an eligible person'</b> (b)
13.111(1) def <b>'eligible person'</b> (1st dot point)	346(1) def <b>'eligible person'</b> (a)
13.111(1) def <b>'eligible person'</b> (2nd dot point)	346(1) def <b>'eligible person'</b> (b)
13.112	347
13.112 (1st dot point)	347(a)
13.112 (2nd dot point)	347(b)
13.112 (3rd dot point)	347(c)
13.112 (4th dot point)	347(d)
13.112 (4th dot point, 1st unnum subpara)	347(d)(i)
13.112 (4th dot point, 1st unnum subpara)	347(d)(ii)
13.112 (5th dot point)	347(e)
13.112 (6th dot point)	347(f)
14.1	348
14.1(4) (1st dot point)	348(4)(a)
14.1(4) (2nd dot point)	348(4)(b)
14.1(4) (3rd dot point)	348(4)(c)
14.1(4) (4th dot point)	348(4)(d)
14.2	349
14.3	350
14.4	351
14.5	352
14.6	353
14.7	354
14.8	355
14.9	356
14.9 (1st dot point)	356(a)
14.9 (2nd dot point)	356(b)
14.10	357
14.10 (1st dot point)	357(a)
14.10 (2nd dot point)	357(b)
14.11	358
14.11(1) (1st dot point)	358(1)(a)
14.11(1) (2nd dot point)	358(1)(b)

14.12	359
14.12(2) (2nd sentence)	359(3)
14.12(3)	359(4)
14.12(3)(a) (1st dot point)	359(4)(a)(i)
14.12(3)(a) (2nd dot point)	359(4)(a)(ii)
14.12(3)(a)(i)	359(4)(a)(iii)
14.12(3)(a)(ii)	359(4)(a)(iv)
14.12(4)	359(5)
14.12(5)	359(6)
14.12(5)(a) (1st dot point)	359(6)(a)(i)
14.12(5)(a) (2nd dot point)	359(6)(a)(ii)
14.12(6)	359(7)
14.12(7)	359(8)
14.12(8)	359(9)
15.1	360
15.2	361
15.2(1) (2nd sentence)	361(2)
15.2(2)	361(3)
15.2(2)(c) (1st dot point)	361(3)(c)(i)
15.2(2)(c) (2nd dot point)	361(3)(c)(ii)
15.2(2)(c) (3rd dot point)	361(3)(c)(iii)
15.2(2)(c) (4th dot point)	361(3)(c)(iv)
15.2(3)	361(4)
15.2(4)	361(5)
15.3	362
15.3(1) (2nd sentence)	362(2)
15.3(2)	362(3)
15.3(2)(c)(iii) (1st dot point)	362(3)(c)(iii)(A)
15.3(2)(c)(iii) (2nd dot point)	362(3)(c)(iii)(B)
15.3(3)	362(4)
15.3(4)	362(5)
15.3(5)	362(6)
15.4	363
15.4(1) (2nd sentence)	363(2)
15.4(2)	363(3)
15.5	364
15.5(1) (2nd sentence)	364(2)
15.5(2)	364(3)
15.5(3)	364(4)
15.5(4)	364(5)
15.5(5)	364(6)
15.6	365
15.7	366
15.8	367
15.8(2)(c) (1st dot point)	367(2)(c)(i)
15.8(2)(c) (2nd dot point)	367(2)(c)(ii)

