

Queensland



# WORKPLACE RELATIONS ACT 1997

**Reprinted as in force on 4 April 1997  
(Act not amended up to this date)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 4 April 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

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

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

- omit provisions that are no longer required (ss 37 and 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

**Also see endnotes for information about when provisions commenced.**

# Queensland



## WORKPLACE RELATIONS ACT 1997

### TABLE OF PROVISIONS

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
1	Short title . . . . .	25
2	Commencement . . . . .	25
3	Principal object of this Act . . . . .	25
4	Definitions—the dictionary . . . . .	27
5	References to making false or misleading statements . . . . .	27
6	References to engaging in conduct . . . . .	27
7	Who is an employee . . . . .	27
8	Who is an employer . . . . .	28
9	What is an industrial matter . . . . .	29
<b>CHAPTER 2—AGREEMENTS</b>		
<b>PART 1—CERTIFIED AGREEMENTS</b>		
<i>Division 1—Preliminary</i>		
10	Object of pt 1 . . . . .	31
11	Commission’s functions . . . . .	32
12	Single business and employers taken to be 1 employer . . . . .	32
13	Additional operation of part . . . . .	33
14	Nominal expiry date . . . . .	34
15	Valid majority . . . . .	34
16	Working day . . . . .	35
<i>Division 2—Making agreements</i>		
17	What this division covers . . . . .	35
18	Nature of agreement . . . . .	35
19	Agreement with employee organisations . . . . .	35

---

20	Agreement with employees . . . . .	36
21	Certificate as to requested representation . . . . .	37
22	Greenfields agreement . . . . .	38
23	Time for applying for certification . . . . .	39
	<b><i>Division 3—Certifying agreements</i></b>	
24	Certain employee organisations not to be heard . . . . .	39
25	Certifying an agreement . . . . .	39
26	When commission to refuse to certify an agreement . . . . .	41
27	Other options open to commission instead of refusing to certify an agreement . . . . .	43
28	Procedures for preventing and settling disputes . . . . .	43
	<b><i>Division 4—Effect of certified agreements</i></b>	
29	When a certified agreement is in operation . . . . .	44
30	Effect of a certified agreement in relation to awards and other agreements . . . . .	44
	<b><i>Division 5—Persons bound by certified agreements</i></b>	
31	Persons bound . . . . .	45
32	Successor employers bound . . . . .	45
	<b><i>Division 6—Extending, amending or terminating certified agreements</i></b>	
33	Extending the nominal expiry date . . . . .	46
34	Amending a certified agreement . . . . .	47
35	Amendment if discrimination between unionists and non-unionists . . . . .	48
36	Other options open to commission instead of refusing to approve amendment of an agreement . . . . .	49
37	Terminating a certified agreement on or before its nominal expiry date . . . . .	49
38	Terminating a certified agreement after its nominal expiry date . . . . .	50
39	Terminating an agreement in a way provided under agreement after nominal expiry date . . . . .	50
	<b><i>Division 7—Negotiations for certified agreements etc.</i></b>	
40	Initiation of bargaining period . . . . .	51
41	Particulars to accompany notice . . . . .	52
42	When bargaining period begins . . . . .	53
43	Protected action . . . . .	53

---

44	Industrial action must not involve secondary boycott . . . . .	54
45	Industrial action etc. must not be taken until after nominal expiry date of certain agreements and awards . . . . .	55
46	Notice of action to be given . . . . .	56
47	Negotiation must precede industrial action . . . . .	58
48	Secret ballot for bargaining period . . . . .	58
49	Industrial action must be properly authorised . . . . .	60
50	What happens if application to certify agreement is not made within 21 days . . . . .	61
51	Immunity provisions . . . . .	61
52	Employer not to dismiss employee etc. for engaging in protected action . .	61
53	When bargaining period ends . . . . .	62
54	Power of commission to suspend or terminate bargaining period . . . . .	62
55	What happens if commission terminates a bargaining period under s 54(3) or (7) . . . . .	65
56	Powers of commission and full bench when s 55 applies . . . . .	66
57	Awards under s 55 . . . . .	67
58	Commission not to arbitrate during bargaining period . . . . .	68
59	Conciliation for agreements . . . . .	68
60	Employers not to discriminate between unionist and non-unionist . . . . .	68
	<b><i>Division 8—Prohibition of coercion in relation to agreements</i></b>	
61	Coercion of persons to make, amend or terminate certified agreements etc. . . . .	69
	<b><i>Division 9—Enforcement and remedies</i></b>	
62	Penalty provisions . . . . .	70
63	Penalties for contravening penalty provisions . . . . .	70
64	Reinstatement and compensation if employer contravenes s 52 . . . . .	72
	<b><i>Division 10—General</i></b>	
65	Secret ballot on valid majority . . . . .	73
66	Complementary laws . . . . .	73
	<b>PART 2—QUEENSLAND WORKPLACE AGREEMENTS</b>	
	<b><i>Division 1—Preliminary</i></b>	
67	Object of pt 2 . . . . .	74
68	Definitions for pt 2 . . . . .	74

---

69	Proposed QWAs and ancillary documents—interpretation . . . . .	75
70	Functions and powers of enterprise commissioner . . . . .	76
71	Protocol regarding employment advocate’s functions . . . . .	76
	<b><i>Division 2—General rules about QWAs and ancillary documents</i></b>	
72	QWAs and ancillary documents only have effect as provided by this part . . . . .	77
73	Collective QWAs . . . . .	77
	<b><i>Division 3—Making, amending or terminating a QWA</i></b>	
74	Employer and employee may make a QWA . . . . .	77
75	Matters to be included in QWA . . . . .	78
76	Nominal expiry date of QWA . . . . .	79
77	Period of operation of QWA . . . . .	79
78	Bargaining agents . . . . .	80
79	Amending a QWA . . . . .	80
80	Terminating a QWA . . . . .	81
	<b><i>Division 4—Filing QWAs and ancillary documents</i></b>	
81	Filing QWAs and ancillary documents . . . . .	81
82	Filing requirements . . . . .	82
83	Employer’s declaration must be accurate . . . . .	83
	<b><i>Division 5—Approving QWAs and ancillary documents</i></b>	
84	Additional approval requirements for QWA and ancillary documents . . . .	83
85	Approving QWA . . . . .	85
86	Approving amendment agreement . . . . .	86
87	Approving other ancillary documents . . . . .	86
88	Enterprise commissioner must issue approval or refusal notice . . . . .	87
89	Undertakings taken to be included in QWAs . . . . .	87
90	Enterprise commissioner to issue copies of approved QWAs and ancillary documents . . . . .	87
	<b><i>Division 6—Effect of a QWA</i></b>	
91	Effect of QWA on awards and agreements . . . . .	87
92	QWA binds employer’s successor . . . . .	88
93	Parties must not contravene QWA . . . . .	88
94	Conciliation for agreements . . . . .	89

---

95	Industrial action by party to QWA . . . . .	89
	<b><i>Division 7—Enforcement and remedies</i></b>	
96	Penalties for contravening this part . . . . .	89
97	Damages for contravention of QWA . . . . .	90
98	Compensation to new employee for shortfall in entitlements . . . . .	90
99	Injunctions . . . . .	91
	<b><i>Division 8—Limited immunity for industrial action</i></b>	
100	Meaning of expressions . . . . .	91
101	Limited immunity conferred . . . . .	92
102	Immunity conditional on giving notice . . . . .	92
103	Employer not to dismiss etc. an employee for taking QWA industrial action . . . . .	92
	<b><i>Division 9—General</i></b>	
104	Hindering QWA negotiations . . . . .	93
105	Persons must not apply duress or make false statements in connection with QWA etc. . . . .	94
106	Employer must give copy of documents to employee . . . . .	94
107	Intervention not permitted . . . . .	94
108	Hearings to be in private . . . . .	95
109	Identity of QWA parties not to be disclosed . . . . .	95
110	Commission must publish report about certain decisions and interpretations . . . . .	95
111	Reports and advice about development in making QWAs . . . . .	96
112	Interpretation of a QWA . . . . .	96
113	Evidence . . . . .	96
114	Signature for corporation . . . . .	97
	<b>PART 3—NO-DISADVANTAGE TEST</b>	
115	Definitions for pt 3 . . . . .	97
116	When does an agreement pass the no-disadvantage test . . . . .	99
117	Special case—employee eligible for supported wage system . . . . .	100
118	Special case—employee undertaking approved traineeship . . . . .	100
119	Special case—employee undertaking approved apprenticeship . . . . .	101
120	Determination of designated awards for certified agreement . . . . .	102

---

121	Determination of designated awards for QWA .....	102
<b>CHAPTER 3—AWARDS</b>		
<b>PART 1—OBJECTS</b>		
122	Objects of ch 3 .....	103
<b>PART 2—COMMISSION’S FUNCTIONS GENERALLY</b>		
123	Performance of commission’s functions under this chapter .....	103
124	No automatic flow-on of certain agreements .....	104
<b>PART 3—FORM AND APPLICATION</b>		
125	Form, effect and term of award .....	105
126	Persons bound by award .....	105
<b>PART 4—COMMISSION’S POWERS</b>		
127	Making, amending and repealing awards .....	106
128	Allowable award matters .....	107
129	Limitation on commission’s powers for awards .....	109
130	Exceptional matters orders .....	110
131	Allowable award matters to be dealt with by full bench .....	111
132	General rulings .....	111
<b>PART 5—OTHER REQUIREMENTS</b>		
133	Inclusion of enterprise flexibility provisions in awards .....	113
134	Some requirements about structure and content etc. of awards and orders .....	114
135	Dispute resolution procedures .....	114
<b>PART 6—EXEMPTIONS</b>		
136	Exemptions .....	116
<b>PART 7—GENERAL</b>		
137	Enforceability of awards .....	116
138	Effect of appeals on awards .....	116
139	Inconsistency between awards and contracts .....	116
<b>CHAPTER 4—GENERAL EMPLOYMENT CONDITIONS</b>		
<b>PART 1—MINIMUM WAGES</b>		
140	Object of pt 1 .....	117
141	Meaning of expressions .....	117



---

142	Orders setting minimum wages . . . . .	117
143	Orders only on application . . . . .	118
144	When commission may make order . . . . .	118
145	Matters to be considered when setting minimum wages . . . . .	119
146	Part does not limit other rights . . . . .	119
147	Orders . . . . .	119
148	Inconsistent industrial instruments or orders . . . . .	120
<b>PART 2—EQUAL REMUNERATION FOR WORK OF EQUAL VALUE</b>		
149	Object of part . . . . .	120
150	Meaning of expressions . . . . .	121
151	Orders requiring equal remuneration . . . . .	121
152	Orders only on application . . . . .	121
153	When commission must and may only make order . . . . .	121
154	Immediate or progressive introduction of equal remuneration . . . . .	122
155	Employer not to reduce remuneration . . . . .	122
156	Part does not limit other rights . . . . .	122
157	Applications under this part . . . . .	122
<b>PART 3—PARENTAL LEAVE</b>		
<i>Division 1—Preliminary</i>		
158	Object of pt 3 . . . . .	123
159	Basic principles . . . . .	123
160	Definitions for pt 3 . . . . .	124
<i>Division 2—Maternity leave</i>		
161	Entitlement to maternity leave . . . . .	126
162	Conditions of entitlement to maternity leave . . . . .	127
163	Period of maternity leave . . . . .	129
164	Entitlement reduced by other maternity leave available to employee . . . .	130
165	Taking annual or long service leave instead of, or in conjunction with, maternity leave . . . . .	131
166	Extending maternity leave . . . . .	131
167	Shortening maternity leave . . . . .	132

---

168	Effect on maternity leave of failure to complete 1 year of continuous service . . . . .	132
169	Effect on maternity leave if pregnancy terminates or child dies . . . . .	132
170	Effect on maternity leave of ceasing to be the primary care-giver . . . . .	133
171	Return to work after maternity leave . . . . .	134
172	Transfer to safe duties because of pregnancy . . . . .	134
<b><i>Division 3—Paternity leave</i></b>		
173	Entitlement to paternity leave . . . . .	135
174	Conditions of entitlement to short paternity leave . . . . .	135
175	Conditions of entitlement to long paternity leave . . . . .	136
176	Period of long paternity leave . . . . .	137
177	Entitlement reduced by other paternity leave available to employee . . . . .	138
178	Taking annual or long service leave instead of, or in conjunction with, paternity leave . . . . .	139
179	Extending long paternity leave . . . . .	140
180	Shortening paternity leave . . . . .	140
181	Effect on long paternity leave of failure to complete 1 year of continuous service . . . . .	141
182	Effect on long paternity leave if pregnancy terminates or child dies . . . . .	141
183	Effect on paternity leave of ceasing to be the primary care-giver . . . . .	142
184	Return to work after paternity leave . . . . .	142
<b><i>Division 4—General</i></b>		
185	Employee's duty if excessive leave approved or if maternity leave and paternity leave overlap . . . . .	143
186	Employer to warn replacement employee that employment is only temporary . . . . .	144
187	Parental leave and continuity of service . . . . .	144
188	Effect of part on other laws . . . . .	145
189	Entitlement to adoption leave . . . . .	145
<b>PART 4—LONG SERVICE LEAVE</b>		
190	Definitions for pt 4 . . . . .	145
191	Source of long service leave entitlement . . . . .	146
192	Approval of long service leave conditions . . . . .	147
193	Entitlement to long service leave . . . . .	147

---

194	Long service leave in sugar industry and meat works . . . . .	148
195	Long service leave for other seasonal employees . . . . .	150
196	Long service leave for employees not governed by awards etc. . . . .	151
197	Continuity of service generally . . . . .	152
198	Determining length of continuous service . . . . .	154
199	Service in Defence Force . . . . .	155
200	Service of casual employees . . . . .	155
201	Taking long service leave . . . . .	156
202	Taking long service leave—casual employees . . . . .	157
203	Payment for long service leave . . . . .	158
204	Payment for long service leave—casual employees . . . . .	158
205	Payment instead of long service leave . . . . .	160
206	Inquiry on re-employment of employee during long service leave . . . . .	160
207	Recognition of certain exemptions . . . . .	161
208	Person may be “employer” and “employee” . . . . .	161
209	Service in apprenticeship or traineeship . . . . .	162
<b>PART 5—OTHER LEAVE</b>		
210	Annual leave accrued during apprenticeship or traineeship . . . . .	162
211	Sick leave accrued during apprenticeship or traineeship . . . . .	163
212	Continuity of employment for sick leave . . . . .	163
<b>CHAPTER 5—DISMISSALS</b>		
<b>PART 1—OBJECTS AND INTERPRETATION</b>		
213	Objects of ch 5 . . . . .	164
214	Meaning of expressions . . . . .	165
215	Complementary laws . . . . .	165
216	Exclusion of employees from chapter . . . . .	165
<b>PART 2—UNLAWFUL DISMISSALS</b>		
217	When dismissal is unlawful . . . . .	166
218	Application to remedy unlawful dismissal . . . . .	168
219	Conciliation before application heard . . . . .	168
220	What to consider in deciding if dismissal is harsh, unjust or unreasonable . . . . .	169

---

221	Onus of proof . . . . .	169
222	Remedies and sanctions for unlawful dismissal . . . . .	170
223	Further orders if employer fails to reinstate . . . . .	171
224	Effect of order on leave . . . . .	172
225	Costs . . . . .	172
<b>PART 3—REQUIREMENTS FOR DISMISSAL</b>		
226	Notice of dismissal or compensation . . . . .	173
227	Orders giving effect to articles 12 and 13 of Convention . . . . .	175
228	Orders if employer does not consult about proposed dismissals . . . . .	176
229	Employer must notify Commonwealth employment service of proposed dismissals . . . . .	177
<b>PART 4—OTHER DISMISSALS</b>		
230	Employee dismissed in December, re-employed in January . . . . .	178
231	Permissible stand-down of employee . . . . .	179
<b>PART 5—PROTECTION OF INJURED EMPLOYEES</b>		
232	Definitions for pt 5 . . . . .	179
233	Wages to be paid for the day employee injured . . . . .	180
234	Reinstatement of injured employees . . . . .	180
235	Dismissal an offence in certain cases . . . . .	181
236	Preservation of employee's rights . . . . .	181
<b>PART 6—GENERAL</b>		
237	Chapter does not limit other rights . . . . .	181
238	Inconsistent instruments and orders . . . . .	182
<b>CHAPTER 6—INDUSTRIAL DISPUTES</b>		
<b>PART 1—NOTICE OF INDUSTRIAL DISPUTE</b>		
239	Notice of industrial dispute . . . . .	182
<b>PART 2—ACTION FOR SETTLING INDUSTRIAL DISPUTES</b>		
240	Action on industrial dispute . . . . .	183
241	Recommendation by consent . . . . .	185
242	Mediation by commissioner or magistrate . . . . .	185
243	Compulsory conference . . . . .	186

**PART 3—BALLOTS**

244 Secret ballot on strike action ..... 186  
 245 Effect of ballot adverse to strike ..... 187

**PART 4—INDUSTRIAL ACTION**

246 Nonparticipation in industrial action ..... 188  
 247 Indemnity against agent’s unauthorised actions ..... 189  
 248 Payments for strikes ..... 189  
 249 Orders the commission may make ..... 191  
 250 Commission not to deal with claims for payments for strikes ..... 192  
 251 Right to refuse to work if imminent health or safety risk ..... 192

**CHAPTER 7—INDUSTRIAL TRIBUNALS AND REGISTRAR**

**PART 1—INDUSTRIAL COURT**

*Division 1—Industrial Court continued*

252 Continuance ..... 193

*Division 2—President*

253 Appointment of president ..... 193  
 254 When president holds office ..... 193  
 255 Acting president ..... 194

*Division 3—Jurisdiction and powers of the court*

256 Constitution of court ..... 194  
 257 President’s jurisdiction ..... 194  
 258 Court’s jurisdiction ..... 194  
 259 Court’s jurisdiction is exclusive ..... 196  
 260 Binding nature of court’s interpretation ..... 196  
 261 Court may refuse to proceed ..... 197  
 262 Decision of full industrial court ..... 197

*Division 4—President’s annual report*

263 President’s annual report ..... 197

*Division 5—President’s advisory council*

264 Establishment of advisory council ..... 198  
 265 Term of office ..... 198  
 266 Remuneration of appointed members ..... 199

---

267	Functions of advisory council . . . . .	199
268	Meetings of advisory council . . . . .	199
<b>PART 2—INDUSTRIAL RELATIONS COMMISSION</b>		
<i>Division 1—Continuance, composition and constitution</i>		
269	Continuance . . . . .	199
270	Composition . . . . .	200
271	Constitution . . . . .	200
<i>Division 2—Members of the commission</i>		
272	Appointment of members . . . . .	200
273	When member holds office . . . . .	201
274	Acting chief commissioner . . . . .	201
275	Acting members . . . . .	202
276	Restrictions etc. on appointment . . . . .	202
277	Removal of members from office . . . . .	202
278	Administrative responsibilities of chief commissioner . . . . .	202
<i>Division 3—The commission</i>		
279	Commission’s jurisdiction . . . . .	203
280	Commission to take account of Anti-Discrimination Act . . . . .	205
281	Commission’s jurisdiction is exclusive . . . . .	205
282	Commission may refuse to proceed . . . . .	205
283	Chief commissioner to consider efficiencies that may be achieved by allocating matters to dual commissioners . . . . .	205
284	Reallocation of commission’s work . . . . .	206
285	Commission may continue to hear reallocated work without re-hearing evidence . . . . .	206
286	Decision of full bench . . . . .	206
<i>Division 4—Commission’s functions</i>		
287	Commission’s functions . . . . .	206
288	Performance of commission’s functions . . . . .	207
<i>Division 5—Powers of commission</i>		
289	General powers . . . . .	208
290	Power to amend or void contracts . . . . .	209
291	Power to grant injunctions . . . . .	209

---

292	Power to direct or order in relation to industrial action . . . . .	211
293	Orders about representation rights of employee organisations . . . . .	212
294	Procedures for reopening . . . . .	213
295	Reference to full bench . . . . .	215
296	Case stated to court . . . . .	215
297	Remission to magistrate . . . . .	216
298	Power to enter and inspect . . . . .	216
299	Interpretation of awards and certified agreements . . . . .	217
300	Statement of policy . . . . .	218
301	Conducting a secret ballot . . . . .	218
302	Other powers . . . . .	220
	<i>Division 6—Member’s conditions of appointment</i>	
303	Remuneration . . . . .	220
304	Pension benefits—Judges (Pensions and Long Leave) Act . . . . .	220
305	Pension benefits—Superannuation Acts . . . . .	221
306	Leave of absence . . . . .	222
	<b>PART 3—INDUSTRIAL MAGISTRATES</b>	
	<i>Division 1—Industrial Magistrates Court</i>	
307	Industrial Magistrates Court . . . . .	223
	<i>Division 2—Industrial magistrates</i>	
308	Office of Industrial Magistrate . . . . .	223
	<i>Division 3—Constitution and jurisdiction of Industrial Magistrates Court</i>	
309	Constitution of Industrial Magistrates Court . . . . .	224
310	Magistrate’s jurisdiction . . . . .	224
311	Magistrates’ jurisdiction is exclusive . . . . .	225
	<i>Division 4—Powers of industrial magistrates</i>	
312	Magistrate’s powers on remission . . . . .	226
	<b>PART 4—INDUSTRIAL REGISTRAR</b>	
	<i>Division 1—Industrial registrar’s office continued</i>	
313	Continuance . . . . .	226

---

<b><i>Division 2—Role of industrial registrar’s office</i></b>	
314	Role of office . . . . . 226
<b><i>Division 3—Industrial registrar and staff</i></b>	
315	Industrial registrar and staff . . . . . 227
316	Functions and powers of registrar . . . . . 227
317	Functions of assistant registrar . . . . . 227
318	Delegation by registrar . . . . . 228
<b>PART 5—ARRANGEMENTS WITH OTHER AUTHORITIES</b>	
<b><i>Division 1—Commissioner may also be member of Australian commission</i></b>	
319	Commissioner may hold other appointment . . . . . 228
<b><i>Division 2—Dual commissioners</i></b>	
320	Appointment of Commonwealth official as commissioner . . . . . 228
321	Role of dual commissioner . . . . . 229
<b><i>Division 3—References to Commonwealth official</i></b>	
322	Reference of matter to Commonwealth official . . . . . 230
<b><i>Division 4—Conferences and joint sessions with industrial authorities</i></b>	
323	Conferences with industrial authorities . . . . . 230
324	Joint sessions with industrial authorities . . . . . 231
325	Similar matters before full bench and industrial authority . . . . . 231
326	Commissioner’s powers in joint session . . . . . 232
327	Chief commissioner may decide matter not to be dealt with in joint session . . . . . 232
328	Restriction on chief commissioner’s authority . . . . . 232
<b><i>Division 5—Other functions etc. and arrangements</i></b>	
329	Functions and powers vested in commission by other jurisdictions . . . . . 233
330	Arrangements with Commonwealth public service . . . . . 233
<b>PART 6—PROCEEDINGS OF COURT, COMMISSION, MAGISTRATES AND REGISTRAR</b>	
<b><i>Division 1—Definitions</i></b>	
331	Definitions for pt 6 . . . . . 234
<b><i>Division 2—Starting proceedings and service of process</i></b>	
332	Starting proceedings . . . . . 234



---

333	Service of process . . . . .	235
	<b><i>Division 3—Conduct of proceedings</i></b>	
334	Representation of parties . . . . .	235
335	Basis of procedures and decisions of the commission and magistrates . . .	237
336	Competence and compellability of witnesses . . . . .	238
337	Intervention by State or Minister . . . . .	238
338	Adjournment by registrar . . . . .	239
339	State employee to give information . . . . .	239
	<b><i>Division 4—Powers</i></b>	
340	Exercise of commission’s powers . . . . .	239
341	Interlocutory proceedings and chamber matters . . . . .	240
342	Power to order inquiry or taking of evidence . . . . .	240
343	Power to administer oath . . . . .	241
344	Powers incidental to exercise of jurisdiction . . . . .	241
345	Power to obtain data and expert evidence . . . . .	242
	<b><i>Division 5—Decisions and enforcement</i></b>	
346	Decisions generally . . . . .	243
347	Reserved decisions . . . . .	244
348	Commission decisions to be in plain English . . . . .	244
349	Extent of decisions and their execution . . . . .	244
350	Costs . . . . .	245
351	Enforcing commission’s orders . . . . .	246
352	Remedies on show cause . . . . .	247
353	Proceeding of commission or magistrate not to be questioned . . . . .	248
354	Filing magistrate’s decision . . . . .	249
355	Recovery of amounts under orders . . . . .	249
	<b><i>Division 6—Protections and immunities</i></b>	
356	Protection and immunities . . . . .	249
	<b><i>Division 7—Rules of court and practice</i></b>	
357	Rules of court . . . . .	250
358	Directions about practice . . . . .	251

**PART 7—APPEALS***Division 1—Appeals to Court of Appeal*

359	Appeal from court to Court of Appeal . . . . .	252
-----	--	-----

*Division 2—Appeals to Industrial Court*

360	Appeal from commission, magistrate or registrar to court . . . . .	252
361	Court may vary penalty on appeal . . . . .	253

*Division 3—Appeals to Industrial Relations Commission*

362	Appeals from commissioner to full bench with leave . . . . .	253
363	Appeal from magistrate to commission . . . . .	254
364	Appeal from registrar to full bench . . . . .	255
365	President may stay decisions when leave sought . . . . .	256
366	Decisions on appeal that are final . . . . .	256
367	Appeal to commission against stand-downs . . . . .	256

*Division 4—Appeals to both Industrial Court and Industrial Relations Commission*

368	Appeals from commissioner to both court and full bench . . . . .	257
-----	--	-----

*Division 5—General*

369	Nature of appeal . . . . .	258
370	Time limited for appeal . . . . .	258

**CHAPTER 8—ADMINISTRATION****PART 1—EMPLOYMENT ADVOCATE**

371	Employment Advocate . . . . .	258
372	Functions and powers . . . . .	259
373	Delegation by employment advocate . . . . .	260
374	Annual report . . . . .	261
375	Complementary laws . . . . .	261

**PART 2—INSPECTORS***Division 1—Appointment*

376	Appointment of inspectors . . . . .	261
377	Limitation of inspector's powers . . . . .	262
378	Inspector's appointment conditions . . . . .	262

---

<b><i>Division 2—Identity cards</i></b>	
379	Identity card . . . . . 263
380	Production or display of identity card . . . . . 263
<b><i>Division 3—General powers</i></b>	
381	Entry to places . . . . . 264
382	General powers after entering places . . . . . 264
383	Power to require documents to be produced . . . . . 265
384	Power to require information . . . . . 266
385	Power to require name and address . . . . . 266
<b><i>Division 4—Powers to claim and deal with unpaid amounts</i></b>	
386	Paying employee’s wages etc. to inspector . . . . . 267
387	Inspector’s obligation for amounts paid on demand . . . . . 268
<b><i>Division 5—General</i></b>	
388	Obstructing inspectors . . . . . 269
389	Impersonating inspectors . . . . . 269
390	Validity of inspector’s conduct despite administrative contravention . . . . . 270
<b>CHAPTER 9—RECORDS AND WAGES</b>	
<b>PART 1—EMPLOYERS RECORDS</b>	
<b><i>Division 1—Definitions</i></b>	
391	Definitions for pt 1 . . . . . 270
<b><i>Division 2—Authorised industrial officers</i></b>	
392	Authorising industrial officers . . . . . 271
393	Revocation and suspending industrial officer’s authorisation . . . . . 272
<b><i>Division 3—Employers to keep certain records</i></b>	
394	Time and wages record—industrial instrument employees . . . . . 272
395	Time and wages record—non-industrial instrument employees . . . . . 274
396	Employee register . . . . . 275
397	Records to be kept in English . . . . . 276
398	Notation of wages details . . . . . 276
<b><i>Division 4—Power to inspect certain records</i></b>	
399	Inspection of time and wages record—inspector . . . . . 277
400	Right of entry—authorised industrial officer . . . . . 278

---

401	Inspection of time and wages record—authorised industrial officer . . . . .	279
402	Inspection of employee register and index—registrar . . . . .	281
403	Inspection of time and wages book—employees . . . . .	281
<b>PART 2—WAGES AND OCCUPATIONAL SUPERANNUATION</b>		
<i>Division 1—Interpretation</i>		
404	Definitions for pt 2 . . . . .	282
405	References to service . . . . .	283
<i>Division 2—Protection for wages</i>		
406	Wages are first charge on amounts payable to employer . . . . .	283
407	Assignment of amount payable ineffectual against claims for wages . . . . .	284
408	Amounts paid or payable to employer to be applied in payment of wages . . . . .	284
409	Attachment notices . . . . .	285
410	Effect of attachment notice . . . . .	285
411	Orders for payment by prime contractor or clerk of the court . . . . .	286
412	Employees to be paid according to when attachment notices are served . . . . .	287
413	Employee may sue prime contractor . . . . .	288
414	Cessation of attachment not to prejudice prime contractor . . . . .	289
415	Discharge by employee for payment received . . . . .	289
416	Remedy of subcontractor’s employees . . . . .	289
417	Prime contractor’s right to reimbursement . . . . .	290
418	Magistrate may hear claim for wages ex parte . . . . .	290
<i>Division 3—Paying and recovering wages</i>		
419	Wages to be paid without deduction . . . . .	291
420	Paying wages . . . . .	291
421	Contract not to stipulate mode of spending wages . . . . .	293
422	Payment of unpaid wages etc. if employee’s whereabouts unknown . . . . .	293
423	Recovery of wages etc. . . . .	294
424	Enforcement of magistrate’s order . . . . .	295
425	Recovery from employee of amounts overpaid . . . . .	295
426	Deduction in default of notice of termination . . . . .	296
427	Minor may sue . . . . .	296

***Division 4—Wages in rural and mining industries***

428	Wages recoverable against mortgagee if mortgagor defaults . . . . .	296
429	Distress warrant levied on property of mortgagor or mortgagee . . . . .	298
430	Application of ss 428 and 429 to mines . . . . .	298
431	Priority in payment of wages earned in mine . . . . .	299

***Division 5—Occupational superannuation***

432	Agreement about superannuation fund . . . . .	300
433	Contributing occupational superannuation . . . . .	300
434	Power to order superannuation contribution to particular fund . . . . .	301
435	Magistrate's power for unpaid superannuation contribution . . . . .	302

**CHAPTER 10—OFFENCES**

436	Contempt of court . . . . .	303
437	Disobeying penalty orders . . . . .	304
438	Improper conduct towards member of the commission, magistrate or registrar . . . . .	304
439	Disturbances near tribunals . . . . .	305
440	Contempt by witness . . . . .	305
441	False or misleading statements . . . . .	306
442	False, misleading or incomplete documents . . . . .	306
443	Obstructing officers . . . . .	307
444	Avoiding Act's obligations . . . . .	308
445	Non-payment of wages . . . . .	308
446	Accepting reduced wages . . . . .	309
447	Publishing statement about employment on reduced wages . . . . .	310
448	Offence to offer or accept premiums . . . . .	311
449	Contraventions of awards, certified agreements or permits . . . . .	312
450	Injunction restraining contraventions . . . . .	313
451	Persons considered parties to offences . . . . .	313
452	Executive officers must ensure corporation complies with ss 396, 433 and 445 . . . . .	314
453	Attempt to commit offence . . . . .	314

**CHAPTER 11—LEGAL PROCEEDINGS**

454	General application of jurisdictional provisions . . . . .	315
-----	--	-----

---

455	Evidentiary provisions affecting proceeding under industrial Act . . . . .	315
456	Confidential material tendered in evidence . . . . .	316
457	Evidentiary value at large of official records . . . . .	317
458	Proof of certain facts by statement . . . . .	318
459	Evidentiary value of certificate of trustee of superannuation fund . . . . .	319
460	Offence proceedings generally . . . . .	319
461	Organisations may start proceedings . . . . .	320
462	Recovering amounts from organisations . . . . .	320
<b>CHAPTER 12—EMPLOYEES IN EMPLOYMENT OF STATE</b>		
463	Application of Act to State . . . . .	321
464	Conflict between industrial instruments etc. and statutory determination . . . . .	321
465	Protection of public property and officers . . . . .	322
466	Ambit of reference to State . . . . .	323
467	Representation of public sector units . . . . .	323
468	Industrial cause affecting diverse employees . . . . .	323
<b>CHAPTER 13—GENERAL</b>		
469	Employees working in and outside State . . . . .	324
470	Student's work permit . . . . .	324
471	Aged or infirm persons permits . . . . .	325
472	Right of entry provisions void . . . . .	326
473	Preference provisions void . . . . .	326
474	Copy of award and certified agreement to be displayed . . . . .	326
475	Incorporation of amendments in reprint of award or certified agreement . . . . .	327
476	Obsolete award or certified agreement . . . . .	327
477	Certificate of employment on termination . . . . .	327
478	False pretences relating to employment . . . . .	328
479	Protection from liability . . . . .	329
480	Payments to financially distressed . . . . .	329
481	Notices and applications to be written . . . . .	330
482	Inaccurate descriptions . . . . .	330
483	Confidentiality of information . . . . .	331
484	Application of Act generally . . . . .	331

---

485	Regulation-making power . . . . .	331
<b>CHAPTER 14—INDUSTRIAL RELATIONS ADVISORY COUNCIL</b>		
486	Establishment of council . . . . .	332
487	Term of office . . . . .	333
488	Deputies of members . . . . .	333
489	Remuneration of appointed members . . . . .	333
490	Functions of council . . . . .	334
491	Conduct of council meetings . . . . .	334
<b>CHAPTER 15—SAVINGS AND REPEALS</b>		
492	Savings . . . . .	335
493	Regulation and rules to continue . . . . .	336
494	Repeals . . . . .	336
<b>CHAPTER 16—TRANSITIONALS</b>		
<b>PART 1—LIMITED CONTINUATION OF CERTAIN CONDITIONS</b>		
496	Preservation of certain general conditions in existing instruments . . . . .	337
<b>PART 2—EXISTING AWARDS</b>		
497	Definitions for pt 2 . . . . .	338
498	Exercise of commission’s powers under this part . . . . .	338
499	Amendment of awards during the interim period . . . . .	338
500	Parts of awards stop having effect at the end of the interim period . . . . .	340
501	Limited continuation of awards after the interim period . . . . .	341
502	Amendment of awards after the end of the interim period . . . . .	341
503	Matters to be dealt with by full bench . . . . .	343
<b>PART 3—EXISTING INDUSTRIAL AGREEMENTS</b>		
504	Existing industrial agreement continues . . . . .	343
505	Industrial agreement displaced by QWA . . . . .	344
<b>PART 4—EXISTING CERTIFIED AGREEMENTS</b>		
506	New termination provisions for existing certified agreements . . . . .	344
507	EFAs that prevail over certified agreements . . . . .	344
508	Certified agreements that prevail over EFAs . . . . .	345
509	Section 55(4) awards and exceptional matters orders prevail over	

---

	pre and post commencement certified agreements . . . . .	345
	<b>PART 5—EXISTING EFAS</b>	
510	Existing EFA continues . . . . .	346
511	EFA displaced by QWA . . . . .	346
512	EFA displaced by certain awards or orders . . . . .	346
	<b>PART 6—UNFAIR DISMISSALS</b>	
513	Dismissals before commencement of this section . . . . .	346
	<b>PART 7—REPRESENTATION RIGHTS OF EMPLOYEE ORGANISATIONS</b>	
514	Applications under the repealed Act, s 45 . . . . .	347
	<b>PART 8—REFERENCES AND APPOINTMENTS</b>	
515	References to Industrial Relations Act 1990 . . . . .	347
516	Appointments continue . . . . .	347
	<b>SCHEDULE 1 . . . . . 348</b>	
	<b>INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS</b>	
	<b>PART II</b>	
	<b>PART III</b>	
	<b>SCHEDULE 2 . . . . . 358</b>	
	<b>FAMILY RESPONSIBILITIES CONVENTION</b>	
	<b>SCHEDULE 3 . . . . . 367</b>	
	<b>TERMINATION OF EMPLOYMENT CONVENTION</b>	
	<b>PART I—METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS</b>	
	<b>PART II—STANDARDS OF GENERAL APPLICATION</b>	
	<i>Division A—Justification for termination</i>	
	<i>Division B—Procedure prior to or at the time of termination</i>	
	<i>Division C—Procedure of appeal against termination</i>	
	<i>Division D—Period of notice</i>	
	<i>Division E—Severance allowance and other income protection</i>	
	<b>PART III—SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS</b>	
	<i>Division A—Consultation of workers' representatives</i>	



***Division B—Notification to the competent authority*****PART IV—FINAL PROVISIONS****SCHEDULE 5** ..... 380**DICTIONARY****ENDNOTES**

1	Index to endnotes	392
2	Date to which amendments incorporated	392
3	Key	392
4	List of legislation	393
5	List of annotations	393



# WORKPLACE RELATIONS ACT 1997

[reprinted as in force on 4 April 1997]

**An Act to provide for workplace relations in Queensland, and for other purposes**

## CHAPTER 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Workplace Relations Act 1997*.

### Commencement

- 2.(1) This Act commences on a day to be fixed by proclamation.

### Principal object of this Act

3. The principal object of this Act is to provide a framework for cooperative workplace relations that supports economic prosperity and welfare by—

- (a) encouraging, through higher productivity and a flexible and fair labour market, the pursuit of high employment, improved living standards, low inflation, and national and international competitiveness; and
- (b) ensuring the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level; and
- (c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances,

*Workplace Relations Act 1997*

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whether or not that form is provided for by this Act; and

- (d) providing the means—
  - (i) for wages and employment conditions to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level; and
  - (ii) to ensure the maintenance of an effective safety net of fair and enforceable minimum wages and employment conditions; and
- (e) providing for rights and responsibilities for employers and employees, and their organisations, that—
  - (i) supports fair and effective agreement-making; and
  - (ii) ensures they abide by awards and agreements applying to them; and
- (f) enabling the commission—
  - (i) to establish an award safety net based on simplified awards to increase flexibility at the workplace or enterprise level; and
  - (ii) to assist in the making of collective and individual agreements that are relevant to the needs of individual workplaces and enterprises; and
  - (iii) to prevent and settle industrial disputes as far as possible by conciliation and, if appropriate and within specified limits, by arbitration; and
- (g) helping employees balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and
- (h) respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination; and
- (i) assisting in giving effect to Australia's international obligations in relation to labour standards.

**Definitions—the dictionary**

4. The dictionary in schedule 5 defines particular words used in this Act.<sup>1</sup>

**References to making false or misleading statements**

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

**References to engaging in conduct**

6. A reference to engaging in conduct includes a reference to being, directly or indirectly, a party to or concerned in the conduct.

**Who is an employee**

7.(1) An “**employee**” is a person employed in a calling on wages or piecework rates.

(2) The following persons are also employees—

- (a) a person whose usual occupation is that of an employee in a calling;
- (b) a person employed in a calling, even though—
  - (i) the person is working under a contract for labour only, or substantially for labour only; or
  - (ii) the person is a lessee of tools or other implements of production, or of a vehicle used to deliver goods; or

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined in the Act and tell the reader where the definitions can be found.

*Workplace Relations Act 1997*

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(iii) the person owns, wholly or partly, a vehicle used to transport goods or passengers;

if that 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 a calling or business;
- (d) for a proceeding for payment or recovery of amounts—a former employee;
- (e) an apprentice or trainee.

(3) A person who is undertaking an industry placement within the meaning of the *Vocational Education and Training (Industry Placement) Act 1992* is not an employee.

**Who is an employer**

**8.(1)** An “**employer**” is—

- (a) a person employing, or who usually employs, 1 or more employees, for the person or someone else; or
- (b) for employees employed in a department of government—the chief executive of that department.

**(2)** The following persons are also employers—

- (a) a person carrying on a calling in which employees are usually employed, even though for the time being employees are not employed in it;
- (b) a person who is managing director, manager, secretary or member of the managing body (however called) of a corporation, partnership, firm or association of persons;
- (c) if 4 or more persons are, or claim to be, partners working in association in a calling or business—the partnership firm constituted, or claimed to be constituted, by the persons;
- (d) for a proceeding for payment or recovery of amounts—a former employer.

**What is an industrial matter**

**9.(1)** An “**industrial matter**” is a matter that affects or relates to—

- (a) work done or to be done; or
- (b) the privileges, rights or functions of—
  - (i) employers or employees; or
  - (ii) persons who have been, or propose to be, or who may become, employers or employees; or
- (c) a matter (whether or not an industrial matter as defined in this section) that the court or commission considers has been, is, or may be a cause or contributory cause of an industrial action or industrial dispute.

**(2)** However, a matter is not an industrial matter if it is the subject of a proceeding for an indictable offence.

**(3)** Without limiting subsection (1) or affecting subsection (2), a matter is an industrial matter if it relates to—

- (a) wages, allowances or remuneration of persons employed, or to be employed, during ordinary hours, on overtime, on special work or on public holidays; or
- (b) whether piecework will be allowed; or
- (c) whether employees are to be given particular leave on full pay; or
- (d) whether and on what conditions employees may board and lodge with their employers, including where it is necessary for employers to provide the board and lodging at a reasonable standard, where it would be impractical not to; or
- (e) whether monetary allowances will be paid by employers to employees for standing back or waiting time caused—
  - (i) by the conditions of the employer’s calling; or
  - (ii) by the intermittency of industrial operations; or
  - (iii) otherwise; or
- (f) the length of notice to be given by an employer or employee to the other before terminating employment, and wages to be paid or deducted instead of notice; or

*Workplace Relations Act 1997*

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- (g) occupational superannuation; or
- (h) the hours of work, the time to be worked to entitle employees to a particular wage, allowance, remuneration or price, or what time will be taken to be overtime; or
- (i) claims to restrict work before or after particular hours; or
- (j) the age, qualification or status of employees, or the mode and conditions of employment or non-employment, including whether a person should be disqualified for employment; or
- (k) claims to have protective clothing or appliances, hot or cold water, or sanitary or bathing accommodation provided for the use of employees; or
- (l) fixing standards of normal temperatures or atmospheric purity in workplaces, above or below ground; or
- (m) providing for shorter hours, higher wages, or other conditions for persons employed under abnormal conditions or in abnormal workplaces, and determining what are abnormal conditions or workplaces; or
- (n) employment of young employees or of a person or class of person, or the disqualification of a person for employment because of age or impairment; or
- (o) the number or proportion of aged, impaired or infirm persons or other employees that may be employed by an employer, or the lowest prices or rates payable to them; or
- (p) a claim to dismiss or to refuse to employ a particular person or class of person, or whether a particular person or class of person, ought to be continued or reinstated in the employment of a particular employer, considering the public interest, despite common law rights of employers or employees; or
- (q) the right to dismiss, or to refuse to employ or reinstate a particular person, or class of person, in a particular calling; or
- (r) custom or usage about employment conditions, either generally or in a particular calling or locality; or
- (s) the interpretation or enforcement of an industrial instrument or a permit, unless this Act otherwise prescribes; or



- (t) the subject matter of an industrial dispute, and a matter that has caused or, the court or commission considers is likely to cause, disagreement or friction between employers and employees; or
- (u) what is fair and just (considering the interests of the persons immediately concerned and the community) according to the standard of the average good employer and the average competent and honest employee in all matters relating to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed—
  - (i) at or before the making of a relevant application to the court or commission; or
  - (ii) at the making or enforcement of a decision of the court or commission; or
- (v) the regulation of relations between employer and employee, or between employees, and to that end the imposition of conditions on—
  - (i) the conduct of a calling; and
  - (ii) the provision of benefits to persons engaged in a calling; or
- (w) a demarcation dispute.

## **CHAPTER 2—AGREEMENTS**

### **PART 1—CERTIFIED AGREEMENTS**

#### *Division 1—Preliminary*

##### **Object of pt 1**

**10.** The object of this part is to facilitate the making, certifying by the commission, and operation, of certain agreements (particularly at the level of a single business or part of a single business).

**Commission's functions**

**11.(1)** The commission must, as far as practicable, perform its functions under this part in a way that furthers the objects of this Act and, in particular, the object of this part.

**(2)** Section 335(4)<sup>2</sup> does not apply to the performance of the commission's functions under this part.

**Single business and employers taken to be 1 employer**

**12.(1)** In this part, a “**single business**” is—

- (a) a business, project or undertaking that is carried on by an employer; or
- (b) the activities carried on by—
  - (i) the State; or
  - (ii) an entity established for a public purpose under a law of the State or Commonwealth; or
  - (iii) another entity in which the State has a controlling interest.

**(2)** In this part—

- (a) if 2 or more employers carry on a business, project or undertaking as a joint venture or common enterprise, the employers are taken to be 1 employer; and
- (b) if 2 or more corporations that are related to each other for the purposes of the Corporations Law each carry on a single business—
  - (i) the corporations may be treated as 1 employer; and
  - (ii) the single businesses may be treated as 1 single business.

**(3)** In this part, a part of a single business includes, for example—

- (a) a geographically distinct part of the single business; and

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<sup>2</sup> Section 335 (Basis of procedures and decisions of the commission and magistrates)

- (b) a distinct operational or organisational unit within the single business.

### **Additional operation of part**

**13.(1)** In addition to its operation apart from this section to a single business, or part of a single business, of an employer, this part applies, subject to this section, in the same way to any of the following, or any combination of the following—

- (a) 1 or more single businesses carried on by 1 or more employers;
- (b) 1 or more parts of single businesses carried on by 1 or more employers.

**(2)** If an application for certification of an agreement by the commission can only be made under this part because of subsection (1), the agreement is a **“multiple-business agreement”**.

**(3)** Only a full bench may certify a multiple-business agreement under division 3.

**(4)** A full bench, under division 3, must not certify a multiple-business agreement unless satisfied it is in the public interest to certify the agreement, having regard to—

- (a) whether the matters dealt with by the agreement could be more appropriately dealt with by an agreement, other than a multiple-business agreement, under this part; and
- (b) any other matter that the full bench considers relevant.

**(5)** Despite section 30,<sup>3</sup> a multiple-business agreement has no effect as far as it is inconsistent with another agreement certified under division 3<sup>4</sup> that is not a multiple-business agreement.

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<sup>3</sup> Section 30 (Effect of a certified agreement in relation to awards and other agreements)

<sup>4</sup> Division 3 (Certifying agreements)

(6) Division 7 (other than sections 59 and 60)<sup>5</sup> does not apply to a proposed multiple-business agreement.

### **Nominal expiry date**

**14.** In this part, the “**nominal expiry date**” of a certified agreement is the date specified in the agreement as its nominal expiry date, or that date as extended or further extended under section 33.<sup>6</sup>

### **Valid majority**

**15.** For this part, a valid majority of the persons employed at a particular time whose employment is or will be subject to an agreement—

- (a) make or genuinely make the agreement; or
- (b) approve or genuinely approve—
  - (i) the agreement; or
  - (ii) the extension of the nominal expiry date of the agreement; or
  - (iii) the amendment or termination of the agreement;

if—

- (c) the employer gives all of the persons employed a reasonable opportunity to decide whether they want to make the agreement, or give the approval; and
- (d) either—
  - (i) if the decision is made by a vote—a majority of the persons who cast a valid vote; or
  - (ii) otherwise—a majority of the persons;decide, or genuinely decide, that they want to make the agreement, or give the approval.

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<sup>5</sup> Division 7 (Negotiations for certified agreements etc.), sections 59 (Conciliation for agreements) and 60 (Employers not to discriminate between unionist and non-unionist)

<sup>6</sup> Section 33 (Extending the nominal expiry date)

**Working day**

**16.** In this part, a “**working day**”, for a single business or a part of a single business, is a day on which employees normally perform work in the business or part.

***Division 2—Making agreements*****What this division covers**

**17.** This division sets out requirements that must be satisfied for applications to be made to the commission to certify certain agreements between employers and—

- (a) employee organisations; or
- (b) employees.

**Nature of agreement**

**18.(1)** For an application to be made to the commission under this division, there must be a written agreement about matters pertaining to the relationship between—

- (a) an employer; and
- (b) all persons—
  - (i) who, while the agreement operates, are employed in a single business, or a part of a single business, of the employer; and
  - (ii) whose employment is subject to the agreement.

**(2)** The agreement must be made in accordance with section 19, 20 or 22.<sup>7</sup>

**Agreement with employee organisations**

**19.(1)** The employer may make the agreement with 1 or more employee organisations if, when the agreement is made, each organisation—

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<sup>7</sup> Section 20 (Agreement with employees) or 22 (Greenfields agreement)

*Workplace Relations Act 1997*

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- (a) has at least 1 member employed in the single business, or a part of a single business, whose employment will be subject to the agreement; and
  - (b) is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement.
- (2) The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement.
- (3) The employer must take reasonable steps to ensure—
- (a) at least 14 days before approval is given, all the persons either have, or have ready access to, the proposed written agreement; and
  - (b) before approval is given, the terms of the agreement are explained to all the persons.
- (4) An agreement must not be made under this section if it may be made under section 22.<sup>8</sup>

**Agreement with employees**

**20.(1)** The employer may make the agreement with a valid majority of the relevant employees employed when the agreement is made who have previously approved the making of the agreement.

(2) The employer must take reasonable steps to ensure every relevant employee has at least 14 days notice of intention to make the agreement.

(3) The agreement must not be made before the 14 days have passed.

(4) At or before the time when the notice is given, the employer must take reasonable steps to ensure every relevant employee either has, or has ready access to, the proposed written agreement.

(5) The notice must also state that if—

- (a) a relevant employee is a member of an employee organisation; and

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<sup>8</sup> Section 22 (Greenfields agreement)

*Workplace Relations Act 1997*

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- (b) the organisation is entitled to represent the employee's industrial interests in relation to work that will be subject to the agreement;

the employee may ask the organisation to represent the employee in meeting and conferring with the employer about the agreement.

(6) If an organisation is asked to represent a relevant employee, the employer must give the organisation a reasonable opportunity to meet and confer with the employer about the agreement before it is made.

(7) The requirement in subsection (6) stops applying to the employer if after the request is made—

- (a) the relevant employee withdraws the request; or  
(b) the conditions in subsection (5)(a) and (b) cease to be met.

(8) Before the agreement is made, the employer must take reasonable steps to ensure the terms of the agreement are explained to all the relevant employees employed at the time.

(9) If a proposed agreement is amended for any reason after the notice is given, the steps in subsections (2), (3), (4), (6) and (8) must again be taken in relation to the proposed agreement as amended.

(10) However, subsection (9) does not apply if the commission is satisfied that the proposed agreement was amended only—

- (a) for a formal or clerical reason; or  
(b) in another way that does not adversely affect a relevant employee's interests.

(11) In this section—

**“relevant employee”** means an employee whose employment will be subject to the agreement.

### **Certificate as to requested representation**

**21.(1)** If the registrar is satisfied—

- (a) for an application by an employee organisation—an employee has made a request under section 20(5) for the organisation to represent the employee in meeting and conferring with an employer about a proposed agreement; or

- (b) for an application by an employer—after making a request under section 20(5), the requirement in section 20(6) for the employer to give a reasonable opportunity to the organisation to meet and confer about the proposed agreement, has, because of section 20(7), ceased to apply to the employer;

the registrar may issue a certificate to that effect.

(2) The certificate—

- (a) must not identify any of the employees concerned; but
- (b) must identify the organisation, the employer and the proposed agreement.

(3) The certificate is, for all purposes of this Act, evidence that—

- (a) an employee made the request; or
- (b) the requirement ceased to apply.

### **Greenfields agreement**

**22.(1)** This section applies if—

- (a) the single business is a new business that the employer proposes to establish, or is establishing, when the agreement is to be made; and
- (b) the agreement is to be made before the employment of any of the persons—
  - (i) who will be necessary for the normal operation of the business, or a part of a single business; and
  - (ii) whose employment will be subject to the agreement.

(2) The employer may make the agreement with 1 or more employee organisations meeting the requirements of subsection (3).

(3) When the agreement is made, each organisation must be entitled to represent the industrial interests of 1 or more of the persons, whose employment is likely to be subject to the agreement, in relation to work that will be subject to the agreement.



**Time for applying for certification**

**23.** An application for the commission to certify the agreement must be made within 21 days after—

- (a) for an agreement made under section 19<sup>9</sup>—the day on which the agreement is approved; or
- (b) for an agreement made under section 20<sup>10</sup> or 22—the day on which the agreement is made.

***Division 3—Certifying agreements*****Certain employee organisations not to be heard**

**24.** In an application for certification of an agreement, the commission—

- (a) must, on application, give leave to hear from an employee organisation that was requested to represent a person under section 20<sup>11</sup> in relation to the agreement, if—
  - (i) the request has not been withdrawn; or
  - (ii) the conditions in section 20(5)(a) and (b) continue to be met; and
- (b) except as mentioned in paragraph (a), must not hear from an employee organisation, other than an organisation proposed to be bound by the agreement.

**Certifying an agreement**

**25.(1)** If an application is made to the commission to certify an agreement, the commission must certify the agreement if, and must not certify the agreement unless, satisfied the requirements of this section are met.

**(2)** The agreement must pass the no-disadvantage test.

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<sup>9</sup> Section 19 (Agreement with employee organisations)

<sup>10</sup> Section 20 (Agreement with employees)

<sup>11</sup> Section 20 (Agreement with employees)

*Workplace Relations Act 1997*

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**(3)** If—

- (a) the only reason why the commission must not certify an agreement is that the agreement does not pass the no-disadvantage test; and
- (b) the commission is satisfied that certifying the agreement is not contrary to the public interest;

the agreement is taken to pass the no-disadvantage test.

*Example of subsection (3)(b)—*

The making of the agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the single business or part.

**(4)** A valid majority of the relevant employees employed at the time must have—

- (a) for an agreement made under section 19<sup>12</sup>—genuinely approved the agreement; or
- (b) for an agreement made under section 20<sup>13</sup>—genuinely approved and made the agreement.

**(5)** The explanation of the terms of the agreement to persons mentioned in section 19(3)(b) or 20(8) must have been done in a way that was appropriate, having regard to the persons' particular circumstances and needs.

*Examples of persons with particular circumstances and needs—*

1. Women
2. Persons from a non-English-speaking background
3. Young persons
4. Persons with limited literacy or numeracy skills

**(6)** The agreement must include procedures for preventing and settling disputes, about matters arising under the agreement, between—

- (a) the employer; and
- (b) the relevant employees.

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<sup>12</sup> Section 19 (Agreement with employee organisations)

<sup>13</sup> Section 20 (Agreement with employees)

(7) If the agreement was made under section 20, the employer must not have coerced, or attempted to coerce, an employee—

- (a) not to make a request mentioned in section 20(5); or
- (b) to withdraw the request.

(8) The agreement must specify a date, not more than 3 years after the date on which the agreement will come into operation, as the nominal expiry date of the agreement.

(9) The agreement must also contain, or be accompanied by, the information prescribed under a regulation.

(10) In this section—

“**relevant employee**” means an employee whose employment will be subject to the agreement.

### **When commission to refuse to certify an agreement**

**26.(1)** The commission must refuse to certify an agreement if it considers that a provision of the agreement is inconsistent with—

- (a) a provision of chapter 4, parts 1 and 2 and chapter 5;<sup>14</sup> or
- (b) an order by the commission under the provisions; or
- (c) an injunction granted by the commission under the provisions; or
- (d) the *Industrial Organisations Act 1997*, part 14.<sup>15</sup>

**(2)** The commission must refuse to certify an agreement if satisfied—

- (a) the employer has, in connection with negotiating the agreement, contravened—
  - (i) section 60; or
  - (ii) the *Industrial Organisations Act 1997*, part 14; or

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<sup>14</sup> Chapter 4, parts 1 (Minimum wages) and 2 (Equal remuneration for work of equal value)  
Chapter 5 (Dismissals)

<sup>15</sup> *Industrial Organisations Act 1997*, part 14 (Freedom of association)

*Workplace Relations Act 1997*

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- (b) the employer has caused an entity to engage, in connection with negotiations for an agreement, in conduct that, had the employer engaged in the conduct, would be a contravention by the employer of—
  - (i) section 60;<sup>16</sup> or
  - (ii) the *Industrial Organisations Act 1997*, part 14; or
- (c) an entity has, for the employer—
  - (i) engaged in conduct mentioned in paragraph (b); or
  - (ii) caused another entity to engage in the conduct.

(3) Subsection (2) does not apply if the commission is satisfied the contravention or conduct, and its effects, have been fully remedied.

(4) The commission must refuse to certify an agreement if it considers a provision of the agreement is a discriminatory provision.

(5) The commission must refuse to certify an agreement if—

- (a) the agreement applies only to a part of a single business that is neither of the following—
  - (i) a geographically distinct part of the single business;
  - (ii) a distinct operational or organisational unit within the single business; and
- (b) the commission considers the agreement defines the part in a way that results in the employment of employees not being subject to the agreement if it would be reasonable for the employment to be, having regard to—
  - (i) the nature of the work performed by the employees whose employment is not subject to the agreement; and
  - (ii) the organisational and operational relationships between the part and the rest of the single business; and
- (c) the commission considers it unfair that the employment of those employees is not subject to the agreement.

(6) This section applies despite section 25.

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<sup>16</sup> Section 60 (Employers not to discriminate between unionist and non-unionist)

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

**27.(1)** If, under section 25<sup>17</sup> or 26, the commission has grounds to refuse to certify an agreement—

- (a) the commission may accept an undertaking from 1 or more of the persons who made the agreement in relation to the operation of the agreement and, if satisfied the undertaking meets the commission's concerns, certify the agreement; and
- (b) before refusing to certify the agreement, the commission must give the persons who made the agreement an opportunity to take action that may be necessary to make the agreement certifiable.

**(2)** If an undertaking is not complied with, the commission, after giving the persons who made the agreement an opportunity to be heard, may—

- (a) order the 1 or more persons who gave the undertaking to comply with it; or
- (b) terminate the agreement.

**(3)** If—

- (a) after doing the things required or allowed by subsection (1), the commission is still required to refuse to certify the agreement; and
- (b) it is so required only because it is not satisfied as mentioned in section 26(1);

the commission may conciliate the industrial matter concerned with a view to assisting the persons concerned to make the agreement certifiable.

**Procedures for preventing and settling disputes**

**28.** Procedures in a certified agreement for preventing and settling disputes between the employer and employees whose employment will be subject to the agreement may, if the commission approves, authorise the commission to settle disputes over the application of the agreement.

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<sup>17</sup> Section 25 (Certifying an agreement)

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

**29.(1)** A certified agreement starts operating when it is certified.

**(2)** The agreement stops operating if—

- (a) its nominal expiry date has passed; and
- (b) it is replaced by another certified agreement.

**(3)** The agreement stops operating if it is terminated under section 27, 36, 37, 38 or 39.<sup>18</sup>

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

**30.(1)** While a certified agreement operates—

- (a) it prevails over an award or industrial agreement, to the extent of any inconsistency with the award or agreement; and
- (b) it has no effect to the extent of any inconsistency with another agreement certified before it, whose nominal expiry date has not passed.

**(2)** An exceptional matters order prevails, to the extent of any inconsistency, over a certified agreement that was certified before the order was made.

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<sup>18</sup> Section 27 (Other options open to commission instead of refusing to certify an agreement), 36 (Other options open to commission instead of refusing to approve amendment of an agreement), 37 (Terminating a certified agreement on or before its nominal expiry date), 38 (Terminating a certified agreement after its nominal expiry date) or 39 (Terminating an agreement in a way provided under agreement after nominal expiry date)

***Division 5—Persons bound by certified agreements*****Persons bound**

**31.(1)** A certified agreement binds—

- (a) the employer; and
- (b) all persons whose employment is, while the agreement operates, subject to the agreement; and
- (c) if the agreement is made with 1 or more employee organisations under section 19 or 22<sup>19</sup>—the 1 or more organisations.

**(2)** The commission must determine that a certified agreement binds an employee organisation if—

- (a) a valid majority of employees made the agreement with the employer under section 20;<sup>20</sup> and
- (b) before the agreement is certified, the organisation gives the commission and employer notice that it wants to be bound by the agreement; and
- (c) the organisation satisfies the commission that it has at least 1 member—
  - (i) whose employment will be subject to the agreement; and
  - (ii) whose industrial interests the organisation is entitled to represent for work that will be subject to the agreement; and
  - (iii) who asked the organisation to give the notice.

**Successor employers bound**

**32.(1)** This section applies if—

- (a) an employer is bound by a certified agreement; and

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<sup>19</sup> Section 19 (Agreement with employee organisations) or 22 (Greenfields agreement)

<sup>20</sup> Section 20 (Agreement with employees)

- (b) at a later time a new employer becomes the successor (whether or not immediate) of the whole or a part of the business concerned.

**(2)** From the later time—

- (a) the new employer is bound by the certified agreement, to the extent it relates to the whole or part of the business; and
- (b) the previous employer stops being bound by the certified agreement, to the extent it relates to the whole or part of the business; and
- (c) a reference in this part to the employer includes a reference to the new employer, and ceases to refer to the previous employer, to the extent the context relates to the whole or part of the business.

**(3)** In this section—

“**successor**” includes assignee and transmittee.

***Division 6—Extending, amending or terminating certified agreements***

**Extending the nominal expiry date**

**33.(1)** On or before the nominal expiry date of a certified agreement, the following persons may extend the nominal expiry date by application to the commission—

- (a) if 1 or more organisations are bound by the agreement—the employer and the 1 or more organisations;
- (b) otherwise—the employer.

**(2)** The extended date can not be more than 3 years after the date on which the agreement came into operation.

**(3)** The extension has no effect unless the commission approves it.

**(4)** The commission must approve the extension if, and must not approve the extension unless, satisfied a valid majority of the employees whose employment is subject to the agreement at the time genuinely approve the extension.

**(5)** The extension takes effect when the commission’s approval takes effect.



(6) This section does not apply to an agreement—

- (a) to which section 22<sup>21</sup> applied; or
- (b) to which section 25(3)<sup>22</sup> applied, in circumstances covered by the example to that subsection.

### **Amending a certified agreement**

**34.(1)** The following persons may amend the agreement by application to the commission—

- (a) if 1 or more organisations are bound by the agreement—the employer and the 1 or more organisations;
- (b) otherwise—the employer.

(2) The amendment has no effect unless the commission approves it.

(3) The commission must approve the amendment if, and must not approve the amendment unless, satisfied—

- (a) a valid majority of the employees whose employment is subject to the agreement at the time genuinely approve the amendment; and
- (b) the commission would be required to certify the agreement as amended if it were a new agreement whose certification was applied for under this part.

(4) In applying subsection (3)(b)—

- (a) a requirement about a majority of persons making or approving the agreement is taken to be satisfied; and
- (b) section 27<sup>23</sup> is to be disregarded.

(5) The amendment takes effect when the commission's approval takes effect.

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<sup>21</sup> Section 22 (Greenfields agreement)

<sup>22</sup> Section 25 (Certifying an agreement)

<sup>23</sup> Section 27 (Other options open to commission instead of refusing to certify an agreement)

(6) The commission may, on application by a person bound by a certified agreement, amend a certified agreement—

- (a) to remove ambiguity or uncertainty; or
- (b) to include, omit or amend a term (however specified) that allows an employer to stand-down an employee.

(7) A certified agreement can not be amended except under—

- (a) this section (including as it applies under section 35); or
- (b) section 33; or
- (c) section 36.<sup>24</sup>

### **Amendment if discrimination between unionists and non-unionists**

**35.(1)** If—

- (a) 1 or more employees whose employment is not subject to the agreement ask the employer to—
  - (i) amend the agreement so that their employment is subject to the agreement; and
  - (ii) seek the approval of the commission for the amendment under section 34; and
- (b) their employment would be subject to the agreement if—
  - (i) they were members of an employee organisation or of a particular employee organisation; or
  - (ii) they were not members of an employee organisation or of a particular employee organisation; and
- (c) the amendment would not cause the agreement to become a multiple-business agreement;

the employer must comply with the request.

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<sup>24</sup> Section 36 (Other options open to commission instead of refusing to approve amendment of an agreement)

(2) If, in accordance with the request, the employer seeks the commission's approval to the amendment under section 34(3), the commission must disregard section 34(3)(a) in deciding whether to approve the amendment.

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

**36.(1)** If the commission has grounds to refuse to approve an amendment of an agreement under section 34,<sup>25</sup> it—

- (a) may accept an undertaking from 1 or more of the persons who amended the agreement in relation to the operation of the agreement as amended and, if satisfied the undertaking meets the commission's concerns, approve the amendment; and
- (b) before refusing to approve the amendment, must give the persons who amended the agreement an opportunity to take any action that may be necessary to allow the amendment to be approved.

(2) If an undertaking is not complied with, the commission, after giving the persons who amended the agreement an opportunity to be heard, may—

- (a) order the 1 or more persons who gave the undertaking to comply with it; or
- (b) amend the agreement to undo the effect of the approved amendment; or
- (c) terminate the agreement.

### **Terminating a certified agreement on or before its nominal expiry date**

**37.(1)** On or before the nominal expiry date of a certified agreement the following persons may terminate the agreement by notice—

- (a) if 1 or more organisations are bound by the agreement—the employer and the 1 or more organisations;
- (b) otherwise—the employer.

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<sup>25</sup> Section 34 (Amending a certified agreement)

(2) The termination has no effect unless the commission approves it.

(3) The commission must approve the termination if, and must not approve the termination unless, satisfied a valid majority of the employees whose employment is subject to the agreement at the time genuinely approve its termination.

(4) The termination takes effect when the commission's approval takes effect.

### **Terminating a certified agreement after its nominal expiry date**

**38.(1)** After the nominal expiry date of a certified agreement—

- (a) the employer; or
- (b) a majority of the employees whose employment is subject to the agreement; or
- (c) an employee organisation that—
  - (i) is bound by the agreement; and
  - (ii) has at least 1 member whose employment is subject to the agreement;

may give notice to all of the employees, or other employees, whose employment is subject to the agreement and persons, or other persons, who are bound by the agreement, and to the commission, stating that the agreement terminates with effect from a specified day.

(2) The specified day must be at least 28 days after—

- (a) the day on which the notice is given; or
- (b) if it is given to different persons on different days—the day on which it is last given.

(3) The agreement terminates on the specified day.

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

**39.(1)** If—

- (a) a certified agreement provides for it to be terminated if certain conditions are met; and
- (b) those conditions are met after the agreement's nominal expiry date has passed;

any of the persons mentioned in subsection (2) may apply to the commission to have the termination approved.

(2) The persons are—

- (a) the employer; or
- (b) an employee whose employment is subject to the agreement; or
- (c) an employee organisation that is bound by the agreement and that has at least 1 member whose employment is subject to the agreement.

(3) If the commission is satisfied that subsection (1)(a) and (b) has been complied with, it must approve the termination.

(4) If the commission does so, the agreement terminates when the commission's approval takes effect.

### *Division 7—Negotiations for certified agreements etc.*

#### **Initiation of bargaining period**

**40.(1)** If—

- (a) an employer; or
- (b) an employee organisation; or
- (c) an employee acting on his or her own behalf and for other employees;

wants to negotiate a certified agreement in relation to employees who are employed in a single business or a part of a single business, the employer, organisation or employee (the **“initiating party”**) may initiate a period (the **“bargaining period”**) for negotiating the proposed agreement.

(2) The bargaining period is initiated by the initiating party giving notice to each other negotiating party and to the commission stating that the initiating party intends to try—

- (a) to make an agreement with the other negotiating parties; and
- (b) to have the agreement certified.

(3) In this division, a “**negotiating party**” to a proposed agreement means—

- (a) the initiating party; or
- (b) if the initiating party is an employer who intends to try to make an agreement under section 19 or 22<sup>26</sup>—the organisation or organisations who are proposed to be bound by the agreement; or
- (c) if the initiating party is an employer who intends to try to make an agreement under section 20<sup>27</sup>—the employees at the time whose employment will be subject to the agreement; or
- (d) if the initiating party is an employee organisation—the employer who is proposed to be bound by the agreement; or
- (e) if the initiating party is an employee acting on his or her own behalf and for other employees—the employer who is proposed to be bound by the agreement and the employees whose employment will be subject to the agreement.

### **Particulars to accompany notice**

**41.** The notice must be accompanied by particulars of—

- (a) the single business or part of the single business to be covered by the proposed agreement; and
- (b) the types of employees whose employment will be subject to the agreement and the other persons who will be bound by the agreement; and

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<sup>26</sup> Section 19 (Agreement with employee organisations) or 22 (Greenfields agreement)

<sup>27</sup> Section 20 (Agreement with employees)

- (c) the matters that the initiating party proposes should be dealt with by the agreement; and
- (d) the proposed nominal expiry date of the agreement; and
- (e) any other matters prescribed under a regulation.

### **When bargaining period begins**

**42.** The bargaining period begins at the end of 7 days after—

- (a) the day on which the notice was given; or
- (b) if the notice was given to different persons on different days—the day on which it was last given.

### **Protected action**

**43.(1)** This section identifies certain action (“**protected action**”) to which section 51<sup>28</sup> applies.

**(2)** During the bargaining period, a protected person is entitled to organise or engage in industrial action directly against the employer for the purpose of—

- (a) supporting or advancing claims made in relation to the proposed agreement; or
- (b) responding to a lockout by the employer of employees whose employment will be subject to the agreement.

**(3)** If the protected person does so, the organising of, or engaging in, the industrial action is protected action.

**(4)** During the bargaining period, the employer is entitled to lock out from their employment all or any of the employees whose employment will be subject to the agreement for the purpose of—

- (a) supporting or advancing claims made by the employer in relation to the proposed agreement; or

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<sup>28</sup> Section 51 (Immunity provisions)

(b) responding to industrial action by any of the employees whose employment will be subject to the agreement.

(5) If the employer does so, the lockout is protected action.

(6) If the employer locks out an employee, the employer may refuse to pay remuneration to the employee for the period of the lockout.

(7) The employer can not lock out an employee unless the continuity of the employee's employment, for the purposes prescribed under a regulation, is not affected by the lockout.

(8) This section has effect subject to the following provisions of this division.

(9) In this section—

**“protected person”** means—

- (a) an employee organisation that is a negotiating party; or
- (b) a member of the employee organisation who is employed by the employer; or
- (c) an officer or employee of the employee organisation acting in that capacity; or
- (d) an employee who is a negotiating party.

### **Industrial action must not involve secondary boycott**

**44.(1)** Engaging in industrial action is not protected action if it is—

- (a) engaged in in concert with 1 or more persons or organisations who are not protected persons; or
- (b) organised other than solely by 1 or more protected persons.

**(2)** Organising industrial action is not protected action if it is—

- (a) organised in concert with 1 or more persons or organisations who are not protected persons; or
- (b) intended to be engaged in other than solely by 1 or more protected persons.

**(3)** In this section—



**“protected person”** means—

- (a) an employee organisation that is a negotiating party; or
- (b) a member of the employee organisation who is employed by the employer; or
- (c) an officer or employee of the employee organisation acting in that capacity; or
- (d) an employee who is a negotiating party.

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

**45.(1)** From when—

- (a) a certified agreement; or
- (b) an award under section 55(4);<sup>29</sup>

starts operating until its nominal expiry date has passed, an employee, organisation or officer covered by subsection (2) must not, for the purpose of supporting or advancing claims against the employer in relation to the employment of employees whose employment is subject to the agreement or award, engage in industrial action.

**(2)** The following persons are covered by subsection (1)—

- (a) an employee whose employment is subject to the agreement or award;
- (b) an employee organisation that is bound by the agreement or award;
- (c) an officer or employee of the employee organisation acting in that capacity.

**(3)** If the employee, organisation or officer contravenes subsection (1), the action is not protected action.

**(4)** From when—

- (a) a certified agreement; or

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<sup>29</sup> Section 55 (What happens if commission terminates a bargaining period under s 54(3) or (7))

- (b) an award under section 55(4);

comes into operation until its nominal expiry date has passed, the employer must not, for the purpose of supporting or advancing the employer's claims in relation to the employment of employees whose employment is subject to the agreement, lock out an employee from his or her employment.

- (5) If the employer does so, the lockout is not protected action.

(6) Engaging in industrial action in contravention of section 95<sup>30</sup> is not protected action.

### **Notice of action to be given**

**46.(1)** Action taken as mentioned in section 43(2)<sup>31</sup> by the following persons is not protected action unless the requirements in subsection (2) are met—

- (a) an employee organisation;
- (b) a member of the employee organisation;
- (c) an officer or employee of the employee organisation acting in that capacity;
- (d) an employee who is a negotiating party.

**(2)** The requirements are that the employee organisation, or the employee who is a negotiating party, has given the employer—

- (a) if the action is in response to, and is taken after the start of, a lockout of employees by the employer in relation to the proposed agreement—notice of the intention to take the action; or
- (b) otherwise—at least 3 working days notice of the intention to take the action.

**(3)** If 1 or more of the negotiating parties is an employee organisation, any action taken as mentioned in section 43(4) by the employer to lock out employees from their employment is not protected action unless—

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<sup>30</sup> Section 95 (Industrial action by party to QWA)

<sup>31</sup> Section 43 (Protected action)

*Workplace Relations Act 1997*

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- (a) the employer has given the other negotiating party or each of the other negotiating parties—
    - (i) if the lockout is in response to, and takes place after the start of, industrial action organised or engaged in by an organisation that is a negotiating party in relation to the proposed agreement—notice of the intended lockout; or
    - (ii) otherwise—at least 3 working days notice of the intended lockout; and
  - (b) as far as it relates to a particular employee—
    - (i) if paragraph (a)(i) applies—before the lockout begins; or
    - (ii) otherwise—at least 3 working days before the lockout begins;

the employer has given notice to the particular employee, or has taken other reasonable steps to notify the particular employee, of the intended lockout.

**(4)** If 1 or more of the negotiating parties is an employee whose employment will be subject to the proposed agreement, any action taken as mentioned in section 43(4) by the employer to lock out employees from their employment is not protected action as far as it relates to a particular employee unless—

- (a) if the lockout is in response to, and takes place after the start of, industrial action organised or engaged in by any of the employees who are negotiating parties in relation to the proposed agreement—before the lockout begins; or
- (b) otherwise—at least 3 working days before the lockout begins;

the employer has given notice to the particular employee, or has taken other reasonable steps to notify the particular employee, of the intended lockout.

**(5)** A notice under this section must state the nature of the intended action and the day when it will begin.

**(6)** A notice under this section may be given before the start of the bargaining period.

**Negotiation must precede industrial action**

**47.(1)** Engaging in industrial action by a person who is a member of an employee organisation that is a negotiating party is not protected action unless the organisation has, before the person begins to engage in the industrial action—

- (a) genuinely tried to reach agreement with the employer; and
- (b) if the commission has made an order about the negotiations—complied with the order as far as it applies to the organisation.

**(2)** Engaging in industrial action by an employee who is a negotiating party is not protected action unless, before the employee begins to engage in the industrial action—

- (a) the employee, or another employee acting for the employee, has genuinely tried to reach agreement with the employer; and
- (b) if the commission has made an order in relation to the negotiations—the employee has complied with the order as far as it applies to the employee.

**(3)** A lockout of employees by an employer is not protected action unless the employer has, before the employer begins the lockout—

- (a) if the employees are members of an organisation that is a negotiating party—genuinely tried to reach agreement with the organisation; and
- (b) if the employees are negotiating parties—genuinely tried to reach agreement with the employees; and
- (c) if the commission has made an order about the negotiations—complied with the order as far as it applies to the employer.

**Secret ballot for bargaining period**

**48.(1)** This section applies if the commission considers—

- (a) industrial action relating to a bargaining period is being taken or the taking of industrial action is threatened, impending or probable; and

*Workplace Relations Act 1997*

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- (b) finding out, in relation to the matter, the attitudes of the employees whose employment will be subject to the proposed agreement might help—
- (i) to stop or prevent the industrial action; or
  - (ii) to settle the matters giving rise to the industrial action.

(2) The commission may order that a vote of employees be taken by secret ballot<sup>32</sup> (with or without a provision for absent voting), in accordance with the commission's directions, to find out their attitudes about the matter.

(3) After an order is made, the organising of, or engaging in, industrial action by the employee organisation or employees is not protected action unless—

- (a) the ballot has been taken; and
- (b) the industrial action has been approved by a majority of the valid votes cast in the ballot.

(4) If after an order is made, but before the vote is taken, the commission forms the view that the ballot should not be proceeded with because it has satisfied itself that—

- (a) the matters giving rise to the industrial action have been, or are about to be, settled; or
- (b) the industrial action has stopped or been prevented, or is about to stop or be prevented;

the commission must revoke the order.

(5) In subsection (3)—

**“organisation”** includes—

- (a) a member of the organisation; and
- (b) an officer or employee of the organisation acting in that capacity.

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<sup>32</sup> See section 301 (Conducting a secret ballot) for the way a secret ballot is conducted.

**Industrial action must be properly authorised**

**49.(1)** Engaging in industrial action by members of an employee organisation that is a negotiating party is not protected action unless, before the industrial action begins—

- (a) the industrial action is properly authorised by the organisation's management committee or someone authorised by the committee to authorise the industrial action; and
- (b) if the organisation's rules specify the way industrial action is to be authorised—the industrial action is properly authorised under the rules; and
- (c) notice of the giving of the authorisation is given to the registrar.

**(2)** Industrial action is taken to be properly authorised under an employee organisation's rules even though a technical breach has happened in authorising the industrial action, if the person who committed the breach acted in good faith.

**(3)** Examples of a technical breach in authorising industrial action include—

- (a) a contravention of the organisation's rules; and
- (b) an error or omission in complying with this Act; and
- (c) participation, by a person not eligible to do so, in the making of a decision by a management committee, or by members, of the organisation.

**(4)** Industrial action is taken to have been properly authorised under an employee organisation's rules, and to have been authorised before the industrial action began, unless—

- (a) the commission declares in a proceeding that the industrial action was not properly authorised under the rules; and
- (b) the proceeding was brought in the commission within 6 months after the notice was given to the registrar under subsection (1)(c).

**(5)** As far as an employee organisation's rules specify the way in which industrial action that section 43 entitles the organisation to organise or

engage in is to be authorised, the rules do not contravene the *Industrial Organisations Act 1997*, section 22<sup>33</sup> unless the way specified contravenes that section.

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

**50.** Unless an application to the commission to certify an agreement is made within 21 days after the day when the agreement is made, nothing done during the bargaining period by an employee whose employment is subject to the agreement or by a person bound by the agreement is protected action.

### **Immunity provisions**

**51.(1)** No action lies under a law for industrial action that is protected action unless the action has involved or is likely to involve—

- (a) personal injury; or
- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

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

**(3)** In this section—

“**law**” means a written or unwritten law, but does not include the *State Transport Act 1938*.

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

**52.(1)** An employer must not—

- (a) dismiss an employee, injure an employee in his or her employment or change an employee’s position to the employee’s prejudice; or

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<sup>33</sup> *Industrial Organisations Act 1997*, section 22 (General requirements for rules)

- (b) threaten to dismiss an employee, injure an employee in his or her employment or change an employee's position to the employee's prejudice;

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

(2) Subsection (1) does not apply to any of the following actions taken by the employer—

- (a) standing-down the employee;
- (b) refusing to pay the employee if, under the common law, the employer is permitted to do so because the employee has not performed work as directed;
- (c) action of the employer that is itself protected action.

(3) In a proceeding under section 63<sup>34</sup> for an alleged contravention of subsection (1), it is to be presumed, unless the employer proves otherwise, that the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to engage, was engaging, or had engaged, in protected action.

### **When bargaining period ends**

**53.** The bargaining period ends if any of the following events happen—

- (a) an agreement under division 2<sup>35</sup> is made by the employer and any 1 or more of the other negotiating parties;
- (b) the initiating party gives each of the other negotiating parties notice that the initiating party no longer wants to reach an agreement under division 2 with the other parties;
- (c) the commission terminates the bargaining period.

### **Power of commission to suspend or terminate bargaining period**

**54.(1)** The commission may suspend or terminate the bargaining period

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<sup>34</sup> Section 63 (Penalties for contravening penalty provisions)

<sup>35</sup> Division 2 (Making agreements)



*Workplace Relations Act 1997*

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if, after giving the negotiating parties an opportunity to be heard, it is satisfied any of the circumstances in subsections (2) to (7) exists or existed.

(2) A circumstance for subsection (1) is that a negotiating party that, before or during the bargaining period, has organised or taken, or is organising or taking, industrial action to support or advance claims in relation to the proposed agreement—

- (a) did not genuinely try to reach an agreement with the other negotiating parties before organising or taking the industrial action; or
- (b) is not genuinely trying to reach an agreement with the other negotiating parties; or
- (c) has not complied with the commission's directions relating to the proposed agreement or to a matter that arose during the negotiations for the proposed agreement; or
- (d) has not complied with a recommendation of the commission under section 241<sup>36</sup> relating to—
  - (i) the proposed agreement; or
  - (ii) a matter that arose during the negotiations for the proposed agreement.

(3) A circumstance for subsection (1) is that industrial action, being taken to support or advance claims in relation to the proposed agreement, is threatening—

- (a) to endanger the life, the personal health or safety, or the welfare, of the population or of part of it; or
- (b) to cause significant damage to the economy or an important part of it.

(4) A circumstance for subsection (1) is that industrial action is being organised or taken by—

- (a) an organisation that is a negotiating party; or
- (b) a member of the organisation who is employed by the employer; or

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<sup>36</sup> Section 241 (Recommendation by consent)

*Workplace Relations Act 1997*

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(c) an officer or employee of the organisation acting in that capacity; against an employer to support or advance claims in relation to employees—

(d) whose employment will be subject to the agreement; and

(e) who are neither members, nor eligible to become members, of the organisation.

(5) A circumstance for subsection (1) is that industrial action that is being organised or taken by an organisation that is a negotiating party—

(a) relates, to a significant extent, to a demarcation dispute; or

(b) contravenes a commission order that relates, to a significant extent, to a demarcation dispute.

(6) If the bargaining period relates to employees employed in a part of a single business, a circumstance for subsection (1) is that the initiating party is not complying with an award, an order, a direction of the commission, or a certified agreement, in relation to another part of the single business.

(7) A circumstance for subsection (1) is that—

(a) immediately before the commencement of this section, the wages and conditions of the type of employees whose employment will be subject to the agreement were determined by a paid rates award, or would have been so determined if a certified agreement or EFA had not prevailed over the award; and

(b) as far as the wages and conditions of the type of employees whose employment will be subject to the agreement were, before the commencement of this section, customarily determined by an award, they were determined by a paid rates award; and

(c) there is no reasonable prospect of the negotiating parties reaching an agreement under division 2 during the bargaining period.

(8) The commission—

(a) must not suspend or terminate the bargaining period under subsection (1), in a circumstance in subsection (2), (4), (5), (6) or (7), except on application by a negotiating party; but

(b) may suspend or terminate the period under subsection (1), in a circumstance in subsection (3)—

- (i) of its own initiative; or
- (ii) on application by a negotiating party or the Minister.

(9) Anything done by a negotiating party or another person in relation to the proposed agreement is not protected action if it is done while the bargaining period is suspended.

(10) When terminating the bargaining period, if the commission considers it to be in the public interest, it may declare that, during a specified period beginning at the time of the termination, a specified negotiating party or employee of the employer—

- (a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed agreement; or
- (b) may initiate the bargaining period only on specified conditions.

(11) In this section—

**“paid rates award”** means an award that—

- (a) includes a statement to the effect that it is a paid rates award; or
- (b) has been regarded by the commission as a paid rates award when applying principles for determining wages and employment conditions.

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

**55.(1)** This section applies if a bargaining period is terminated for the circumstance in section 54(3) or (7).

(2) As soon as practicable, the commission must begin to exercise the conciliation powers under section 56—

- (a) to facilitate the making of an agreement under division 2;<sup>37</sup> or
- (b) otherwise to settle any matter or issue that could be covered by the agreement.

(3) Subsection (2) applies even if the commission has already attempted conciliation during the bargaining period.

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<sup>37</sup> Division 2 (Making agreements)

(4) If, after conciliation powers under subsection (2) have been exercised, a full bench is satisfied—

- (a) the negotiating parties have not settled the matters that were at issue during the bargaining period (whether or not by making an agreement); and
- (b) it is not likely that further conciliation will result in the matters being settled within a reasonable time;

the full bench may exercise the arbitration powers mentioned in section 56 to make an award that deals with the matters.

(5) Despite any other provision of this Act, the arbitration powers may be exercised only by a full bench.

(6) In exercising the arbitration powers, a full bench must consider the following—

- (a) the matters that were at issue during the bargaining period;
- (b) the merits of the case;
- (c) the interests of the negotiating parties and the public interest;
- (d) how productivity might be improved in the business or part of the business concerned;
- (e) the extent to which the conduct of the negotiating parties during the bargaining period was reasonable;
- (f) any relevant principles formulated by a full bench for this subsection.

(7) Subsection (6) does not, by implication, limit the matters to which a full bench may have regard.

### **Powers of commission and full bench when s 55 applies**

**56.(1)** The commission has the conciliation powers for the matters in section 55(2) that it would have under section 240<sup>38</sup> if that section applied to conciliation of the matters instead of industrial disputes.

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<sup>38</sup> Section 240 (Action on industrial dispute)

(2) A full bench has the arbitration powers for the matters in section 55(4) that it would have under section 240 if that section applied to arbitration of the matters, instead of industrial disputes, by a full bench.

### **Awards under s 55**

**57.(1)** An award under section 55(4)<sup>39</sup> must specify a date as its nominal expiry date.

(2) Subject to this section, the award operates at all times after it commences.

(3) The award has effect subject to any conditions specified in it.

(4) Before the award's nominal expiry date has passed, a full bench must not revoke the award unless satisfied—

- (a) the employer and the 1 or more organisations, or a majority of the employees, who are bound by the award have agreed to the revocation (for example, because they propose to make an agreement under division 2<sup>40</sup>); and
- (b) the revocation would not be against the public interest.

(5) After the award's nominal expiry date—

- (a) the employer, or an organisation, bound by the award; or
- (b) a majority of the employees to whom the award applies;

may give notice to all of the employees, or other employees, to whom the award applies and persons, or other persons, who are bound by the award and to the commission, stating that the award is revoked with effect from a specified day.

(6) The specified day must be at least 28 days after—

- (a) the day on which the notice is given; or
- (b) if it is given to different persons on different days—the day on which it is last given.

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<sup>39</sup> Section 55 (What happens if commission terminates a bargaining period under s 54(3) or (7))

<sup>40</sup> Division 2 (Making agreements)

- (7) The award is revoked on the specified day.
- (8) The award may be amended only to—
- (a) remove ambiguity or uncertainty; or
  - (b) include, omit or amend a term (however specified) that authorises an employer to stand-down an employee.
- (9) Before the award's nominal expiry date has passed, no bargaining period may be initiated under section 40<sup>41</sup> for negotiating an agreement in relation to the employment of employees whose employment is dealt with in the award.

### **Commission not to arbitrate during bargaining period**

**58.** During a bargaining period, the commission must not exercise its arbitration powers under section 240<sup>42</sup> for a matter that is at issue between the negotiating parties.

### **Conciliation for agreements**

**59.(1)** The commission has the conciliation powers for a matter arising under this part that it would have under section 240 if that section applied to conciliation of the matters instead of industrial disputes.

(2) If 2 or more employee organisations are involved in the negotiations or proposed negotiations, the commission may order that the organisations be represented, for conciliating the matter, by a single person or group of persons authorised by the organisations to represent them (whether generally or for the particular negotiations).

(3) Subsection (2) does not, by implication, limit subsection (1).