15.9	368
15.10	369
15.10(2) (2nd sentence)	369(3)
15.10(3)	369(4)
15.10(4)	369(5)
15.10(4) (2nd sentence)	369(6)
15.10(4) (3rd sentence)	369(7)
15.10(5)	369(8)
15.11	370
15.12	371
15.12(1) (1st dot point)	371(1)(a)
15.12(1) (2nd dot point)	371(1)(b)
15.13	372
15.14	373
15.15	374
15.16	375
15.17	376
15.18	377
15.18(3) (1st dot point)	377(3)(a)
15.18(3) (2nd dot point)	377(3)(b)
15.19	378
15.19 (1st sentence)	378(1)
15.20	379
15.21	380
15.22	381
15.23	382
15.24	383
16.1	384
16.2	385
16.2 (1st dot point)	385(a)
16.2 (2nd dot point)	385(b)
16.3	386
16.3(1) (1st dot point)	386(1)(a)
16.3(1) (2nd dot point)	386(1)(b)
16.4	387
16.4(1) (1st dot point)	387(1)(a)
16.4(1) (2nd dot point)	387(1)(b)
16.5	388
16.6	389
16.6(2) (1st dot point)	389(2)(a)
16.6(2) (2nd dot point)	389(2)(b)
17.1	390
17.2	391
17.3	392
17.4	393
17.4(1) (1st dot point)	393(1)(a)

17.4(1) (2nd dot point)	393(1)(b)
17.5	394
17.6	395
17.6(2) (1st dot point)	395(2)(a)
17.6(2) (2nd dot point)	395(2)(b)
17.6(2) (2nd sentence)	395(3)
17.6(3)	395(4)
17.6(3) (1st dot point)	395(4)(a)
17.6(3) (2nd dot point)	395(4)(b)
17.6(4)	395(5)
17.6(5)	395(6)
17.7	396
17.7(3) (2nd sentence)	396(4)
17.7(4)	396(5)
17.7(4) (1st dot point)	396(5)(a)
17.7(4) (2nd dot point)	396(5)(b)
17.7(5)	396(6)
17.7(5) (1st dot point)	396(6)(a)
17.7(5) (2nd dot point)	396(6)(b)
17.8	397
17.9	398
17.9 (1st sentence)	398(1)
17.9 (1st sentence, 1st dot point)	398(1)(a)
17.9 (1st sentence, 2nd dot point)	398(1)(b)
17.9 (2nd sentence)	398(2)
17.9(2)	398(3)
17.10	399
17.10 (1st dot point)	399(a)
17.10 (2nd dot point)	399(b)
17.11	400
17.12	401
17.13 (1st sentence)	402(1)
17.13 (2nd sentence)	402(2)
17.14	403
17.15	404
17.16	405
17.16(4) (1st dot point)	405(4)(a)
17.16(4) (2nd dot point)	405(4)(b)
17.16(4A)	405(5)
17.16(5)	405(6)
17.16(6)	405(7)
17.16(6) (2nd sentence)	405(8)
17.16(7)	405(9)
17.16(8)	405(10)
17.17	406
17.18	407

17.19	408
17.20	409
17.20(1A)	409(2)
17.20(2)	409(3)
17.20(3)	409(4)
17.20(4)	409(5)
17.20(5)	409(6)
17.21	410
17.22	411
17.22(2) (2nd sentence)	411(3)
17.22(3)	411(4)
17.23	412
17.24	413
17.25	414
17.26	415
17.27	416
17.28	417
17.29	418
17.29(2) (2nd sentence)	418(3)
17.30	419
18.1	420
18.1(3) (2nd sentence)	420(4)
18.1(4)	420(5)
18.2	421
18.3	422
18.4	423
18.5	424
18.5(3) (2nd sentence)	424(4)
18.6	425
18.7	426
18.8	427
18.9	428
18.10	429
18.11	430
18.12	431
18.12(2) (2nd sentence)	431(3)
18.12(3)	431(4)
18.13	432
18.14	433
18.14(2) (1st dot point)	433(2)(a)
18.14(2) (2nd dot point)	433(2)(b)
18.15	434
18.16	435
18.17	436
18.18	437
18.19	438