### **Employers not to discriminate between unionist and non-unionist**

**60.** In negotiating an agreement under division 2,<sup>43</sup> an employer must not

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<sup>41</sup> Section 40 (Initiation of bargaining period)

<sup>42</sup> Section 240 (Action on industrial dispute)

<sup>43</sup> Division 2 (Making agreements)

discriminate between the employer's employees because—

- (a) some of the employees are members of an employee organisation, while others are not members of the organisation; or
- (b) some of the employees are members of a particular employee organisation, while others are not members of the organisation or are members of a different employee organisation.

### *Division 8—Prohibition of coercion in relation to agreements*

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

**61.(1)** A person must not—

- (a) take or threaten to take industrial action or other action; or
- (b) refrain or threaten to refrain from taking action;

with intent to coerce someone else to agree, or not to agree, to—

- (c) making, amending or terminating, or extending the nominal expiry date of, an agreement under division 2;<sup>44</sup> or
- (d) approving anything mentioned in paragraph (c).

**(2)** Subsection (1) does not apply to action, or industrial action, that is protected action (within the meaning of division 7<sup>45</sup>).

**(3)** An employer must not coerce, or attempt to coerce, an employee of the employer—

- (a) not to make a request mentioned in section 20(5)<sup>46</sup> in relation to an agreement the employer proposes to make; or
- (b) to withdraw the request.

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<sup>44</sup> Division 2 (Making agreements)

<sup>45</sup> Division 7 (Negotiations for certified agreements etc.)

<sup>46</sup> Section 20 (Agreement with employees)

***Division 9—Enforcement and remedies*****Penalty provisions**

**62.** In this division, each of the following is a penalty provision—

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

**Penalties for contravening penalty provisions**

**63.(1)** A contravention of a penalty provision is not an offence.

**(2)** However, a magistrate may, by order, impose a penalty on a person who contravenes a penalty provision.

**(3)** The penalty can not be more than—

- (a) for a corporation—135 penalty units; or
- (b) otherwise—27 penalty units.

**(4)** An application for an order for a contravention of section 35<sup>47</sup> may be made by—

- (a) the employees making the request mentioned in section 35; or
- (b) an employee organisation of which any of the employees making the request is a member; or
- (c) an inspector; or

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<sup>47</sup> Section 35 (Amendment if discrimination between unionists and non-unionists)



*Workplace Relations Act 1997*

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(d) another person prescribed under a regulation.

(5) An application for an order for a contravention of section 45<sup>48</sup> may be made by—

(a) an employee whose employment is subject to the certified agreement concerned; or

(b) another person who is bound by the agreement; or

(c) another person prescribed under a regulation.

(6) An application for an order for a contravention of section 52<sup>49</sup> may be made by—

(a) the employee concerned; or

(b) an employee organisation of which the employee is a member; or

(c) an inspector; or

(d) another person prescribed under a regulation.

(7) An application for an order for a contravention of section 60<sup>50</sup> may be made by—

(a) an employee who allegedly was disadvantaged because of the discrimination mentioned in section 60; or

(b) an employee organisation of which the employee is a member; or

(c) an inspector; or

(d) another person prescribed under a regulation.

(8) An application for an order for a contravention of section 61<sup>51</sup> may be made by—

(a) an employee whose employment is subject to the agreement, or will be subject to the proposed agreement concerned; or

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<sup>48</sup> Section 45 (Industrial action etc. must not be taken until after nominal expiry date of certain agreements and awards)

<sup>49</sup> Section 52 (Employer not to dismiss employee etc. for engaging in protected action)

<sup>50</sup> Section 60 (Employers not to discriminate between unionist and non-unionist)

<sup>51</sup> Section 61 (Coercion of persons to make, amend or terminate certified agreements etc.)

- (b) another person bound by the agreement or who will be bound by the proposed agreement; or
- (c) the person who allegedly was intended to be coerced; or
- (d) an employee organisation of which the person is a member; or
- (e) an inspector; or
- (f) another person prescribed under a regulation.

(9) The magistrate may order that a penalty, or part of a penalty, be paid to any person who may have made the application (other than an officer or employee of the State or a public service officer).

(10) Any part of the penalty that is ordered to be paid to the person must first be paid to the person.

(11) The remainder of the penalty must then be paid to the consolidated fund.

### **Reinstatement and compensation if employer contravenes s 52**

**64.(1)** If an employer contravenes section 52,<sup>52</sup> the commission may order the employer—

- (a) if the contravention was constituted by dismissing an employee—to reinstate the employee to the position the employee occupied immediately before the dismissal or to a position at least as favourable as that position; and
- (b) to pay the employee dismissed, injured or prejudiced, compensation for loss suffered because of the dismissal, injury or prejudice.

(2) The rights of and relating to reinstatement that are conferred on an employee by this section do not limit any other rights of the employee.

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<sup>52</sup> Section 52 (Employer not to dismiss employee etc. for engaging in protected action)

***Division 10—General*****Secret ballot on valid majority**

**65.(1)** If the commission—

- (a) is required under this part to be satisfied that a valid majority of the persons employed at a particular time whose employment is or will be subject to an agreement have genuinely made or terminated the agreement, or given an approval; and
- (b) is not so satisfied;

the commission may order a vote be taken by secret ballot<sup>53</sup> (with or without a provision for absent voting), in accordance with the commission's directions, of persons employed at the time of the ballot whose employment is or will be subject to the agreement to decide whether they would make or terminate the agreement, or give the approval.

(2) If a majority of the validly cast votes is in favour of making or terminating the agreement, or giving the approval, the commission is taken to be satisfied of the requirement.

(3) Before a vote is taken, the commission may revoke an order under subsection (1) if it becomes satisfied that the requirement of subsection (1)(a) has been met.

**Complementary laws**

**66.(1)** To enable functions to be performed or powers to be exercised by the Australian Commission, the Commonwealth provisions apply as a law of the State with—

- (a) the amendments required under a regulation; and
- (b) any other amendments allowed under a regulation.

(2) In this section—

**“Commonwealth provisions”** means the Commonwealth Act, part VIB and the other provisions of that Act as far as they relate to the part.

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<sup>53</sup> See section 301 (Conducting a secret ballot) for the way a secret ballot is conducted.

## **PART 2—QUEENSLAND WORKPLACE AGREEMENTS**

### *Division 1—Preliminary*

#### **Object of pt 2**

**67.** The object of this part is to facilitate the making, approving by an enterprise commissioner, and operation, of certain agreements (“**QWAs**”) between a single employer and a single employee.

#### **Definitions for pt 2**

**68.** In this part—

“**additional approval requirements**” means the additional approval requirements in section 84.<sup>54</sup>

“**amendment agreement**” see section 79.

“**ancillary document**” means any of the following—

- (a) an amendment agreement;
- (b) an extension agreement;
- (c) a termination agreement;
- (d) a termination notice.

“**approval notice**” means an approval notice issued by an enterprise commissioner.

“**bargaining agent**” means a person appointed as a bargaining agent under section 78.

“**certified copy**” of a document means a copy that is certified as being a true copy of the document.

“**employee**” see section 69(2).

“**employer**” see section 69(2).

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<sup>54</sup> Section 84 (Additional approval requirements for QWA and ancillary documents)

**“existing employee”**, in relation to a QWA, means an employee who signed the QWA after commencing the employment to which the QWA relates.

**“extension agreement”** means an agreement to extend the nominal expiry date of a QWA.

**“file”** a QWA or ancillary document means file with the registrar or employment advocate.

**“filing receipt”** means a receipt issued by the registrar or employment advocate.

**“filing requirements”** means the filing requirements in section 82.

**“new employee”**, in relation to a QWA, means an employee who signed the QWA before, or at the time of, commencing the employment to which the QWA relates.

**“nominal expiry date”** of a QWA, see section 76.

**“party”**, for a QWA or ancillary document, means the employer or employee.

**“period of operation”** of a QWA, see section 77.

**“QWA”** see sections 69 and 89.

**“QWA date”** means the date on which the employer and employee sign the QWA or, if they sign on different dates, the later of the dates.

**“refusal notice”** means a refusal notice issued by an enterprise commissioner under division 5.<sup>55</sup>

**“relevant or designated award”** means the relevant or designated award that is used when applying the no-disadvantage test.

**“termination agreement”** see section 80.

**“termination notice”** see section 80.

### **Proposed QWAs and ancillary documents—interpretation**

**69.(1)** As far as the context permits, a reference in this part to a QWA or

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<sup>55</sup> Division 5 (Approving QWAs and ancillary documents)

ancillary document includes a reference to a proposed QWA or ancillary document.

(2) In relation to a proposed QWA or ancillary document, a reference in this part to the employer or employee is a reference to the person who will be the employer or employee when the QWA or ancillary document starts to operate.

### **Functions and powers of enterprise commissioner**

**70.(1)** An enterprise commissioner has the functions set out in this part.

(2) In performing the functions, the enterprise commissioner may exercise the powers of a commissioner that are necessary to facilitate the approval, or operation, of a QWA or ancillary document.

(3) In performing the functions, the enterprise commissioner may call on the assistance of the employment advocate.

(4) The enterprise commissioner must, as far as practicable, perform the functions—

- (a) in a way that furthers the objects of this Act and, in particular, the object of this part; and
- (b) without undue delay; and
- (c) in an informal way.

(5) Section 335(4)<sup>56</sup> does not apply to the performance of the enterprise commissioner's functions under this part.

### **Protocol regarding employment advocate's functions**

**71.(1)** As soon as practicable after the commencement of this part, the president and chief executive must establish a protocol about the employment advocate's functions under this part.

(2) In exercising functions under this part, the employment advocate must apply the protocol.

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<sup>56</sup> Section 335 (Basis of procedures and decisions of the commission and magistrates)

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

**72.(1)** A QWA or ancillary document has effect as provided by this part, and not otherwise.

**(2)** In particular—

- (a)** a QWA for a new employee has no effect before a filing receipt is issued for the QWA; and
- (b)** a QWA for an existing employee has no effect before an approval notice is issued for the QWA.

**Collective QWAs**

**73.(1)** In this part, 2 or more agreements that have been negotiated collectively may be included in the same document if the same employer is a party to all the agreements.

**(2)** The agreements need not be in the same terms.

**(3)** A QWA for a new employee can not be included in the same document as a QWA for an existing employee.

***Division 3—Making, amending or terminating a QWA*****Employer and employee may make a QWA**

**74.(1)** A single employer and a single employee, other than an employer and employee mentioned in subsection (3), may make a QWA that deals with matters relating to the relationship between an employer and employee.

**(2)** A QWA may be made before commencement of the employment.

**(3)** The employer of an employee employed in 1 of the following may not make a QWA with the employee—

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

- (b) a public service office or part of a public service office under the *Public Service Act 1996*;
- (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose;
- (d) a part of an entity mentioned in paragraph (c);
- (e) a registry or other administrative office of a court of the State of any jurisdiction;
- (f) the parliamentary service;
- (g) the Governor's official residence (known as 'Government House') and its associated administrative unit;
- (h) a court of the State of any jurisdiction;
- (i) the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a);
- (j) another entity, or part of another entity, declared under a regulation for this section.

### **Matters to be included in QWA**

**75.(1)** The employer must ensure the QWA includes the provisions about discrimination prescribed under a regulation.

**(2)** If the QWA does not in fact include the prescribed provisions about discrimination, the QWA is taken to include the provisions.

**(3)** The employer must ensure the QWA does not include provisions that prohibit or restrict disclosure of details of the QWA by either party to another person.

**(4)** The employer must ensure the QWA includes a dispute resolution procedure.

**(5)** If the QWA does not include a dispute resolution procedure, the QWA is taken to include the model dispute resolution procedure prescribed under a regulation.



(6) If a dispute resolution procedure confers powers on an enterprise commissioner to prevent or settle disputes between the parties to the QWA about the application or interpretation of the QWA, the enterprise commissioner may exercise the powers.

(7) To avoid doubt, unless power is conferred on an enterprise commissioner to prevent or settle disputes, the enterprise commissioner must not exercise arbitration powers to prevent or settle a dispute between the parties to the QWA.

### **Nominal expiry date of QWA**

**76.(1)** A QWA must specify a date as its nominal expiry date.

(2) The date can not be more than 3 years after the QWA date.

(3) An employer and employee may make a written agreement (an “**extension agreement**”) that extends the nominal expiry date.

(4) The extended date can not be more than 3 years after the QWA date.

(5) The extension agreement has no effect unless a filing receipt is issued for the extension agreement at least 21 days before the nominal expiry date that is to be extended.

(6) The extension agreement takes effect on the day after an approval notice is issued for the extension agreement.

### **Period of operation of QWA**

**77.(1)** A QWA for a new employee starts operating on the later of the following days—

- (a) the day after a filing receipt is issued for the QWA;
- (b) the day specified in the QWA as the starting day;
- (c) the day the employment commences.

(2) A QWA for a new employee stops operating at the earlier of the following times—

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

- (b) the time when a termination under section 80<sup>57</sup> takes effect;
- (c) the time when another QWA between the employer and employee starts to operate.

(3) A QWA for an existing employee starts operating on the later of the following days—

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

(4) A QWA for an existing employee stops operating at the earlier of the following times—

- (a) the time when a termination under section 80 takes effect;
- (b) the time when another QWA between the employer and employee starts to operate.

### **Bargaining agents**

**78.(1)** An employer or employee may appoint a person to be his or her bargaining agent for the making, approval, amendment or termination of a QWA.

(2) The appointment must be written.

(3) An employer or employee must not refuse to recognise a bargaining agent appointed by the other party if the employer or employee has been given a copy of the bargaining agent's instrument of appointment.

(4) An employer or employee must not coerce, or attempt to coerce, the other party—

- (a) to appoint, or not to appoint, a particular person as a bargaining agent; or
- (b) to terminate the appointment of a bargaining agent.

### **Amending a QWA**

**79.(1)** An employer and employee may make a written agreement

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<sup>57</sup> Section 80 (Terminating a QWA)

(“**amendment agreement**”) amending a QWA.

(2) The amendment agreement takes effect on the later of the following days—

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

(3) Section 75<sup>58</sup> applies to the QWA as amended in the same way as it applied to the original QWA.

### **Terminating a QWA**

**80.(1)** The employer and employee may at any time make a written agreement (“**termination agreement**”) to terminate the QWA.

(2) The termination agreement takes effect on the later of the following times—

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

(3) After the nominal expiry date of a QWA, either the employer or employee may file a notice (“**termination notice**”) to terminate the QWA.

(4) The termination notice takes effect at the end of the 28th day after the party filing the termination notice gave notice to the other party of the termination notice being filed.

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

#### **Filing QWAs and ancillary documents**

**81.(1)** A QWA or ancillary document (“**document**”) may be filed with the registrar or employment advocate.

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<sup>58</sup> Section 75 (Matters to be included in QWA)

(2) If the registrar or employment advocate is satisfied that the filing requirements for the document have been met, the registrar or employment advocate must issue a filing receipt to the person who filed it.

(3) For a QWA, the registrar or employment advocate may issue a filing receipt only if it is filed within 14 days after the QWA date.

(4) If the document is filed with the employment advocate, the employment advocate must immediately give it to the registrar.

(5) The registrar must keep a QWA or ancillary document in a way that maintains the confidentiality of its contents.

### **Filing requirements**

**82.(1)** The filing requirements for a QWA are—

- (a) the QWA must be signed and dated by each of the parties, and the signatures must be witnessed; and
- (b) the QWA must be accompanied by a declaration by the employer, declaring—
  - (i) the QWA complies with section 75;<sup>59</sup> and
  - (ii) the employer gave the employee a copy of the information statement prepared by the employment advocate at least the required number of days before the employee signed the QWA.

(2) The information statement prepared by the employment advocate for subsection (1) must include information about the following matters, but may include other information—

- (a) entitlements under this Act;
- (b) occupational health and safety law;
- (c) services provided by the employment advocate;
- (d) bargaining agents.

(3) The filing requirements for an amendment agreement are—

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<sup>59</sup> Section 75 (Matters to be included in QWA)

*Workplace Relations Act 1997*

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- (a) the agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
- (b) the agreement must be accompanied by a declaration by the employer, declaring the QWA, as amended, complies with section 75.

(4) The filing requirement for an extension agreement is the agreement must be signed and dated by each of the parties, and the signatures must be witnessed.

(5) The filing requirement for a termination agreement is the agreement must be signed and dated by each of the parties, and the signatures must be witnessed.

(6) The filing requirement for a termination notice is the notice must be signed and dated by the party filing the notice, and the signature must be witnessed.

(7) The employer must provide any other information required under a regulation.

(8) In this section—

**“required number of days”** means—

- (a) for a new employee—5 days; or
- (b) for an existing employee—14 days.

**Employer’s declaration must be accurate**

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

*Division 5—Approving QWAs and ancillary documents***Additional approval requirements for QWA and ancillary documents**

84.(1) The additional approval requirements for a QWA are—

*Workplace Relations Act 1997*

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- (a) the QWA complies with section 75;<sup>60</sup> and
- (b) the employee received a copy of the QWA at least the required number of days before signing the QWA; and
- (c) the employer explained the effect of the QWA to the employee as soon as practicable after the employee first received a copy of it; and
- (d) the employee genuinely consented to making the QWA.

(2) The employee may consult with, or seek advice from, anyone about the QWA given to the employee under subsection (1)(b) and the copy is the property of the employee.

(3) The additional approval requirements for an amendment agreement are—

- (a) the QWA, as amended, complies with section 75; and
- (b) the employee received a copy of the amendment agreement at least 14 days before signing the amendment agreement; and
- (c) the employer explained the effect of the amendment agreement to the employee as soon as practicable after the employee first received a copy of it; and
- (d) the employee genuinely consented to making the amendment agreement.

(4) The explanation of the effect of the QWA or amendment agreement mentioned in subsection (1) or (3) must have been done in a way that was appropriate, having regard to the employee's particular circumstances and needs.

*Example of employees with particular circumstances and needs—*

1. Women
2. Persons from a non-English-speaking background
3. Young persons
4. Persons with limited literacy or numeracy skills

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<sup>60</sup> Section 75 (Matters to be included in QWA)

(5) The additional approval requirement for an extension agreement is that the employee genuinely consented to making the extension agreement.

(6) The additional approval requirement for a termination agreement is that the employee genuinely consented to making the termination agreement.

(7) In subsection (1)—

**“required number of days”** means—

- (a) for a new employee—5 days; or
- (b) for an existing employee—14 days.

### **Approving QWA**

**85.(1)** An enterprise commissioner must approve a QWA for which a filing receipt has been issued if the enterprise commissioner is satisfied—

- (a) the QWA passes the no-disadvantage test; and
- (b) the QWA meets the additional approval requirements.

(2) If the enterprise commissioner has concerns about whether the QWA passes the no-disadvantage test, the enterprise commissioner must—

- (a) notify the employee of the concerns; and
- (b) the reasons for them.

(3) If the enterprise commissioner has concerns about whether the QWA passes the no-disadvantage test, but the concerns are resolved by—

- (a) a written undertaking given by the employer and accepted by the enterprise commissioner; or
- (b) other action by the parties;

the enterprise commissioner must approve the QWA.

(4) If the enterprise commissioner—

- (a) is still not satisfied the QWA passes the no-disadvantage test; but
- (b) is satisfied that approving the QWA is not contrary to the public interest;

the enterprise commissioner must approve the QWA.

(5) If the enterprise commissioner is not satisfied the QWA meets the additional approval requirements, the enterprise commissioner must refuse to approve the QWA.

### **Approving amendment agreement**

**86.(1)** An enterprise commissioner must approve an amendment agreement for which a filing receipt has been issued if the enterprise commissioner is satisfied—

- (a) the QWA, as amended, passes the no-disadvantage test; and
- (b) the agreement meets the additional approval requirements.

(2) If the enterprise commissioner has concerns about whether the QWA, as amended, passes the no-disadvantage test, but the concerns are resolved by—

- (a) a written undertaking given by the employer and accepted by the enterprise commissioner; or
- (b) other action by the parties;

the enterprise commissioner must approve the amendment agreement.

(3) If the enterprise commissioner—

- (a) is still not satisfied the QWA passes the no-disadvantage test; but
- (b) is satisfied that approving the QWA is not contrary to the public interest;

the enterprise commissioner must approve the QWA.

(4) If the enterprise commissioner is not satisfied the amendment agreement meets the additional approval requirements, the enterprise commissioner must refuse to approve the amendment agreement.

### **Approving other ancillary documents**

**87.(1)** This section applies to the following ancillary documents—

- (a) an extension agreement;
- (b) a termination agreement;
- (c) a termination notice.



(2) An enterprise commissioner may approve the ancillary document only if satisfied the ancillary document meets the additional approval requirements for the document.

### **Enterprise commissioner must issue approval or refusal notice**

**88.(1)** If an enterprise commissioner approves a QWA or ancillary document, the enterprise commissioner must issue an approval notice to the employer.

(2) If the enterprise commissioner refuses to approve a QWA or ancillary document, the enterprise commissioner must issue a refusal notice to the employer.

(3) If the enterprise commissioner considers the QWA does not pass the no-disadvantage test, the enterprise commissioner must issue a notice to that effect to the employee.

(4) In each approval or refusal notice, the enterprise commissioner must identify the relevant or designated award that applies to the QWA.

### **Undertakings taken to be included in QWAs**

**89.** An undertaking accepted by an enterprise commissioner under this division is taken to be included in the QWA.

### **Enterprise commissioner to issue copies of approved QWAs and ancillary documents**

**90.** After a QWA or ancillary document is approved by an enterprise commissioner, the enterprise commissioner must issue to the employer a copy of the QWA or ancillary document, as approved.

## ***Division 6—Effect of a QWA***

### **Effect of QWA on awards and agreements**

**91.(1)** A QWA, during its period of operation, operates to the exclusion of an award that would otherwise apply to the employee's employment.

(2) A QWA does not operate to the exclusion of an exceptional matters order, but prevails over an exceptional matters order to the extent of any inconsistency.

(3) The relationship between a QWA and a certified agreement is as follows—

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

### **QWA binds employer's successor**

**92.(1)** This section applies if—

- (a) an employer is a party to a QWA; and
- (b) at a later time a new employer becomes the successor of the whole or part of the business concerned.

(2) From the later time—

- (a) the new employer replaces the employer as a party to the QWA; and
- (b) the previous employer stops being a party to the QWA, to the extent it relates to the whole or part of the business; and
- (c) a reference in this part to the employer is a reference to the new employer, and ceases to refer to the previous employer, to the extent the context relates to the whole or part of the business.

(3) In this section—

“**successor**” includes assignee and transmittee.

### **Parties must not contravene QWA**

**93.** A party to a QWA must not contravene the QWA.

**Conciliation for agreements**

**94.** An enterprise commissioner has the conciliation powers for a matter arising under this part that a commissioner would have under chapter 6<sup>61</sup> if that chapter applied to conciliation of the matters instead of industrial disputes.

**Industrial action by party to QWA**

**95.** During the period of operation of a QWA before its nominal expiry date, a party to the QWA must not engage in industrial action in relation to the employment to which the QWA relates.

*Division 7—Enforcement and remedies***Penalties for contravening this part**

**96.(1)** A magistrate may make an order imposing a penalty on a person who contravenes a penalty provision.

**(2)** The penalty can not be more than—

- (a) for a corporation—135 penalty units; or
- (b) otherwise—27 penalty units.

**(3)** An application for an order relating to a QWA or ancillary document may be made by—

- (a) a party to the QWA or ancillary document; or
- (b) the employment advocate.

**(4)** In this section—

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<sup>61</sup> Chapter 6 (Industrial disputes)

“**penalty provision**” means section 78(3) or (4), 83, 93, 95, 103(1), 104(1), 105(1) or (2) or 106(1) or (2).<sup>62</sup>

### **Damages for contravention of QWA**

**97.(1)** A party to a QWA who suffers loss or damage because of a contravention of the QWA by the other party may recover the amount of the loss or damage in an Industrial Magistrates Court.

**(2)** The action must be brought within 6 years after the date on which the cause of action arose.

### **Compensation to new employee for shortfall in entitlements**

**98.(1)** If a QWA for a new employee stops operating because of the issue of a refusal notice and the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b), the employee is entitled to recover the shortfall from the employer in an Industrial Magistrates Court—

- (a) the total value of the entitlements to which the employee became entitled under the QWA for the period while it was in operation;
- (b) the total value of the entitlements to which the employee would have been entitled for that period under an award, agreement or law mentioned in section 116(2),<sup>63</sup> if the QWA had not been made, in relation to the employment to which the QWA relates.

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<sup>62</sup> Section 78 (Bargaining agents)  
 Section 83 (Employer’s declaration must be accurate)  
 Section 93 (Parties must not contravene QWA)  
 Section 95 (Industrial action by party to QWA)  
 Section 103 (Employer not to dismiss etc. an employee for taking QWA industrial action)  
 Section 104 (Hindering QWA negotiations)  
 Section 105 (Persons must not apply duress or make false statements in connection with QWA etc.)  
 Section 106 (Employer must give copy of documents to employee)

<sup>63</sup> Section 116 (When does an agreement pass the no-disadvantage test)

(2) If a QWA that has been approved for a new employee includes an undertaking by the employer under section 85<sup>64</sup> and the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b), the employee is entitled to recover the shortfall from the employer in an Industrial Magistrates Court—

- (a) the total value of the entitlements to which the employee became entitled under the QWA for the period before it was approved;
- (b) the total value of the entitlements to which the employee would have been entitled for that period if the QWA as filed, had included the employer's undertaking.

### **Injunctions**

**99.** An enterprise commissioner, on application by a party to a QWA, may grant an injunction requiring a person not to contravene, or to stop contravening, this part.

### *Division 8—Limited immunity for industrial action*

### **Meaning of expressions**

**100.(1)** In this division—

**“QWA industrial action”** means—

- (a) a strike by an employee to compel or induce the employer—
  - (i) to make a QWA, on particular terms, with the employee; or
  - (ii) to make QWAs, on particular terms, with the employee and other employees; or
- (b) an employer locking out an employee to compel or induce the employee to make a QWA, on particular terms, with the employer.

(2) In this division, a reference to taking action includes a reference to—

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<sup>64</sup> Section 85 (Approving QWA)

- (a) omitting to do something; or
- (b) bringing about a circumstance.

### **Limited immunity conferred**

**101.(1)** No action lies under any law for QWA industrial action unless the action has involved or is likely to involve—

- (a) personal injury; or
- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

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

**(3)** If an employer locks out an employee, the employer may refuse to pay remuneration to the employee for the period of the lockout.

**(4)** An employer can not lock out an employee unless the continuity of the employee's employment, for the purposes prescribed under a regulation, is not affected by the lockout.

**(5)** In this section—

“**law**” means a written or unwritten law, but does not include the *State Transport Act 1938*.

### **Immunity conditional on giving notice**

**102.** The immunity conferred by section 101<sup>65</sup> for QWA industrial action does not apply unless at least 3 working days notice of the intention to take the action was given to the other party.

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

**103.(1)** An employer must not—

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<sup>65</sup> Section 101 (Limited immunity conferred)

*Workplace Relations Act 1997*

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- (a) dismiss an employee, injure an employee in his or her employment or change an employee's position to the employee's prejudice; or
- (b) threaten to dismiss an employee, injure an employee in his or her employment or change an employee's position to the employee's prejudice;

wholly or partly because the employee is proposing to engage, is engaging or has engaged, in QWA industrial action after giving notice under section 102.

(2) Subsection (1) does not apply to any of the following actions taken by the employer—

- (a) standing-down the employee;
- (b) refusing to pay the employee if, under the common law, the employer is permitted to do so because the employee has not performed work as directed;
- (c) action of the employer that is itself QWA industrial action to which section 101<sup>66</sup> applies.

(3) In a proceeding against an employer under section 96<sup>67</sup> for an alleged contravention of subsection (1), it is to be presumed, unless the employer proves otherwise, that the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to engage, was engaging or had engaged, in QWA industrial action.

*Division 9—General***Hindering QWA negotiations**

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

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<sup>66</sup> Section 101 (Limited immunity conferred)

<sup>67</sup> Section 96 (Penalties for contravening this part)

(2) This section does not apply to conduct by or for an employee organisation for the purpose of negotiating a certified agreement, if the conduct is authorised by another provision of this Act.

(3) In this section—

“**party to negotiations**” includes a bargaining agent.

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

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

(2) A person must not knowingly make a false or misleading statement to someone else with the intention of persuading the other person to make, or not to make, a QWA or ancillary document.

### **Employer must give copy of documents to employee**

**106.(1)** As soon as practicable after receiving any of the following documents from an enterprise commissioner or the registrar or employment advocate, the employer must give a copy of it to the employee—

- (a) a filing receipt;
- (b) an approval notice or refusal notice;
- (c) a QWA or ancillary document, as approved.

(2) The employer must give the employee any other document prescribed under a regulation, within the period required under the regulation.

### **Intervention not permitted**

**107.** A person other than—

- (a) a party to a QWA; or
- (b) a party’s bargaining agent; or
- (c) the Minister;

must not be allowed to make submissions, or be heard, in relation to the filing, approval, amendment or termination of a QWA.



### **Hearings to be in private**

**108.** A hearing by an enterprise commissioner for this part must be held in private.

### **Identity of QWA parties not to be disclosed**

**109.(1)** A person (the “**entrusted person**”) must not disclose protected information that the entrusted person knows, or has reasonable grounds to believe, will identify another person (the “**QWA party**”) as being, or having been, a party to a QWA.

Maximum penalty—6 months imprisonment.

**(2)** Subsection (1) does not apply if the disclosure is—

- (a) made by the entrusted person in the course of performing official duties as an officer of the court, commission or department; or
- (b) authorised under a regulation; or
- (c) required or permitted by another Act; or
- (d) authorised in writing by the QWA party.

**(3)** For deciding the burden of proof in a proceeding for an offence against subsection (1), the exceptions in subsection (2) are taken to be part of the description of the offence.

**(4)** In this section—

“**protected information**” means information that was acquired by the entrusted person—

- (a) in the course of performing official duties as an officer of the court, commission or department; or
- (b) from an officer of the court, commission or department who disclosed the information as authorised under a regulation.

### **Commission must publish report about certain decisions and interpretations**

**110.** The commission must publish an annual report summarising

decisions and interpretations about awards, certified agreements, industrial agreements, QWAs and ancillary documents.

### **Reports and advice about development in making QWAs**

**111.(1)** The chief executive, on the Minister's request, must prepare and give to the Minister a report about developments in the State in bargaining for the making of QWAs.

**(2)** To enable the chief executive to prepare the report and generally to advise the Minister, the registrar must allow access to approved QWAs and ancillary documents to—

- (a) the chief executive; or
- (b) the chief executive's agent.

**(3)** The report must not identify either of the parties to a QWA, except with the consent of both parties.

### **Interpretation of a QWA**

**112.** An enterprise commissioner may give an interpretation of a QWA on application by—

- (a) a party to it; or
- (b) the employment advocate.

### **Evidence**

**113.(1)** The registrar may give a certified copy of an approved QWA or ancillary document to a person who is or was a party to the QWA or ancillary document.

**(2)** The registrar may issue a certificate stating—

- (a) specified QWAs or ancillary documents are the only QWAs or ancillary documents that were filed, before a specified date, in relation to a specified employer and employee; or
- (b) a copy of a specified approved QWA or ancillary document was issued on a specified day; or

(c) a filing receipt, approval notice or refusal notice was issued for a specified QWA or ancillary document on a specified day.

(3) The certificate may be given only to a person who is or was a party to each of the documents to which the certificate relates.

(4) In all courts and a proceeding—

(a) a certified copy of an approved QWA or ancillary document is evidence of the QWA or ancillary document; and

(b) a certificate issued by the registrar under subsection (2) is evidence of the matters stated in the certificate.

(5) A document that purports to be a certified copy, or certificate, mentioned in subsection (4) is taken to be the copy or certificate, unless the contrary is proved.

### **Signature for corporation**

**114.** A QWA or ancillary document may be signed for a corporation by a properly authorised officer of the corporation and need not be made under the corporation's seal.

## **PART 3—NO-DISADVANTAGE TEST**

### **Definitions for pt 3**

**115.** In this part—

**“agreement”** means—

(a) a certified agreement; or

(b) a QWA.

**“approved apprenticeship”** means an apprenticeship approved by an approving authority for section 119.<sup>68</sup>

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<sup>68</sup> Section 119 (Special case—employee undertaking approved apprenticeship)

**“approved traineeship”** means a traineeship approved by an approving authority for section 118,<sup>69</sup> other than—

- (a) a traineeship under the Training Wage Award—State; or
- (b) a Career Start traineeship; or
- (c) an Australian Traineeship System traineeship; or
- (d) a National Training Wage traineeship.

**“approving authority”** means the Vocational Education, Training and Employment Commission established under the *Vocational Education, Training and Employment Act 1991*.

**“award”**—

- (a) includes an award under the Commonwealth Act, part VI; but
- (b) does not include an exceptional matters order.

**“designated award”**, in relation to a person to whom an agreement will apply, means an award that the commission under section 120,<sup>70</sup> or an enterprise commissioner under section 121,<sup>71</sup> has decided is appropriate for deciding whether a certified agreement or QWA passes the no-disadvantage test.

**“initial day”** means—

- (a) for a QWA—the day on which it was approved; or
- (b) for a certified agreement—the day on which it was certified.

**“relevant award”**, in relation to a person to whom an agreement will apply, means an award—

- (a) regulating any employment condition of persons engaged in the same kind of work as that of persons under the agreement; and
- (b) that, immediately before the initial day of the agreement, binds the person’s employer.

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<sup>69</sup> Section 118 (Special case—employee undertaking approved traineeship)

<sup>70</sup> Section 120 (Determination of designated awards for certified agreement)

<sup>71</sup> Section 121 (Determination of designated awards for QWA)

**When does an agreement pass the no-disadvantage test**

**116.(1)** An agreement passes the no-disadvantage test if it does not disadvantage employees in relation to their employment conditions.

**(2)** Subject to sections 117 to 119,<sup>72</sup> an agreement disadvantages employees in relation to their employment conditions only if—

- (a) for a certified agreement—its certification would result, on balance, in a reduction in the employees' overall employment conditions—
  - (i) under a relevant award or designated award; and
  - (ii) under any other law of the Commonwealth or a State that a commissioner considers relevant; or
- (b) for a QWA, when there is a certified agreement with a QWA provision—its approval would result, on balance, in a reduction in the employee's overall employment conditions—
  - (i) under the relevant or designated award; and
  - (ii) under any other law of the Commonwealth or a State that an enterprise commissioner considers relevant; or
- (c) for a QWA, when there is a certified agreement without a QWA provision—its approval would result, on balance, in a reduction in the employee's overall employment conditions—
  - (i) under the certified agreement; and
  - (ii) under any other law of the Commonwealth or a State that an enterprise commissioner considers relevant; or
- (d) for a QWA, when there is no certified agreement—its approval would result, on balance, in a reduction in the employee's overall employment conditions—
  - (i) under a relevant award or designated award; and

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<sup>72</sup> Section 117 (Special case—employee eligible for supported wage system)  
Section 118 (Special case—employee undertaking approved traineeship)  
Section 119 (Special case—employee undertaking approved apprenticeship)

- (ii) under any other law of the Commonwealth or a State that an enterprise commissioner considers relevant.

(3) In this section—

**“certified agreement”** means a certified agreement that, immediately before the initial day of the QWA, binds the employer.

**“QWA provision”** of a certified agreement means a provision that expressly allows a subsequent QWA—

- (a) to operate to the exclusion of the certified agreement; or
- (b) to prevail over the certified agreement to the extent of any inconsistency.

### **Special case—employee eligible for supported wage system**

**117.(1)** Subsection (2) applies if an agreement provides for the payment of wages to an employee who is eligible for the supported wage system at a rate not less than the rate set in accordance with that system for the employee.

(2) The approval or certification of the agreement is not to be taken to result in a reduction of the employee’s wages.

### **Special case—employee undertaking approved traineeship**

**118.(1)** Subsection (2) applies if an agreement provides for the payment of wages to an employee undertaking an approved traineeship at a rate that is not less than the appropriate percentage of the rate (the **“benchmark rate”**) that would be applicable to the employee under the relevant award or designated award if—

- (a) that award applied to the employee; and
- (b) the employee were not undertaking the traineeship.

(2) The approval or certification of the agreement is not to be taken to result in a reduction of the employee’s wages.

(3) For subsection (1), the appropriate percentage of the benchmark rate is the percentage of that rate determined in writing by the approving

authority having regard to the reduction in productive time of an employee undertaking the training due to time spent in training.

(4) If the agreement adopts, as the qualification for a wage level, a criterion determined by the approving authority (“**determined criterion**”) instead of the criterion applying under the relevant award or designated award (“**award criterion**”), the award is taken, for this section, to have effect as if the determined criterion were substituted for the award criterion.

### **Special case—employee undertaking approved apprenticeship**

**119.(1)** This section applies if—

- (a) an agreement provides for the payment of wages to an employee undertaking an approved apprenticeship in a particular trade, occupation or kind of work; and
- (b) there is a relevant award, designated award or order regulating the payment of wages to employees undertaking an apprenticeship (a “**benchmark apprenticeship**”) in the same or a similar trade, occupation or kind of work.

(2) The approval or certification of the agreement is to be taken to result in a reduction of the employee’s wages only if the agreement provides for the payment of wages to employees undertaking the approved apprenticeship at a rate that is less than the rate applicable under the relevant award, designated award or order to employees undertaking the benchmark apprenticeship adjusted (if necessary) under subsection (3).

(3) For subsection (2), the rate applicable to an employee undertaking the benchmark apprenticeship is to be adjusted to take into account the proportionate difference, as determined by the approving authority, between the productive time of an employee under the approved apprenticeship and the productive time of an employee under the benchmark apprenticeship.

(4) If the agreement adopts, as the qualification for a wage level, a criterion determined by the approving authority (“**determined criterion**”) instead of the criterion applying under the relevant award, designated award or order (“**award criterion**”), the award is taken, for this section, to have effect as if the determined criterion were substituted for the award criterion.

**Determination of designated awards for certified agreement**

**120.(1)** This section applies if—

- (a) an employer or organisation of employees proposes to make a certified agreement; and
- (b) there is no relevant award in relation to some or all of the persons to whom the agreement will apply.

**(2)** The employer or organisation may apply to the commission for a determination under subsection (3).

**(3)** On application, the commission must determine that an award (regulating employment conditions of employees engaged in a similar kind of work as the person under the agreement) is appropriate for deciding whether the agreement passes the no-disadvantage test.

**(4)** The commission must inform the employer or organisation in writing of its determination.

**Determination of designated awards for QWA**

**121.(1)** This section applies if—

- (a) an employer proposes to make a QWA with a person; and
- (b) there is no relevant award for the person.

**(2)** The employer must apply to an enterprise commissioner for a determination under subsection (3).

**(3)** On application, the enterprise commissioner must determine that an award (regulating employment conditions of employees engaged in a similar kind of work as the person under the QWA) is appropriate for deciding whether the QWA passes the no-disadvantage test.

**(4)** The enterprise commissioner must inform the employer in writing of the enterprise commissioner's determination.



## **CHAPTER 3—AWARDS**

### **PART 1—OBJECTS**

#### **Objects of ch 3**

**122.** The objects of this chapter are to ensure—

- (a) wages and employment conditions are protected by a system of enforceable awards established and maintained by the commission; and
- (b) awards act as a safety net of fair minimum wages and employment conditions; and
- (c) awards are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; and
- (d) the commission's functions and powers in relation to making and amending awards are performed and exercised in a way that encourages the making of agreements between employers and employees at the workplace or enterprise level.

### **PART 2—COMMISSION'S FUNCTIONS GENERALLY**

#### **Performance of commission's functions under this chapter**

**123.(1)** The commission must perform its functions under this chapter in a way that furthers the objects of the Act and, in particular, the objects of this chapter.

**(2)** In performing the functions, the commission must ensure a safety net of fair minimum wages and employment conditions is established, having regard to—

*Workplace Relations Act 1997*

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- (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the community; and
- (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment; and
- (c) when adjusting the safety net, the needs of the low paid.

(3) In performing the functions, the commission must have regard to—

- (a) the need for changes to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed; and
- (b) the need to support training arrangements through appropriate wage provisions for apprentices and trainees; and
- (c) the need to provide a supported wage system for people with disabilities; and
- (d) the need to apply the principle of equal remuneration for work of equal value without discrimination based on sex; and
- (e) the need to prevent and eliminate discrimination.

(4) Changes necessary to keep wages and employment conditions at a relevant level may be made on condition that relevant parties comply with principles established by the commission.

**No automatic flow-on of certain agreements**

**124.** The commission can not include terms in an award that are based on a certified agreement, unless it is satisfied that including the terms would not—

- (a) be inconsistent with principles established by a full bench that apply for deciding wages and employment conditions; and
- (b) be otherwise contrary to the public interest.

## **PART 3—FORM AND APPLICATION**

### **Form, effect and term of award**

**125.(1)** An award—

- (a) must be in a form decided by the commission; and
- (b) takes effect and has the force of law throughout the State and without limit of time, except as otherwise prescribed by subsection (2).

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

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

**(3)** An award stated to be limited in a way mentioned in subsection (2) has effect only to the extent that it provides.

### **Persons bound by award**

**126.(1)** An award binds—

- (a) all parties to the industrial cause in which the award is made who appear or are represented before the commission; and
- (b) all parties who have been called 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, unless the commission considers they were improperly called as parties; and
- (c) all organisations concerned with the calling to which the award applies; and
- (d) all members of organisations bound by the award; and
- (e) all employers and employees, in a locality where the award applies, who are engaged in the calling to which the award applies; and

- (f) if the award purports to apply only to a particular employer or employers, or named establishments or operations of a particular employer or employers—all employees of the employer or the employers or of the employer or employers in the named establishments or operations.
- (2) This section applies subject to—
- (a) all exemptions ordered by the commission under section 136;<sup>73</sup> and
- (b) section 352 and *Industrial Organisations Act 1997*, section 192.<sup>74</sup>

## **PART 4—COMMISSION’S POWERS**

### **Making, amending and repealing awards**

- 127.(1)** The commission may make, amend or repeal an award.
- (2) However, in doing so the commission is subject to section 128.
- (3) The commission may act under subsection (1) of its own initiative or on application by—
- (a) the Minister; or
- (b) an organisation; or
- (c) an employer; or
- (d) a person who satisfies the commission that the person is not an officer of, or acting for, an eligible association.
- (4) The commission may refrain from hearing, further hearing, or deciding an application to amend an award while it—

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<sup>73</sup> Section 136 (Exemptions)

<sup>74</sup> Section 352 (Remedies on show cause) and *Industrial Organisations Act 1997*, section 192 (Consequences of cancellation)

- (a) considers that, in all the circumstances, the parties concerned should try to negotiate a certified agreement or QWA to deal with the subject matter of the proposed amendment; and
- (b) is satisfied there is a reasonable prospect of the parties making either of the agreements.

### **Allowable award matters**

**128.(1)** In making or amending an award, the commission may only deal with the following matters (“**allowable award matters**”)—

- (a) classifications of employees and skill-based career paths;
- (b) ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
- (c) wage rates generally (including hourly rates and annual salaries), wage rates for juniors, apprentices or trainees, and wage rates for employees under the supported wage system;
- (d) piece rates, tallies and bonuses;
- (e) annual leave and leave loadings;
- (f) long service leave;
- (g) personal and carer’s leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other similar forms of leave;
- (h) parental leave and adoption leave;
- (i) compensation for public holidays;
- (j) allowances;
- (k) loadings for working overtime or for casual or shift work;
- (l) penalty rates;
- (m) redundancy pay;
- (n) notice of termination;
- (o) stand-down provisions;

*Workplace Relations Act 1997*

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- (p) dispute resolution procedures;
- (q) jury service;
- (r) type of employment, including full-time employment, casual employment, regular part-time employment and shift work;
- (s) occupational superannuation;
- (t) wages and conditions for outworkers, but only to the extent necessary to ensure that their overall wages and employment conditions are fair and reasonable in comparison with the wages and employment conditions specified in a relevant award or awards for employees who perform the same kind of work at an employer's place of business.

**(2)** The commission may make an award for an allowable award matter that—

- (a) revokes or amends a decision; or
- (b) abrogates or amends labour contracts made before or after the commencement of this Act, subject to the conditions and exemptions the commission considers appropriate; or
- (c) gives the retrospective effect the commission considers appropriate, or that is consented to by the parties, to the whole or part of an award, but so that, except with the parties' consent, the retrospective effect is not made to operate before the day when the commission first took cognisance of the matter; or
- (d) directs a copy of any award be exhibited by the employer in a conspicuous and convenient place on the premises of an employer bound by the award.

**(3)** The commission may include in an award provisions that are—

- (a) incidental to the matters in subsection (1); and
- (b) necessary for the effective operation of the award.

**(4)** This section does not prevent the commission from including a model anti-discrimination clause in an award.

**(5)** In this section—

“**outworker**” means an employee who, for the employer’s business, performs work at private residential premises or at other premises that are not the employer’s place of business.

### **Limitation on commission’s powers for awards**

**129.(1)** The commission’s power to make or amend an award, or to prevent or settle by arbitration an industrial dispute, dealing with an allowable award matter is limited to making a minimum rates award.

**(2)** The commission’s power to make or amend an award in relation to matters covered by section 128(1)(r) does not include power—

- (a) to limit the number or proportion of employees an employer may employ in a particular kind of employment; or
- (b) to set maximum or minimum hours of work for regular part-time employees.

**(3)** Subsection (2)(b) does not prevent the commission from including in an award provisions that—

- (a) set a minimum number of consecutive hours that an employer may require a regular part-time employee to work; or
- (b) facilitate a regular pattern in the hours worked by regular part-time employees.

**(4)** The commission does not have power to include terms in an award that require or permit, or have the effect of requiring or permitting, conduct that would contravene the *Industrial Organisations Act 1997*, part 14.<sup>75</sup>

**(5)** In fixing wage rates payable to employees in a calling, the commission must fix the rates on the basis that a man and a woman employed by the same employer must receive equal remuneration for work of equal value without any discrimination on the ground of sex.

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<sup>75</sup> *Industrial Organisations Act 1997*, part 14 (Freedom of association)

(6) The exercise of the commission’s jurisdiction for persons under 21 years is subject to the *Vocational Education, Training and Employment Act 1991*, section 78.<sup>76</sup>

(7) Despite any other provision of this Act, wage rates fixed by the commission for persons under 21 years in a calling who are not within the application of the *Vocational Education, Training and Employment Act 1991*, may be fixed on a progressive scale based on the wage rates payable to employees 21 years or over in the same calling.

(8) In making an award that fixes the wage rates, the commission must consider the age and experience of the persons under 21 years.

### **Exceptional matters orders**

**130.(1)** Despite section 128(1),<sup>77</sup> the commission may make an order about a matter (the “**exceptional matter**”) if the commission is satisfied—

- (a) a party has made a genuine attempt to reach agreement on the exceptional matter; and
- (b) there is no reasonable prospect of agreement being reached on the exceptional matter by conciliation, or further conciliation, by the commission; and
- (c) it is appropriate to settle the exceptional matter by arbitration; and
- (d) the issues involved in the exceptional matter are exceptional issues; and
- (e) a harsh or unjust outcome may result if the order were not to include the exceptional matter.

(2) The commission may make an exceptional matters order only if satisfied that making the order—

- (a) is in the public interest; and
- (b) consistent with the objects of this Act.

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<sup>76</sup> *Vocational Education, Training and Employment Act 1991*, section 78 (Restrictions on employing persons under 21 in an apprenticeship calling)

<sup>77</sup> Section 128 (Allowable award matters)



(3) The commission may make an exceptional matters order that would apply to more than a single business only if satisfied the order is an appropriate way of settling the matter in dispute.

(4) An exceptional matters order must be made by a full bench, unless the order relates to a single business within the meaning of section 12.<sup>78</sup>

(5) An exceptional matters order must relate only to a single matter.

(6) An exceptional matters order may be enforced as if it were an award.

(7) An exceptional matters order stops being in force 2 years after it is made and can not be extended.

(8) Section 129<sup>79</sup> applies to the commission as if the order were an award.

### **Allowable award matters to be dealt with by full bench**

**131.(1)** A full bench may establish principles about the making or amending of awards for an allowable award matter.

(2) After the principles have been established, the commission's power to make or amend an award is exercisable only by a full bench, unless the award's contents—

- (a) give effect to decisions of a full bench made after the commencement of this section; or
- (b) are consistent with principles established by a full bench after the commencement of this section.

### **General rulings**

**132.(1)** A full bench may make general rulings about an allowable award matter to avoid a multiplication of inquiries into the same matter.

(2) Before entering on making the ruling, the full bench must give—

- (a) reasonable notice, in the way it considers appropriate, of its intention to make the ruling; and

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<sup>78</sup> Section 12 (Single business and single employer)

<sup>79</sup> Section 129 (Limitation on commission's powers for awards)

*Workplace Relations Act 1997*

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(b) an opportunity to all persons interested in the subject of the proposed general ruling to be heard.

(3) A ruling—

(a) must specify a date (the “**specified date**”) on and from which it is to have effect; and

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

(4) A ruling may exclude from the operation of any of its provisions—

(a) a class of employer or employee; or

(b) an award or part of an award.

(5) As soon as practicable after making a ruling, the registrar must publish notice of the ruling and the specified date in the industrial gazette.

(6) The notice, on and from the specified date, replaces a notice of a ruling on the same subject matter previously published.

(7) The ruling notified continues in force until the date immediately before the specified date included in the next ruling on the same subject matter.

(8) On a ruling (other than under subsection (4)) taking effect while an award is in force, on and from the specified date—

(a) the award is taken to be amended to accord with the ruling; and

(b) the amendment has effect as an award.

(9) The registrar, on application under the rules of court, or of the registrar’s own initiative, may amend an award taken to be amended under subsection (8) as the registrar considers appropriate, to accord with the ruling.

(10) The registrar’s action is subject to appeal to the full bench.

## **PART 5—OTHER REQUIREMENTS**

### **Inclusion of enterprise flexibility provisions in awards**

**133.(1)** This section applies when the commission makes or amends an award.

**(2)** If it considers it appropriate, the commission must include in the award a provision establishing a process for negotiating agreements at the workplace or enterprise level about how the award should be amended to make the workplace or enterprise operate more efficiently according to its particular needs.

**(3)** If an application is made to amend an award to give effect to an agreement made under subsection (2), the commission can not amend the award unless it is satisfied the amendment—

- (a) would deal only with allowable award matters; and
- (b) would result in a minimum rates award; and
- (c) if it included an amendment to wage rates specified in the award—would provide for minimum wage rates consistent with sections 122 and 123.<sup>80</sup>

**(4)** An employee organisation may be heard on the application if, and only if, it—

- (a) is a party to the award; and
- (b) has a member whose employment would be regulated by the amendment.

**(5)** The commission must not refuse to amend the award merely because an organisation refuses to agree to the amendment, if the commission is satisfied the refusal is unreasonable.

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<sup>80</sup> Sections 122 (Objects of ch 3) and 123 (Performance of commission's functions under this chapter)

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

**134.(1)** This section applies if the commission makes—

- (a) an award; or
- (b) an order affecting an award.

**(2)** The commission, if it considers it appropriate, must ensure the award or order does not—

- (a) include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; or
- (b) prescribe work practices or procedures that restrict or hinder the efficient performance of work; or
- (c) contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.

**(3)** The commission must ensure the award or order—

- (a) whenever possible, contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply; and
- (b) whenever possible, contains provisions enabling the employment of regular part-time employees; and
- (c) is stated in plain English and is easy to understand in structure and content; and
- (d) does not contain provisions that are obsolete or need updating; and
- (e) whenever possible, provides support to training arrangements through appropriate apprentice and trainee wages and a supported wage system for people with disabilities; and
- (f) does not contain discriminatory provisions.

**Dispute resolution procedures**

**135.(1)** An award must provide for a dispute resolution procedure.

(2) The form of the procedure is to be agreed on by the parties to the award.

(3) However, if the parties can not agree, the commission must insert an appropriate procedure in the award.

(4) Without limiting subsection (1), in a procedure—

- (a) matters to be dealt with must include—
  - (i) all industrial matters; and
  - (ii) other matters that the parties agree on; and
- (b) a dispute must 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; and
- (c) reasonable time limits are to be allowed for discussion at each level of authority; and
- (d) while a procedure is being followed, normal work must continue, unless there is a genuine health or safety issue; and
- (e) the state or condition existing before the dispute emerged must continue while a procedure is being followed; and
- (f) a dispute may be referred, by consent of the parties, to an independent person for resolution; and
- (g) matters that can not be resolved by the parties to the dispute must be referred to the commission or a magistrate as required by section 239.<sup>81</sup>

(5) In this section—

**“dispute”** includes grievance.

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<sup>81</sup> Section 239 (Notice of industrial dispute)

## **PART 6—EXEMPTIONS**

### **Exemptions**

**136.(1)** The commission may, of its own initiative or on application by an organisation or employer, by the order by which it makes an award, or by its later order, exempt from the application of the award—

- (a) an employer or class of employer, or employee or class of employee, in a locality and in the calling to which the award applies; and
- (b) a person who is engaged, whether as employer or employee, in the locality and calling, while the award remains in force.

**(2)** While an exemption exists, the award does not bind the employer, employee, class, or person, according to the exemption.

## **PART 7—GENERAL**

### **Enforceability of awards**

**137.** Action can not be commenced to enforce an award until 21 days after the date it is published in the industrial gazette.

### **Effect of appeals on awards**

**138.** The commission must immediately amend an award to give effect to a decision, affecting the award, of—

- (a) the court on appeal from a decision of the commission or on a case stated by the commission; or
- (b) a full bench on appeal from a single commissioner.

### **Inconsistency between awards and contracts**

**139.(1)** To the extent of any inconsistency, an award prevails over a

contract of service that is—

- (a) in force when the award becomes enforceable; or
- (b) made while the award continues in force.

(2) The contract is to be interpreted, and takes effect, as if it were amended to the extent necessary to make it conform to the award.

(3) However, no inconsistency arises merely because the contract provides for employment conditions more favourable to the employee than the award.

## **CHAPTER 4—GENERAL EMPLOYMENT CONDITIONS**

### **PART 1—MINIMUM WAGES**

#### **Object of pt 1**

**140.** The object of this part is to give effect to the Minimum Wages Convention.

#### **Meaning of expressions**

**141.** If an expression used in this part is also used in the Minimum Wages Convention, it has the same meaning as in the Convention.

#### **Orders setting minimum wages**

**142.** The commission may make an order setting—

- (a) the same minimum wage for all employees in a stated group; or
- (b) different minimum wages for different categories of employees in a stated group.

**Orders only on application**

**143.** The commission may make an order under this part only on an application by—

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

**When commission may make order**

**144.(1)** The commission must, and may only, make an order if satisfied—

- (a) coverage by a system of minimum wages is appropriate, given the employment conditions of the group of employees to be covered by the order; and
- (b) the order will operate for at least some of the employees in the stated group, having regard to employees ineligible under subsection (3).

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

**(3)** An employee is ineligible only if—

- (a) minimum wages for the employee are set by an industrial instrument; or
- (b) proceedings have been commenced under chapter 2, parts 1 to 3<sup>82</sup> and chapter 3<sup>83</sup> for the setting or adjustment of minimum wages for the employee.

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

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

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<sup>82</sup> Chapter 2 (Agreements), part 1 (Certified Agreements), part 2 (Queensland workplace agreements), part 3 (No-disadvantage test)

<sup>83</sup> Chapter 3 (Awards)



- (i) an organisation whose rules entitle it to represent the industrial interests of any of the employees concerned;
  - (ii) an organisation whose rules entitle it to represent the industrial interests of employers of the employees;
  - (iii) another organisation representing employers of the employees; and
- (b) take the views into account.

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

### **Matters to be considered when setting minimum wages**

**145.** When setting minimum wages under this part, the commission must consider—

- (a) the principles it would apply when setting minimum wages under chapter 3;<sup>84</sup> and
- (b) the needs of workers and their families, taking into account the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups; and
- (c) economic factors, including, for example, the requirements of economic development, levels of productivity and the desirability of reaching and keeping a high level of employment and a low inflation rate.

### **Part does not limit other rights**

**146.** This part does not limit any right a person or organisation may otherwise have to establish minimum wages.

### **Orders**

**147.(1)** This section applies to an order of the commission under this

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<sup>84</sup> Chapter 3 (Awards)

part.

(2) An order must be written.

(3) An order takes effect from the date of the order or a later stated date.

(4) An order is enforceable in the same way as an award.

(5) The commission may amend or revoke an order only on application by any of the following persons (whether or not named or described in the order)—

- (a) an employer, or representative of an employer, covered by the order;
- (b) an employee, or representative of an employee, covered by the order.

### **Inconsistent industrial instruments or orders**

**148.** An industrial instrument or commission order that is inconsistent with an order under this part does not apply to the extent the inconsistency detrimentally affects the rights of the employees concerned.

## **PART 2—EQUAL REMUNERATION FOR WORK OF EQUAL VALUE**

### **Object of part**

**149.** The object of this part is to give effect to—

- (a) the Anti-Discrimination Conventions; and
- (b) the Equal Remuneration Recommendation; and
- (c) the Discrimination (Employment and Occupation) Recommendation.

### **Meaning of expressions**

**150.(1)** In this part—

**“equal remuneration for work of equal value”** means equal remuneration for men and women workers for work of equal value.

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

### **Orders requiring equal remuneration**

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

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

### **Orders only on application**

**152.** The commission may make an order under this part only on application by—

- (a) an employee to be covered by the order; or
- (b) an organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order; or
- (c) the Anti-Discrimination Commissioner.

### **When commission must and may only make order**

**153.** The commission must, and may only, make an order if—

- (a) it is satisfied the employees to be covered by the order do not receive equal remuneration for work of equal value; and
- (b) the order can reasonably be regarded as appropriate and as giving effect to—
  - (i) 1 or more of the Anti-Discrimination Conventions; or
  - (ii) the Equal Remuneration Recommendation; or

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

### **Immediate or progressive introduction of equal remuneration**

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

- (a) immediately; or
- (b) progressively, in specified stages.

### **Employer not to reduce remuneration**

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

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

### **Part does not limit other rights**

**156.** Subject to section 157, this part does not limit any right a person or organisation may otherwise have to secure equal remuneration for work of equal value.

### **Applications under this part**

**157.(1)** An application can not be made under this part for an order to secure equal remuneration for work of equal value for an employee if a proceeding for an alternative remedy—

- (a) to secure the remuneration for the employee; or
- (b) against unequal remuneration for work of equal value for the employee;

has begun under another provision of this Act or under another Act.

(2) Subsection (1) does not prevent an application under this part if the proceeding for the alternative remedy has—

- (a) been discontinued by the party who started the proceeding; or

(b) failed for want of jurisdiction.

(3) If an application under this part has been made for an order to secure equal remuneration for work of equal value for an employee, a person is not entitled to take a proceeding for an alternative remedy under a provision or Act mentioned in subsection (1)—

- (a) to secure the remuneration for the employee; or
- (b) against unequal remuneration for work of equal value for the employee.

(4) Subsection (3) does not prevent a proceeding being taken for an alternative remedy if the proceeding under this part has—

- (a) been discontinued by the party who started the proceeding; or
- (b) failed for want of jurisdiction.

(5) This section applies to an application under the corresponding provisions of the repealed Act.

## **PART 3—PARENTAL LEAVE**

### *Division 1—Preliminary*

#### **Object of pt 3**

**158.** The object of this part is to give effect to the Family Responsibilities Convention.

#### **Basic principles**

**159.(1)** Under this part, an employee who gives birth to a child, and her spouse, are entitled to unpaid parental leave totalling 52 weeks to care for the child.

(2) However, an employee's entitlement to leave under this part is reduced by the employee's other entitlements to parental leave other than under this part.

(3) To obtain parental leave under this part, an employee must satisfy stated requirements about—

- (a) length of service; and
- (b) notice periods; and
- (c) information and documentation.

(4) Except for 1 week at the time of the birth, an employee and the employee's spouse must take parental leave at different times.

(5) An employee may take other leave (annual leave for example) in conjunction with parental leave, but this will reduce the amount of parental leave the employee may take.

(6) Parental leave may be varied in certain circumstances.

(7) In general, if a variation is foreseeable, an employee must give notice of it, but if a variation is not foreseeable notice is not required (for example, when the birth is premature).

(8) Cancellation of parental leave by the employer is limited to situations when—

- (a) the employee will not become, or ceases to be, the child's primary care-giver; or
- (b) there has been a mistake in calculating the amount of leave to which the employee is entitled.

(9) An employee who takes parental leave is, in most circumstances, entitled to return to the position the employee held before the leave was taken.

(10) Parental leave does not break an employee's continuity of service.

### **Definitions for pt 3**

**160.** In this part—

**“continuous service”**—

- (a) means service under an unbroken employment contract other than as a casual or seasonal employee; and
- (b) includes a period of leave or absence authorised by—

*Workplace Relations Act 1997*

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- (i) the employer; or
- (ii) an industrial instrument or order; or
- (iii) an employment contract; or
- (iv) this part.

**“employee”** includes a part-time employee, but not a casual or seasonal employee.

**“law”** includes an unwritten law.

**“long paternity leave”** means—

- (a) part 3 long paternity leave; or
- (b) other leave that—
  - (i) an employee is entitled to, or has been applied for or been granted for the birth of his spouse’s child, other than under this part (for example, under an industrial instrument or order); and
  - (ii) is analogous to part 3 long paternity leave, or would be analogous except that—
    - (A) it is paid leave; or
    - (B) different rules govern eligibility for it; or
    - (C) it can be taken for different periods.

**“maternity leave”** means—

- (a) part 3 maternity leave; or
- (b) other leave that—
  - (i) an employee is entitled to, or has been applied for or been granted for her pregnancy or her child’s birth, other than under this part (for example, under an industrial instrument or order); and
  - (ii) is analogous to part 3 maternity leave, or would be analogous except that—
    - (A) it is paid leave; or
    - (B) it can begin before the estimated date of birth; or

(C) different rules govern eligibility for it; or

(D) it can be taken for different periods.

**“medical certificate”** means a certificate signed by a doctor.

**“parental leave”** means maternity leave or paternity leave.

**“part 3 long paternity leave”** see section 173.

**“part 3 maternity leave”** see section 161.

**“part 3 short paternity leave”** see section 173.

**“paternity leave”** means short paternity leave or long paternity leave.

**“short paternity leave”** means—

(a) part 3 short paternity leave; or

(b) other leave that—

(i) an employee is entitled to, or has been applied for or been granted for the birth of his spouse’s child, other than under this part (for example, under an industrial instrument or order); and

(ii) is analogous to part 3 short paternity leave, or would be analogous except that—

(A) it is paid leave; or

(B) different rules govern eligibility for it; or

(C) it can be taken for different periods.

### *Division 2—Maternity leave*

#### **Entitlement to maternity leave**

**161.** A pregnant employee is entitled to 1 period of unpaid leave (**“part 3 maternity leave”**) for the child’s birth and to be the child’s primary care-giver.



**Conditions of entitlement to maternity leave**

**162.(1)** An employer must grant part 3 maternity leave to an employee if—

- (a) she notifies the employer of the estimated date of birth at least 70 days before the date; and
- (b) she applies for the leave at least 28 days before the first day of the leave; and
- (c) the application states the first and last days of the leave; and
- (d) the first day of the leave is the estimated date of birth or a later day; and
- (e) she gives with the application a medical certificate that states—
  - (i) she is pregnant and the estimated date of birth; or
  - (ii) she has given birth to a living child and the date of birth; and
- (f) she gives with the application a statutory declaration stating—
  - (i) the first and last days of all the following—
    - (A) short paternity leave for which her spouse intends to apply, or has applied, for the child's birth;
    - (B) long paternity leave for which her spouse intends to apply, or has applied, for the child's birth;
    - (C) annual or long service leave for which her spouse intends to apply or has applied, instead of or in conjunction with, the paternity leave; and
  - (ii) that she will—
    - (A) be the child's primary care-giver throughout the maternity leave; and
    - (B) not engage in conduct inconsistent with her employment contract while on maternity leave; and
- (g) it is reasonable to expect that she will complete, or she had completed, at least 1 year of continuous service with the employer on the day before the estimated date of birth.

**(2)** Subsections (1)(a) and (g) do not apply if—

*Workplace Relations Act 1997*

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- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with subsection (1)(a); and
- (b) if it was not reasonably practicable for the employee to notify the employer before the actual date of birth of the estimated date of birth—she notified the employer as soon as reasonably practicable; and
- (c) otherwise—the medical certificate given under subsection (1)(e) also states the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and
- (d) it is reasonable to expect the employee will complete, or the employee had completed, 1 year of continuous service with the employer on the day before the estimated date of birth.

**(3)** Subsection (1)(b) does not apply if—

- (a) it was not reasonably practicable for the employee to comply with the paragraph because the child was premature, or for some other compelling reason; and
- (b) the employee gives the application as soon as reasonably practicable before, on or after the first day of the leave; and
- (c) if the child is born before the employee gives the application—the first day of the leave is the day of the child’s birth or a later day.

**(4)** If subsection (3)(c) applies, subsection (1)(d) does not apply.

**(5)** If, because the child was premature, the first day of the leave is earlier than the estimated date of birth, a reference in this part to 1 year of continuous service means a period of continuous service equal to 1 year less the period—

- (a) beginning on the first day of the leave; and
- (b) ending on the estimated date of birth.

**(6)** When an employee applies for maternity leave (the “**substitute leave**”) to be taken instead of maternity leave for which she has already applied (the “**original leave**”)—

- (a) if a document, given under subsection (1)(e) or (f) with the application for the original leave, applies to the application for the

substitute leave—the document need not be given with the later application; and

- (b) if the employer approves the substitute leave—the employer—
  - (i) must cancel the original leave if it has been approved; or
  - (ii) must not give the original leave if it has not been approved.

### **Period of maternity leave**

**163.(1)** The part 3 maternity leave—

- (a) if the child has not been born—
  - (i) must begin on the later of—
    - (A) the day stated in the application as the first day of the leave; or
    - (B) the estimated date of birth; and
  - (ii) must not extend beyond the first anniversary of the estimated date of birth; and
- (b) if the child has been born—
  - (i) must begin on the later of—
    - (A) the day stated in the application as the first day of the leave; or
    - (B) the child's date of birth; and
  - (ii) must not extend beyond the child's first birthday; and
- (c) must not overlap with the spouse's leave (other than short paternity leave) stated in the relevant statutory declaration; and
- (d) must be for a continuous period equal to the shorter of—
  - (i) the period applied for; or
  - (ii) the period of entitlement.

**(2)** The period of entitlement is 52 weeks less the total of all the following—

- (a) unpaid leave (other than maternity leave) or paid sick leave that the employer has already approved for the employee for the pregnancy;
- (b) annual or long service leave the employee has applied to take instead of, or in conjunction with, maternity leave for the pregnancy;
- (c) the spouse's leave stated in the relevant statutory declaration.

### **Entitlement reduced by other maternity leave available to employee**

**164.(1)** This section applies if, had this part not been enacted—

- (a) an employee could have applied (for her pregnancy or her child's birth) for maternity leave to which paragraphs (a) and (b) of the definition "maternity leave" in section 160 applies, whether or not she has in fact applied; and
- (b) if she had applied as required by the rules governing the maternity leave—she would have a legally enforceable right to the leave.

**(2)** If the period of alternative leave is at least as long as the unadjusted period of maternity leave, the employer must not approve maternity leave to the employee under a relevant section.

**(3)** Otherwise, the employer must approve to the employee, instead of the unadjusted period of maternity leave, a period of maternity leave that—

- (a) equals the difference between the unadjusted period of maternity leave and the period of alternative leave; and
- (b) begins immediately after the period of alternative leave if the employer grants it; and
- (c) otherwise complies with section 163.

**(4)** In this section—

**"period of alternative leave"** means the leave mentioned in subsection (1)(b).

**"relevant section"** means section 162<sup>85</sup> or 163.

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<sup>85</sup> Section 162 (Conditions of entitlement to maternity leave)

**“unadjusted period of maternity leave”** means any part 3 maternity leave that a relevant section would, apart from this section, require the employer to grant to the employee for the child’s birth.

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

**165.** If an employee applies to take annual or long service leave instead of, or in conjunction with, part 3 maternity leave, the employer must approve the annual or long service leave if—

- (a) had this part not been enacted, the employer would have been obliged to grant it; or
- (b) the total of all the following is not more than 52 weeks—
  - (i) the annual or long service leave;
  - (ii) annual or long service leave that the employer has already granted the employee instead of, or in conjunction with, the maternity leave;
  - (iii) the maternity leave;
  - (iv) unpaid leave (other than maternity leave) or paid sick leave that the employer has already approved for the employee for the pregnancy;
  - (v) the spouse’s leave under section 162(1)(f)<sup>86</sup> specified in the relevant statutory declaration.

### **Extending maternity leave**

**166.(1)** An employee may apply to extend the part 3 maternity leave approved for her.

**(2)** The employer must approve the application if—

- (a) the application is given to the employer at least 14 days before the last day of the leave; and

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<sup>86</sup> Section 162 (Conditions of entitlement to maternity leave)

- (b) the application states the first and last day of the extended leave; and
- (c) unless the things mentioned in section 162(1)(f)(i)<sup>87</sup> are still as specified in the relevant statutory declaration—the employee gives with the application a statutory declaration stating the things mentioned; and
- (d) the period of leave, if extended, would not be more than the period of entitlement under section 163,<sup>88</sup> worked out when granting the application.

(3) The maternity leave may be extended again only by agreement between the employer and the employee.

### **Shortening maternity leave**

**167.(1)** An employee may apply to shorten the part 3 maternity leave granted to her.

(2) The employer may grant the application if it states the last day of the shortened leave.

### **Effect on maternity leave of failure to complete 1 year of continuous service**

**168.** The employer may cancel part 3 maternity leave if—

- (a) it has been granted on the basis that it is reasonable to expect the employee will complete a period of at least 1 year of continuous service with the employer on a particular day; and
- (b) the employee does not complete the period on the day.<sup>89</sup>

### **Effect on maternity leave if pregnancy terminates or child dies**

**169.(1)** This section applies if an employer has approved part 3 maternity

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<sup>87</sup> Section 162 (Conditions of entitlement to maternity leave)

<sup>88</sup> Section 163 (Period of maternity leave)

<sup>89</sup> If the period is not completed because the child is premature, see section 162(5).

leave to an employee and—

- (a) the pregnancy terminates other than by the birth of a living child; or
- (b) she gives birth to a living child, but the child later dies.

(2) If an event mentioned in subsection (1)(a) or (b) happens before the leave begins, the employer may cancel the leave before it begins.

(3) If the leave has begun, the employee may notify the employer that she wishes to return to work.

(4) If the employee does so, the employer must notify her of the day when she must return to work.

(5) The day must be within 4 weeks after the employer received the notice.

(6) Also, despite subsections (3) to (5), if the leave has begun, the employer may notify the employee of the day when she must return to work.

(7) The day must be at least 4 weeks after the employer gives the notice.

(8) If the employee returns to work, the employer must cancel the rest of the leave.

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

**170.(1)** This section applies if—

- (a) during a substantial period beginning on or after the beginning of an employee's part 3 maternity leave, the employee is not the child's primary care-giver; and
- (b) considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary care-giver within a reasonable period.

(2) The employer may notify the employee of the day when she must return to work.

(3) The day must be at least 4 weeks after the employer gives the notice.

(4) If the employee returns to work, the employer must cancel the rest of the leave.

### **Return to work after maternity leave**

**171.(1)** This section applies when an employee returns to work after part 3 maternity leave.

(2) The employer must employ her in the position she held immediately before—

- (a) if she was transferred to safe duties under section 172<sup>90</sup>—the transfer; or
- (b) if she began working part-time because of the pregnancy—she began working part-time; or
- (c) otherwise—she began maternity leave.

(3) If—

- (a) the position no longer exists; but
- (b) she is qualified for, and can perform the duties of, other positions in the employer's employment;

the employer must employ her in whichever of the other positions is nearest in status and remuneration to the position.

### **Transfer to safe duties because of pregnancy**

**172.** If a doctor considers—

- (a) an illness or risk arising out of an employee's pregnancy; or
- (b) hazards connected with an employee's work considering the employee's pregnancy;

make it inadvisable for the employee to continue existing duties, the employer may—

- (c) transfer the employee to other duties that—
  - (i) the employee can efficiently perform; and

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<sup>90</sup> Section 172 (Transfer to safe duties because of pregnancy)



*Workplace Relations Act 1997*

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- (ii) are nearest in status and remuneration to the existing duties;  
or
- (d) direct the employee to take leave for the period that the doctor considers necessary.

***Division 3—Paternity leave*****Entitlement to paternity leave**

**173.** For the birth of his spouse's child, an employee is entitled to—

- (a) up to 1 week of unpaid paternity leave (“**part 3 short paternity leave**”) beginning on the child's date of birth; and
- (b) unpaid paternity leave (“**part 3 long paternity leave**”) to be the child's primary care-giver.

**Conditions of entitlement to short paternity leave**

**174.(1)** An employer must grant part 3 short paternity leave to an employee if—

- (a) at least 70 days before the estimated date of birth, he gives to the employer—
  - (i) a notice stating his intention to apply for the leave and how long (up to 1 week) the leave is to last; and
  - (ii) a medical certificate that names his spouse and states she is pregnant and the estimated date of birth; and
- (b) he applies for the leave as soon as reasonably practicable on or after the first day of the leave; and
- (c) the application states the first and last days of the leave; and
- (d) the leave is for not more than 1 week; and
- (e) unless the first day of the leave is the estimated date of birth—
  - (i) he gives with the application a medical certificate that names his spouse and states the actual date of birth; and
  - (ii) the first day of the leave is the actual date of birth; and

- (f) it is reasonable to expect that he will complete, or he had completed, at least 1 year of continuous service with the employer on the day before the estimated date of birth.

**(2)** Subsection (1)(a) and (f) does not apply if—

- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with subsection (1)(a); and
- (b) if it was not reasonably practicable for the employee to give the employer (before the actual date of birth) the notice and certificate mentioned in subsection (1)(a)—he gave them as soon as reasonably practicable; and
- (c) otherwise—the medical certificate given under subsection (1)(e)(i) also states the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and
- (d) it is reasonable to expect the employee will complete, or the employee had completed, 1 year of continuous service with the employer on the day before the estimated date of birth.

### **Conditions of entitlement to long paternity leave**

**175.(1)** An employer must grant part 3 long paternity leave to an employee if—

- (a) he applies for the leave at least 70 days before the first day of the of leave; and
- (b) the application states the first and last days of the leave; and
- (c) he gives with the application a medical certificate that names his spouse and states—
  - (i) she is pregnant and the estimated date of birth; or
  - (ii) she has given birth to a living child and the date of birth; and
- (d) he gives with the application a statutory declaration stating—
  - (i) the first and last days of all the following—

*Workplace Relations Act 1997*

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- (A) unpaid leave (other than maternity leave) or paid sick leave for which his spouse intends to apply, or has applied, for the pregnancy;
  - (B) maternity leave for which his spouse intends to apply, or has applied, for the child's birth;
  - (C) annual or long service leave, for which his spouse intends to apply, or has applied, instead of, or in conjunction with, maternity leave; and
- (ii) that he will—
- (A) be the child's primary care-giver throughout the paternity leave; and
  - (B) not engage in conduct inconsistent with his employment contract while on paternity leave; and
- (e) it is reasonable to expect that he will complete, or he had completed, at least 1 year of continuous service with the employer on the day before the first day of the leave.
- (2) Subsection (1)(a) does not apply if—
- (a) it was not reasonably practicable for the employee to comply with the subsection because the child was premature, or for some other compelling reason; and
  - (b) the employee gives the application as soon as reasonably practicable before, on or after the first day of the leave.

**Period of long paternity leave**

**176.(1)** The part 3 long paternity leave—

- (a) if the child has not been born—
  - (i) must begin on the later of—
    - (A) the day stated in the application as the first day of the leave; or
    - (B) the estimated date of birth; and
  - (ii) must not extend beyond the first anniversary of the estimated date of birth; and

- (b) if the child has been born—
  - (i) must begin on the later of—
    - (A) the day stated in the application as the first day of the leave; or
    - (B) the child’s date of birth; and
  - (ii) must not extend beyond the child’s first birthday; and
- (c) must not overlap with the spouse’s leave specified in the relevant statutory declaration; and
- (d) must be for a continuous period equal to the shorter of—
  - (i) the period applied for; or
  - (ii) the period of entitlement.

(2) The period of entitlement is 52 weeks less the total of all the following—

- (a) the short paternity leave the employee has applied to take;
- (b) annual or long service leave the employee has applied to take instead of, or in conjunction with, long paternity leave for the child’s birth;
- (c) the spouse’s leave stated in the relevant statutory declaration.

### **Entitlement reduced by other paternity leave available to employee**

**177.(1)** This section applies if, had this part not been enacted—

- (a) an employee could have applied (for the birth of his spouse’s child) for short paternity leave or long paternity leave to which paragraphs (a) and (b) of the definition “short paternity leave” or “long paternity leave” in section 160 apply, whether or not he has in fact applied; and
- (b) if he had applied as required by the rules governing the paternity leave—he would have a legally enforceable right to the leave.

(2) If the period of alternative leave is at least as long as the unadjusted period of paternity leave, the employer must not grant leave to the employee under a relevant section.

(3) Otherwise, the employer must approve to the employee, instead of the unadjusted period of paternity leave, a period of short paternity leave, or long paternity leave, that—

- (a) equals the difference between the unadjusted period of paternity leave and the period of alternative leave; and
- (b) begins immediately after the period of alternative leave if the employer grants it; and
- (c) otherwise complies with a relevant section.

(4) In this section—

**“period of alternative leave”** means the leave mentioned in subsection (1)(b).

**“relevant section”** means section 174 or 175.<sup>91</sup>

**“unadjusted period of paternity leave”** means any part 3 short paternity leave or part 3 long paternity leave that a relevant section would, apart from this section, require the employer to approve to the employee for the child’s birth.

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

**178.** If an employee applies to take annual or long service leave, instead of, or in conjunction with, part 3 short paternity leave or part 3 long paternity leave, the employer must grant the annual or long service leave if—

- (a) had this part not been enacted, the employer would have been obliged to grant it; or
- (b) the total of all the following is not more than 52 weeks—
  - (i) the annual or long service leave;
  - (ii) annual or long service leave that the employer has already granted the employee instead of, or in conjunction with, the paternity leave;

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<sup>91</sup> Section 174 (Conditions of entitlement to short paternity leave) or 175 (Conditions of entitlement to long paternity leave)

- (iii) the paternity leave;
- (iv) the spouse's leave stated under section 175(1)(d)<sup>92</sup> in the relevant statutory declaration.

### **Extending long paternity leave**

**179.(1)** An employee may apply to extend the part 3 long paternity leave granted for him.

**(2)** The employer must approve the application if—

- (a) the application is given to the employer at least 14 days before the last day of the leave; and
- (b) the application states the first and last day of the extended leave; and
- (c) unless the things mentioned in section 175(1)(d)(i)<sup>93</sup> are still as stated in the relevant statutory declaration—the employee gives with the application a statutory declaration stating the things mentioned; and
- (d) the period of leave, if extended, would not be more than the period of entitlement under section 176(2),<sup>94</sup> worked out when granting the application.

**(3)** The paternity leave may be extended again only by agreement between the employer and the employee.

### **Shortening paternity leave**

**180.(1)** An employee may apply to shorten the part 3 paternity leave granted to him.

**(2)** The employer may grant the application if it states the last day of the shortened leave.

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<sup>92</sup> Section 175 (Conditions of entitlement to long paternity leave)

<sup>93</sup> Section 175 (Conditions of entitlement to long paternity leave)

<sup>94</sup> Section 176 (Period of long paternity leave)

**Effect on long paternity leave of failure to complete 1 year of continuous service**

**181.** The employer may cancel part 3 long paternity leave if—

- (a) it has been granted on the basis that it is reasonable to expect the employee will complete a period of at least 1 year of continuous service with the employer on a particular day; and
- (b) the employee does not complete the period on the day.<sup>95</sup>

**Effect on long paternity leave if pregnancy terminates or child dies**

**182.(1)** This section applies if an employer has granted part 3 long paternity leave to an employee and—

- (a) his spouse's pregnancy terminates other than by the birth of a living child; or
- (b) his spouse gives birth to a living child, but the child later dies.

**(2)** If an event mentioned in subsection (1)(a) or (b) happens before the leave begins, the employer may cancel the leave before it begins.

**(3)** If the leave has begun, the employee may notify the employer that he wishes to return to work.

**(4)** If the employee does so, the employer must notify him of the day when he must return to work.

**(5)** The day must be within 4 weeks after the employer received the notice.

**(6)** Also, despite subsections (3) to (5), if the leave has begun, the employer may notify the employee of the day when he must return to work.

**(7)** The day must be at least 4 weeks after the employer gives the notice.

**(8)** If the employee returns to work, the employer must cancel the rest of the leave.

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<sup>95</sup> If the period is not completed because the child is premature, see section 162(5).

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

**183.(1)** This section applies if—

- (a) during a substantial period beginning on or after the beginning of an employee's part 3 long paternity leave, the employee is not the child's primary care-giver; and
- (b) considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary care-giver within a reasonable period.

(2) The employer may notify the employee of the day he must return to work.

(3) The day must be at least 4 weeks after the employer gives the notice.

(4) If the employee returns to work, the employer must cancel the rest of the leave.

**Return to work after paternity leave**

**184.(1)** This section applies when an employee returns to work after part 3 long paternity leave.

(2) The employer must employ him in the position he held immediately before he began paternity leave.

(3) If—

- (a) the position no longer exists; but
- (b) he is qualified for, and can perform the duties of, other positions in the employer's employment;

the employer must employ him in whichever of the other positions is nearest in status and remuneration to the position.



*Division 4—General***Employee's duty if excessive leave approved or if maternity leave and paternity leave overlap**

**185.(1)** This section applies if—

- (a) the total of all the following is more than 52 weeks—
  - (i) maternity leave granted by an employer to an employee for a pregnancy;
  - (ii) annual or long service leave granted by the employer to the employee instead of, or in conjunction with, the maternity leave;
  - (iii) unpaid leave (other than maternity leave) or paid sick leave granted by the employer to the employee for the pregnancy;
  - (iv) paternity leave granted by an employer to the employee's spouse;
  - (v) annual or long service leave granted by the employer to the employee's spouse instead of, or in conjunction with, the paternity leave; or
- (b) leave granted for the employee overlaps with leave granted for the employee's spouse.

**(2)** The employee must give her employer a notice—

- (a) if subsection (1)(a) applies—stating that the total is more than 52 weeks and stating the amount of the excess; and
- (b) if subsection (1)(b) applies—stating the period of overlap; and
- (c) suggesting how the employer may vary or cancel leave granted to her (other than leave she has already taken) to reduce or remove the excess or overlap; and
- (d) unless the variations and cancellations suggested will remove the excess or overlap—setting out the suggestions her spouse has made or will make under subsection (3)(c).

**(3)** The employee's spouse must give his employer a notice—

- (a) if subsection (1)(a) applies—stating that the total is more than 52 weeks and stating the amount of the excess; and
- (b) if subsection (1)(b) applies—stating the period of overlap; and
- (c) suggesting how the employer may vary or cancel leave granted to him (other than leave he has already taken) to reduce or remove the excess or overlap; and
- (d) unless the variations or cancellations suggested will remove the excess or overlap—setting out the suggestions his spouse has made or will make under subsection (2)(c).

(4) The variations and cancellations suggested must be of a kind that, if they are all made, the excess or overlap will be removed.

(5) An employer who receives a notice under subsection (2) or (3) may vary or cancel leave as suggested in the notice, or as agreed with the employee or her spouse.

### **Employer to warn replacement employee that employment is only temporary**

**186.** An employer may employ a person—

- (a) to replace an employee while the employee is on parental leave; or
- (b) to replace an employee who, while another employee is on parental leave, must perform the duties of the position held by the other employee;

only if the employer has informed the person—

- (c) that the person's employment is temporary; and
- (d) about the rights of the employee who is on parental leave.

### **Parental leave and continuity of service**

**187.** A period of parental leave does not break an employee's continuity of service, but does not count as service other than—

- (a) to determine the employee's entitlement to a later period of parental leave; or

- (b) as expressly provided in this Act, or in an industrial instrument or order; or
- (c) as prescribed under a regulation.

### **Effect of part on other laws**

**188.(1)** To avoid doubt, this part has effect despite—

- (a) another law of the State; or
- (b) an industrial instrument or order.

**(2)** However, this part is not intended to exclude or limit the operation of the law, industrial instrument or order as far as it can operate concurrently with this part.

### **Entitlement to adoption leave**

**189.** An employer must give eligible employees the unpaid adoption leave prescribed under a regulation.

## **PART 4—LONG SERVICE LEAVE**

### **Definitions for pt 4**

**190.** In this part—

“**continuous service**” of an employee means—

- (a) in section 194<sup>96</sup>—the period of continuous service the employee is taken to have had with an employer under section 194(3); and
- (b) elsewhere—the employee’s continuous service with the same employer (whether wholly in the State, or partly in and partly outside the State).

“**industrial authority**” means—

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<sup>96</sup> Section 194 (Long service leave in sugary industry and meat works)

- (a) for a certified agreement—the commission; or
- (b) for a QWA—an enterprise commissioner.

**“owner”** of a meat works includes a person who carries on the business of the works.

**“period between seasons”** includes the period between—

- (a) the end of 1 season and the start of the next season; and
- (b) for a particular employee—the day the employee stops employment in 1 season and the day the employee starts employment in the next season.

**“season”** means a period (whether falling completely in 1 calendar year or partly in 1 calendar year and partly in the next calendar year) when—

- (a) for the sugar industry—
  - (i) sugar cane is delivered to, and crushed at, a sugar mill; or
  - (ii) sugar cane is harvested, or farm work is performed, in the sugar industry; and
- (b) for a meat works—stock are delivered to, and slaughtered at, the works.

**“seasonal employment”** means employment related to a season.

### **Source of long service leave entitlement**

**191.** The entitlement of employees to long service leave on full pay is—

- (a) for employees who have the entitlement under another Act—as prescribed under the other Act; or
- (b) for an entitlement under section 195<sup>97</sup>—as declared under a regulation made under section 195; or
- (c) for an entitlement under section 196<sup>98</sup>—as prescribed under section 196; or

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<sup>97</sup> Section 195 (Long service leave for other seasonal employees)

<sup>98</sup> Section 196 (Long service leave for employees not governed awards etc.)

- (d) for employees who have an entitlement, under an industrial instrument, that is not as favourable as the entitlement under this part—as prescribed under this part.

### **Approval of long service leave conditions**

**192.(1)** On application, the commission must insert in an award provisions entitling employees to long service leave on full pay as prescribed by this part.

(2) An industrial authority may approve, as a certified agreement or QWA, an agreement under which employees are entitled to long service leave benefits that the industrial authority considers are at least as favourable to employees as the entitlement under this part.

(3) The industrial authority must approve the agreement if satisfied—

- (a) an employer who is a party to the agreement has agreed to the provisions conferring long service leave on the employees; and
- (b) the community in general will not be prejudiced by conferring the leave.

### **Entitlement to long service leave**

**193.(1)** An employee who is entitled to long service leave under a law, industrial instrument, or other agreement or arrangement, is entitled to leave that is at least as favourable as the entitlement under this part.

(2) The entitlement of employees to long service leave under this part is—

- (a) for an employee with 15 years continuous service—13 weeks; and
- (b) for an employee, with at least 10 but less than 15 years continuous service, whose service is terminated—a period that bears to 13 weeks the proportion that the employee's period of the continuous service (stated in years, and a fraction of a year if necessary) bears to 15 years; and
- (c) for an employee who, after completing the first, or a subsequent, 15 years continuous service, continues the service—

- (i) if the employee completes a further 15 years continuous service—a further 13 weeks; or
- (ii) if the employee's service is terminated after completing at least a further 5 but less than 15 years continuous service—a further period that bears to 13 weeks the proportion that the employee's further period of the continuous service (stated in years, and a fraction of a year if necessary) bears to 15 years.