18.20	439
18.20(2)(a) (1st dot point)	439(2)(a)(i)
18.20(2)(a) (2nd dot point)	439(2)(a)(ii)
18.21	440
18.22	441
18.23	442
18.24	443
18.25	444
18.26	445
18.26(4) (2nd sentence)	445(5)
18.26(5)	445(6)
18.26(6)	445(7)
18.27	446
18.28	447
18.29 (1st sentence)	448(1)
18.29 (2nd sentence)	448(2)
18.30	449
18.30(1)(a) (1st dot point)	449(1)(a)(i)
18.30(1)(a) (2nd dot point)	449(1)(a)(ii)
18.31 (1st sentence)	450(1)
18.31 (2nd sentence)	450(2)
18.32	451
18.33 (1st sentence)	452(1)
18.33 (2nd sentence)	452(2)
18.34	453
18.35	454
18.36	455
18.37	456
18.38(1)	457
18.38(1)(d) (1st dot point)	457(d)(i)
18.38(1)(d) (2nd dot point)	457(d)(ii)
18.39	458
18.40	459
18.41	460
18.41(3) proviso	460(4)
18.42	461
18.42(3) (2nd sentence)	461(4)
18.42(4)	461(5)
18.42(5)	461(6)
18.42(6)	461(7)
18.42(6)(a) (1st dot point)	461(7)(a)(i)
18.42(6)(a) (2nd dot point)	461(7)(a)(ii)
18.42(6)(b) (1st dot point)	461(7)(b)(i)
18.42(6)(b) (2nd dot point)	461(7)(b)(ii)
18.42(7)	461(8)
18.42(8)	461(9)

18.42(8) (1st dot point)	461(9)(a)
18.42(8) (2nd dot point)	461(9)(b)
18.43	462
18.43(1) (1st dot point)	462(1)(a)
18.43(1) (2nd dot point)	462(1)(b)
18.44	463
18.45	464
18.45(3) (1st dot point)	464(3)(a)
18.45(3) (2nd dot point)	464(3)(b)
18.45(3) (3rd dot point)	464(3)(c)
18.45(3) (4th dot point)	464(3)(d)
18.45(3) (5th dot point)	464(3)(e)
18.45(3)(a)	464(3)(f)
18.45(3)(b)	464(3)(g)
18.45(3)(c)	464(3)(h)
18.46	465
18.46(1) (1st dot point)	465(1)(a)
18.46(1) (2nd dot point)	465(1)(b)
18.46(1) (3rd dot point)	465(1)(c)
18.46(1) (4th dot point)	465(1)(d)
18.47	466
18.47(4) (1st dot point)	466(4)(a)
18.47(4) (2nd dot point)	466(4)(b)
18.48	467
18.49	468
18.49(2) (1st dot point)	468(2)(a)
18.49(2) (2nd dot point)	468(2)(b)
18.50	469
18.50(1) (2nd sentence)	469(2)
18.50(2)	469(3)
18.50(3)	469(4)
18.50(4)	469(5)
18.51	470
18.51(1) (1st dot point)	470(1)(a)
18.51(1) (2nd dot point)	470(1)(b)
18.52	471
18.53	472
18.54	473
19.1 (1st sentence)	474(1)
19.1 (2nd sentence)	474(2)
19.2	475
19.3	476
19.4 (1st sentence)	477(1)
19.4 (2nd sentence)	477(2)
19.5	478
19.6	479



19.6(1) (2nd sentence)	479(2)
19.6(2)	479(3)
19.7	480
19.8	481
19.8(3) (2nd sentence)	481(4)
19.8(4)	481(5)
19.8(4) (2nd sentence)	481(6)
19.8(4) (3rd sentence)	481(7)
19.8(5)	481(8)
19.8(5) (2nd sentence)	481(9)
19.9	482
PART 19A	PART 20
19A.1	483
19A.2	484
19A.3	485
19A.4	486
PART 19B	PART 21
19B.1	487
PART 20	PART 22
20.1	488
20.2	489
20.3	490
20.4	491
20.4(1) proviso	491(2)
20.4(2)	491(3)
20.5	492
20.5(2) (1st dot point)	492(2)(a)
20.5(2) (2nd dot point)	492(2)(b)
20.6	493

## **7 Table of comparative legislation**

### **Key to abbreviations in table of comparative legislation**

<b>Cwth</b>	=	<b>Industrial Relations Act 1988 (Commonwealth)</b>
<b>Qd</b>	=	<b>Industrial Conciliation and Arbitration Act 1961 (Queensland)</b>
<b>Wa</b>	=	<b>Wages Act 1918–1983 (Queensland)</b>