(3) Long service leave is exclusive of a public holiday during the period of the leave.

(4) This section applies subject to adjustments made for—

- (a) a seasonal employee under section 194 or 195;<sup>99</sup> and
- (b) a casual employee under section 200.<sup>100</sup>

(5) In this section—

**“terminated”** means terminated by—

- (a) the employee's death; or
- (b) the employee; or
- (c) the employer, for a cause other than serious misconduct.

### **Long service leave in sugar industry and meat works**

**194.(1)** This section applies to an employee who is entitled to long service leave on full pay because the commission has conferred, under section 192,<sup>101</sup> an entitlement on employees employed—

- (a) in seasonal employment in the sugar industry; or
- (b) in or about meat works in seasonal employment by the meat works owner.

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<sup>99</sup> Section 194 (Long service leave in sugary industry and meat works) or 195 (Long service leave for other seasonal employees)

<sup>100</sup> Section 200 (Service of casual employees)

<sup>101</sup> Section 192 (Approval of long service leave conditions)

(2) This section prescribes the employee's entitlement to long service leave by determining—

(a) under subsection (3)—

- (i) how the employee's period of continuous service with an employer must be worked out for the purpose of working out the employee's unadjusted entitlement; and
- (ii) how the employee's period of actual service with an employer must be worked out; and

(b) under subsection (4)—the employee's seasonal entitlement for each period of long service leave provided under section 193.

(3) The following rules apply for subsection (2)(a)—

- (a) service before the commencement of this section must be treated in the same way as service after the commencement;
- (b) if the employee is engaged in harvesting sugar cane or farm work in the sugar industry—service with the employer before 23 June 1990 must not be taken into account;
- (c) the continuity of the employee's service with an employer is not broken by a period when the employee is not employed by the employer between seasons if—
  - (i) in 1 season, the employee's service with the employer continued until the end of the season or until an earlier day when 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 season's opening or on a later day in the season when the employer required the employee to start employment;
- (d) a period between seasons, when the employee is not employed by the employer—
  - (i) must be taken into account in calculating the employee's period of continuous service with an employer; and
  - (ii) must not to be taken into account in working out the length of the employee's actual service;

- (e) times in a period between seasons when the employee is employed by the employer must be taken into account for determining actual service;
- (f) long service leave to which an employee is entitled—
  - (i) may be 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.

(4) For subsection (2)(b), the seasonal entitlement of an employee for each period of long service leave provided for under section 193 is the period obtained by using the following formula—

$$\frac{\text{unadjusted entitlement} \times \text{actual service}}{\text{continuous service}}$$

(5) In this section—

“**actual service**” of an employee means the period of actual service the employee is taken to have had with an employer under subsection (3).

“**meat works**” means a place where livestock are slaughtered or meat is boned.

“**seasonal entitlement**” of an employee means the period of long service to which an employee is entitled by using the formula in subsection (4).

“**unadjusted entitlement**” means the period of long service leave to which an employee would be entitled under section 193 if—

- (a) subsection (3) was applied; but
- (b) the adjustment under subsection (4) was not made.

### **Long service leave for other seasonal employees**

**195.(1)** A regulation may provide for long service leave for other employees whose employment with the same employer—

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



(2) The regulation may specify employees by reference to callings, duties, employers, workplaces or in another way sufficient to identify them.

**Long service leave for employees not governed by awards etc.**

**196.(1)** This section applies to an employee who is not bound by—

- (a) an industrial instrument; or
- (b) a Commonwealth award that provides for long service leave; or
- (c) another Act, or a law of the Commonwealth, that provides for long service leave.

(2) The employee is entitled to long service leave on full pay in accordance with sections 193 to 206 and this section.

(3) A reference in sections 193 to 206, to an industrial instrument, is to be read as including a reference to a Commonwealth award.

(4) The commission may determine all matters about the time when, the way in which and the conditions on which long service leave may be taken.

(5) Without limiting subsection (4), the commission's jurisdiction extends to the declaration of general rulings by a full bench.

(6) A person must comply with the general ruling.

Maximum penalty—16 penalty units.

(7) For this section, if the employee is employed in seasonal employment in or about meat works by an owner in seasonal employment as defined by section 194<sup>102</sup>—

- (a) the continuity of the employee's service with an employer is not broken by a period when the employee is not employed by the employer between seasons if—
  - (i) in 1 season, the employee's service with the employer continued until the end of the season or until an earlier date when the employee's employment was terminated by the employer; and

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<sup>102</sup> Section 194 (Long service leave in sugary industry and meat works)

- (ii) in the next season, the employee's service with the same employer commenced on the season's opening or on a later date in the season when the employer required the employee to commence employment; and
- (b) in determining the length of continuous service with the employer—
  - (i) a period between seasons, when the employee is not employed by an employer, must not be taken into account; and
  - (ii) times in the period when the employee is employed by the employer must be taken into account; and
- (c) long service leave to which an employee is entitled—
  - (i) may be 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.

(8) In this section—

**“Commonwealth award”** means an award, agreement, determination or order made, registered, approved or certified under the Commonwealth Act.

### **Continuity of service generally**

**197.(1)** In working out an employee's entitlement to long service leave under this part—

- (a) service with an employer who becomes a member of a partnership and service with the partnership is service with the same employer; and
- (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;

*Workplace Relations Act 1997*

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is service with the same employer; and

- (c) continuity of an employee's service with an employer is not broken by—
  - (i) absence (including through illness or injury) from work on leave approved by the employer; or
  - (ii) the employee's employment being terminated by the employer or employee because of illness or injury, if the employee—
    - (A) is re-employed by the employer; and
    - (B) has not been employed in a calling (whether on the employee's own account or as an employee) between the termination and the re-employment; or
  - (iii) the employee's employment being terminated by the employer or employee for not more than 3 months, if the employee is re-employed by the employer; or
  - (iv) an interruption or termination of the employee's service with the employer, if the interruption or termination has—
    - (A) been effected by the employer with an intention of avoiding an obligation imposed on the employer by this part or an industrial instrument; or
    - (B) arisen directly or indirectly from an industrial dispute, and the employee is re-employed by the employer; or
    - (C) been effected by the employer because of slackness in trade or business, and the employee is re-employed by the employer; or
  - (v) the employer's calling is transferred from the employer to another employer; or
  - (vi) the employee's employment being terminated by the employer or employee, on the date when the employer's calling is transferred from the employer to another employer, or within 1 month immediately before that date, if the employee is re-employed by the other employer within 3 months after the termination; and

- (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 transferred must be taken into account in determining the length of the employee's continuous service with the employer to whom the employee's service is transferred.

(2) In this section—

“**terminate**” includes stand-down.

### **Determining length of continuous service**

**198.(1)** If an employee's entitlement to long service leave relates to employment before the relevant day—

- (a) the determination of the employee's continuous service before the relevant day; and
- (b) the calculation of the employee's entitlement to long service leave in relation to continuous service before the relevant day;

must be made under the repealed *Industrial Conciliation and Arbitration Act 1961*, sections 17, 18, 19 or 20, as the case requires.

(2) In determining the length of an employee's continuous service, a period of the employee's absence from work that does not break the continuity of the employee's service under the following sections is not to be taken into account—

- (a) section 197(1)(c)(ii);
- (b) section 197(1)(c)(iv)(A) or (B).

(3) In determining the length of an employee's continuous service, if the employee's service is, or has been before the relevant day—

- (a) temporarily lent or let on hire by an employer to another employer—the service with the other employer is taken to be service with the employer; or
- (b) transferred by an employer to another employer—the service with each of the employers (except for a period when the employee took long service leave) is taken to be service with the other employer.

(4) In determining the length of an employee's continuous service with a corporation, or of another corporation that is a subsidiary of the corporation, the service with each of the corporations (except for a period when the employee took long service leave) is to be taken into account.

(5) In this section—

**“relevant day”** means 23 June 1990.

**“subsidiary”** means a corporation that would be taken to be a subsidiary under the Corporations law, whether or not the Corporations law applies in a particular case.

### **Service in Defence Force**

**199.(1)** This section applies in working out a person's entitlement to long service leave under this part.

(2) Service by the person as a member of the Defence Force is taken to be continuous service with the employer who employed the person immediately before the person began service with the Force.

(3) In this section—

**“Defence Force”** means the Australian Defence Force.

**“permanent forces”** has the meaning given by the *Defence Act 1903* (Cwlth).<sup>103</sup>

**“service”**, as a member of the Defence Force, means service in the Force other than in the permanent forces.

### **Service of casual employees**

**200.(1)** In working out an employee's entitlement to long service leave under this part, service of an employee who is employed more than once by the same employer over a period is continuous service with the employer even if the employment is broken.

(2) However, the continuous service ends if the employment is broken by more than a 3 month period between the end of 1 employment contract

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<sup>103</sup> See section 4(1) of that Act.

and the start of the next employment contract.

**(3)** Subsection (1) applies even though—

- (a) any of the employment is not full-time employment; or
- (b) the employee is employed by the employer under 2 or more employment contracts; or
- (c) the employee would, apart from this section, be taken to be engaged in casual employment; or
- (d) the employee has engaged in other employment during the period.

**(4)** In working out the employee's continuous service—

- (a) service by the employee before 23 June 1990 must not be taken into account; and
- (b) if the employee only obtained the entitlement because of the enactment of section 17 of the *Industrial Relations Reform Act 1994*—the employee's service between 23 June 1990 and the commencement of section 17 must not be taken into account; and
- (c) a period when the employee was not employed by the employer must be taken into account.

**(5)** Subsection (4)(a) does not affect an employee's entitlement to long service leave under—

- (a) an award made before 23 June 1990; or
- (b) the *Industrial Conciliation and Arbitration Act 1961*.

**(6)** This section does not limit an entitlement to long service leave worked out other than under this section.<sup>104</sup>

### **Taking long service leave**

**201.(1)** Subject to section 193,<sup>105</sup> an industrial authority may insert in an industrial instrument the provisions the industrial authority considers appropriate—

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<sup>104</sup> See section 197, which provides other rules for calculating an employee's entitlement to long service leave.

<sup>105</sup> Section 193 (Entitlement to long service leave)

- (a) for the time when, the way in which and the conditions on which long service leave may be taken; or
- (b) to the effect that leave in the nature of long service leave taken, before the provisions are inserted, by an employee bound by the instrument must be deducted from the long service leave that the employee becomes entitled to under the provisions.

(2) The provisions operate and must be given effect as if prescribed under this part.

(3) Subject to a provision of the industrial instrument, long service leave may be taken at a time agreed between—

- (a) an organisation of which the employees are members; and
- (b) the employer.

(4) If—

- (a) the relevant industrial instrument does not provide for the time when, or the way in which, long service leave may be taken; and
- (b) an employee, or an organisation of which the employee is a member, fails to agree with the employer on the matters;

the employer may give the employee at least 3 months notice of the date on which the employee must take at least 4 weeks long service leave.

(5) The employee must comply with the notice.

### **Taking long service leave—casual employees**

**202.(1)** An employer may agree with an employee who is entitled to long service leave under section 200<sup>106</sup> that the entitlement may be taken in the form of its full-time equivalent.

*Example—*

If an employee—

- (a) is entitled to be paid for 260 hours long service leave; and
- (b) works under an award that provides for a full-time working week of 40 ordinary hours;

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<sup>106</sup> Section 200 (Service of casual employees)

the employee and the employer may agree that the employee take  $6\frac{1}{2}$  weeks leave ( $260 \div 40 = 6\frac{1}{2}$ ).

(2) This section applies subject to a provision in an industrial instrument about the employee's long service leave.

### **Payment for long service leave**

**203.(1)** Long service leave must be paid for as ordinary time that, for the purpose of making the payment, is taken to be worked continuously by the employee during the leave period.

(2) If, immediately before commencing long service leave, an employee is being paid for ordinary time at a higher rate than the ordinary rate, the employee's leave must be paid for at the higher rate.

(3) However, if during the employee's leave, the ordinary rate is—

- (a) increased above the higher rate—the employee must be paid at the increased rate for the part of the leave period that the increased rate applies to; or
- (b) decreased—the employee may be paid at the decreased rate for the part of the leave period that the decreased rate applies to.

(4) If satisfied an employer has, before an employee starts long service leave, decreased the rate at which the employee is being paid for ordinary time (the “**usual rate**”) (being a higher rate than the ordinary rate) with intent to avoid the employer's obligation under subsection (2), the commission may order the employee's leave be paid for at the usual rate.

(5) If an order is made, subsection (2) applies to the employee as if the employee were being paid the usual rate immediately before the employee started the leave.

(6) In this section—

“**ordinary rate**” means the rate payable for ordinary time under a relevant industrial instrument.

### **Payment for long service leave—casual employees**

**204.(1)** The amount payable to a casual employee for long service leave



is worked out using the formula—

**number of hours x hourly rate.**

(2) For the formula under subsection (1), the number of hours is worked out using the formula—

$$\frac{\text{actual service}}{52} \times \frac{13}{15}$$

*Example of subsection (2)—*

An employee who worked 15 600 ordinary hours over a 15 year period and is being paid an hourly rate of \$10 would be entitled to be paid—

$$\begin{aligned} & \left( \frac{15\,600}{52} \times \frac{13}{15} \right) \times \$10 \\ &= 260 \times \$10 \\ &= \$2\,600. \end{aligned}$$

(3) If a dispute arises between an employee who is paid at piecework rates and the employer about the rate the employee should be paid for long service leave, the commission may determine the payment.

(4) An employer and employee may agree on the times when and the way in which the employee will be paid for long service leave.

(5) The commission may determine a matter relating to the payment that the employer and employee can not agree on.

(6) An amount payable for long service leave becomes payable at a time agreed between the employer and the employee or, if they can not agree, determined by the commission.

(7) In this section—

“**actual service**” means the total ordinary hours actually worked by an employee during the period of continuous service to which the long service leave entitlement relates.

“**casual employee**” means an employee mentioned in section 200(1).<sup>107</sup>

“**hourly rate**” means the hourly rate for ordinary time payable to the employee on the day—

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<sup>107</sup> Section 200 (Service of casual employees)

- (a) if the employee takes the long service leave—the employee starts the leave; or
- (b) otherwise—immediately before the entitlement becomes payable.

**“number of hours”** means the number of hours for which payment must be made for long service leave.

### **Payment instead of long service leave**

**205.(1)** An employer must not make, and an employee must not accept, payment instead of long service leave except on termination of an employee’s employment.

Maximum penalty—40 penalty units.

**(2)** Subsection (3) applies if an employee entitled to long service leave dies—

- (a) before taking the leave; or
- (b) after starting, but before finishing, the leave.

**(3)** Unless the amount has been already paid to the employee who has died, the employer must pay the employee’s legal personal representative the amount payable for long service leave for—

- (a) the employee’s entitlement to long service leave; or
- (b) the part of the entitlement for which payment has not been made.

**(4)** If an amount payable under subsection (3) is not paid, the employee’s legal personal representative or an inspector may, without limiting another way of recovery, recover the amount under section 423(1) and (3)<sup>108</sup> as unpaid wages.

### **Inquiry on re-employment of employee during long service leave**

**206.(1)** This section applies if—

- (a) an employee’s service with an employer is terminated by the employer or the employee; and

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<sup>108</sup> Section 423 (Recovery of wages etc.)

- (b) the employer pays the employee for all or any long service leave to which the employee is entitled; and
- (c) the employer re-employs the employee within a period, commencing on the termination date, equal to the period of long service leave for which payment was made.

(2) On application by an inspector or an organisation of which the employee is a member, a magistrate may inquire into the matter..

(3) If satisfied the employer and employee arranged the termination, payment and re-employment to avoid the employee taking all or any long service leave, the magistrate may make the order the magistrate considers appropriate.

(4) In making the order, the magistrate must consider the object of this part that long service leave is to taken by an employee in accordance with the employee's entitlement.

(5) A person must not enter into an arrangement mentioned in subsection (3).

Maximum penalty—16 penalty units.

### **Recognition of certain exemptions**

**207.(1)** The provisions of this part that provide for long service leave for employees do not apply to an employer if—

- (a) the commission has exempted the employer, under the *Industrial Conciliation and Arbitration Act 1961*, from the application of long service leave provisions in that Act or an award; and
- (b) the exemption is in force.

(2) On application, the commission may revoke an exemption.

### **Person may be “employer” and “employee”**

**208.** If in performing duties in a calling a person is an employee, the person is entitled to long service leave as prescribed under this part despite the person being, by definition for this Act, an employer because of—

- (a) the person's engagement in the calling; or
- (b) the position the person holds in the calling.

### **Service in apprenticeship or traineeship**

**209.(1)** This section applies if an employer continues to employ an apprentice or trainee (the “**employee**”) on the completion of the apprenticeship or traineeship.

**(2)** The period of apprenticeship or traineeship must be taken into account in determining the length of the employee's continuous service with the employer.

**(3)** An employer who re-employs the employee within 3 months after completion of the employee's apprenticeship or traineeship is taken to have continued to employ the employee on completion.

## **PART 5—OTHER LEAVE**

### **Annual leave accrued during apprenticeship or traineeship**

**210.(1)** This section applies if an employer continues to employ an apprentice or trainee (the “**employee**”) on completion of the apprenticeship or traineeship.

**(2)** Any annual leave not taken during the apprenticeship or traineeship accrues.

**(3)** However, unless the commission otherwise determines, in working out the amount of accrued annual leave—

- (a) a limitation of the amount imposed under the *Vocational Education, Training and Employment Act 1991* must be taken into account; and
- (b) a limitation of the amount imposed by the relevant industrial instrument must not be taken into account.

(4) This section does not affect an employee's entitlement to annual leave.

### **Sick leave accrued during apprenticeship or traineeship**

**211.(1)** This section applies if an employer continues to employ an apprentice or trainee (the “**employee**”) on the completion of the apprenticeship or traineeship.

(2) Sick leave accrued by the employee before the completion must be taken into account to work out the employee's entitlement to be paid for time absent from work through illness during the continued employment.

(3) An employer who re-employs the employee within 3 months after completion of the employee's apprenticeship or traineeship is taken to have continued to employ the employee on the completion.

### **Continuity of employment for sick leave**

**212.(1)** In working out an employee's entitlement to sick leave—

- (a) if the calling in which the employee is employed is transferred from the employer to another employer—
  - (i) the transfer does not break the employee's continuity of employment; and
  - (ii) the periods of the employee's employment with each of the employers must be taken into account to work out the length of the employee's continuous employment; and
- (b) the employee's employment by an employer who becomes a member of a partnership and employment of the employee with the partnership is employment with the same employer; and
- (c) employment by a partnership and—
  - (i) employment by 1 or more of the former partners, on dissolution of the partnership; or
  - (ii) employment by the partnership as reconstituted, on dissolution of the partnership;is employment with the same employer; and

- (d) the continuity of employment of the employee in a calling transferred from the employer to another employer is not broken if—
- (i) the employee is dismissed by—
    - (A) within 1 month before the date when the calling is transferred—the employer; or
    - (B) on the date when the calling is transferred—either employer; and
  - (ii) within 3 months after the dismissal, the employee is re-employed by the other employer; and
- (e) employment with a corporation or its subsidiary that would constitute unbroken continuous employment with an employer if the corporations were the same employer is taken to be continuous employment with the same employer.

(2) In this section—

“**dismiss**” includes stand down.

“**subsidiary**” means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in a particular case.

## CHAPTER 5—DISMISSALS

### PART 1—OBJECTS AND INTERPRETATION

#### Objects of ch 5

**213.** The objects of this chapter are—

- (a) to establish procedures for deciding whether a dismissal is unlawful; and
- (b) to provide for appropriate remedies and sanctions if a dismissal is found to be unlawful; and

- (c) by establishing the procedures, remedies and sanctions, to help give effect to—
  - (i) the Termination of Employment Convention; and
  - (ii) the Discrimination (Employment and Occupation) Convention; and
  - (iii) the Family Responsibilities Convention; and
- (d) by the procedures and remedies, to ensure both the employer and employee concerned in an application about a dismissal are given a ‘fair go all round’; and
- (e) to provide for protection of injured employees.

### **Meaning of expressions**

**214.** If an expression used in this chapter is also used in the Termination of Employment Convention, it has the same meaning as in the Convention.

### **Complementary laws**

**215.(1)** For the dismissal of a federal award employee, the Commonwealth provisions apply as a law of this State, in place of this chapter, to enable functions to be performed or powers to be exercised by—

- (a) the Australian commission; or
- (b) the Federal Court of Australia, in connection with orders of the Australian commission made in the exercise of the Commonwealth provisions.

**(2)** In this section—

**“Commonwealth provisions”** means the Commonwealth Act, part VIA, division 3, subdivision B.

**“federal award employee”** means a federal award employee within the meaning of the Commonwealth Act, section 170CD.

### **Exclusion of employees from chapter**

**216.(1)** This chapter does not apply to an apprentice or trainee—

(a) whose service is terminated under the *Vocational Education, Training and Employment Act 1991*, section 71;<sup>109</sup> or

(b) whose training agreement is cancelled under the *Vocational Education, Training and Employment Act 1991*, sections 96 or 97.<sup>110</sup>

(2) Part 2<sup>111</sup> applies to casual employees other than those excluded under a regulation.

(3) Part 3<sup>112</sup> does not apply to—

(a) a casual employee; or

(b) an employee engaged by the hour or day; or

(c) an employee engaged for a specific period or task.

(4) Sections 227, 228 and 229<sup>113</sup> do not apply to an employee with less than 1 year of continuous service.

(5) A regulation may exclude particular employees from the operation of particular provisions of this chapter.

## **PART 2—UNLAWFUL DISMISSALS**

### **When dismissal is unlawful**

**217.** A dismissal is unlawful if—

(a) it is harsh, unjust or unreasonable; or

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<sup>109</sup> Section 71 (Trainee probation)

<sup>110</sup> Section 96 (Discipline) or 97 (Cancellation of training agreement on request)

<sup>111</sup> Part 2 (Unlawful dismissals)

<sup>112</sup> Part 3 (Requirements for dismissal)

<sup>113</sup> Sections 227 (Orders giving effect to articles 12 and 13 of Convention), 228 (Orders if employer does not consult about proposed dismissals) and 229 (Employer must notify Commonwealth employment service of proposed dismissals)



*Workplace Relations Act 1997*

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- (b) it is for any of the following reasons (an “**invalid reason**”)—
- (i) temporary absence, within the meaning of a regulation, from work because of illness or injury (other than an injury within the meaning of part 5<sup>114</sup>);
  - (ii) seeking office as, or acting or having acted in the capacity of, an employees’ representative;
  - (iii) membership of an employee organisation or participation in the organisation’s activities outside working hours or, with the employer’s consent, during working hours;
  - (iv) non-membership of an employee organisation;
  - (v) filing a complaint, or taking part in a proceeding, against an employer involving alleged violation of laws or recourse to competent administrative authorities;
  - (vi) the making by anyone, or a belief that anyone has made or may make—
    - (A) a public interest disclosure under the *Whistleblowers Protection Act 1994*; or
    - (B) a complaint under the *Health Rights Commission Act 1991*;
  - (vii) refusing to negotiate for, make, sign, extend, amend or terminate a QWA;
  - (viii) family responsibilities;
  - (ix) absence from work during parental leave;
  - (x) a reason mentioned in section 421(2);<sup>115</sup>
  - (xi) discrimination that would contravene the *Anti-Discrimination Act 1991*.

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<sup>114</sup> Part 5 (Protection of injured employees)

<sup>115</sup> Section 421 (Contract not to stipulate mode of spending wages)

**Application to remedy unlawful dismissal**

**218.(1)** If a dismissed employee alleges the dismissal was unlawful, an application may be made to the commission for the dismissal to be dealt with under this part.

**(2)** An application may be made by—

- (a) an employee; or
- (b) with the employee's consent—an organisation whose rules entitle it to represent the employee's industrial interests.

**(3)** An application must be made within—

- (a) 21 days after the dismissal takes effect; or
- (b) a further period the commission allows on an application made during or after the 21 days.

**Conciliation before application heard**

**219.(1)** Before the commission hears an application under section 218, the commission must hold a conference to attempt to settle the matter by conciliation.

**(2)** The commission may summons the applicant, employee or employer to attend the conference at a stated time and place.

**(3)** If the commission is satisfied all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful, it—

- (a) must inform the parties to the conciliation of—
  - (i) that fact; and
  - (ii) the possible consequences of further proceeding on the application; and
- (b) may recommend the application be discontinued, whether or not it also recommends another way of resolving the matter.

**(4)** The application lapses if the applicant has not, within 6 months after the applicant has been informed by the commission under subsection (3)—

- (a) taken any action in relation to the application; or
- (b) discontinued the application.

(5) Before an order is made under section 222,<sup>116</sup> the parties may—

- (a) seek further conciliation of the matter; or
- (b) settle the matter.

(6) The chief commissioner may delegate the functions of the commission under this section to the registrar or an assistant registrar.

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

**220.** In deciding whether a dismissal was harsh, unjust or unreasonable, the commission must consider—

- (a) whether the employee was notified of the reason for dismissal; and
- (b) whether the dismissal related to—
  - (i) the operational requirements of the employer's undertaking, establishment or service; or
  - (ii) the employee's conduct, capacity or performance; and
- (c) if the dismissal relates to the employee's conduct, capacity or performance—
  - (i) whether the employee had been warned about the conduct, capacity or performance; or
  - (ii) whether the employee was given an opportunity to respond to the allegation about the conduct, capacity or performance; and
- (d) any other matters the commission considers relevant.

### **Onus of proof**

**221.** The onus is on—

- (a) for an application that alleges the dismissal was unlawful because it was harsh, unjust or unreasonable—the employee to prove the

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<sup>116</sup> Section 222 (Remedies and sanctions for unlawful dismissal)

dismissal was harsh, unjust or unreasonable; or

- (b) for an application that alleges the dismissal was unlawful because it was for an invalid reason—the employer to prove the dismissal was not for an invalid reason.

### **Remedies and sanctions for unlawful dismissal**

**222.(1)** If the commission is satisfied an employer unlawfully dismissed an employee, it may order—

- (a) the employee be reinstated, on conditions at least as favourable as the conditions on which the employee was employed immediately before dismissal, by the employer—
  - (i) reappointing the employee to the position in which the employee was employed immediately before dismissal; or
  - (ii) appointing the employee to another position; or
- (b) if the commission considers reinstatement would be inappropriate—the employer pay the employee an amount of compensation decided by the commission.

**(2)** If the commission orders the employee be reinstated, it may also—

- (a) make an order it considers necessary to maintain the continuity of the employee's employment; and
- (b) order the employer to pay the employee the remuneration lost, or likely to have been lost, by the employee because of the dismissal, after taking into account any employment benefits or wages received by the employee since the dismissal; and
- (c) order the employee to repay any amount paid to the employee by or for the employer on the dismissal.

**(3)** When deciding the amount of compensation payable under subsection (1)(b), the commission—

- (a) must not award an amount that is more than—
  - (i) if the employee is not employed under an industrial instrument, industrial agreement or EFA—the lesser of the remuneration under subparagraph (ii) and an amount prescribed under a regulation; or

(ii) otherwise—the remuneration the employer would have been liable to pay the employee for the 6 months immediately after the dismissal, paid at the rate the employee received immediately before the dismissal; and

(b) may take into account any amount paid to the employee by or for the employer on the dismissal.

(4) The commission must not make an order under subsection (1) or (2) unless, considering all the circumstances of the matter, it is satisfied the remedy ordered is appropriate.

(5) If satisfied an employer has dismissed an employee for an invalid reason, the commission may (in addition to an order under subsections (1) and (2)) order the employer to pay the employee an amount of not more than the monetary value of 135 penalty units.

(6) Neither section 219<sup>117</sup> nor this section limits the commission's power to make an interim or interlocutory order.

(7) To avoid doubt, an order under subsection (1)(b), (2)(b) or (c), or (5) may allow payment to be made in specified instalments.

(8) In this section—

“**circumstances**”, for an application alleging the dismissal was harsh, unjust or unreasonable, includes—

(a) if raised by the employer—the viability of the employer's undertaking, establishment or service if the order were made; and

(b) the length of the employee's employment with the employer.

### **Further orders if employer fails to reinstate**

**223.(1)** If an employer wilfully fails to comply with an order to reinstate an employee, the commission may—

(a) further order the employer to pay the employee—

(i) an amount of not more than the monetary value of 50 penalty units; and

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<sup>117</sup> Section 219 (Conciliation before application heard)

- (ii) an amount as remuneration for lost wages; and
- (b) make further orders until the employer complies with the order under section 222.

(2) This section does not affect another provision of this Act allowing a proceeding to be taken against the employer.

### **Effect of order on leave**

**224.** If the commission makes an order under section 222(2)(a),<sup>118</sup> the interruption to the employee's continuity of employment or service caused by the dismissal must be disregarded when calculating the employee's entitlement to annual, sick or long service leave.

### **Costs**

**225.(1)** The commission may order a party to an application under section 218<sup>119</sup> to pay costs incurred by another party if satisfied the party—

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

(2) An application for an order for costs must be made within 21 days after—

- (a) the commission decides the application; or
- (b) the application is discontinued or lapses.

(3) In this section—

**“costs”** includes legal and professional costs and disbursements and witness expenses, whether or not the commission has certified under section 350.<sup>120</sup>

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<sup>118</sup> Section 222 (Remedies and sanctions for unlawful dismissal)

<sup>119</sup> Section 218 (Application to remedy unlawful dismissal)

<sup>120</sup> Section 350 (Costs)

## **PART 3—REQUIREMENTS FOR DISMISSAL**

### **Notice of dismissal or compensation**

**226.(1)** An employer may dismiss an employee only if the employee—

- (a) has been—
  - (i) given the period of notice required by subsection (4); or
  - (ii) paid compensation; or
- (b) engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the notice period.

**(2)** Misconduct under subsection (1)(b) includes—

- (a) theft; and
- (b) assault; and
- (c) fraud; and
- (d) other misconduct prescribed under a regulation.

**(3)** However, subsection (2) does not apply if the employee can show that, in the circumstances, the conduct was not conduct that made it unreasonable to continue the employment during the notice period.

**(4)** The minimum period of notice is—

- (a) if the employee's continuous service is—
  - (i) not more than 1 year—1 week; and
  - (ii) more than 1 year but not more than 3 years—2 weeks; and
  - (iii) more than 3 years but not more than 5 years—3 weeks; and
  - (iv) more than 5 years—4 weeks; and
- (b) increased by 1 week if the employee—
  - (i) is over 45 years old; and
  - (ii) has completed at least 2 years of continuous service with the employer.

(5) A regulation may prescribe matters that must be disregarded when working out continuous service under subsection (4).

(6) The compensation must at least equal the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.

(7) The total must be worked out on the basis of—

- (a) the ordinary hours worked by the employee; and
- (b) the amounts payable to the employee for the hours, including (for example) allowances, loadings and penalties; and
- (c) any other amounts payable under the employee's employment contract.

(8) A regulation may prescribe the amount that is taken to be payable, or how to work out the amount, under an employment contract mentioned in subsection (7)(c), to an employee whose remuneration before dismissal was determined wholly or partly on the basis of commission or piece rates.

(9) If an employer dismisses an employee, to whom subsection (1)(a) applies, without giving the required notice or paying the required compensation—

- (a) on an application under section 218<sup>121</sup>—the commission may order the employer to pay the employee the compensation that the employer was required to pay under subsection (6); or
- (b) otherwise—a magistrate may order the employer to pay the employee the compensation that the employer was required to pay under subsection (6).

(10) An application for an order under subsection (9)(b) may be made by—

- (a) an employee who has been dismissed; or
- (b) with the employee's consent—an organisation whose rules entitle it to represent the employee's industrial interests; or
- (c) an inspector.

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<sup>121</sup> Section 218 (Application to remedy unlawful dismissal)



(11) The application must be made within 6 years after the day on which the employee is dismissed.

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

### **Orders giving effect to articles 12 and 13 of Convention**

**227.(1)** The commission may make an order giving effect to the requirements about the dismissal of employees under—

- (a) article 12 of the Termination of Employment Convention, as far as it relates to a severance allowance or other separation benefits; or
- (b) article 13 of the Termination of Employment Convention.

(2) When making an order giving effect to article 13, the commission must limit the order's application to cases where an employer decides to dismiss at least a specified number of employees (of at least 15).

(3) An employer must not dismiss an employee in contravention of an order under subsection (1).

(4) If an employer dismisses an employee in contravention of the order, the commission may—

- (a) make any of the orders it may make under section 222(1) or (2);<sup>122</sup> or
- (b) order the employer to pay the employee an amount of not more than the monetary value of 135 penalty units.

(5) The commission may make an order under this section only if it has received an application from—

- (a) an employee; or
- (b) an organisation whose rules entitle it to represent the employee's industrial interests.

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<sup>122</sup> Section 222 (Remedies and sanctions for unlawful dismissal)

(6) An application for an order under subsection (4) must be made within—

- (a) 21 days after the dismissal takes effect; or
- (b) a further period the commission allows on an application made during or after the 21 days.

### **Orders if employer does not consult about proposed dismissals**

**228.(1)** An employer who decides to dismiss 15 or more employees for an economic, technological or structural reason must, as soon as practicable after making the decision, and before dismissing any of the employees—

- (a) notify each employee organisation, of which any of the employees is a member, of—
  - (i) the dismissals; and
  - (ii) the reasons for the dismissals; and
  - (iii) the number and categories of employees; and
  - (iv) the time when, or the period over which, the employer intends to carry out the dismissals; and
- (b) give each organisation an opportunity to consult with the employer on ways to—
  - (i) avoid or minimise the dismissals; and
  - (ii) minimise the adverse effects of the dismissals (for example, by finding alternative employment).

(2) The commission may make the orders it considers appropriate to put employees dismissed in contravention of subsection (1), and their organisations, in the same position (as nearly as can be done) as if the employer had—

- (a) if subsection (1)(a) was contravened—informed the organisation; and
- (b) if subsection (1)(b) was contravened—given the organisation an opportunity to consult.

(3) Subsections (1) and (2) do not apply to an organisation if the employer could not reasonably be expected to have known (at the time of

the decision) that the organisation's rules entitled it to represent the industrial interests of the dismissed employees.

(4) The commission may make an order only if it has received an application from an employee or organisation that is to be affected by the order.

(5) An application must be made within—

- (a) 21 days after the dismissal takes effect; or
- (b) a further period the commission allows on an application made during or after the 21 days.

### **Employer must notify Commonwealth employment service of proposed dismissals**

**229.(1)** This section applies if an employer decides to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature.

(2) The employer may dismiss the employees only if the employer, as soon as practicable after making the decision, notifies the Commonwealth employment service of—

- (a) the dismissals; and
- (b) the reasons for the dismissals; and
- (c) the number and categories of employees; and
- (d) the time when, or the period over which, the employer intends to carry out the dismissals.

(3) If satisfied an employer has dismissed, or proposes to dismiss, an employee contrary to subsection (2), the commission may make either or both of the following orders—

- (a) an order imposing on the employer a penalty of not more than 16 penalty units;
- (b) an order declaring the dismissal ineffective until the employer has complied with subsection (2).

(4) An application for an order may be made by—

- (a) a dismissed employee; or

(b) an organisation whose rules entitle it to represent the employee's industrial interests; or

(c) an inspector.

(5) An application must be made within—

(a) 21 days after the dismissal takes effect; or

(b) a further period the commission allows on an application made during or after the 21 days.

(6) The commission may order that a penalty, or part of a penalty, be paid to any person who may have made the application (other than an officer or employee of the State or a public service officer).

(7) Any part of the penalty that is ordered to be paid to the person must first be paid to the person.

(8) The remainder of the penalty must then be paid to the consolidated fund.

(9) A contravention of subsection (2) is not an offence.

(10) In this section—

**“Commonwealth employment service”** means the Commonwealth department or agency whose primary responsibility is helping unemployed people to find work.

## **PART 4—OTHER DISMISSALS**

### **Employee dismissed in December, re-employed in January**

**230.(1)** This section applies to an employee (other than a casual employee within the meaning of the relevant industrial instrument) who—

(a) is dismissed by an employer during December; and

(b) is re-employed by the employer before the end of the next January; and

- (c) was employed by the employer for a continuous period of at least 2 weeks immediately before being dismissed.

(2) The employer must pay the employee at the ordinary rate payable to the employee immediately before the dismissal for the Christmas Day, Boxing Day, and New Year's Day public holidays between the dismissal and the re-employment.

(3) In this section—

“dismiss” includes stand-down.

### **Permissible stand-down of employee**

**231.(1)** An employer may stand-down an employee without pay on a day, or for part of a day, when the employee can not be usefully employed because of something that happened—

- (a) for which the employer is not responsible; or  
(b) over which the employer has no control.

(2) This section applies despite another provision of this Act or an industrial instrument.

(3) This section does not apply to an apprentice or trainee.

## **PART 5—PROTECTION OF INJURED EMPLOYEES**

### **Definitions for pt 5**

**232.** In this part—

“dismiss” an injured employee includes a case where—

- (a) an unreasonable employment condition designed to make the employee leave the employment is imposed on the employee; and  
(b) the employee leaves the employment.

“injured employee” means an employee who receives an injury.

**“injury”** means an injury within the meaning of the *Workers’ Compensation Act 1990* or *WorkCover Queensland Act 1996* for which workers’ compensation is payable under that Act.

### **Wages to be paid for the day employee injured**

**233.(1)** An injured employee is entitled to be paid full wages for the day when the injury happens.

(2) Subsection (1) applies despite an industrial instrument or employment contract.

### **Reinstatement of injured employees**

**234.(1)** This section applies if an injured employee is dismissed because of unfitness for employment in a position because of the injury.

(2) The employee may apply to the employer, within 21 days after the dismissal, for reinstatement to the employee’s former position.

(3) The employee must give the employer a doctor’s certificate that certifies the employee is fit for employment in the former position.

(4) If the employer fails to immediately reinstate the employee, the following persons may apply to the commission for a reinstatement order—

- (a) the employee;
- (b) an employee organisation of which the employee is a member, with the employee’s consent.

(5) If the commission is satisfied the employee is fit for employment in the former position, the commission may order the employer to reinstate the employee.

(6) The order may specify terms of reinstatement, including, for example, the day the reinstatement is to take effect.

(7) The commission may order reinstatement even if the employee applied to the employer to be reinstated more than 21 days after the dismissal, if the commission considers it would be appropriate in the circumstances.

(8) In this section—

**“former position”** of an injured employee means, at the employee’s option—

- (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.

### **Dismissal an offence in certain cases**

**235.(1)** An employer must not dismiss an injured employee, within 3 months after the employee becomes unfit, solely or mainly because the employee is not fit for employment in a position because of the injury.

Maximum penalty—40 penalty units.

**(2)** This section applies to a dismissal after the commencement of this section even if the employee became unfit before the commencement.

### **Preservation of employee’s rights**

**236.(1)** This part does not affect another right of a dismissed employee under an Act or law.

**(2)** This part can not be affected by a contract or agreement.

## **PART 6—GENERAL**

### **Chapter does not limit other rights**

**237.** This chapter does not limit a right a person or organisation may otherwise have to—

- (a) appeal against a dismissal; or
- (b) have an industrial instrument or order about a dismissal made.

**Inconsistent instruments and orders**

**238.** An industrial instrument or order that is inconsistent with an order under this chapter does not apply to the extent the inconsistency detrimentally affects the rights of employees concerned.

**CHAPTER 6—INDUSTRIAL DISPUTES****PART 1—NOTICE OF INDUSTRIAL DISPUTE****Notice of industrial dispute**

**239.(1)** Subsection (2) applies if an industrial dispute—

- (a) exists between—
  - (i) an employer organisation or employer; and
  - (ii) an employee organisation or employee; and
- (b) remains unresolved after the parties have genuinely attempted to settle the dispute.

**(2)** Each party to the dispute must immediately give notice of the dispute to—

- (a) if the dispute exists within the city of Brisbane—the registrar; or
- (b) elsewhere—the registrar or nearest magistrate.

**(3)** The notice—

- (a) may be given by letter, telex, fax, electronic mail, or other means of written communication; and
- (b) must state—
  - (i) the names of the parties to the dispute; and
  - (ii) the place where the dispute exists; and
  - (iii) the subject matter of the dispute.



(4) If the Minister is aware an industrial dispute exists, the Minister may notify a commissioner or the registrar of the dispute.

## **PART 2—ACTION FOR SETTLING INDUSTRIAL DISPUTES**

### **Action on industrial dispute**

**240.(1)** This section applies if—

- (a) notice of a dispute has been given by a party under section 239(2);<sup>123</sup> or
- (b) notice of a dispute has been given by the Minister under section 239(4) and a commissioner considers it is in the public interest to take action under this section; or
- (c) whether or not a notice has been given under section 239—a commissioner considers it is in the public interest to take action under this section.

(2) A commissioner may take the steps the commissioner considers appropriate for the prevention or prompt settlement of the dispute, by—

- (a) conciliation in the first instance; and
- (b) if the commissioner considers conciliation has failed and the parties are unlikely to resolve the dispute—arbitration.

(3) Without limiting subsection (2), the commissioner may—

- (a) make orders, or give directions, of an interlocutory nature; or
- (b) remit the dispute, or part of it, to a magistrate for—
  - (i) hearing and decision; or
  - (ii) the exercise of the magistrate's powers under this Act for the prevention or prompt settlement of the dispute; or

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<sup>123</sup> Section 239 (Notice of industrial dispute)

*Workplace Relations Act 1997*

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- (c) exercise the commission's powers under section 291<sup>124</sup> (whether or not application under that section has been made) to order an interim injunction; or
  - (d) make another order or exercise another power the commissioner considers appropriate for the prevention or prompt settlement of the dispute.
- (4)** A magistrate who receives a notice under section 239(2)—
- (a) must immediately notify the registrar of the particulars stated in the notice and, if the magistrate considers it appropriate, call a compulsory conference under section 243;<sup>125</sup> and
  - (b) if the parties agree—must immediately hear and decide the dispute or exercise the magistrate's powers for the prevention or prompt settlement of the dispute; and
  - (c) may or, if directed by the commission to do so, must remit the dispute to the commission at any stage of a proceeding for the dispute; and
  - (d) must keep the registrar informed of the progress and outcome of a proceeding for the dispute.
- (5)** A magistrate to whom a matter is remitted by a commissioner—
- (a) must immediately hear and decide the dispute or exercise the magistrate's powers for the prevention or prompt settlement of the dispute; and
  - (b) may, or, if directed by the commissioner to do so, must remit the dispute to the commissioner at any stage of a proceeding for the dispute; and
  - (c) must keep the commissioner informed of the progress and outcome of a proceeding for the dispute.
- (6)** For a proceeding for the dispute—
- (a) the commissioner or magistrate may name a party to the dispute as having carriage of the proceeding; and

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<sup>124</sup> Section 291 (Power to grant injunctions)

<sup>125</sup> Section 243 (Compulsory conference)

(b) the party named has the carriage of the proceeding accordingly.

(7) This section does not affect the operation of an industrial instrument that—

- (a) imposes a duty on a party to the instrument in relation to industrial disputes; or
- (b) confers a power or imposes a duty on a magistrate.

### **Recommendation by consent**

**241.(1)** This section applies if—

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

(2) The commission must conduct a hearing and make recommendations about those aspects of the dispute.

(3) This section does not prevent the commission from making recommendations in other circumstances.

### **Mediation by commissioner or magistrate**

**242.** A commissioner or magistrate may act as mediator in an industrial cause, whether or not it is within the jurisdiction of the commission or a magistrate—

- (a) on the request of the parties directly involved in the cause; or
- (b) if it appears mediation is desirable in the public interest.

**Compulsory conference**

**243.(1)** This section applies if a commissioner or magistrate taking action under section 240<sup>126</sup> considers that holding a conference is desirable to prevent or settle the industrial dispute.

(2) The commissioner or magistrate may summons a person to attend a conference at a stated time and place.

(3) A person may be summoned even though not directly involved in the dispute, if the commissioner or magistrate considers the person's presence would be conducive to the prevention or prompt settlement of the dispute.

(4) A person summoned must—

- (a) attend the conference at the stated time and place; and
- (b) continue to attend as directed by the presiding commissioner or magistrate.

Maximum penalty—40 penalty units.

(5) The person is entitled to be paid by the State an amount certified by the commissioner or magistrate as reasonable compensation for the person's expenses and loss of time.

(6) At the discretion of the commissioner or magistrate, a conference may be held—

- (a) in public or private; or
- (b) partly in public and partly in private.

**PART 3—BALLOTS****Secret ballot on strike action**

**244.(1)** This section applies if—

- (a) a strike happens; or

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<sup>126</sup> Section 240 (Action on industrial dispute)

(b) the commission, or a person applying to the commission, considers a strike is likely to happen.

(2) The commission may act under subsection (4)—

- (a) of its own initiative; or
- (b) on application by an employer or employer organisation; or
- (c) on application by or on behalf of 5% of the employees engaged in or on the calling, enterprise, establishment or project concerned, or by 250 of the employees, whichever is less, but being, in any case, at least 4.

(3) The commission must act under subsection (4)—

- (a) on application by an employee organisation; or
- (b) if directed by the Minister.

(4) To find out the number of employees or members who favour the strike, the commission may direct the registrar or a magistrate to conduct a secret ballot<sup>127</sup> of—

- (a) the employees engaged in or on the calling, enterprise, establishment or project concerned; or
- (b) the members of an employee organisation engaged in or on the calling, enterprise, establishment or project concerned.

(5) The registrar or magistrate must publish the result of the secret ballot in a newspaper circulating in the locality concerned.

### **Effect of ballot adverse to strike**

**245.(1)** Subsection (2) applies if—

- (a) when a secret ballot was conducted under section 244(4)<sup>128</sup>—
  - (i) a strike exists; or

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<sup>127</sup> See section 301 (Conducting a secret ballot) for the way a secret ballot is conducted.

<sup>128</sup> Section 244 (Secret ballot on strike action)

- (ii) a strike appeared likely to happen, and happens for the same issue within 1 month after the ballot result is published under section 244(5); and
  - (b) the ballot shows that a majority of employees or members who voted in the ballot is not in favour of the strike.
- (2) The registrar or magistrate who conducted the ballot must advertise a date (the “**end date**”), not more than 7 days after the date of publication, on or before which the employees or members who are on strike must discontinue the strike.
- (3) The advertisement—
- (a) must be in a newspaper circulating in the locality concerned; and
  - (b) may be included in the advertisement published under section 244(5).
- (4) The employees or members must discontinue the strike on or before the end date.
- (5) An employee or member who does not is taken to have terminated, from the end date, the employment in which the employee or member was engaged when the strike commenced, unless the employee or member has a reasonable excuse.
- (6) Disagreement by a person with the result of the ballot is not a reasonable excuse.

## **PART 4—INDUSTRIAL ACTION**

### **Nonparticipation in industrial action**

- 246.(1)** An employee organisation or someone else (whether or not an officer, employee or member of the organisation) must not—
- (a) incite, advise or encourage a person to act to the prejudice of an employee who did not take part in a strike; or
  - (b) impose or threaten to impose a penalty, forfeiture or disability on an employee, or member of an employee organisation, because

the employee or member did not take part in a strike.

Maximum penalty—40 penalty units.

(2) An employer organisation or someone else (whether or not an officer, employee or member of the organisation) must not—

- (a) incite, advise or encourage a person to act to the prejudice of an employer who did not take part in a lockout; or
- (b) impose or threaten to impose a penalty, forfeiture or disability on an employer, or member of an employer organisation, because the employer or member did not take part in a lockout.

Maximum penalty—40 penalty units.

(3) If, in a proceeding for an offence under subsection (1)(b) or (2)(b), it is proved that an imposition or threat was made on or to a person who did not take part in a strike or lockout, it is to be presumed that the reason for the imposition or threat is the failure to take part, unless the contrary is proved.

### **Indemnity against agent's unauthorised actions**

**247.** An organisation or association of persons is not liable for anything said or done by its agent, during or in connection with industrial action, if—

- (a) the agent acted without the knowledge of the governing body of the organisation or association; and
- (b) the governing body could not, by the exercise of reasonable diligence, have prevented the action.

### **Payments for strikes**

**248.(1)** An employer must not pay an employee for a period when the employee engages in a strike.

(2) An employee must not accept a payment from an employer who, by making the payment, contravenes subsection (1).<sup>129</sup>

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<sup>129</sup> See section 249 for the orders the commission may make for a contravention of this section.

*Workplace Relations Act 1997*

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**(3)** An employee must not—

- (a) make a claim for an employer to pay the employee for a period when the employee engages in a strike; or
- (b) organise or engage in, or threaten to organise or engage in, a strike against an employer with intent to coerce the employer to make the payment.

**(4)** An employee organisation, or an officer, member or employee of the organisation, must not—

- (a) make a claim for an employer to pay an employee for a period when the employee engages in a strike; or
- (b) organise or engage in, or threaten to organise or engage in, a strike against an employer with intent to coerce the employer to make the payment.

**(5)** For subsection (4), action is taken to have been done by an organisation if it is done by—

- (a) the organisation's management committee; or
- (b) an officer, employee or agent of the organisation acting in that capacity; or
- (c) a member or group of members of the organisation acting under the organisation's rules; or
- (d) a member of the organisation, who performs the function of dealing with an employer on behalf of the member and other members of the organisation, acting in that capacity.

**(6)** Subsection (5)(c) and (d) does not apply if any of the following persons has taken reasonable steps to prevent the action—

- (a) the organisation's management committee;
- (b) a person authorised by the committee;
- (c) an officer of the organisation.

**(7)** A contravention of subsection (3) or (4) is not an offence.<sup>130</sup>

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<sup>130</sup> See section 249 for the orders the commission may make for a contravention of this section.



(8) In this section—

“**strike**” does not include the failure to perform work in excess of that required under a relevant industrial instrument, industrial agreement or EFA.

### **Orders the commission may make**

**249.(1)** An application may be made to the commission for orders under this section for a contravention of section 248.<sup>131</sup>

(2) The application may be made by—

- (a) the Minister; or
- (b) a person who has an interest in the matter; or
- (c) for a contravention of section 248(3) or (4)—the employer; or
- (d) someone else prescribed under a regulation.

(3) A regulation prescribing persons for subsection (2)(d) may limit its application to stated circumstances.

(4) The commission may, if it considers it appropriate in all the circumstances, make 1 or more of the following orders—

- (a) an order imposing on a person who contravenes section 248 a penalty of not more than 135 penalty units;
- (b) an order requiring a person who contravenes section 248(3) or (4) to pay an employer compensation of the amount the commission considers appropriate;
- (c) an injunction (including an interim injunction), and any other order, the commission considers necessary to stop the contravention or remedy its effects;
- (d) another consequential order.

(5) The commission must not make an order requiring compensation to be paid to an employer who contravenes section 248(1) for the contravention.

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<sup>131</sup> Section 248 (Payments for strikes)

**Commission not to deal with claims for payments for strikes**

**250.(1)** The commission can not deal with a claim for the making of a payment to employees for a period when the employees engage in a strike within the meaning of section 248.<sup>132</sup>

**(2)** Subsection (1) applies to a claim for a period before or after—

- (a) the making of the claim; or
- (b) the commencement of this section.

**Right to refuse to work if imminent health or safety risk**

**251.** Nothing in this Act prevents an employee from refusing to perform work if—

- (a) the refusal is based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
- (b) the employee does not unreasonably contravene a direction of his or her employer to perform other available work (whether at the same or another workplace) that is safe and appropriate for the employee to perform.

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<sup>132</sup> Section 248 (Payments for strikes)

## **CHAPTER 7—INDUSTRIAL TRIBUNALS AND REGISTRAR**

### **PART 1—INDUSTRIAL COURT**

#### *Division 1—Industrial Court continued*

##### **Continuance**

**252.** The Industrial Court (the “**court**”), as formerly established as a superior court of record in Queensland, is continued in existence.

#### *Division 2—President*

##### **Appointment of president**

**253.(1)** The Governor in Council may, by industrial gazette notice, appoint a Supreme Court judge as president of the court.

(2) The president is appointed for the term specified in the notice.

(3) The president has, in addition to the president’s judicial functions, overall administrative control of the commission and the registrar’s office.

##### **When president holds office**

**254.(1)** The president holds office until—

- (a) the president’s term of appointment ends; or
- (b) the president turns 70; or
- (c) the president stops being a Supreme Court judge.

(2) However, if the president stops holding office while hearing a matter, the Governor in Council may, without reappointing the person as president, continue the person in office for the time necessary to enable the hearing to be completed.

(3) The person continued in office may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

### **Acting president**

**255.(1)** This section applies if the president temporarily can not perform the functions of office.

(2) The Governor in Council may, by industrial gazette notice, appoint a person who is qualified to be appointed as a Supreme Court judge to act as president.

(3) The person, if not a Supreme Court judge, is entitled to the remuneration payable to a Supreme Court judge while acting as president.

(4) A person who has acted as president may attend sittings of the court for the purpose of giving a decision in, or otherwise completing, a proceeding that was heard by the person while the person was acting as president.

(5) A decision given under subsection (4) is taken to be the president's decision in the proceeding.

## ***Division 3—Jurisdiction and powers of the court***

### **Constitution of court**

**256.(1)** The court is constituted by the president sitting alone.

(2) A Full Industrial Court ("**full court**") is constituted by the president and 2 or more commissioners sitting together.

### **President's jurisdiction**

**257.** Unless otherwise required by this or another Act, the president sitting alone has all the jurisdiction and powers of the court.

### **Court's jurisdiction**

**258.(1)** The court has jurisdiction—

*Workplace Relations Act 1997*

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- (a) to perform all functions and exercise all powers prescribed for the court by this or another Act; and
  - (b) to hear and decide the following matters—
    - (i) cases stated to it by the commission;
    - (ii) appeals from decisions of the commission;
    - (iii) appeals from an industrial magistrate's decision in a proceeding for—
      - (A) an offence against this Act; or
      - (B) recovery of damages, or other amounts, under this Act or under an industrial instrument or a permit;
    - (iv) proceedings for cancelling or suspending registration of an organisation;
    - (v) appeals from decisions of, and references by, the registrar on matters of law or procedure;
    - (vi) a proceeding for an offence against this Act, other than an offence for which jurisdiction is expressly conferred on a magistrate;
    - (vii) a proceeding for an offence under section 243, 440, 443 or 456;<sup>133</sup> and
  - (c) to punish contempts of the court; and
  - (d) to exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process, that the commission and magistrates—
    - (i) exercise their jurisdictions according to law; and
    - (ii) do not exceed their jurisdictions.
- (2) A matter mentioned in subsection (1)(b)(iv), (vi) or (vii) must be heard and decided by a full court.
- (3) In a proceeding, the court may—

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<sup>133</sup> Section 243 (Compulsory conference), 440 (Contempt by witness), 443 (Obstructing officers) or 456 (Confidential material tendered in evidence)

- (a) make the decisions it considers appropriate, irrespective of specific relief claimed or applied for by a party; and
- (b) give directions about the hearing of a matter within the court's jurisdiction.

(4) The exercise of the court's jurisdiction for persons under 21 years is subject to the *Vocational Education, Training and Employment Act 1991*.

(5) A provision of this or another Act does not limit, by implication, the court's jurisdiction.

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

**259.(1)** The court's decision—

- (a) is final and conclusive; and
- (b) can not be impeached for informality or want of form; and
- (c) can not be appealed against, reviewed, quashed or invalidated in another court.

(2) The court's jurisdiction is exclusive of another court's jurisdiction and an injunction or prerogative order can not be issued, granted or made in relation to a proceeding in the court within its jurisdiction.

(3) Subsection (1) is subject to section 359.<sup>134</sup>

### **Binding nature of court's interpretation**

**260.** The court's interpretation of a provision of this Act, an industrial instrument or a permit is final and conclusive and binds—

- (a) the commission; and
- (b) magistrates; and
- (c) organisations and persons who are subject to this Act, or bound by the industrial instrument or permit.

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<sup>134</sup> Section 359 (Appeal from court to Court of Appeal)

**Court may refuse to proceed**

**261.(1)** This section applies if a proceeding before the court relates to an industrial instrument that exists or is sought in the proceeding.

**(2)** The court may refuse to hear and decide the proceeding if any of the employees who are, or would be, bound by the instrument are—

- (a) involved in an industrial dispute; or
- (b) contravening—
  - (i) this Act, a decision, or a recommendation under section 241;<sup>135</sup> or
  - (ii) the *Industrial Organisations Act 1997*.

**(3)** Subsection (2) applies whether or not the employees are employees whose employment may be affected by the decision of the proceeding.

**Decision of full industrial court**

**262.(1)** In a proceeding in the full court, the court's decision is the decision of the majority of its members.

**(2)** However, the president's opinion is taken to be the decision of the full court if—

- (a) the question to be decided is about—
  - (i) the court's jurisdiction; or
  - (ii) the interpretation of a provision of this or another Act, or of a law, industrial instrument or permit; or
- (b) its members are evenly divided on the question to be decided.

***Division 4—President's annual report*****President's annual report**

**263.(1)** As soon as practicable after the end of each financial year, the

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<sup>135</sup> Section 241 (Recommendation by consent)

president must prepare and give to the Minister a report for the year on—

- (a) the operation of this Act; and
- (b) in particular, the working of the court, commission and registrar's office.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

### *Division 5—President's advisory council*

#### **Establishment of advisory council**

**264.(1)** The president's advisory council (the "**advisory council**") is to be established.

(2) The advisory council is to be made up of a maximum of 9 members.

(3) The advisory council consists of—

- (a) the president; and
- (b) the chief commissioner; and
- (c) the chief executive; and
- (d) employers, or officers or employees of employer organisations; and
- (e) employees, or officers or employees of employee organisations; and
- (f) persons who have knowledge of, or experience in, industrial relations.

(4) The members mentioned in subsection (3)(d) to (f) (the "**appointed members**") are to be appointed by the Minister after consultation with the president.

#### **Term of office**

**265.(1)** The appointment of a member is for the term (not longer than 3 years) stated in the notice of the member's appointment.



(2) An appointed member may resign the appointment at any time, by signed notice given to the Minister.

### **Remuneration of appointed members**

**266.** An appointed member is entitled to the allowances and reasonable expenses approved by the Minister.

### **Functions of advisory council**

**267.** The advisory council's functions are—

- (a) to discuss matters relating to the efficiency and effectiveness of the commission; and
- (b) to advise the president in relation to those matters.

### **Meetings of advisory council**

**268.** Meetings of the advisory council are to be—

- (a) called by the president; and
- (b) held when the president decides, but at least 3 times a year.

## **PART 2—INDUSTRIAL RELATIONS COMMISSION**

### *Division 1—Continuance, composition and constitution*

#### **Continuance**

**269.** The Queensland Industrial Relations Commission (the “**commission**”), as formerly established as a court of record, is continued in existence.

### **Composition**

**270.(1)** The commission consists of the following members of the commission—

- (a) at least 6 industrial commissioners (“**commissioners**”), 1 of whom is the chief industrial commissioner (the “**chief commissioner**”);
- (b) at least 1 enterprise commissioner.

**(2)** The commission’s jurisdiction, or existence, is not affected by a vacancy in any office of the commission.

### **Constitution**

**271.(1)** The commission is constituted by a member sitting alone to exercise the commission’s jurisdiction.

**(2)** A full bench of the commission (“**full bench**”) is constituted by 3 or more commissioners sitting together.

**(3)** More than 1 full bench or commission may sit at the same time.

### ***Division 2—Members of the commission***

### **Appointment of members**

**272.(1)** The Governor in Council may appoint a person—

- (a) as a commissioner—by commission; or
- (b) as an enterprise commissioner—
  - (i) if the person is not already a commissioner—by commission; or
  - (ii) if the person is already a commissioner—by gazette notice.

**(2)** The appointment is for—

- (a) for a person appointed by commission—
  - (i) initially—a term of 7 years; and
  - (ii) after the initial term—further terms of not more than 7 years

each; or

- (b) for a person who holds a commission and is subsequently appointed by gazette notice—a term not longer than the remainder of the term of appointment under the commission.

### **When member holds office**

**273.(1)** A member holds office until—

- (a) the member's term of appointment ends; or
- (b) the member turns 70; or
- (c) the member resigns by signed notice given to the Governor; or
- (d) the member stops being a member because of section 276(2);<sup>136</sup>  
or
- (e) the member is removed from office under section 277.<sup>137</sup>

(2) However, if a member stops holding office because of subsection (1)(a) or (b) while investigating or hearing a matter, the Governor in Council may, without reappointing the person as a member, continue the person in office for the time necessary to enable the investigation or hearing to be completed.

(3) The person continued in office may exercise the jurisdiction and powers of the commission constituted by a member of the commission.

### **Acting chief commissioner**

**274.(1)** This section applies if the chief commissioner temporarily can not perform the functions of the office.

(2) The president may nominate another commissioner to perform the chief commissioner's functions.

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<sup>136</sup> Section 276 (Restrictions etc. on appointment)

<sup>137</sup> Section 277 (Removal of members from office)

**Acting members**

**275.** The Governor in Council may, by industrial gazette notice, appoint a person to be an acting member of the commission.

**Restrictions etc. on appointment**

**276.(1)** The following persons can not be appointed as members of the commission—

- (a) a member of the Executive Council or Legislative Assembly;
- (b) a person who—
  - (i) acts as director of a corporation engaged in a calling; or
  - (ii) acts as auditor of a corporation engaged in a calling or of a business; or
  - (iii) participates in any capacity in the management of a corporation engaged in a calling; or
  - (iv) participates in any capacity in the management of a business.

**(2)** A person stops being a member on becoming—

- (a) a member of the Executive Council or Legislative Assembly; or
- (b) a person mentioned in subsection (1)(b), other than with the Minister's written approval.

**Removal of members from office**

**277.(1)** The Governor may remove a member appointed by commission for incapacity or misbehaviour on an address of the Legislative Assembly.

**(2)** If a member holds a commission and a subsequent appointment by gazette notice, the Governor in Council may end the subsequent appointment at any time by gazette notice.

**Administrative responsibilities of chief commissioner**

**278.(1)** The chief commissioner, subject to the president's overall administrative control of the commission, must—

*Workplace Relations Act 1997*

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- (a) administer the commission; and
  - (b) organise and allocate the work of the commission.
- (2) In doing so, the chief commissioner must—
- (a) strive to ensure the expeditious resolution of matters before the commission; and
  - (b) consider ways of enhancing the efficiency and effectiveness of the commission; and
  - (c) consider the needs of the users of the commission's services and the desirability of providing a quality service to users.
- (3) The chief commissioner must regularly consult with the president about the matters mentioned in subsection (2).
- (4) A member of the commission must comply with a direction of the president or chief commissioner about—
- (a) the administration of the commission; and
  - (b) the organisation and allocation of the commission's work.

*Division 3—The commission***Commission's jurisdiction**

**279.(1)** The commission has jurisdiction to hear and decide the following matters—

- (a) all questions of law or fact brought before it or that it considers expedient to hear and decide for the regulation of a calling;
- (b) all questions—
  - (i) arising out of an industrial matter; or
  - (ii) involving the determination of the rights and duties of a person in relation to an industrial matter; or
  - (iii) it considers expedient to hear and decide about an industrial matter;

*Workplace Relations Act 1997*

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- (c) an industrial dispute, referred to the commission by a commissioner who has held a conference under this Act at which no agreement has been reached;
- (d) all appeals properly made to it under this or another Act;
- (e) all matters committed to the commission by this or another Act.

(2) The commission has jurisdiction to regulate a calling by an award—

- (a) on application by an organisation, an employer, or 20 employees (who are not members of an employee organisation and not covered by an award) in a calling; or
- (b) on application by the Minister; or
- (c) of its own initiative.

(3) The commission has jurisdiction to hold an inquiry into or about an industrial matter and to report the result of the inquiry, and make recommendations, to the Minister—

- (a) on application by an interested person; or
- (b) by direction of the Minister; or
- (c) of its own initiative.

(4) The commission has jurisdiction to consolidate into 1 award all awards binding or affecting an employer or class of employer in a calling, or the members of an organisation employed by the same employer or class of employer—

- (a) on application by an organisation or an employer; or
- (b) by direction of the Minister.

(5) When exercising its jurisdiction under subsection (4), the commission may make the amendments of the award it considers expedient to make to effect the consolidation.

(6) No provision of this or another Act limits, by implication, the commission's jurisdiction.

(7) In this section—

“**class**” includes a section of a class.

**Commission to take account of Anti-Discrimination Act**

**280.** In exercising its jurisdiction, the commission must take account of the *Anti-Discrimination Act 1991* relating to discrimination in relation to employment.

**Commission's jurisdiction is exclusive**

**281.** The original and appellate jurisdiction conferred on the commission by this Act is exclusive of the jurisdiction of the Supreme Court or another court or tribunal, unless otherwise prescribed under this Act.

**Commission may refuse to proceed**

**282.(1)** This section applies if a proceeding before the commission relates to an industrial instrument that exists or is sought in the proceeding.

**(2)** The commission may refuse to hear and decide the proceeding if any of the employees who are, or would be, bound by the instrument are—

- (a) involved in an industrial dispute; or
- (b) contravening—
  - (i) this Act, a decision, or a recommendation under section 241;<sup>138</sup> or
  - (ii) the *Industrial Organisations Act 1997*.

**(3)** Subsection (2) applies whether or not the employees are employees whose employment may be affected by the decision of the proceeding.

**Chief commissioner to consider efficiencies that may be achieved by allocating matters to dual commissioners**

**283.** When administering the commission and organising and allocating its work,<sup>139</sup> the chief commissioner must consider—

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<sup>138</sup> Section 241 (Recommendation by consent)

<sup>139</sup> Administrative responsibility for administering the commission and organising and allocating the commission's work rests with the chief commissioner (see section 284], subject to the president's overall control (see section 253(2)).

- (a) the improved efficiency of the commission; and
- (b) in particular, the improved cooperation between the commission and the Australian commission;

that may be achieved by the commission's functions and powers being performed and exercised, for a particular matter, by a dual commissioner.

### **Reallocation of commission's work**

**284.** In organising and allocating the commission's work, the chief commissioner may reallocate the matter of a proceeding before a commission constituted by 1 or more of the members to a commission constituted by—

- (a) the same member or members together with another member or other members; or
- (b) a different member or different members.

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

**285.** The commission to which the matter is reallocated may continue to hear and decide the matter, without re-hearing evidence given before the reallocation.

### **Decision of full bench**

**286.** In a proceeding before a full bench, the commission's decision is the decision of the majority of its members.

## ***Division 4—Commission's functions***

### **Commission's functions**

**287.** The commission's functions include—

- (a) establishing and maintaining—



*Workplace Relations Act 1997*

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- (i) an effective award safety net of fair minimum wages and conditions; and
- (ii) a system of non-discriminatory awards based on allowable award matters; and
- (b) supervising the bargaining of agreements; and
- (c) certifying agreements; and
- (d) approving workplace agreements; and
- (e) resolving disputes by conciliation of industrial matters and, if necessary, by arbitration or making an order; and
- (f) making awards on allowable award matters; and
- (g) resolving disputes in the negotiation of agreements—
  - (i) by conciliation; and
  - (ii) if the parties agree to abide by a recommendation—by recommendation; and
  - (iii) by supervising protected bargaining periods; and
- (h) resolving disputes that threaten to harm the community or the economy by conciliation and, if necessary, by arbitration; and
- (i) resolving disputes over union coverage by making representation orders; and
- (j) dealing with claims relating to dismissals.

**Performance of commission's functions**

**288.(1)** The commission must perform its functions—

- (a) under a provision of this Act in a way that furthers the objects of this Act relevant to the provision; and
- (b) in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under this Act.

(2) To remove doubt, a reference in this Act to the commission performing a function, other than a function under chapter 2, part 2,<sup>140</sup> does not include a reference to the commission constituted by an enterprise commissioner.

### *Division 5—Powers of commission*

#### **General powers**

**289.(1)** In a proceeding, the commission may—

- (a) make a decision it considers appropriate, irrespective of specific relief claimed or applied for by a party; and
- (b) give directions about the hearing of a matter within the commission's jurisdiction.

(2) In a proceeding, the commission may, by order or direction, do anything it is allowed to do by this Act.

(3) The commission may, by general order or for a particular case, delegate to magistrates generally, a particular magistrate, or the registrar—

- (a) the working out of a decision of the commission; or
- (b) a function relating to the decision, including, for example—
  - (i) the making of orders; or
  - (ii) the giving of directions; or
  - (iii) the preparation of rosters and schedules; or
  - (iv) a similar function it considers appropriate.

(4) A full bench may, to assist it in the appropriate determination of a proceeding—

- (a) refer the whole or part of a question or matter before it to a commissioner—
  - (i) for investigation and report to the full bench; or
  - (ii) for the other action it decides;

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<sup>140</sup> Chapter 2, part 2 (Queensland workplace agreements)

(b) direct 1 or more of its members to carry out a specified investigation or inspection and to report on it to the full bench.

(5) A commissioner to whom a reference is made or a direction is given must comply with the reference or direction.

### **Power to amend or void contracts**

**290.(1)** The commission may amend or declare void (wholly or partly) a contract if it considers—

(a) the contract—

(i) is a contract of services that is not covered by an industrial instrument; or

(ii) is a contract for services that is designed to, or does, avoid the provisions of an industrial instrument; and

(b) the contract's conditions are harsh, unconscionable or unfair.

(2) The commission may make an order it considers appropriate about payment of money for a contract amended or declared void.

(3) A proceeding under this section may be instituted by—

(a) the party required under the contract to provide services; or

(b) an inspector, for the party.

(4) In this section—

**“condition”** of a contract means a condition about the way services under the contract are to be provided or remunerated.

**“contract”** includes—

(a) an arrangement; and

(b) a collateral arrangement relating to a contract or arrangement.

**“industrial instrument”** includes an award or agreement made under the Commonwealth Act.

### **Power to grant injunctions**

**291.(1)** The commission may, on application, grant the injunctive order it

considers appropriate—

- (a) to compel compliance with an industrial instrument, a permit or an industrial Act; or
- (b) to restrain a contravention, or continuance of a contravention, of an industrial instrument, a permit or an industrial Act.

(2) An application may be made by—

- (a) a party to industrial action or an industrial dispute; or
- (b) a person who is, or is likely to be, directly affected by industrial action or an industrial dispute; or
- (c) the registrar; or
- (d) the employment advocate; or
- (e) an inspector.

(3) An application by an organisation must be under the organisation's seal and signed by the organisations president and secretary.

(4) The commission may direct the injunctive order to—

- (a) the officers or members of an organisation generally; or
- (b) particular officers or members of an organisation; or
- (c) a particular employer; or
- (d) a particular employee.

(5) The commission's jurisdiction for an injunctive order may be exercised in chambers, but an order granted by the commission in chambers may be discharged by a full bench on the application of—

- (a) a party to the relevant instrument; or
- (b) a person affected by the order.

(6) A person to whom the order is directed must comply with the order after the person has received notice of it.

(7) The commission may decide the form of the notice and the way it is to be served.

(8) Without limiting subsection (7), the commission may order substituted service of the notice by advertisement or otherwise.

(9) If the officers or members, or a substantial number of the officers or members, of an organisation to whom an injunctive order is directed, contravene the order, the organisation and every officer of the organisation is taken to have contravened the order.

(10) It is a defence to a prosecution for an offence under subsection (9) for the organisation or officer to prove that it, or the officer, took all reasonable steps to ensure the officers or members complied with the order.

(11) The commission can not grant an injunctive order for a proposed contravention of section 217, 226, 227, 228 or 229.<sup>141</sup>

(12) In this section—

“**injunctive order**” means an order in the nature of a mandatory or restrictive injunction.

“**organisation**” includes a branch of the organisation.

### **Power to direct or order in relation to industrial action**

**292.(1)** If it considers it appropriate in relation to industrial action, whether actual, threatened, or apprehended, the commission may—

- (a) direct the industrial action to stop or not happen; or
- (b) give the other directions or make the orders it considers appropriate.

(2) The powers conferred on the commission by subsection (1) are in addition to, and not in derogation of, the powers conferred on it by the rest of this Act.

(3) A person or organisation to whom an order under subsection (1) applies must comply with the order.<sup>142</sup>

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<sup>141</sup> Section 217 (When dismissal is unlawful), 226 (Notice of dismissal or compensation), 227 (Orders giving effect to articles 12 and 13 of Convention), 228 (Orders if employer does not consult about proposed dismissals) or 229 (Employer must notify Commonwealth employment service of proposed dismissals)

<sup>142</sup> For contravention of the order, see section 351 (Enforcing commission’s orders).

**Orders about representation rights of employee organisations**

**293.(1)** A full bench may, on application by an organisation, an employer or the Minister, make the following orders about a demarcation dispute—

- (a) an order that an employee organisation has the right, to the exclusion of another organisation, to represent a particular group of employees who are eligible for membership of the organisation;
- (b) an order that an employee organisation that does not have the right to represent a particular group of employees has the right;
- (c) an order that an employee organisation does not have the right to represent a particular group of employees who are eligible for membership of the organisation.

**(2)** The full bench may make an order only if—

- (a) the full bench considers a conciliation proceeding would not assist the prevention or settlement of the dispute; or
- (b) a conciliation proceeding in relation to the dispute is completed, but the dispute has not been fully settled.

**(3)** The full bench may make an order only if satisfied—

- (a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, member or employee of the organisation is—
  - (i) preventing, obstructing or restricting the performance of work; or
  - (ii) harming an employer's business; or
- (b) the consequences mentioned in paragraph (a)—
  - (i) have stopped, but are likely to recur as a result of the conduct or threatened conduct; or
  - (ii) are imminent as a result of the conduct or threatened conduct.

**(4)** In considering whether to make an order, the full bench must consider—

- (a) the wishes of employees who are affected by the dispute; and

- (b) the effect of an order on the operations (including operating costs, work practices, efficiency and productivity) of an employer who is—
  - (i) a party to the dispute; or
  - (ii) a member of an organisation that is a party to the dispute; and
- (c) an agreement or understanding that the full bench becomes aware of that deals with an employee organisation's right to represent a particular group of employees; and
- (d) the consequences of not making an order for an employer, employees or organisation involved in the dispute; and
- (e) another order made by the commission, relating to another demarcation dispute involving the organisation to which the order would relate, that the commission considers relevant.<sup>143</sup>

(5) An order may be subject to conditions.

(6) An organisation to which an order applies must comply with the order.<sup>144</sup>

(7) The full bench may, on application by the Minister or a person or organisation affected by an order, make the further order it considers appropriate to ensure compliance with the order.

(8) In this section—

**“right to represent”** a particular group of employees means the right to represent the industrial interests of the particular group of employees.

### **Procedures for reopening**

**294.(1)** A proceeding may be reopened, on application by a person under subsection (2), by—

- (a) for a proceeding taken before a full bench—a full bench; or

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<sup>143</sup> Under section 244 (Secret ballot on strike action) the commission may order that a vote of the members of the organisation concerned in the dispute be taken by secret ballot for the purpose of finding out their attitudes to the dispute.

<sup>144</sup> For contravention of the order, see section 351 (Enforcing commission's orders).

*Workplace Relations Act 1997*

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(b) otherwise—the commission.

**(2)** Application for reopening of a proceeding may be made by—

(a) the Minister; or

(b) a party to the proceedings; or

(c) for a proceeding that is not about a certified agreement or QWA—

(i) an organisation whose members are bound by, or claim to be affected by or dissatisfied with, the proceeding; or

(ii) a person who is bound by or claims to be affected by or dissatisfied with the proceeding, and who satisfies the commission that the person is not an officer of, or acting for, an eligible association.

**(3)** If the commission reopens a proceeding, it may—

(a) revoke or amend a decision or recommendation made or taken by it; and

(b) make the decision or recommendation it considers appropriate.

**(4)** If a recommendation of the commission has been acted on by the Governor in Council and the commission later revokes or amends the recommendation, the Governor in Council may—

(a) cancel the action taken on the recommendation to accord with the commission's revocation or amendment; or

(b) amend the action to accord with the commission's revocation or amendment.

**(5)** Failure to give notice to a person of the proceeding, or any part of the proceeding, leading to the making, or taking, by the commission of a decision binding on the person—

(a) does not invalidate or otherwise affect the decision; but

(b) if the person is one on whose application the commission may exercise its powers, the person's failure to participate in the proceeding because of the absence of notice does not affect the person's application for reopening of a proceeding.



(6) If the commission grants an application for reopening, it may give the retrospective operation to its decision made in the reopened proceeding it considers appropriate.

### **Reference to full bench**

**295.(1)** A commissioner may, at any stage of a proceeding and on the terms the commissioner considers appropriate, refer the matter to which the proceeding relates to a full bench.

(2) A commissioner who is not the chief commissioner may refer the matter only with the chief commissioner's approval.

(3) Before the hearing of a matter by the commissioner begins, a party to the proceeding may apply to the chief commissioner for the matter to be referred to a full bench.

(4) An application mentioned in subsection (3) may be heard by the chief commissioner in chambers.

(5) If the chief commissioner is satisfied the matter is of substantial industrial significance, the chief commissioner may refer the matter to a full bench.

(6) A full bench may hear and decide a matter referred to it and make the decision it considers appropriate.

### **Case stated to court**

**296.(1)** The commission may, at any stage of a proceeding and on the terms it considers appropriate, state a written case for the court's opinion on a question of law relevant to the proceeding.

(2) The court may—

- (a) hear and decide the matter raised by a case stated; and
- (b) remit the case, with its opinion, to the commission by which the case was stated; and
- (c) make the order about costs it considers appropriate.

(3) The commission must give effect to the court's opinion.

**Remission to magistrate**

**297.(1)** A commissioner may order an industrial matter be remitted to a magistrate for—

- (a) investigation and report to the commissioner; or
- (b) taking of evidence; or
- (c) hearing and decision.

**(2)** In this section—

**“industrial matter”** includes any aspect of an industrial matter, or any matter or question connected with the matter.

**Power to enter and inspect**

**298.(1)** A member, or an officer, of the commission or another person with a member’s written authority, may—

- (a) enter a workplace in relation to which—
  - (i) an industrial dispute exists, is impending or threatened, or will probably arise; or
  - (ii) an industrial matter exists; or
  - (iii) an industrial instrument or permit exists; or
  - (iv) it is reasonably suspected an offence under an industrial Act has been, or is being committed; and
- (b) inspect any work, machinery, appliance, materials, article or thing in or on the workplace; and
- (c) question a person in or on the workplace about a matter relevant to the commission’s concern with the workplace.

**(2)** A power under subsection (1) may be exercised only during working hours at the workplace.

**(3)** If a member, officer or other person is seeking to exercise a power under subsection (1), a person must not—

- (a) refuse or unduly delay entry to the workplace; or

- (b) fail to answer a question about a matter mentioned in subsection (1), unless the person has a lawful excuse; or
- (c) wilfully give false information or make a false statement.

Maximum penalty for subsection (3)—40 penalty units or 1 years imprisonment.

**(4)** In this section—

**“workplace”** means a place where, or for which—

- (a) a calling is carried on; or
- (b) work has been, or is being, performed; or
- (c) another activity has happened, or is happening.

### **Interpretation of awards and certified agreements**

**299.(1)** A commissioner may give an interpretation of an award on application by—

- (a) the Minister; or
- (b) an organisation; or
- (c) an employer; or
- (d) a person who satisfies the commissioner that the person is not an officer of, or acting for, an eligible association; or
- (e) an inspector.

**(2)** A commissioner may give an interpretation of a certified agreement on application by—

- (a) the Minister; or
- (b) an organisation, or other person, bound by the agreement; or
- (c) an employee whose employment is subject to the agreement; or
- (d) an inspector.

**(3)** If an inspector’s application under subsection (1) or (2) relates to an alleged ambiguity, the commissioner must hear and decide the application in the absence of a statement of agreed facts.

**Statement of policy**

**300.(1)** A full bench may make a statement of policy about an industrial matter, whether or not the matter is before the commission.

(2) On application by a party to an award, a stated policy about an allowable award matter may be given effect by being inserted in the award.

(3) The registrar may give effect to a stated policy by directions about procedural matters to the extent allowed by the commission.

(4) The directions bind all persons concerned.

**Conducting a secret ballot**

**301.(1)** The commission may specify when, where and how a secret ballot is to be conducted.

(2) A magistrate or the registrar must—

- (a) conduct the ballot in accordance with the direction; and
- (b) for the conduct of the ballot—do the things provided for by the rules of court.

(3) Public service officers must help a magistrate or the registrar, as required, to conduct the ballot.

(4) A magistrate or the registrar must advertise the result of the ballot in a newspaper circulating in the locality concerned.

(5) A person must not—

- (a) resist or obstruct a magistrate, the registrar, an officer of the public service, or a person acting under the direction or authority of the magistrate or registrar, performing a duty imposed, or an action directed or authorised to be done, for the ballot; or
- (b) at or near the place where the ballot is being taken—
  - (i) threaten or intimidate, or obstruct the free passage of, an employee proceeding to or attending at the place to vote at the ballot; or
  - (ii) threaten or intimidate an employee not to vote or to vote in a particular way at the ballot; or

*Workplace Relations Act 1997*

- (c) obstruct an employee or another person in the performance of an action directed or authorised to be done for the ballot; or
- (d) by a threat or intimidation, prevent an employee or another person from performing an action directed or authorised to be done for the ballot; or
- (e) vote at the ballot unless the person—
  - (i) is entitled to vote; and
  - (ii) has received a ballot paper from the magistrate or registrar; or
- (f) vote at the ballot in someone else's name; or
- (g) if the person is entitled to vote at the ballot—mark a ballot paper relating to the ballot, other than the ballot paper received by the person from the magistrate or registrar.

Maximum penalty—40 penalty units.

**(6)** A police officer may—

- (a) arrest without warrant a person the officer finds committing an offence against subsection (5)(a), (b), (c) or (d); and
- (b) institute a prosecution for the offence.

**(7)** Subsection (6) prevails over the Criminal Code, section 534<sup>145</sup> to the extent of any inconsistency.

**(8)** In this section—

**“prevent”** includes attempt to prevent.

**“resist or obstruct”** includes attempt to resist or obstruct.

**“threaten or intimidate”** includes attempt to threaten or intimidate.

**“vote”** includes attempt to vote.

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<sup>145</sup> Criminal Code, section 534 (Intimidation of workers and employers)

**Other powers**

**302.** This division does not limit, by implication, another power given to, or possessed by, the commission under this or another Act or law.

***Division 6—Member’s conditions of appointment*****Remuneration**

**303.(1)** The salary and allowances payable to members of the commission are to be fixed by decisions of the Salaries and Allowances Tribunal under the *Judges (Salaries and Allowances) Act 1967*.

**(2)** The salary and allowances are payable out of the consolidated fund, which is appropriated accordingly.

**Pension benefits—Judges (Pensions and Long Leave) Act**

**304.(1)** The *Judges (Pensions and Long Leave) Act 1957*, other than sections 2A and 15,<sup>146</sup> (the “**pensions Act**”) applies with all necessary changes to a member of the commission and a member’s spouse or child in the way it applies to a judge and a judge’s spouse or child.

**(2)** In the pensions Act, a reference to a judge may, if the context permits, be taken to be a reference to a member.

**(3)** In working out a person’s length of service as a member for subsection (1), the following periods must be taken into account—

(a) a period when the person has served as a member, whether under—

(i) a first appointment as a member or a renewal of the appointment; or

(ii) a subsequent appointment;

(b) a period when the person has served as an acting member.

**(4)** This section does not apply if section 305 applies.

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<sup>146</sup> *Judges (Pensions and Long Leave) Act 1957*, sections 2A (Length of service) and 15 (Leave of absence of Judges)

**Pension benefits—Superannuation Acts**

**305.(1)** Section 304 does not confer entitlement to pension benefits on a member of the commission, or on a member's spouse or child, if the member was appointed as a member—

- (a) under the repealed Act or an Act repealed by the repealed Act, and was entitled to elect, and properly elected—
  - (i) to contribute, or continue to contribute, to the fund; or
  - (ii) to be, or continue to be, a member of the scheme; or
- (b) after the commencement of this section and—
  - (i) is a contributor to the fund—properly elects to continue to contribute to the fund; or
  - (ii) is a member of the scheme—properly elects to continue as a member of the scheme; or
  - (iii) is not a contributor to the fund or a member of the scheme—properly elects to be a member of the scheme.

**(2)** A member making an election under subsection (1)(b) must do so within 3 months after being first appointed as a member.

**(3)** The election must be by signed notice in duplicate, a copy of which must be given to—

- (a) the board under the 1972 Act or board of trustees under the *Superannuation (State Public Sector) Act 1990*, as the case may be; and
- (b) the chief executive of the department in which this Act is administered.

**(4)** If a member properly elects to continue to contribute to the fund—

- (a) contributions are subject to and in accordance with the 1958 Act and the 1972 Act that applied to the member's contributions immediately before appointment as a member; and
- (b) benefits payable to the member or the member's spouse or child because of contributing to the fund are as prescribed by the 1958 Act and the 1972 Act that apply to the member, spouse or child; and

- (c) for the 1958 Act—the member is taken to be an officer within the meaning of that Act; and
- (d) for the 1972 Act—the member is taken to be an officer within the meaning of that Act.

(5) If a member does not properly elect to continue contributing to the fund, the member is—

- (a) taken to have ceased to be a contributor and an officer within the meaning of the 1958 Act or the 1972 Act on appointment as a member; and
- (b) entitled to—
  - (i) the payments prescribed by the Acts that apply to the member to be paid to a contributor on resignation before reaching an age at which the contributor is permitted to retire; or
  - (ii) preserve the contribution in the way prescribed by the Acts that apply to the member.

(6) In this section—

“**1958 Act**” means the *Public Service Superannuation Act 1958*.

“**1972 Act**” means the *State Service Superannuation Act 1972*.

“**fund**” means the State Service Superannuation Fund established under the 1972 Act.

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

### **Leave of absence**

**306.(1)** The *Judges (Pensions and Long Leave) Act 1957*, section 15<sup>147</sup> applies with all necessary changes to a member of the commission in the way it applies to a judge.

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<sup>147</sup> *Judges (Pensions and Long Leave) Act 1957*, section 15 (Leave of absence of Judges)



(2) In section 15 of that Act, a reference to a judge may, if the context permits, be taken to be a reference to a member.

(3) In working out a person's length of service as a member for subsection (1), the following periods must be taken into account—

- (a) a period when the person has served as a member, whether under—
  - (i) a first appointment as a member or a renewal of the appointment; or
  - (ii) a subsequent appointment;
- (b) a period when the person has served as an acting member.

## **PART 3—INDUSTRIAL MAGISTRATES**

### *Division 1—Industrial Magistrates Court*

#### **Industrial Magistrates Court**

**307.** An Industrial Magistrates Court is a court of record.

### *Division 2—Industrial magistrates*

#### **Office of Industrial Magistrate**

**308.** Each of the following persons is an industrial magistrate (a “magistrate”)—

- (a) a stipendiary magistrate;
- (b) an acting stipendiary magistrate.

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

**Constitution of Industrial Magistrates Court**

**309.** An Industrial Magistrates Court is constituted by a magistrate sitting alone.

**Magistrate's jurisdiction**

**310.(1)** A magistrate has jurisdiction—

- (a) to hear and decide all matters within the jurisdiction of a magistrate that are brought before, or referred to, the magistrate; and
- (b) throughout the State.