<b>s 6</b>	Qd s 5
<b>s 7</b>	Qd s 3
<b>s 8</b>	Qd s 7
<b>s 9</b>	Qd s 7
<b>s 10</b>	Qd s 7
<b>s 11</b>	Qd s 7
<b>s 12</b>	Qd s 7

- s 13 Qd ss 8, 22
- s 14 Qd s 8
- s 15 Qd s 8
- s 16 Qd s 8
- s 17 Qd s 8
- s 18 Qd s 8
- s 19 Qd s 9
- s 20 Qd s 9
- s 21 Qd s 9
- s 22 Qd s 9
- s 23 Qd s 9
- s 25 Qd s 9
- s 26 Qd s 9
- s 28 Qd s 9
- s 29 Qd ss 10A, 10B
- s 30 Qd ss 10, 10B
- s 31 Qd ss 11, 33
- s 32 Qd s 11
- s 33 Qd s 12
- s 34 Qd ss 12, 22, 23, 26
- s 35 Qd s 12
- s 36 Qd s 13
- s 38 Qd s 28
- s 39 Qd s 123A
- s 41 Qd s 102
- s 42 Qd s 36A
- s 43 Cwlth s 118
- s 45 Qd ss 32, 33
- s 46 Qd s 33
- s 47 Qd s 35
- s 48 Qd s 25
- s 49 Qd s 130
- s 50 Qd s 42
- s 51 Qd s 42
- s 52 Qd ss 24, 25
- s 54 Qd s 25
- s 55 Qd s 24
- s 62 Cwlth s 14
- s 63 Qd s 9A
- s 64 Qd ss 11A, 12
- s 67 Qd Sch 1 cll 1, 7
- s 68 Qd Sch 1 cll 2, 5, 6, 8, 9

- s 70 Qd ss 13, 14, 120
- s 71 Qd s 8
- s 72 Qd Sch 1 cl 2
- s 73 Qd Sch 1 cl 2
- s 74 Qd Sch 1 cl 6
- s 75 Qd s 129
- s 76 Qd ss 86, 135
- s 77 Qd s 121
- s 78 Qd ss 13, 90, 128
- s 79 Qd ss 16, 17, 135A
- s 81 Cwlth s 227
- s 82 Qd s 122
- s 83 Qd ss 80, 125
- s 84 Qd Sch 1 cl 3
- s 85 Qd ss 124, 124A
- s 86 Qd Sch 1 cl 11
- s 87 Qd Sch 1 cl 10
- s 88 Qd Sch 1 cl 4; Ord iv r 26
- s 91 Qd s 25
- s 92 Qd Sch 1 cl 12
- s 93 Qd Sch 1 cl 16
- s 94 Qd Sch 1 cl 16
- s 95 Qd s 8
- s 96 Qd ss 27, 34, 46
- s 97 Qd s 27
- s 98 Qd s 27; Sch 1 cl 15
- s 102 Qd s 21A
- s 103 Qd s 27
- s 105 Qd s 29
- s 106 Qd s 31
- s 107 Qd s 12
- s 123 Qd s 89
- s 124 Qd s 89
- s 125 Qd s 90
- s 126 Qd s 89
- s 127 Qd s 89
- s 128 Qd s 92
- s 129 Qd s 89
- s 130 Qd s 91
- s 131 Qd s 29
- s 132 Qd s 32
- s 133 Qd s 94