**(2)** A magistrate has jurisdiction—

- (a) to hear and decide a proceeding about the following matters—
  - (i) offences against this Act for which—
    - (A) a maximum penalty of not more than 40 penalty units is prescribed, unless the offence is one for which this Act makes other provision; or
    - (B) jurisdiction is conferred by this Act on magistrates;
  - (ii) claims for wages payable to an employee under an industrial instrument or permit or for amounts payable, with an employee's written consent, from the wages;
  - (iii) claims for wages payable to an employee under an agreement in which—
    - (A) wages are payable at a price or rate that is not fixed by a relevant industrial instrument or permit; or
    - (B) wages are payable at a price or rate over that fixed by a relevant industrial instrument or permit;
  - (iv) claims for amounts payable, with an employee's written consent, from wages mentioned in subparagraph (iii);

- (v) claims under chapter 9, part 2, division 2;<sup>148</sup>
- (vi) claims for damages for contravention of an agreement made under an industrial instrument;
- (vii) claims for damages suffered by an employee because of the employer neglecting to pay the employee's wages;
- (viii) claims for compensation under section 226;<sup>149</sup> and
- (b) to exercise powers conferred on, or jurisdiction given to, magistrates by this Act; and
- (c) to exercise powers conferred on, or jurisdiction given to, magistrates by another Act; and
- (d) in relation to an industrial matter (or any aspect of the matter, or a matter or question connected with the matter) remitted to the magistrate by a commissioner—
  - (i) to investigate and report on the matter, as required by the commissioner's order; or
  - (ii) to take evidence about the matter, as required by the commissioner's order; or
  - (iii) to hear and decide the matter, as required by the commissioner's order.

### **Magistrates' jurisdiction is exclusive**

**311.(1)** The jurisdiction conferred on a magistrate by this or another Act is exclusive of the jurisdiction of another court or tribunal, unless this or the other Act otherwise prescribes.

**(2)** Jurisdiction conferred on a magistrate by section 310(2)(a)(ii) and (iii) is not exclusive of another court's jurisdiction.

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<sup>148</sup> Chapter 9, part 2, division 2 (Protection for wages)

<sup>149</sup> Section 226 (Notice of dismissal or compensation)

*Division 4—Powers of industrial magistrates***Magistrate’s powers on remission**

**312.(1)** A magistrate to whom the commission remits a matter must comply promptly with the order of remission.

**(2)** For that purpose, the magistrate has all the jurisdiction and powers of a commissioner necessary or convenient for compliance with the order.

**PART 4—INDUSTRIAL REGISTRAR***Division 1—Industrial registrar’s office continued***Continuance**

**313.** The Industrial Registrar’s Office (the “**registrar’s office**”), as formerly established, is continued in existence.

*Division 2—Role of industrial registrar’s office***Role of office**

**314.** The registrar’s office—

- (a) is the registry of the court and commission; and<sup>150</sup>
- (b) provides administrative support to the court and commission; and
- (c) performs the functions prescribed for the office.

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<sup>150</sup> The clerk of the court provides registry services for industrial magistrates.

***Division 3—Industrial registrar and staff*****Industrial registrar and staff**

**315.(1)** The Governor in Council may, by industrial gazette notice, appoint a person as industrial registrar (the “**registrar**”).

(2) Assistant registrars may also be appointed.

(3) The registrar, assistant registrars and staff of the registrar’s office are employed under the *Public Service Act 1996*.

(4) The registrar, assistant registrars and staff of the registrar’s office are officers of the court and the commission.

**Functions and powers of registrar**

**316.(1)** The registrar—

- (a) administers the registrar’s office; and
- (b) for the court and commission—must perform the functions, and may exercise the powers, prescribed under a regulation or provided for under the rules of court; and
- (c) has any other function conferred on the registrar under this or another Act.

(2) In performing a function or exercising a power under subsection (1)(b), the registrar must comply with a direction given in relation to the performance or exercise by the president or a member of the commission.

(3) The registrar has the power to do all things necessary or convenient to be done for the performance of the registrar’s functions.

**Functions of assistant registrar**

**317.** An assistant registrar must help the registrar in performing the registrar’s functions.

**Delegation by registrar**

**318.** The registrar may delegate a power of the registrar under this Act to—

- (a) an assistant registrar; or
- (b) an appropriately qualified person nominated by the president; or
- (c) for section 402<sup>151</sup>—an appropriately qualified officer of the court or commission.

## **PART 5—ARRANGEMENTS WITH OTHER AUTHORITIES**

### *Division 1—Commissioner may also be member of Australian commission*

**Commissioner may hold other appointment**

**319.** A commissioner who is appointed as a member of the Australian commission may hold that appointment and the appointment as commissioner at the same time.

### *Division 2—Dual commissioners*

**Appointment of Commonwealth official as commissioner**

**320.(1)** The Governor in Council may appoint a member of the Australian commission to be a commissioner (“**dual commissioner**”).

**(2)** Sections 277 and 303<sup>152</sup> do not apply to the appointment of a dual commissioner or to a dual commissioner.

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<sup>151</sup> Section 402 (Inspection of employee register and index—registrar)

<sup>152</sup> Sections 277 (Removal of members from office) and 303 (Remuneration)

**(3)** The appointment—

- (a) is for the term the Governor in Council considers appropriate and states in the instrument of appointment; and
- (b) may be terminated, with the Governor in Council's approval, by the Minister's notice given to the dual commissioner.

**(4)** A dual commissioner—

- (a) is not entitled to remuneration for performing the functions of a commissioner; but
- (b) is entitled to be paid expenses reasonably incurred by the dual commissioner in exercising powers and performing functions as a commissioner.

**(5)** A dual commissioner stops being a commissioner if the person—

- (a) becomes a person mentioned in section 276(2);<sup>153</sup> or
- (b) stops being a member of the Australian commission.

**Role of dual commissioner**

**321.(1)** A dual commissioner, in accordance with an agreement between the chief commissioner and the president of the Australian commission—

- (a) must perform the functions of a commissioner; and
- (b) has, and may exercise for a particular matter, the powers of—
  - (i) a commissioner; and
  - (ii) a member of the Australian commission.

**(2)** A provision of this Act prescribing the functions or powers of a commissioner is subject to subsection (1) in its application to a dual commissioner.

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<sup>153</sup> Section 276 (Restrictions etc. on appointment)

***Division 3—References to Commonwealth official*****Reference of matter to Commonwealth official**

**322.(1)** The chief commissioner may ask the president of the Australian commission to nominate a member of that commission to deal with an industrial matter before the commission.

(2) If a nomination is made, the chief commissioner may refer the industrial matter to the nominated member, to be dealt with by the nominated member under this Act.

(3) In dealing with the industrial matter, the nominated member—

- (a) has the powers of a commissioner; and
- (b) in exercising the powers, is taken to constitute the commission constituted by a single commissioner.

(4) The nominated member's decision is taken to be a decision of the commission.

(5) A reference to a nominated member—

- (a) does not derogate from the commission's authority to exercise jurisdiction in relation to the industrial matter referred; and
- (b) may be revoked by the chief commissioner by notice given to the nominated member.

(6) In exercising the authority conferred under this section, the chief commissioner must act in consultation with the president of the court.

(7) In this section—

**“industrial matter”** includes part of an industrial matter.

***Division 4—Conferences and joint sessions with industrial authorities*****Conferences with industrial authorities**

**323.(1)** This section applies if—

- (a) the chief commissioner considers it desirable that a conference be held with an industrial authority about an industrial matter; and



- (b) the industrial authority agrees to a conference.

(2) The chief commissioner may confer, or direct another commissioner to confer, with the industrial authority to coordinate decisions made, or to be made—

- (a) under this Act about the industrial matter; and
- (b) by the industrial authority.

### **Joint sessions with industrial authorities**

**324.(1)** This section applies if—

- (a) the chief commissioner considers a proceeding relating to an industrial matter before the commission constituted by a single commissioner should be heard in joint session with an industrial authority; and
- (b) the industrial authority agrees to a joint session.

(2) The chief commissioner may—

- (a) hear, or direct another commissioner to hear, the proceeding in joint session with the industrial authority; and
- (b) confer, or direct the other commissioner to confer, with the industrial authority about the proceeding and the decision to be made in the proceeding; and
- (c) join, or direct the other commissioner to join, with the industrial authority in the decision made in the proceeding.

### **Similar matters before full bench and industrial authority**

**325.(1)** This section applies if—

- (a) the chief commissioner considers an industrial authority has before it an industrial matter similar to an industrial matter before a full bench; and
- (b) the industrial authority agrees to participate in joint session.

(2) The chief commissioner may—

- (a) if the chief commissioner is a member of the full bench—participate in joint session with the industrial authority about the industrial matter; or
- (b) direct a member of the full bench to participate in joint session with the industrial authority about the industrial matter.

(3) The chief commissioner or member must report the result of the joint session to the full bench.

### **Commissioner's powers in joint session**

**326.** A commissioner sitting in joint session with an industrial authority, in relation to the industrial matter dealt with in joint session must perform the functions and has, and may exercise, the powers of a commission constituted by a single commissioner.

### **Chief commissioner may decide matter not to be dealt with in joint session**

**327.** The chief commissioner may decide that an industrial matter should not be dealt with in joint session and, if the decision is made after a joint session about the matter starts—

- (a) the commissioner participating in the joint session must immediately stop participating; and
- (b) the industrial matter may proceed before the commission or, if appropriate, a full bench.

### **Restriction on chief commissioner's authority**

**328.** In exercising the authority conferred under this division, the chief commissioner must act in consultation with the president.

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

**329.(1)** Subject to this Act, the commission may perform the functions and exercise the powers conferred on it under—

- (a) the *Workplace Relations Act 1996* (Cwlth); or
- (b) another enactment of a jurisdiction other than Queensland declared for this section under a regulation.

**(2)** A decision of the commission under authority conferred by subsection (1) is not a decision made by it under this Act.

**Arrangements with Commonwealth public service**

**330.(1)** Arrangements may be made under the *Public Service Act 1996*, section 82<sup>154</sup> for—

- (a) officers of the Commonwealth public service to perform the functions and exercise the powers of Queensland public service officers under this Act; and
- (b) Queensland public service officers to perform the functions and exercise the powers of officers of the Commonwealth public service under the Commonwealth Act.

**(2)** An arrangement under subsection (1)(a) is sufficient authority for an officer of the Commonwealth public service to perform the functions and exercise the powers of a Queensland public service officer under this Act.

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<sup>154</sup> *Public Service Act 1996*, section 82 (Work performance and interchange arrangements)

## **PART 6—PROCEEDINGS OF COURT, COMMISSION, MAGISTRATES AND REGISTRAR**

### *Division 1—Definitions*

#### **Definitions for pt 6**

**331.** In this part—

“**administer**” an oath includes authorise the administering of an oath.

“**exercising**” jurisdiction includes exercising powers and performing functions.

“**take**” a statutory declaration includes authorise the taking of a statutory declaration.

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

#### **Starting proceedings**

**332.(1)** A proceeding may be started in the court or commission or before the registrar on application by—

- (a) an organisation or an officer or member of an organisation; or
- (b) the Minister; or
- (c) the employment advocate; or
- (d) an inspector; or
- (e) an employer; or
- (f) a person who has an interest in the matter to which the application relates.

**(2)** A proceeding may be started by the commission of its own initiative and, for the proceeding, the commission may call before it the persons it considers necessary.

**(3)** This section does not affect another provision of this Act providing for the starting of proceedings.

**Service of process**

**333.(1)** Subsection (2) applies if—

- (a) for a proceeding in, or to be started in, the court—the president or the registrar; or
- (b) for a proceeding in, or to be started in, the commission—a member of the commission or the registrar;

considers service of a summons, notice, order or other document (the “**document**”) can not be effected promptly by personal service or in a way prescribed under the rules of court.

**(2)** The president, a member of the commission or the registrar may order—

- (a) substituted service of the document; or
- (b) notice of the document be given by letter, telex, fax, electronic mail, advertisement in an appropriate newspaper, or otherwise, instead of service.

**(3)** Service or notice in accordance with the order is sufficient service of the person required to be served.

**(4)** Unless otherwise ordered by the court or commission—

- (a) service of the document on an employer organisation; or
- (b) substituted service or notice of the document in accordance with an order under subsection (2);

is taken to be service on all employers who have employees engaged in the calling that is relevant to the purpose of the document, or in related callings.

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

**334.(1)** In a proceeding, a party to the proceeding, or a person ordered or permitted to appear or to be represented in the proceeding, may be represented by a lawyer only if—

- (a) for a proceeding in the court—

*Workplace Relations Act 1997*

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- (i) the proceeding is for the prosecution of an offence under this or another Act; or
  - (ii) all parties to the proceeding consent; or
  - (iii) the court gives leave; or
- (b) for a proceeding for the president's leave under section 362(1)<sup>155</sup>—
- (i) all parties to the proceeding and all persons ordered or permitted to be heard on the proceeding consent; or
  - (ii) the president gives leave; or
- (c) for an interlocutory proceeding before the registrar for a proceeding before, or to be brought before, the court—
- (i) all parties to the proceeding consent; or
  - (ii) the registrar gives leave; or
- (d) for a proceeding before the commission—
- (i) all parties to the proceeding consent; or
  - (ii) the commission gives leave; or
- (e) for a proceeding before an Industrial Magistrates Court or a proceeding, other than an interlocutory proceeding, before the registrar—all parties to the proceeding consent.

(2) For subsection (1)(d)(ii), the commission may give leave only if it considers—

- (a) representation by a lawyer is desirable for the effective conduct of the proceeding; and
- (b) the proceeding is—
  - (i) for the exercise of the commission's powers under section 290;<sup>156</sup> or
  - (ii) about the rules of an organisation or of an association seeking registration as an organisation.

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<sup>155</sup> Section 362 (Appeals from commissioner to full bench with leave)

<sup>156</sup> Section 290 (Power to amend or void contracts)

(3) In the proceeding—

- (a) a party to the proceeding, or a person ordered or permitted to appear or to be represented may be represented by an agent appointed in writing; and
- (b) an organisation may be represented by an officer or member of the organisation.

(4) Nothing in subsection (3) is to be interpreted as a means of circumventing subsection (1) or (2).

(5) All parties to a proceeding in an Industrial Magistrates Court may be represented by a lawyer if the proceeding is—

- (a) brought personally by an employee and relates to a matter that could have been brought before a court of competent jurisdiction (other than an Industrial Magistrates Court); or
- (b) for the prosecution of an offence.

(6) However, in a proceeding under subsection (5)(b), the person represented can not be awarded costs of the representation.

(7) In this section—

“**lawyer**”, for a proceeding, means a lawyer (enrolled in Queensland or elsewhere) engaged as a lawyer for the proceeding.

### **Basis of procedures and decisions of the commission and magistrates**

**335.(1)** Subsections (2) and (3) do not apply to a proceeding for the recovery of amounts or an offence against an industrial Act.

(2) In a proceeding before the commission or an Industrial Magistrates Court, the commission or Industrial Magistrates Court—

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

(3) Also, the commission or Industrial Magistrates Court is to be governed in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of—

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

(4) In making a decision, the commission must consider the public interest, and to that end must consider—

- (a) the objects of the relevant industrial Act; and
- (b) the state of the economy; and
- (c) the likely effects of the commission's decision on the economy, industry generally and the particular industry concerned.

(5) In exercising its jurisdiction, the commission must have appropriate regard to the rules of court.

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

**336.** A party to a proceeding in the court or commission is competent, and may be compelled, to give evidence in the proceeding as a witness to the same extent as in a civil proceeding in the Supreme Court.

### **Intervention by State or Minister**

**337.(1)** The State may intervene at any stage—

- (a) in a proceeding before the court, the commission, an Industrial Magistrates Court or the registrar; or
- (b) in a proceeding before any court or tribunal that touches on—
  - (i) the jurisdiction or powers of the court, the commission, a magistrate or the registrar; or
  - (ii) a matter for which the jurisdiction or powers may be exercised; or
  - (iii) the interpretation of an industrial Act.

(2) On intervention, the State becomes a party to the proceeding.

(3) The Minister may intervene, in the public interest, at any stage in a proceeding before the court, the commission, an Industrial Magistrates Court or the registrar.

(4) On intervention, the Minister becomes a party to the proceeding.



**Adjournment by registrar**

**338.** If the president or a member of the commission can not attend at the time appointed for hearing a proceeding, the registrar may adjourn the court or commission and any business set down for the day to a day and time that the registrar considers convenient.

**State employee to give information**

**339.(1)** A person employed by the State must give the court or commission, on request, information that the person has knowledge of in an official capacity.

**(2)** The person must comply with the request despite an obligation under an Act or law not to disclose information, unless an Act or law allows, justifies or excuses a refusal to give it in evidence in a legal proceeding.

***Division 4—Powers*****Exercise of commission's powers**

**340.(1)** The commission may, unless otherwise prescribed,<sup>157</sup> exercise its powers—

- (a) of its own initiative; or
- (b) on application by—
  - (i) a party to a proceeding in which the power is to be exercised; or
  - (ii) an organisation.

**(2)** The commission may, of its own initiative—

- (a) join 2 or more matters to be heard and decided by the commission, whether the matters or any of them arise under this or another Act; and
- (b) hear and decide the matters in 1 proceeding.

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<sup>157</sup> See, for example, section 294 (Procedures for reopening).

**Interlocutory proceedings and chamber matters**

**341.** In an industrial cause, the president, a member of the commission or the registrar may make orders, or give directions, he or she considers just and necessary in relation to—

- (a) an interlocutory proceeding to be taken before the hearing of the cause, including a proceeding about—
  - (i) naming and joinder of parties; or
  - (ii) persons to be served with notice of a proceeding; or
  - (iii) calling of persons to attend in a proceeding; or
  - (iv) particulars of the claims of the parties; or
  - (v) the issues to be referred to the court or commission; or
  - (vi) admissions, discovery, interrogatories or inspection of documents or property; or
  - (vii) examination of witnesses; or
  - (viii) costs of the interlocutory proceeding; or
  - (ix) place, time and mode of hearing of the cause; or
- (b) a matter that, under the rules of court, the president, a member, or the registrar is allowed to hear or deal with in chambers.

**Power to order inquiry or taking of evidence**

**342.(1)** The commission, by order, may direct—

- (a) the registrar to conduct an inquiry into a matter the commission requires information about for the exercise of the commission's jurisdiction; or
- (b) an appropriately qualified person to take evidence for the commission about an industrial cause.

**(2)** The registrar or other person must comply promptly with the direction and report, or give a record of evidence taken, to the commission.

**(3)** The registrar may call persons to attend before the registrar and examine parties and witnesses for—

- (a) conducting an inquiry mentioned in subsection (1); or
- (b) disposing of another matter referred to the registrar under an industrial Act.

(4) A person directed to take evidence under subsection (1) has all the powers of the commission for—

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

### **Power to administer oath**

**343.** In exercising jurisdiction, the following persons may take evidence on oath or statutory declaration, and for that purpose may administer an oath or take a statutory declaration—

- (a) a person constituting the court, the commission or an Industrial Magistrates Court;
- (b) the registrar;
- (c) a person directed by the commission to take evidence for the commission.

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

**344.** Except as otherwise prescribed by this Act or the rules of court, the court, commission and registrar may—

- (a) at or before a hearing, take steps to find out whether all persons who ought to be bound by a decision to be made in a proceeding have been called to attend or given notice of, the proceeding; and
- (b) direct, for a proceeding—
  - (i) who the parties to the proceeding are; and
  - (ii) by whom the parties may be represented; and
  - (iii) persons to be called to attend the proceeding, if they have not been called and it appears they should attend the proceeding; and
  - (iv) parties to be joined or struck out; and

*Workplace Relations Act 1997*

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- (v) who may be heard and on what conditions; and
- (c) hear and decide an industrial cause in the way that appears best suited for the purpose; and
- (d) allow the proceeding to be amended on terms that appear just and fair; and
- (e) correct, amend or waive an error, defect or irregularity in the proceeding, whether substantive or formal; and
- (f) give directions under a decision, that the court, commission or registrar considers necessary for, or conducive and appropriate to, the effective implementation of the decision; and
- (g) hear and decide an industrial cause in the absence of a party, or of a person who has been called to attend, or served with a notice to appear, at the proceeding; and
- (h) sit at any time and in any place for hearing and deciding an industrial cause, and adjourn a sitting to any time and place; and
- (i) refer technical matters, accounting matters, or matters involving expert knowledge to an expert, and admit the expert's report in evidence; and
- (j) extend a prescribed or stated time, before or after expiry of the time; and
- (k) waive compliance with a rule of court.

**Power to obtain data and expert evidence**

**345.(1)** If the commission wants expert evidence based on facts or figures to decide an industrial cause, it may—

- (a) order the following persons to give it returns of the facts or figures—
  - (i) an organisation that is, or any of whose members are, party to the proceeding;
  - (ii) an employer, or group of employers, who are party to the proceeding; and

*Workplace Relations Act 1997*

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- (b) allow a person selected by it as an expert in a relevant respect to prepare, from the returns, schedules directed to matters that the commission seeks to be informed on.

(2) A person preparing a schedule may show in it the particulars that—

- (a) are relevant to the cause; or
- (b) the commission asks for.

(3) However, the person must not, without the commission's leave, otherwise divulge to anyone (other than the commission)—

- (a) the name of the organisation that gave the return; or
- (b) business information of a private or confidential nature extracted from the return.

Maximum penalty—20 penalty units.

(4) A schedule, as far as possible, must extend beyond 1 years operation of an industry or business.

### *Division 5—Decisions and enforcement*

#### **Decisions generally**

**346.** Subject to this Act, the court or commission may, in an industrial cause—

- (a) make a decision it considers just, and include in the decision a provision it considers appropriate for preventing or settling the industrial dispute, or dealing with the industrial matter, the cause relates to, without being restricted to any specific relief claimed by the parties to the cause; or
- (b) dismiss the cause, or refrain from hearing, further hearing, or deciding the cause, if the court or commission considers—
  - (i) the cause is trivial; or
  - (ii) a further proceeding by the court or commission is not necessary or desirable in the public interest; or

- (c) order a party to the cause to pay another party the expenses (including witness expenses) it considers appropriate.

### **Reserved decisions**

**347.(1)** The court or commission may reserve its decision in a proceeding.

**(2)** If a decision is reserved—

(a) it may be pronounced at—

- (i) a continuation or resumption of the court or commission; or
- (ii) a subsequent sitting of the court or commission; or

(b) the court or commission may give its written decision, signed by the person or each of the persons constituting the court or commission, to the registrar.

**(3)** The registrar must file a written decision in the registrar's office and give a copy of it to each of the immediate parties to the industrial cause.

**(4)** When filed, a decision has effect as if it had been pronounced by the court or commission.

### **Commission decisions to be in plain English**

**348.** The commission must ensure the commission's written decisions are—

- (a) in plain English; and
- (b) structured in a way that makes a decision as easy to understand as the subject matter allows.

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

**349.(1)** In the exercise of its jurisdiction, the court or commission may—

- (a) make the decisions it considers necessary for—
  - (i) doing complete justice in a proceeding before it; and
  - (ii) the execution of the decision; and

*Workplace Relations Act 1997*

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- (b) enforce its own decisions; and
- (c) direct the issue of a writ or process, or impose and enforce a penalty, allowed or prescribed by this or another Act, in the same way a Supreme Court judgment is enforced.

(2) A decision of the court or commission—

- (a) must be drawn up and verified; and
- (b) without limiting any other way of execution and recovery prescribed, may be executed, recovered on, and otherwise enforced;

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

(3) For the effective operation of subsection (2), the Rules of the Supreme Court, as far as they may reasonably be applied, are to be applied and complied with, with the amendments the court or commission approves.

(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 commission for—

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

## **Costs**

**350.(1)** The court and commission may award costs in a proceeding before the court or commission, including a proceeding that is dismissed or not proceeded with for want of jurisdiction.

(2) However, unless this Act otherwise permits, costs must not be awarded for a lawyer or agent in a proceeding before the commission, unless the commission certifies it was in the interests of justice that the lawyer or agent was heard.

**Enforcing commission's orders**

**351.(1)** The commission may direct an order about an industrial dispute to—

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

**(2)** If an order may be directed to an organisation or a person, the commission may direct the order to the person only after considering whether it would be more appropriate to direct the order to the organisation.

**(3)** An order must—

- (a) if the order is made against a person—state the person's name; and
- (b) state a time for complying with the order; and
- (c) direct any of the following persons to file an affidavit with the registrar within a stated time—
  - (i) the organisation or person;
  - (ii) the party to the proceeding who sought the order;
  - (iii) any other party to the proceeding the commission considers appropriate.

**(4)** An affidavit under subsection (3)(c) must state whether there has been compliance with the order and, if the order has not been complied with, the steps the person is aware of that have been taken to comply.

**(5)** The commission may extend a time stated under subsection (3)(b) or (c).

**(6)** At the end of the time stated for filing an affidavit, or the time extended by the commission, the registrar must—

- (a) examine all affidavits filed, and if the registrar considers it necessary, make the further inquiries the registrar considers appropriate; and
- (b) determine whether there has been substantial compliance with the order.



(7) If the registrar is not satisfied that there has been substantial compliance with the order, the registrar must issue a notice (under the rules of court) calling on the organisation or person to whom the order was directed to show cause to the full court at a stated time why the organisation or person should not be dealt with under section 352.

### **Remedies on show cause**

**352.(1)** If an organisation issued with the notice does not show cause at the stated time, the full court may—

- (a) impose on the organisation a penalty of not more than 1 000 penalty units; or
- (b) amend an award or certified agreement to which the organisation is a party; or
- (c) suspend the date of operation of a wage increase that would otherwise be payable to members of the organisation or to a class of the members; or
- (d) change the organisation's rules to exclude from eligibility for membership persons belonging to a particular class of member or section of the membership; or
- (e) make the orders it considers appropriate—
  - (i) restricting the use of property of the organisation, or a branch of the organisation; or
  - (ii) controlling the property of the organisation, or a branch of the organisation, to ensure the restrictions are complied with; or
- (f) suspend the organisation's registration for a stated period; or
- (g) cancel the organisation's registration; or
- (h) make the other orders it considers appropriate—
  - (i) to secure the organisation's compliance with the commission's order; or
  - (ii) to punish the organisation for not complying with the commission's order; or

(i) order the organisation to pay the costs of the show cause proceeding.

(2) If a person issued with the notice does not show cause at the stated time, the full court may—

(a) impose on the person a fine of not more than 40 penalty units; or

(b) make the other orders it considers appropriate—

(i) to secure the person's compliance with the commission's order; or

(ii) to punish the person for not complying with the commission's order; or

(c) order the person to pay the costs of the show cause proceeding.

(3) All persons concerned must comply with an order or direction made or given by the court.

(4) In this section—

**“stated time”** means at the time stated in the notice to show cause under section 351(7),<sup>158</sup> or at a time to which the proceeding is adjourned.

### **Proceeding of commission or magistrate not to be questioned**

**353.(1)** This section applies to a proceeding before the commission or an Industrial Magistrates Court.

(2) A decision in the proceeding can not, in any court or on any account—

(a) be impeached for informality or want of form; or

(b) be appealed against, reviewed, quashed or invalidated, except as provided under an industrial Act.

(3) The proceeding is not removable by prerogative order in the nature of certiorari.

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<sup>158</sup> Section 351 (Enforcing commission's orders)

(4) A prohibition order can not be issued, and an injunction or prerogative order in the nature of mandamus can not be granted, for, or to restrain, the proceeding if it is about matters within the jurisdiction of the commission or a magistrate.

### **Filing magistrate's decision**

**354.(1)** A decision of a magistrate made on a remission by the commission—

- (a) must be filed in the registrar's office; and
- (b) when filed, is taken to be a decision of the commission and has effect, and may be enforced, accordingly.

(2) Subsection (1) does not limit any right of appeal from the decision.

### **Recovery of amounts under orders**

**355.(1)** If the court or commission in a proceeding orders an amount be paid (as a penalty or otherwise), the registrar may issue a certificate, under the seal of the court or commission, stating—

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

(2) When the certificate is filed in a court of competent jurisdiction in an action for a debt of the amount, the order evidenced by the certificate is enforceable as an order made by the court where the certificate is filed.

(3) This section does not limit other ways in which amounts may be recovered on an order of the court or commission.

## ***Division 6—Protections and immunities***

### **Protection and immunities**

**356.(1)** The president, a member of the commission and a magistrate, in the exercise of jurisdiction for this or another Act have the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge.

(2) The president, a member of the commission, a magistrate or the registrar (the “**official**”) has, in a proceeding for defamation for a publication made to or by the official in the official’s official capacity, a defence of absolute privilege if the publication was made in good faith.

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

### *Division 7—Rules of court and practice*

#### **Rules of court**

**357.(1)** The president may make rules of court under this Act.

(2) The president may make the rules only with the concurrence of—

- (a) for a rule relating to an enterprise commissioner—an enterprise commissioner; or
- (b) for a rule relating to the Industrial Magistrates Court—the Chief Stipendiary Magistrate; or
- (c) otherwise—2 commissioners.

(3) Rules may be made about the following matters—

- (a) regulating the practice and procedure and forms to be followed and used—
  - (i) in or for a proceeding in the court, commission or Industrial Magistrates Court and before the registrar; or
  - (ii) in or for drawing up, settling and enforcing decisions, convictions and actions made, recorded or done by the court, commission or registrar; or
  - (iii) for regulating a proceeding in chambers;
- (b) publishing decisions and other actions of the court, commission or registrar and the effect of the publication;
- (c) recovering fines and penalties imposed;
- (d) enforcing orders for attachment or imprisonment and orders for the payment of amounts made by the court or commission;

- (e) fees and expenses payable to witnesses;
- (f) fees payable in relation to a proceeding in the court or commission, or before the registrar and the party by whom the fees are to be paid;
- (g) service of process, notices, orders or other proceeding on parties and other persons;
- (h) the functions and powers of officers of the court or commission;
- (i) delegating the jurisdiction of the commission as permitted by this Act;
- (j) requiring organisations or other entities to give returns, lists of officers or members and other statistical information to the registrar;
- (k) providing for all matters necessary or expedient to be provided for to allow for—
  - (i) the full and effective exercise of jurisdiction and powers of the court, commission, Industrial Magistrates Court and registrar; and
  - (ii) giving effect to the decisions, convictions and actions made, recorded, or done by the court, the commission, a magistrate, the registrar, or an officer of the court or commission.

(4) Rules of court made under this section are subordinate legislation.

### **Directions about practice**

**358.(1)** Subject to this Act and the rules of court, the practice and procedure of the court, the commission, an Industrial Magistrates Court or the registrar is as directed by the president, a member, a magistrate or the registrar.

(2) If a person wishes to take a step in an industrial cause or a proposed cause and this Act or the rules of court do not provide or sufficiently provide for it, application for directions may be made in chambers to the appropriate person mentioned in subsection (1).

## **PART 7—APPEALS**

### *Division 1—Appeals to Court of Appeal*

#### **Appeal from court to Court of Appeal**

**359.(1)** A person dissatisfied as a defendant may appeal to the Court of Appeal against the following decisions—

- (a) a decision of the full court, in a proceeding mentioned in section 258(1)(b)(iv), (vi) or (vii);<sup>159</sup>
- (b) a decision of the court in a proceeding mentioned in section 258(1)(c).

**(2)** In the appeal, the validity of a proceeding in or before, or of a decision of, the commission or a magistrate can not be called in question.

### *Division 2—Appeals to Industrial Court*

#### **Appeal from commission, magistrate or registrar to court**

**360.(1)** The State, or a person dissatisfied with a decision of the commission or registrar, may appeal against the decision to the court only on the ground of—

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

**(2)** Despite subsection (1), an appeal does not lie to the court, on any ground, against a decision of a full bench made—

- (a) on appeal from a decision of a member of the commission; or
- (b) under section 55(4).<sup>160</sup>

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<sup>159</sup> Section 258 (Court's jurisdiction)

<sup>160</sup> Section 55 (What happens if commission terminates a bargaining period under s 53(3) or (7))

(3) A person dissatisfied with a decision of a magistrate exercising jurisdiction conferred under section 310<sup>161</sup> in relation to—

- (a) the matters stated in section 310(2)(a) or (c); or
- (b) the powers provided for in section 435;<sup>162</sup>

may appeal to the court.

(4) The court may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
  - (ii) amend, as it considers appropriate, the decision appealed against; or
  - (iii) suspend the operation of the decision appealed against and remit the industrial cause, with or without directions, to the commission, an Industrial Magistrates Court or the registrar to act according to law.

### **Court may vary penalty on appeal**

**361.** If the court, on appeal, confirms a person's conviction for an offence, it may increase or reduce the penalty imposed on the person for the offence.

### ***Division 3—Appeals to Industrial Relations Commission***

#### **Appeals from commissioner to full bench with leave**

**362.(1)** A person dissatisfied with a decision of a commissioner may appeal against the decision to a full bench, with the president's leave, on a ground other than—

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<sup>161</sup> Section 310 (Magistrate's jurisdiction)

<sup>162</sup> Section 435 (Magistrate's power for unpaid superannuation contribution)

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

(2) The president may give leave for the appeal only if the president considers the matter is of sufficient importance that an appeal should be brought in the public interest.

(3) The full bench may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
  - (ii) amend, as it considers appropriate, the decision appealed against; or
  - (iii) suspend the operation of the decision appealed against if it has not already been stayed under section 365,<sup>163</sup> and remit the matter, with or without directions, to the member—
    - (A) for report to the full bench; or
    - (B) to act according to law.

### **Appeal from magistrate to commission**

**363.(1)** A person dissatisfied with a decision of a magistrate exercising jurisdiction conferred under section 310<sup>164</sup> may appeal against the decision to a full bench, unless an appeal may be brought under subsection (2) or section 360(3).<sup>165</sup>

(2) A person dissatisfied with a decision of a magistrate under section 471<sup>166</sup> may appeal against the decision to the commission.

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<sup>163</sup> Section 365 (President may stay decisions when leave sought)

<sup>164</sup> Section 310 (Magistrate's jurisdiction)

<sup>165</sup> Section 360 (Appeal from commission, magistrate or registrar to court)

<sup>166</sup> Section 471 (Aged or infirm persons permits)



(3) If the decision under section 471 is that a permit may be issued, an appeal may be brought only on the ground that the calling to which the permit relates, or would relate, is one for which the permit should not be issued.

(4) The commission may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
  - (ii) amend, as it considers appropriate, the decision appealed against; or
  - (iii) remit the matter, with or without directions, to the magistrate—
    - (A) for report to the commission; or
    - (B) to act according to law.

### **Appeal from registrar to full bench**

**364.(1)** A person dissatisfied with a decision of the registrar under section 132(9) or 470<sup>167</sup> may appeal against the decision to a full bench.

(2) The full bench may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
  - (ii) amend, as it considers appropriate, the decision appealed against; or
  - (iii) remit the industrial cause, with or without directions, to the registrar—

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<sup>167</sup> Section 132 (General rulings) or 470 (Student's work permit)

- (A) for report to the full bench; or
- (B) to act according to law.

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

**365.(1)** After application is made for leave to appeal under section 362(1),<sup>168</sup> a person with a sufficient interest in the matter may apply to the president for an order staying the operation of the decision against which it is sought to appeal.

(2) The president may order the operation be stayed, wholly or partly, for a stated period, if the president considers it appropriate.

(3) The order has effect according to its terms.

### **Decisions on appeal that are final**

**366.** A decision of a full bench on an appeal against a commissioner's decision is final.

### **Appeal to commission against stand-downs**

**367.(1)** An employee stood down by an employer under section 231,<sup>169</sup> may appeal to the commission against the stand-down.

(2) If the employee is a member of an employee organisation, the organisation in its registered name may institute and conduct the appeal for the employee.

(3) The commission may—

(a) dismiss the appeal; or

(b) allow the appeal and order—

(i) the employee be paid the wages lost by the employee because of the stand-down within a stated period; or

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<sup>168</sup> Section 362 (Appeals from commissioner to full bench with leave)

<sup>169</sup> Section 231 (Permissible stand-down of employee)

- (ii) if the employee remains stood down at the time of the commission's decision—the employer to provide for the resumption of work by the employee, immediately or on a stated day.

(4) If the commission makes an order under subsection (3)(b)(i), it may include in the order default provisions for its enforcement (other than by imprisonment) as if—

- (a) the commission were an Industrial Magistrates Court; and
- (b) the commissioner who makes the order were a magistrate.

(5) The order may be filed with the clerk of a Magistrates Court and on filing may be enforced as an order made by an Industrial Magistrates Court.

#### ***Division 4—Appeals to both Industrial Court and Industrial Relations Commission***

##### **Appeals from commissioner to both court and full bench**

**368.(1)** A person who has the right to appeal against a commissioner's decision may appeal both to—

- (a) the court; and
- (b) a full bench.

(2) The person must file 2 separate appeals stating—

- (a) for the appeal to the court—only the grounds mentioned in section 360(1);<sup>170</sup> and
- (b) for the appeal to a full bench—only the grounds mentioned in section 362(1).<sup>171</sup>

(3) The president must decide the order in which the appeals are to be heard.

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<sup>170</sup> Section 360 (Appeal from commission, magistrate or registrar to court)

<sup>171</sup> Section 362 (Appeals from commissioner to full bench with leave)

(4) In this section—

“**appeal against decision**” includes an application for a prerogative order in relation to a decision.

### *Division 5—General*

#### **Nature of appeal**

**369.(1)** An appeal to the court or commission is by way of re-hearing on the record.

(2) However, the court may hear evidence afresh, or hear additional evidence, if the court considers it appropriate to effectively dispose of the appeal.

#### **Time limited for appeal**

**370.** An appeal against a decision must be commenced as required under the rules of court within 21 days after—

- (a) if the decision is given at a hearing—the announcement of the decision at the hearing; or
- (b) if the decision is given through the registrar—the release of the decision.

## **CHAPTER 8—ADMINISTRATION**

### **PART 1—EMPLOYMENT ADVOCATE**

#### **Employment Advocate**

**371.(1)** The Governor in Council may, by industrial gazette notice, appoint a person as the employment advocate.

(2) The employment advocate is to be employed under the *Public Service Act 1996*.

(3) The chief inspector may at the same time be the employment advocate.

(4) The Governor in Council may enter into an arrangement for the Commonwealth employment advocate to perform any or all of the functions and exercise any or all of the powers of the employment advocate under this Act.

(5) An arrangement under subsection (4) is sufficient authority for the Commonwealth employment advocate to perform the functions and exercise the powers of an employment advocate under this Act.

### **Functions and powers**

**372.(1)** The employment advocate has the following functions—

- (a) providing help and advice to employees about their rights and obligations under this Act and the *Industrial Organisations Act 1997*, part 14;<sup>172</sup>
- (b) providing help and advice to employers (especially in small business) about their rights and obligations under this Act and the *Industrial Organisations Act 1997*, part 14;
- (c) providing advice to employers and employees, for QWAs, about the relevant award, statutory entitlements and relevant provisions of this Act;
- (d) investigating and remedying—
  - (i) alleged contraventions of QWAs or chapter 2, part 2;<sup>173</sup> or
  - (ii) any other complaints relating to QWAs;
- (e) investigating and remedying alleged contraventions of the *Industrial Organisations Act 1997*, part 14;

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<sup>172</sup> *Industrial Organisations Act 1997*, part 14 (Freedom of association)

<sup>173</sup> Chapter 2, part 2 (Queensland workplace agreements)

- (f) any other functions given to the employment advocate by chapter 2, part 2;
- (g) any other functions prescribed under a regulation.

(2) In performing the functions, the employment advocate must have particular regard to—

- (a) the needs of workers in a disadvantaged bargaining position (including for example, women, people from a non-English speaking background, young people, apprentices, trainees and outworkers); and
- (b) assisting workers to balance work and family responsibilities; and
- (c) promoting better work and management practices through QWAs.

(3) The employment advocate has the power to do all things necessary or convenient to be done for, or in connection with, the performance of the advocate's functions.

(4) For the performance of a function mentioned in subsection (1)(d) or (e)—

- (a) the employment advocate is appointed as an inspector; but
- (b) section 376<sup>174</sup> does not apply to the employment advocate.

### **Delegation by employment advocate**

**373.** The employment advocate may delegate the employment advocate's powers to—

- (a) for a function mentioned in section 372(1)(a) to (c), (f) or (g)—an appropriately qualified public service officer or employee; or
- (b) for a function mentioned in section 372(1)(a) to (c)—an appropriately qualified person; or
- (c) for a function mentioned in section 372(1)(d) or (e)—an inspector.

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<sup>174</sup> Section 376 (Appointment of inspectors)

**Annual report**

**374.** The department's annual report for a financial year must include a report about the employment advocate's operations during the year.

**Complementary laws**

**375.(1)** To enable functions to be performed or powers to be exercised by the Commonwealth employment advocate or the Australian commission, the Commonwealth provisions apply as a law of the State with—

- (a) the amendments required under a regulation; and
- (b) any other amendments allowed under a regulation.

**(2)** In this section—

**“Commonwealth provisions”** means the Commonwealth Act, parts IVA and VID and the other provisions of that Act as far as they relate to the parts.

**PART 2—INSPECTORS***Division 1—Appointment***Appointment of inspectors**

**376.(1)** The Governor in Council may, by industrial gazette notice, appoint a person as the chief inspector.

**(2)** The chief inspector is to be employed under the *Public Service Act 1996*.

**(3)** The chief executive may appoint any of the following persons to be an inspector—

- (a) public service officers and employees;
- (b) other persons prescribed under a regulation.

(4) However, the chief executive may appoint a person as an inspector only if satisfied the person has the necessary expertise to be an inspector.

(5) An inspector, while the inspector holds the appointment, is also an inspector for—

- (a) the *Industrial Organisations Act 1997*; and
- (b) the *Pastoral Workers' Accommodation Act 1980*; and
- (c) the *Trading (Allowable Hours) Act 1990*; and
- (c) the *Workers' Accommodation Act 1952*.

### **Limitation of inspector's powers**

**377.(1)** In exercising powers, an inspector is subject to the directions of—

- (a) for a power exercised in relation to a QWA or the *Industrial Organisations Act 1997*, part 14<sup>175</sup>—the employment advocate; and
- (b) otherwise—the chief inspector.

(2) An inspector's powers may be limited—

- (a) under a condition of appointment; or
- (b) by notice given by the chief executive to the inspector; or
- (c) under a regulation.

### **Inspector's appointment conditions**

**378.(1)** An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector ceases holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; and

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<sup>175</sup> *Industrial Organisations Act 1997*, part 14 (Freedom of association)



(b) if the appointment conditions provide—on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) An inspector may resign by signed notice of resignation given to the chief executive.

(4) However, an inspector may not resign from the office under this Act (the “**secondary office**”) if a condition of appointment to the main office requires the inspector to hold the secondary office.

### *Division 2—Identity cards*

#### **Identity card**

**379.(1)** The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photo of the person; and
- (b) be signed by the person; and
- (c) identify the person as an inspector for this Act.

(3) A person who stops being an inspector must return the person’s identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

#### **Production or display of identity card**

**380.(1)** An inspector may exercise a power in relation to a person only if—

- (a) the inspector first produces his or her identity card for the person’s inspection; or
- (b) the inspector has the inspector’s identity card displayed so it is clearly visible to the person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

### *Division 3—General powers*

#### **Entry to places**

**381.(1)** An inspector may, without the occupier's consent, enter—

- (a) a public place; or
- (b) a workplace when—
  - (i) the workplace is open for carrying on business; or
  - (ii) the workplace is otherwise open for entry.

(2) If the workplace is on or near domestic premises, an inspector may, without the occupier's consent, enter the land around the premises to gain access to the workplace.

(3) However, if it is practicable to do so before entering the land, the inspector must first tell the occupier of the inspector's intention to gain access to the workplace.

(4) In this section—

**“domestic premises”** means premises usually occupied as a private dwelling house.

**“workplace”** means a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on.

#### **General powers after entering places**

**382.(1)** This section applies to an inspector who enters a place under section 381.

(2) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) inspect, photograph or film any part of the place or anything at the place; or

- (b) take a thing, or a sample of thing, in the place; or
- (c) copy a document at the place; or
- (d) take into or onto the place the persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
- (e) require a person at the place to give the inspector reasonable help to exercise the powers under paragraphs (a) to (d).