- s 134 Qd s 93
- s 135 Qd s 29
- s 136 Qd s 29
- s 138 Qd s 29
- s 139 Qd s 123
- s 140 Qd ss 14, 21, 96
- s 141 Qd s 14
- s 142 Qd s 14
- s 143 Qd s 14
- s 144 Qd s 21A
- s 145 Qd s 30
- s 146 Qd sch 1 cl 14
- s 147 Qd sch 1 cl 15
- s 148 Qd s 12
- s 149 Qd s 12A
- s 150 Qd s 16
- s 151 Qd s 16
- s 152 Qd s 16
- s 153 Qd s 15
- s 154 Qd s 15
- s 155 Qd s 15
- s 156 Qd s 15
- s 157 Qd s 15
- s 159 Qd s 17
- s 160 Qd s 17
- s 161 Qd s 17
- s 162 Qd s 17
- s 163 Qd s 17
- s 164 Qd s 17
- s 166 Qd s 17
- s 167 Qd s 17
- s 168 Qd s 17
- s 169 Qd s 17
- s 170 Qd s 18
- s 171 Qd s 20
- s 172 Qd s 19
- s 173 Qd ss 17, 19
- s 174 Qd s 5
- s 188 Qd s 36
- s 189 Qd s 38
- s 190 Qd s 39
- s 12.4 Qd s 40

- s 191 Qd s 98
- s 192 Qd s 98
- s 193 Qd s 60C
- s 194 Qd s 100
- s 195 Cwlth s 188
- s 196 Qd ss 44, 45
- s 197 Cwlth s 189
- s 198 Cwlth s 193
- s 199 Qd s 52
- s 200 Qd s 64
- s 201 Qd ss 46, 55
- s 202 Cwlth s 192
- s 203 Qd s 69
- s 204 Cwlth s 194
- s 205 Cwlth s 196
- s 206 Cwlth s 195
- s 207 Cwlth s 197
- s 208 Cwlth s 198
- s 209 Cwlth s 199
- s 210 Cwlth s 200
- s 211 Cwlth s 201
- s 213 Cwlth s 204
- s 214 Qd ss 44, 45
- s 215 Cwlth s 206
- s 216 Cwlth s 208
- s 217 Cwlth s 209
- s 218 Qd s 51
- s 229 Cwlth s 227
- s 230 Cwlth s 228
- s 231 Cwlth s 229
- s 232 Cwlth s 230
- s 233 Cwlth s 231
- s 234 Cwlth s 232
- s 235 Qd s 76
- s 236 Qd s 77
- s 237 Qd s 78
- s 238 Qd s 79
- s 239 Qd s 80
- s 240 Qd s 81
- s 241 Qd s 82
- s 242 Qd s 83
- s 243 Qd s 84

- s **13.40** Qd s 85
- s **244** Qd s 86
- s **245** Qd s 86A
- s **246** Qd s 87
- s **247** Qd s 47
- s **248** Qd s 47
- s **249** Qd ss 60B, 66
- s **250** Qd s 56
- s **251** Qd s 56
- s **252** Qd s 56
- s **253** Qd s 56
- s **254** Qd s 56
- s **255** Qd s 48
- s **256** QD S 47A
- s **257** Cwlth s 233
- s **258** Cwlth s 234
- s **259** Cwlth s 235
- s **260** Cwlth s 236
- s **261** Cwlth s 237
- s **262** Cwlth s 238
- s **263** Cwlth s 239
- s **264** Cwlth s 240
- s **265** Cwlth s 241
- s **266** Cwlth s 242
- s **267** Cwlth s 243
- s **268** Cwlth s 244
- s **269** Cwlth s 245
- s **270** Cwlth s 246
- s **271** Cwlth s 247
- s **272** Cwlth s 248
- s **273** Cwlth s 249
- s **274** Cwlth s 251
- s **275** Cwlth s 252
- s **310** Cwlth s 294
- s **311** Cwlth s 295
- s **312** Qd ss 73, 74
- s **314** Cwlth s 297
- s **315** Cwlth s 298
- s **317** Cwlth s 270
- s **318** Cwlth s 271
- s **319** Cwlth s 272
- s **320** Cwlth s 273

- s 321 Cwlth s 274
- s 322 Qd s 60
- s 323 Cwlth s 275
- s 324 Cwlth s 276
- s 325 Cwlth s 277
- s 326 Cwlth s 278
- s 327 Cwlth s 279
- s 328 Cwlth s 280
- s 329 Qd s 58
- s 330 Cwlth s 281
- s 331 Cwlth s 282
- s 332 Cwlth s 283
- s 333 Cwlth s 284
- s 334 Cwlth s 285
- s 335 Cwlth s 254
- s 336 Cwlth s 255
- s 337 Cwlth s 256
- s 338 Qd s 61
- s 339 Qd s 62
- s 340 Cwlth s 269
- s 341 Qd s 138
- s 342 Qd s 118
- s 343 Qd s 101
- s 344 Qd s 101A
- s 345 Qd s 47A
- s 346 Cwlth s 334
- s 347 Cwlth s 336
- s 349 Qd s 131
- s 350 Qd s 131
- s 351 Qd s 131
- s 352 Qd s 131
- s 353 Qd s 132
- s 354 Qd s 132
- s 355 Qd s 134
- s 356 Qd s 132
- s 358 Qd s 133
- s 359 Qd s 97
- s 360 Qd s 97
- s 361 Qd ss 126, 136
- s 363 Qd s 126
- s 364 Qd s 126
- s 365 Qd s 57

- s **366** Qd s 126
- s **367** Qd s 126
- s **368** Qd s 108
- s **369** Qd s 126A
- s **370** Qd s 136
- s **371** Qd s 57
- s **373** Qd s 136
- s **374** Qd s 127
- s **375** Qd s 128A
- s **376** Qd s 128B
- s **378** Qd s 110; Wa s 31
- s **379** Qd s 41
- s **380** Qd s 137
- s **381** Qd s 138A
- s **382** Qd s 139
- s **383** Qd s 140
- s **384** Qd s 141
- s **392** Wa s 4
- s **393** Wa s 5
- s **394** Wa s 6
- s **395** Wa s 7
- s **396** Wa s 7
- s **397** Wa ss 8, 10
- s **398** Wa s 9
- s **399** Wa s 11
- s **400** Wa s 13
- s **401** Wa s 14
- s **402** Wa s 16
- s **403** Wa s 18
- s **406** Qd s 97; Wa ss 19, 20, 23-25A
- s **407** Wa ss 19, 20
- s **408** Wa s 21
- s **409** Qd s 97
- s **410** Qd ss 17, 97; Wa s 20
- s **411** Qd s 97
- s **412** Wa s 25B
- s **414** Wa s 39
- s **416** Wa s 36
- s **417** Wa s 36
- s **418** Wa s 36
- s **419** Wa s 37
- s **420** Wa s 37



- s 421 Qd s 103
- s 422 Qd s 113
- s 423 Qd s 130
- s 424 Qd s 107
- s 425 Qd s 104
- s 426 Qd s 105
- s 427 Qd s 106
- s 428 Qd s 121
- s 429 Qd ss 14, 17
- s 430 Qd s 19
- s 431 Qd s 39
- s 432 Qd s 99
- s 433 Qd s 50
- s 434 Qd s 60
- s 435 Qd s 77
- s 436 Qd s 82
- s 437 Qd s 85
- s 438 Qd s 86
- s 439 Qd s 88
- s 440 Qd s 47
- s 441 Qd s 60B
- s 442 Qd s 56
- s 443 Cwlth s 318
- s 444 Qd s 60
- s 445 Cwlth ss 323, 324, 325
- s 446 Cwlth s 326
- s 447 Cwlth s 327
- s 448 Cwlth s 327
- s 449 Cwlth s 328
- s 450 Cwlth s 329
- s 451 Cwlth s 330
- s 452 Cwlth s 331
- s 453 Qd s 61
- s 454 Cwlth s 322
- s 455 Qd ss 47A, 60A, 101B
- s 456 Qd s 134
- s 457 Qd s 132
- s 458 Qd ss 108, 126
- s 459 Qd s 57
- s 460 Qd s 136
- s 461 Qd s 110, Wa s 31
- s 462 Qd s 97; Wa s 34

- s **464** Qd s 113
- s **465** Qd s 109
- s **467** Qd s 113
- s **468** Qd s 113
- s **469** Qd s 111
- s **470** Qd s 112
- s **471** Qd s 111
- s **472** Qd s 116
- s **473** Qd s 116
- s **474** Qd s 115