(3) When making a requirement under subsection (2)(e), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(4) A person required to give reasonable help under subsection (2)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### **Power to require documents to be produced**

**383.(1)** An inspector may require a person to produce for inspection, at a reasonable time and place nominated by the inspector, a document relating to employees, including, for example, a time sheet or pay sheet.

(2) The person must produce the document, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) The inspector may keep the document to copy it.

(4) If the inspector copies it, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document.

(5) The person must certify the copy, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) The inspector must return the document to the person as soon as practicable after copying it.

**Power to require information**

**384.(1)** An inspector may, during business hours—

- (a) question with respect to matters under this Act or under a relevant industrial instrument—
  - (i) an employer in a calling; or
  - (ii) a person found in or on a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on; and
- (b) require the employer or person to give the inspector information to help the inspector ascertain whether this Act, or a relevant industrial instrument, permit or order are being, have been or will be complied with, or should be given operation in relation to the calling.

(2) When making the requirement, the inspector must warn the employer or person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.

(3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) It is a reasonable excuse for an individual to fail to comply with the requirement if doing so might tend to incriminate the individual.

(5) The power to question an employee includes power to question the employee out of anyone else's hearing.

**Power to require name and address**

**385.(1)** An inspector may require a person, for this Act, to state the person's name and address.

(2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.

(4) A person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

#### *Division 4—Powers to claim and deal with unpaid amounts*

#### **Paying employee's wages etc. to inspector**

**386.(1)** On an inspector's written demand, an employer must pay—

- (a) the unpaid wages payable to an employee; and
- (b) for an eligible employee—
  - (i) the unpaid contributions payable under a relevant industrial instrument for the employee by the employer to a complying superannuation fund; and
  - (ii) an amount based on the return that would have accrued had the contribution been properly paid to the fund.

Maximum penalty—40 penalty units.

(2) The payment must be made—

- (a) under subsection (1)(a)—to the inspector; or
- (b) under subsection (1)(b)—
  - (i) into a complying superannuation fund in the time specified by the inspector; or
  - (ii) if not paid into a complying superannuation fund in the specified time—to the inspector.

(3) A demand must not be made, or need not be complied with, if it does or would relate to unpaid wages for which an order for recovery could not be made on an application under section 423.<sup>176</sup>

(4) An Industrial Magistrates Court that hears and decides a complaint against an employer for an offence under subsection (1)(a)—

- (a) apart from a penalty that it may impose; and

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<sup>176</sup> Section 423 (Recovery of wages etc.)

(b) whether or not it finds the employer guilty;

may order the employer to pay the employee the amount the court finds, on the balance of probabilities, is payable to the employee.

(5) A court that finds an employer guilty of an offence under subsection (1)(b) may make, in relation to the employer, an order that a magistrate may make on an application made under section 435.<sup>177</sup>

(6) If an order is made, section 435 applies to it.

(7) In this section—

“**employee**” includes a former employee.

### **Inspector’s obligation for amounts paid on demand**

**387.(1)** An inspector who is paid an amount mentioned in section 386 must immediately give the payer a receipt for the amount.

(2) The receipt is a full discharge to the employer concerned for the amount stated in the receipt.

(3) The inspector must pay the amount to—

(a) for a superannuation contribution—

(i) if the employee is employed by the employer—the approved superannuation fund; or

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

(A) the approved superannuation fund; or

(B) a complying superannuation fund; or

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

(D) an eligible rollover fund; or

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

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<sup>177</sup> Section 435 (Magistrate’s power for unpaid superannuation contribution)

(b) otherwise—the employee.

(4) If the inspector has not accounted for the amount within 30 days after receiving it, the inspector must pay the amount immediately to the department.

(5) The department must account for the amount in the way required by subsection (3).

(6) However, the department must pay the amount into the unclaimed moneys fund in the Treasury if—

- (a) the department can not locate the employee after making reasonable inquiries; or
- (b) the employee does not nominate a superannuation fund for subsection (3) if requested by an inspector to do so.

(7) In this section—

“**employee**” includes a former employee.

“**superannuation contribution**” means—

- (a) an employer’s contribution to an approved superannuation fund to the credit of an eligible employee, which is unpaid; or
- (b) an amount mentioned in section 386(1)(b)(ii).

### *Division 5—General*

#### **Obstructing inspectors**

**388.** A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

#### **Impersonating inspectors**

**389.** A person must not pretend to be an inspector.

Maximum penalty—40 penalty units.

**Validity of inspector's conduct despite administrative contravention**

**390.** Failure of an inspector to comply with section 377(1) or 380<sup>178</sup>—

- (a) does not affect the lawfulness or effect of an act done or omission made by the inspector for this Act; but
- (b) makes the inspector liable to disciplinary action.

**CHAPTER 9—RECORDS AND WAGES****PART 1—EMPLOYERS RECORDS***Division 1—Definitions***Definitions for pt 1**

**391.** In this part—

**“authorised industrial officer”** means a person who holds an authority in force under section 392.

**“record”** includes a computer print-out if—

- (a) the contents of the print-out relevant to this part are separate from all other material in the print-out; and
- (b) the print-out gives particulars required by this part accurately and in a way and form convenient for the purpose of inspection under this part.

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<sup>178</sup> Section 377 (Limitation of inspector's powers) or 380 (Production or display of identity card)



**“time and wages record”**—

- (a) for an industrial instrument employee—see section 394;<sup>179</sup> and
- (b) for a non-industrial instrument employee—see section 395.<sup>180</sup>

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

**392.(1)** The registrar, on application by an organisation, may issue an officer or employee of the organisation with an authorisation under this section.

**(2)** An authorisation may be subject to conditions stated in it.

**(3)** A person who holds an authorisation that is in force (an **“authorised industrial officer”**) may exercise the powers of an authorised industrial officer under this part.

**(4)** The authorisation—

- (a) must be applied for in the way prescribed under a regulation; and
- (b) is in force for the term stated in the authorisation, unless it sooner stops being in force for a reason mentioned in paragraph (c); and
- (c) stops being in force—
  - (i) on its revocation; or
  - (ii) on its suspension, for the period of suspension; or
  - (iii) on its holder ceasing to be an officer or employee of the organisation that made the application or ceasing to be an authorised industrial officer acceptable to the organisation.

**(5)** When an authorisation stops being in force, the organisation who applied for it—

- (a) must notify the registrar within 14 days after the authorisation stops being in force; and

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<sup>179</sup> Section 394 (Time and wages record—industrial instrument employees)

<sup>180</sup> Section 395 (Time and wages record—non-industrial instrument employees)

- (b) on the registrar's request, must surrender the authorisation to the registrar.

Maximum penalty—16 penalty units.

### **Revocation and suspending industrial officer's authorisation**

**393.(1)** This section applies if, on application by an employer, the commission considers an authorised industrial officer has—

- (a) breached a condition of the authorisation; or
- (b) contravened section 400(2);<sup>181</sup> or
- (c) exercised the officer's power to enter in an unreasonable or vexatious way; or
- (d) made unreasonable, vexatious or inappropriate use of information obtained from inspection of a record made available because of the officer's power as an authorised industrial officer.

**(2)** The commission may—

- (a) revoke the officer's authorisation; or
- (b) suspend the officer's authorisation for a period it considers appropriate; or
- (c) attach conditions to the officer's authorisation it considers appropriate.

### *Division 3—Employers to keep certain records*

#### **Time and wages record—industrial instrument employees**

**394.(1)** An employer must keep a time and wages record at the workplace that contains the following particulars for each industrial instrument employee—

- (a) the employee's full name and address;
- (b) the employee's date of birth;

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<sup>181</sup> Section 400 (Right of entry—authorised industrial officer)

*Workplace Relations Act 1997*

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- (c) for each pay period—
  - (i) the employee's designation; and
  - (ii) the name of the industrial instrument or permit under which the employee is working; and
  - (iii) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks; and
  - (iv) if the industrial instrument or permit provides for—
    - (A) a weekly, daily or hourly wage rate—details of the wage rate for each week, day, or hour at which the employee is paid; or
    - (B) piecework rates—details of the piecework performed and the rate at which payment is made to the employee; and
  - (v) the gross and net wages paid to the employee; and
  - (vi) details of any deductions made from the wages; and
  - (vii) contributions made by the employer to a superannuation fund;
- (d) for an employee whose entitlement to long service leave is worked out under section 200<sup>182</sup>—the total hours (other than overtime) worked by the employee since the start of the period to which the entitlement relates, calculated up to 30 June in each year;
- (e) details of sick leave credited or approved, and sick leave payments to the employee;
- (f) the date when the employee became an employee of the employer;
- (g) if appropriate, the date when the employee stopped employment with the employer;

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<sup>182</sup> Section 200 (Service of casual employees)

*Workplace Relations Act 1997*

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- (h) other particulars necessary to show compliance with the hours of work, wage rates and general employment conditions provided under the instrument or permit.

Maximum penalty—40 penalty units.

(2) If the industrial instrument does not limit the employee's daily or weekly working hours, particulars of the employee's starting and finishing times each day need not be recorded, unless the instrument requires it.

(3) The employer must keep the record for 6 years.

Maximum penalty—40 penalty units.

(4) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (1)(d) for the employee, calculated to the previous 30 June.

Maximum penalty—40 penalty units.

(5) In this section—

**“industrial instrument employee”** means a person who—

- (a) is employed by the employer; and
- (b) works under an industrial instrument or permit.

**Time and wages record—non-industrial instrument employees**

**395.(1)** An employer must keep a time and wages record at the workplace that contains the following particulars for each non-industrial instrument employee—

- (a) for each pay period—
  - (i) the employee's designation; and
  - (ii) the employee's wage rate; and
  - (iii) the gross and net wages paid to the employee; and
  - (iv) details of any deductions made from the wages;

- (b) if an employee's entitlement to long service leave is worked out under section 200<sup>183</sup>—the total hours (other than overtime) worked by the employee since the start of the period to which the entitlement relates, calculated to 30 June in each year.

Maximum penalty—40 penalty units.

- (2) The employer must keep the record for 6 years.

Maximum penalty—40 penalty units.

- (3) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (1)(b) for the employee, calculated to the previous 30 June.

Maximum penalty—40 penalty units.

- (4) In this section—

**“non-industrial instrument employee”** means a person who—

- (a) is employed by the employer; and  
(b) works other than under an industrial instrument or permit.

### **Employee register**

**396.(1)** An employer must keep an employee register that contains the following particulars for each employee—

- (a) the employee's full name and residential address;  
(b) for a person who is residing other than at the person's permanent residence when the person becomes an employee—the person's permanent residential address and the address of the person's other residence;  
(c) the calling in which the employee is engaged;  
(d) the date when the employee became an employee of the employer;  
(e) if appropriate, the date when the employee stopped employment with the employer.

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<sup>183</sup> Section 200 (Service of casual employees)

Maximum penalty—40 penalty units.

(2) If an employer has more than 100 employees and the register is not an alphabetical index itself, the employer must keep an alphabetical index of the employee's names.

Maximum penalty—40 penalty units.

(3) The index may be in a loose leaf, computer print-out or card index form.

(4) Within 14 days after a change in an employee's calling, the employer must enter in the register particulars of the change and the date when the change happened.

Maximum penalty—40 penalty units.

(5) An employee must inform the employer of—

- (a) the employee's residential address whenever asked by the employer; and
- (b) if the employee changes the employee's residential address—the new address immediately.

Maximum penalty—40 penalty units.

(6) Particulars must be entered in a register opposite and relative to the name of the employee to which they relate.

(7) If an employer carries on business at more than 1 place, the employer must keep a register and index for each place.

### **Records to be kept in English**

**397.** A record or index kept under this part must be in the English language.

### **Notation of wages details**

**398.(1)** When paying an employee wages, the employer must state how the payment is made up by giving a written statement to the employee.

Maximum penalty—40 penalty units.

(2) The statement may be given on the employee's pay envelope or advice and 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 wage rate; and
  - (ii) overtime wage rate;
- (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 wages paid;
- (g) the net wages paid;
- (h) details of any deductions made from the wages;
- (i) the amount of contribution paid to a superannuation fund.

#### *Division 4—Power to inspect certain records*

##### **Inspection of time and wages record—inspector**

**399.(1)** An inspector may inspect a time and wages record at a workplace during the employer's business hours.

(2) The employer must allow the inspector to inspect the record.

Maximum penalty—40 penalty units.

(3) Subsection (4) applies if—

- (a) an employer does not produce the record to the inspector; or
- (b) an inspector is obstructed during the inspection of the record; or
- (c) an inspector wants to inspect the record of a former employer (the “**employer**”).

(4) The inspector may, by notice, require the employer to produce the record—

- (a) at—

- (i) a stated workplace of the employer; or
  - (ii) for an employer who has no official workplace or a former employer—a reasonably convenient place nominated by the inspector; and
- (b) at a stated reasonable time.

(5) If the employer does not produce the record as required by the notice, the employer is taken to have failed to keep the record, unless the employer has a reasonable excuse.

(6) The notice may be given by post or in another way.

### **Right of entry—authorised industrial officer**

**400.(1)** An authorised industrial officer may enter a relevant workplace, during the employer's business hours, to exercise a power under section 401.

(2) The officer must give the employer at least 48 hours notice of the officer's intention to enter.

(3) However, the registrar may, on the officer's application, waive the requirement to give the notice if satisfied it is impracticable for the officer to give the notice because of emergent reasons.

(4) The registrar must issue a certificate to the officer stating that the employer's workplace is a relevant workplace if satisfied the certificate is required to enable the officer to enter the workplace.

(5) On entering the workplace, the officer must first—

- (a) notify the employer or the employer's representative of the officer's presence; and
- (b) produce the officer's authorisation.

(6) An employer must not refuse an authorised industrial officer entry to the workplace if the officer—

- (a) if notice has not been given in accordance with subsection (2)—produces a copy of the registrar's waiver under subsection (3); and



*Workplace Relations Act 1997*

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- (b) if requested by the employer before entering the workplace—produces a certificate; and
- (c) complies with subsection (5).

Maximum penalty—27 penalty units.

(7) If the officer does not comply with subsection (5), the officer may be treated as a trespasser.

(8) Subsection (5) does not apply if—

- (a) it is impracticable for the officer to give the notice because of the remoteness of the workplace; or
- (b) on entering the workplace, the officer discovers that neither the employer nor an employer’s representative having charge of the workplace is present.

(9) In this section—

**“relevant workplace”**—

- (a) means a workplace in or on which an employee who is a member of the officer’s organisation carries on a registered calling of the officer’s organisation; but
- (b) does not include a place where the officer is required to be in the course of the officer’s employment with an employer, other than the organisation.

**Inspection of time and wages record—authorised industrial officer**

**401.(1)** Having entered the workplace under section 400, an authorised industrial officer may inspect the time and wages record of—

- (a) a member employee; or
- (b) an employee who is eligible to become a member of the officer’s organisation; or
- (c) an employee who is a party to a QWA or ancillary document, but only with the employee’s written consent.

(2) The employer—

*Workplace Relations Act 1997*

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- (a) must allow the officer to inspect the record for an employee mentioned in subsection (1)(a) or (b), unless the employee has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and
- (b) must not allow the officer to inspect the record for—
  - (i) an employee who has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; or
  - (ii) an employee mentioned in subsection (1)(c), unless the employee has given written consent.

Maximum penalty—27 penalty units.

**(3)** A person must not, by threats or intimidation, persuade or attempt to persuade an employee or prospective employee to make, or refuse to make, a written request to the employer or prospective employer that the record not be available for inspection by an authorised industrial officer.

Maximum penalty—27 penalty units.

**(4)** If the employer keeps particulars other than those mentioned in section 394(1)<sup>184</sup> in the record, the employer need not make the other particulars available for inspection.

**(5)** The officer may make a copy of the record, but can not require any help from the employer.

**(6)** The officer may interview—

- (a) the employer about compliance with the relevant industrial instrument or permit; and
- (b) employees (either individually or together) during non-working time.

**(7)** A person must not obstruct the officer exercising a power under subsection (5) or (6).

Maximum penalty—27 penalty units.

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<sup>184</sup> Section 394 (Time and wages record—industrial instrument employees)

(8) The officer must not—

- (a) wilfully obstruct an employee during the employee's working time or the employer; or
- (b) contravene a requirement of this section.

Maximum penalty—27 penalty units.

(9) A person must not act as an authorised industrial officer under this section, unless the person holds a current authorisation.

Maximum penalty—27 penalty units.

(10) In this section—

**“member employee”** means an employee who is a member of the officer's organisation.

**“time and wages record”** means the time and wages record required to be kept under section 394.

### **Inspection of employee register and index—registrar**

**402.(1)** The registrar may inspect an employer's employee register and index at the employer's workplace during the employer's business hours.

(2) The employer must allow the registrar to inspect the record or index.

Maximum penalty—40 penalty units.

(3) The registrar may, by notice, direct the employer to give the register or index to a stated person, at a stated reasonable time and place if—

- (a) the registrar requires a register or index for the taking of a ballot; or
- (b) the court or commission orders the register or index be made available for any other purpose.

(4) The employer must comply with the direction.

Maximum penalty—40 penalty units.

### **Inspection of time and wages book—employees**

**403.(1)** An employee may inspect the time and wages record for the

employee's particulars relating to the 12 month period before the inspection.

(2) At the employer's discretion, the employer may give the particulars to the employee in writing.

(3) Unless the employer otherwise consents, the employee may inspect the record only—

- (a) once in any 12 month period; and
- (b) during the employer's business hours, but outside the employee's working time.

## **PART 2—WAGES AND OCCUPATIONAL SUPERANNUATION**

### *Division 1—Interpretation*

#### **Definitions for pt 2**

**404.** In this part—

**“assignment”** includes disposition and charge, whether legal or equitable.

**“contracted work”** means work that is, or is to be, performed under a contract or undertaking (whether written or unwritten).

**“employer”**, in division 2, means the person—

- (a) with whom a prime contractor has contracted to perform work; or
- (b) who has an obligation to a prime contractor to perform work.

**“fixed rate”**, in division 3,<sup>185</sup> means the rate fixed by an industrial instrument or permit.

**“mine”**, in division 4,<sup>186</sup> means a mine within the meaning of the *Mines Regulation Act 1964*.

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<sup>185</sup> Division 3 (Paying and recovering wages)

<sup>186</sup> Division 4 (Wages in rural and mining industries)

*Workplace Relations Act 1997*

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**“mortgagee”**, in division 4, means a person entitled to payment under the security of an instrument of mortgage, crop lien, stock mortgage or bill of sale.

**“mortgagor”**, in division 4, means a person liable to pay a mortgagee under an instrument of mortgage, crop lien, stock mortgage or bill of sale.

**“prime contractor”**—

- (a) means a person (the **“contractor”**) who contracts with someone else for the performance of work by the other person, or at whose request, or on whose credit or behalf and with whose knowledge and consent, work is performed; and
- (b) includes a person, claiming under the contractor, whose rights are acquired after the work begins.

**“rate”**, in division 3, includes price.

**“subcontractor”** means a person who contracts with an employer to perform work to discharge the employer’s obligation to a prime contractor.

### **References to service**

**405.** A reference in this part to service on a person includes reference to service on the person’s agent.

### *Division 2—Protection for wages*

#### **Wages are first charge on amounts payable to employer**

**406.(1)** Wages payable to employees employed on any contracted work are, subject to the prime contractor’s rights as prescribed under this Act, a first charge on the amount payable to the employer by the prime contractor for the work.

(2) Until a notice of attachment under section 409<sup>187</sup> is served on the prime contractor, the prime contractor may pay the employer all amounts payable for the contracted work.

### **Assignment of amount payable ineffectual against claims for wages**

**407.(1)** This section applies to an assignment by an employer of amounts that have become, or are to become, payable to the employer by a prime contractor for contracted work.

(2) The assignment is of no effect as against wages payable, or to become payable, to employees employed by the employer in performance of the work.

(3) Subsection (2) does not apply if the assignment is to the employees employed by the employer in performance of the work concerned for wages payable, or to become payable, to them for performing the work.

### **Amounts paid or payable to employer to be applied in payment of wages**

**408.(1)** This section applies to amounts paid or payable to an employer by a prime contractor for contracted work.

(2) The amount is not liable to be attached or charged, except by employees mentioned in subsection (5), until all wages payable, or to become payable, to the employees have been properly paid to them or have been secured to them in a way approved by a magistrate.

(3) The employer must apply the amounts received, to the extent necessary, in payment of wages payable, or to become payable, to employees employed by the employer in performance of work for which the amounts are received.

Maximum penalty—40 penalty units.

(4) The employer must keep an accurate written account of the amounts received from the prime contractor, and of the way the amounts have been disbursed or disposed of.

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<sup>187</sup> Section 409 (Attachment notices)

Maximum penalty—40 penalty units.

(5) The employer must produce the account for inspection to an employee mentioned in subsection (3)—

- (a) whose wages are more than 8 days in arrears and are not paid when demanded; and
- (b) who asks to see the account.

Maximum penalty—40 penalty units.

(6) The employer must allow the employee to make a copy of the account.

Maximum penalty—40 penalty units.

### **Attachment notices**

**409.** An employee whose wages remain unpaid for 24 hours after they are payable and have been demanded by the employee, may serve the prime contractor with an attachment notice in the form approved by the chief executive for the purpose.

### **Effect of attachment notice**

**410.(1)** This section applies if an attachment notice is served on the prime contractor.

(2) The prime contractor must retain from the amounts payable, or to become payable, by the prime contractor to the employer for the contracted work an amount sufficient to satisfy—

- (a) the claim for wages specified in the notice; and
- (b) all further claims for wages specified in notices of attachment served on the prime contractor within 7 days after the service of the first notice.

(3) At the end of the 7 day period, the amount claimed as wages and specified in the notices is attached in the prime contractor's hands, and must be kept by the prime contractor until—

- (a) a magistrate orders to whom, and in what way, the amount must be paid; or

(b) the prime contractor deals with the amount under subsection (4); or

(c) the notices are withdrawn.

(4) After being served with a notice, the prime contractor may pay the amount to which the notice relates to a clerk of the Magistrates Court until—

(a) a magistrate makes an order in relation to the amount; or

(b) the notice is withdrawn.

(5) The payment—

(a) must be accompanied by the notice or a copy of it; and

(b) is a full discharge of the prime contractor from liability for the amount paid and costs of a proceeding for the amount.

(6) An amount paid to a clerk of the Magistrates Court may be paid out only—

(a) on the order of a magistrate; or

(b) if the relevant attachment notice is withdrawn.

(7) A prime contractor who fails to keep, or to pay under subsection (4), an amount required by subsection (2) or (3) to be kept is personally liable to each employee in the amount of the employee's claim for wages stated in the employee's attachment notice served on the prime contractor.

(8) An employee who has served an attachment notice on a prime contractor may withdraw the notice by giving notice of withdrawal to—

(a) the prime contractor; and

(b) the employer to whom amounts are payable, or are to become payable, by the prime contractor.

### **Orders for payment by prime contractor or clerk of the court**

**411.(1)** Subsection (2) applies if an employee who served an attachment notice on a prime contractor obtains judgment from a magistrate against the employer for the claim for wages.

(2) The magistrate may order the judgment be satisfied, in whole or part, by payment of a stated amount—



- (a) from amounts paid to the clerk of the Magistrates Court under section 410(4); or
- (b) if no amount was paid to the clerk under section 410(4) or the amount paid was not enough to cover the amount ordered to be paid by the magistrate—by the prime contractor.

(3) In deciding the amount that should be ordered to be paid for an employee's claim, the magistrate must take into account the existence of claims for wages of other employees of the employer of which the magistrate has knowledge.

(4) Subject to any appeal against the magistrate's decision, the clerk or prime contractor must pay the amount stated in the relevant order to the employee from the amounts—

- (a) paid to the clerk under section 410(4); or
- (b) attached and kept in the hands of the prime contractor.

(5) Payment must be made within 21 days after a copy of the order is served on the clerk or prime contractor.

(6) If an appeal is started and notice of it served, the clerk or prime contractor must continue to keep or hold the amounts from which payment is to be made until the appeal is finally decided or discontinued.

(7) The prime contractor is not liable to a greater extent than the amount actually payable by the prime contractor to the employer when—

- (a) the order is served; or
- (b) payment is made under the order;

whichever is the greater.

### **Employees to be paid according to when attachment notices are served**

**412.(1)** Subject to sections 409 to 411,<sup>188</sup> an amount attached in the hands of a prime contractor, or paid to a clerk of the Magistrates Court, is to

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<sup>188</sup> Section 409 (Attachment notices)  
Section 410 (Effect of attachment notice)  
Section 411 (Orders for payment by prime contractor or clerk of the court)

be paid in priority according to the order of the service of the relevant attachment notices.

(2) However, for this section, all notices served within 7 days after the service of the first notice are—

- (a) taken to have been served simultaneously with the first notice; and
- (b) accorded equal priority to distribution of the amount attached or paid.

(3) The claims for wages of all employees who are taken to have served notices simultaneously must be paid in full, unless the amounts attached in the hands of the prime contractor or held by the clerk are insufficient for the purpose.

(4) If the amounts are insufficient for the purpose, the claims are to abate in equal proportions among themselves.

### **Employee may sue prime contractor**

**413.(1)** Subsection (2) applies if—

- (a) a prime contractor is served with a copy of the magistrate's order made under section 411(2);<sup>189</sup> and
- (b) the amount stated in the order and payable by the prime contractor is not paid in accordance with the order.

(2) The employee in whose favour the order is made may, in an Industrial Magistrates Court and in the employee's own name, sue the prime contractor for the amount stated in the order and unpaid, by way of any action or proceeding the employer could have brought against the prime contractor as if—

- (a) there been no attachment of amounts under this part; and
- (b) the amounts required by the attachment under section 409<sup>190</sup> to be kept were payable to the employer and unpaid.

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<sup>189</sup> Section 411 (Orders for payment by prime contractor or clerk of the court)

<sup>190</sup> Section 409 (Attachment notices)

(3) The employee's entitlement is subject to the prime contractor's right to set off against the employee's claim all amounts—

- (a) properly paid by the prime contractor to the employer under section 406(2);<sup>191</sup> and
- (b) the employer was, when the notice was served on the prime contractor, liable to pay the prime contractor for a 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**

**414.(1)** This section applies if an order under section 411<sup>192</sup> stops operating because—

- (a) of satisfaction of the employee's claim; or
- (b) it is set aside.

(2) A prime contractor who has paid in accordance with the order, before receiving notice of the satisfaction or setting aside, is not to be prejudiced in relation to the payment because the order stopped operating.

### **Discharge by employee for payment received**

**415.** An employee who receives an amount for a claim for wages to which an order under section 411<sup>193</sup> relates must sign a discharge for the amount, in the form approved by the chief executive for the purpose, if asked by the person making the payment.

### **Remedy of subcontractor's employees**

**416.(1)** If an employer has let the performance of work to a subcontractor, an employee employed by the subcontractor in that work has the same rights and remedies for a claim for wages against the employer

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<sup>191</sup> Section 406 (Wages are first charge on amounts payable to employer)

<sup>192</sup> Section 411 (Orders for payment by prime contractor or clerk of the court)

<sup>193</sup> Section 411 (Orders for payment by prime contractor or clerk of the court)

under this division as an employee of the employer has against a prime contractor.

(2) For subsection (1), in construing this division (other than section 404<sup>194</sup> and this section) the term ‘employer’ is substituted for the term ‘prime contractor’ and the term ‘subcontractor’ is substituted for the term ‘employee’.

### **Prime contractor’s right to reimbursement**

**417.(1)** This section applies if—

- (a) a prime contractor has paid a claim for wages payable to an employee of the employer, in satisfaction of the prime contractor’s obligations under this division; and
- (b) either of the following happens—
  - (i) for an employer who is a corporation—winding-up proceedings are commenced;
  - (ii) for an employer who is an individual—the employer’s assets are distributed in insolvency of the employer or in a composition with the employer’s creditors.

(2) 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 payable by the employer.

(3) This section applies only to the extent that a State law may validly apply to the distribution of assets.

### **Magistrate may hear claim for wages ex parte**

**418.** A magistrate may hear and decide a proceeding for a claim for wages in the absence of a person to whom the originating process is directed on proof, on oath or affirmation, of the service of the process.

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<sup>194</sup> Section 404 (Definitions for pt 2)

***Division 3—Paying and recovering wages*****Wages to be paid without deduction**

**419.(1)** If an employer employs an employee to perform work for a fixed rate, the employer must pay the employee the fixed rate without deduction, other than a deduction authorised by—

- (a) a relevant industrial instrument; or
- (b) this division; or
- (c) the employee's written consent.

**(2)** If—

- (a) an employer employs an employee to perform work for a rate agreed between the employer and the employee; and
- (b) either the rate for the work is not fixed by a relevant industrial instrument or permit or the fixed rate is less than the agreed rate;

the employer must pay the employee the agreed rate without deduction, other than a deduction authorised by this division or the employee's written consent.

**(3)** A contract or authority is void to the extent it provides for a deduction to be made from wages in contravention of this section.

**Paying wages**

**420.(1)** Wages payable to an employee must be paid at least monthly to the employee.

Maximum penalty—16 penalty units.

**(2)** The wages must be paid—

- (a) in Australian currency; or
- (b) with the employee's written consent—
  - (i) wholly or partly to the employee's credit in an account with a financial institution nominated by the employee; or
  - (ii) by cheque of a type mentioned in subsection (5), draft, money order or electronic fund transfer; or

*Workplace Relations Act 1997*

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(c) in another way allowed under a relevant industrial instrument.

Maximum penalty—16 penalty units.

(3) If—

(a) wages are to be paid in cash; and

(b) the amount is not a multiple of 5c;

the amount may be rounded to the nearest amount that is a multiple of 5c, even if this involves a reduction.

(4) If wages are to be paid other than in cash, they are to be paid without deduction of any charge made because of the way payment is made.

Maximum penalty—16 penalty units.

(5) Except with the employee's written consent, a cheque by which wages are paid—

(a) must be payable to a bearer on demand; and

(b) must not be crossed.

(6) If wages are payable to an employee when the employee stops employment with the employer, the wages must be paid to the employee within 3 days after the employment stops, unless—

(a) section 422<sup>195</sup> applies; or

(b) the employer has complied with an inspector's demand under section 386.<sup>196</sup>

Maximum penalty—40 penalty units.

(7) If an employee accepts for wages a cheque, draft or money order that is dishonoured, the employee may recover from the employer by action in a court of competent jurisdiction as a debt payable to the employee—

(a) the wages payable; and

(b) a reasonable amount for damages suffered by the employee because of the dishonour.

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<sup>195</sup> Section 422 (Payment of unpaid wages etc. if employee's whereabouts unknown)

<sup>196</sup> Section 386 (Paying employee's wages etc. to inspector)

(8) A contract or authority is void to the extent it provides for payment of wages other than under this section.

### **Contract not to stipulate mode of spending wages**

**421.(1)** Subject to this division, an employer is not, directly or indirectly, to impose as a condition, express or implied, of an employee's employment, a provision about the place where, way in which, or person with whom an employee's wages, or a part of the wages, are to be spent.

Maximum penalty—16 penalty units.

(2) An employer must not dismiss an employee because the employee's wages, or a part of the wages, are spent, or not spent, at a place, in a way, or with a person.<sup>197</sup>

### **Payment of unpaid wages etc. if employee's whereabouts unknown**

**422.(1)** Subsection (2) applies if—

- (a) an employer can not comply with section 419(6)<sup>198</sup> because the former employee's whereabouts are unknown to the employer and can not be discovered by the employer with reasonable diligence; and
- (b) the inability continues for 30 days after cessation of employment by the former employee.

(2) The employer, immediately at the end of the 30 days, must pay the wages payable to the former employee to the nearest clerk of the Magistrates Court.

Maximum penalty—40 penalty units.

(3) The receipt of the clerk for the payment is a full discharge to the employer for the amount stated in the receipt.

(4) The clerk must pay the amount—

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<sup>197</sup> See section 217 (When dismissal is unlawful)

<sup>198</sup> Section 419 (Wages to be paid without deduction)

- (a) if the former employee's whereabouts are discovered—to the former employee; or
- (b) if at the end of a further 30 days, the amounts have not been paid to the former employee—to the department's funds for the former employee.

(5) This section does not apply if the employer has complied with an inspector's demand made under section 386.<sup>199</sup>

### **Recovery of wages etc.**

**423.(1)** An application may be made to a magistrate for an order for payment of wages payable to an employee that are unpaid.

(2) The application may be made by—

- (a) the employee; or
- (b) an employee organisation of which the employee is a member, acting for the employee; or
- (c) a person authorised by the employee to make the application, and acting for the employee; or
- (d) an inspector.

(3) The application must be made within 6 years after the wages became payable.

(4) On hearing the application, the magistrate—

- (a) must order the employer to pay the employee the amount the magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and
- (b) may make an order for the payment despite an express or implied provision of an agreement to the contrary; and
- (c) may order the payment to be made on the terms the magistrate considers appropriate; and
- (d) may award costs to either party in an amount assessed by the magistrate.

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<sup>199</sup> Section 386 (Paying employee's wages etc. to inspector)



**Enforcement of magistrate's order**

**424.(1)** This section applies to an order of a magistrate for payment by an employer of—

- (a) wages found to be payable; or
- (b) contributions to an approved superannuation fund found to be payable; or
- (c) costs in a proceeding relating to unpaid amounts mentioned in paragraph (a) or (b).

**(2)** The order is enforceable under the *Justices Act 1886* as an order for payment of money made by justices under that Act.

**(3)** If an order is made, the amount ordered to be paid (including costs) is a debt payable to the person, in whose favour the order is made, by the employer.

**(4)** The order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*, and on being filed—

- (a) is taken to be an order properly made by a Magistrates Court; and
- (b) without limiting subsection (2), may be enforced as an order made by a Magistrates Court.

**Recovery from employee of amounts overpaid**

**425.(1)** This division does not prevent an employer recovering an amount paid to an employee that the employee is not entitled to because of absence from work.

**(2)** Without limiting the employer's right to recover, the employer may recover the amount by deducting amounts from the employee's wages for a subsequent pay period or periods.

**(3)** Deductions under subsection (2)—

- (a) must be commenced within 1 year after the payment; and
- (b) may extend over a period of 6 years after the payment.

**(4)** A deduction can not be made in an amount that would reduce the wages payable to the employee for a pay period to less than an amount prescribed under a regulation.

**Deduction in default of notice of termination**

**426.(1)** This section applies if—

- (a) an employment contract is governed by an industrial instrument that provides for notice of termination of the employment for a specified period; and
- (b) an employee ceases the employment without giving the employer the notice for the specified period.

(2) The employer may deduct from wages payable to the employee an amount stated by the instrument to be forfeited or payable to the employer if notice of termination is not given by an employee for the period specified.

**Minor may sue**

**427.** A minor may sue, or bring another proceeding under this division, for wages payable to the minor as an employee, in the same way and to the same extent as if the minor were 18 years.

***Division 4—Wages in rural and mining industries*****Wages recoverable against mortgagee if mortgagor defaults**

**428.(1)** This section applies if an employee—

- (a) has performed work—
  - (i) in cultivating, or otherwise improving, land that is subject to a mortgage; or
  - (ii) in cultivating, or otherwise in connection with, a crop that is subject to a lien; or
  - (iii) relating to animal or vegetable matter prepared or manufactured by machinery that is subject to a bill of sale; or
  - (iv) in tending, feeding, driving, or otherwise in connection with, stock that is subject to a mortgage; and
- (b) is prevented from, or hindered in, recovering wages for the work from the mortgagor as employer because—

*Workplace Relations Act 1997*

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- (i) the mortgagee has entered into, or taken possession of the land, crop, machinery or stock, or is taken to have done so; or
- (ii) the mortgagee has sold the land, crop, machinery or stock, under the mortgagee's security; or
- (iii) a cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee.

(2) The mortgagee is taken to be the employee's employer for the performance of the work.

(3) The mortgagor is taken, in engaging the employee for the work, to have acted as the mortgagee's authorised agent.

(4) Subsections (2) and (3) do not affect appropriate accounting as between the mortgagor and the mortgagee.

(5) A mortgagee is not liable for the employee's wages that have become payable more than 6 months before whichever of the following events happens first—

- (a) the employee first applies to the mortgagee for payment of the wages;
- (b) the mortgagee takes possession of, or sells, the land, crop, machinery or stock.

(6) The mortgagee's liability under this section—

- (a) is additional to the mortgagor's liability for the employee's wages; and
- (b) does not affect rights, liabilities, functions and powers as between the mortgagor and employee.

(7) An employee does not lose a right to bring a proceeding against the mortgagee for unpaid wages, and costs of the proceeding, if the employee—

- (a) brings a proceeding against a mortgagor for wages (whether or not the employee obtains an order for payment against the mortgagor); and
- (b) because of a reason in subsection (1)(b), fails to obtain payment of the wages, or part of the wages, from the mortgagor.

**Distress warrant levied on property of mortgagor or mortgagee**

**429.(1)** A warrant of distress issued to enforce an order for payment of wages payable to an employee for work performed in connection with property mentioned in section 428(1), as far as the land, crop, machinery or stock is concerned—

- (a) authorises distress on and sale of the mortgagee's property and the mortgagor's property; and
- (b) may be executed on the mortgaged land or the encumbered crop, machinery, or stock even though the mortgagee has entered into or taken possession of the land, crop, machinery or stock, or is taken to have done so, under the mortgagee's security.

**(2)** An amount paid by, or recovered from, the mortgagee for the wages—

- (a) is taken to be an advance made by the mortgagee to the mortgagor under the mortgagee's security; and
- (b) may be recovered by the mortgagee under the security.

**(3)** In this section—

**“land”** includes the fixtures on the land.

**Application of ss 428 and 429 to mines**

**430.(1)** Sections 428<sup>200</sup> and 429 apply, with necessary changes, if an employee—

- (a) has performed work in or about—
  - (i) a mine (including its fixtures) that is subject to a mortgage; or
  - (ii) machinery or apparatus, used in or for a mine, that is subject to a bill of sale; and
- (b) is prevented from, or hindered in, recovering wages for the work from the mortgagor as employer because—

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<sup>200</sup> Section 428 (Wages recoverable against mortgagee if mortgagor defaults)

*Workplace Relations Act 1997*

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- (i) the mortgagee has entered into, or taken possession of the mine, machinery or apparatus, or is taken to have done so; or
- (ii) has sold the mine, machinery or apparatus, under the mortgagee's security; or
- (iii) a cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee.

(2) However, a mortgagee is not liable for the employee's wages that have become payable more than 1 month before whichever of the following events happens first—

- (a) the employee first applies to the mortgagee for payment of the wages;
- (b) the mortgagee takes possession of, or sells, the mine, machinery or apparatus.

(3) In this section—

“wages” for work includes earnings for work.

**Priority in payment of wages earned in mine**

**431.(1)** An amount of wages, of not more than 4 weeks, payable to an employee for employment in or about a mine—

- (a) is a first charge on the claim or land in or on which the mine is situated; and
- (b) in the winding-up of a corporation formed for or engaged in working the mine, must be paid in priority to all other debts, secured or unsecured, of the corporation.

(2) Subsection (1)(a) applies even though—

- (a) the claim or land is mortgaged or charged to secure payment of other amounts; or
- (b) there is a lien on the claim or land.

(3) Subsection (1)(b) applies only to the extent that a law of the State may validly apply to the distribution of assets in a winding-up.

(4) If a first charge exists under subsection (1)(a), the amount charged includes—

- (a) all amounts awarded by a court as costs against an employer in a proceeding brought by or for an employee to recover the wages mentioned in the subsection; and
- (b) the amount of costs, charges and expenses reasonably incurred in attempting to enforce an order or orders for payment of the wages.

(5) The debts that are a first charge under subsection (1)(a) or are to be paid in priority under subsection (1)(b)—

- (a) rank equally among themselves; and
- (b) if necessary, abate in equal proportions among themselves.

(6) In this section—

“wages” for work includes earnings for work.

### *Division 5—Occupational superannuation*

#### **Agreement about superannuation fund**

**432.(1)** This section applies if an industrial instrument requires an employer to pay contributions to a specified superannuation fund.

(2) Despite the instrument, the required contributions may be paid to a complying superannuation fund agreed to by the employer and employee.

(3) The agreement must be written and signed by the employer and employee.

(4) A person must not coerce someone else to make an agreement mentioned in subsection (3).

Maximum penalty for subsection (4)—40 penalty units.

#### **Contributing occupational superannuation**

**433.(1)** An employer must contribute, for eligible employees, to the approved superannuation fund at the level required by the relevant industrial instrument.

Maximum penalty—40 penalty units.

(2) The offence is a continuing offence that may be charged in 1 complaint for a period.

(3) An employer who contributed—

(a) to a complying superannuation fund at a level required by a relevant industrial instrument; but

(b) to a fund that is not the approved superannuation fund;

does not commit an offence unless the employer has knowingly contravened the instrument.

(4) If the commission makes an order under section 434(1), an employer who fails to contribute in accordance with the order is taken to fail to make the contribution under the relevant industrial instrument, whether or not the order was directed to that employer.

(5) The court by which a defendant is found guilty of an offence under subsection (1) may make, in relation to the defendant, an order that a magistrate is authorised by section 435<sup>201</sup> to make on an application under that section, and that section applies and extends accordingly.

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

**434.(1)** This section applies if—

(a) an industrial matter relates to an allegation that an employer has been, or is, contributing to a complying superannuation fund for employees at a level required by a relevant industrial instrument; but

(b) the fund is not the approved superannuation fund.

(2) The commission, of its own initiative or on application by an inspector, organisation or employee concerned, may—

(a) determine which complying superannuation fund the employer should have been, or should be, contributing to to comply with the relevant industrial instrument; and

(b) order the employer to contribute accordingly.

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<sup>201</sup> Section 435 (Magistrate's power for unpaid superannuation contribution)

(3) If the commission considers it appropriate, the commission may make its order to operate from the date when a particular employee became eligible for payment of contribution to the fund determined by the commission.

(4) The commission may recognise all or any of the contribution made by an employer to a complying superannuation fund up to and including the date of the commission's determination as having met the requirements, or a part of them, of a relevant industrial instrument, relating to employers' contribution to the approved superannuation fund.

### **Magistrate's power for unpaid superannuation contribution**

**435.(1)** An application may be made to a magistrate for an order for payment of contributions to the approved superannuation fund payable for an eligible employee that are unpaid.

(2) The application may be made by—

- (a) an inspector; or
- (b) an employee who is an eligible employee on whose behalf an employer is required to contribute to an approved superannuation fund; or
- (c) an employee organisation of which an employee mentioned in paragraph (b) is a member.

(3) The application must be made within 6 years after the contributions became payable.

(4) On hearing the application, the magistrate must order the employer to pay the employee—

- (a) the amount the magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and
- (b) an amount the magistrate considers appropriate, based on the return that would have accrued in relation to the contribution had it been properly paid to the fund.

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

- (a) if the employee is employed by the employer—the approved superannuation fund; or



- (b) if the employee is no longer employed by the employer—
  - (i) the approved superannuation fund; or
  - (ii) a complying superannuation fund; or
  - (iii) a superannuation fund nominated by the employee; or
  - (iv) an eligible rollover fund; or
  - (v) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee.
- (6) The amount must be paid into the unclaimed moneys fund in the Treasury, if a former employee in relation to whom an order is made—
  - (a) can not be located after reasonable inquiry; or
  - (b) does not nominate a superannuation fund for the purpose of the order, if required by the order to do so.
- (7) The magistrate—
  - (a) may order payment on the terms the magistrate considers appropriate; and
  - (b) may order costs, or make no order for costs, as the magistrate considers appropriate.

## CHAPTER 10—OFFENCES

### Contempt of court

**436.(1)** The court has all the protection, powers, jurisdiction and authority possessed by the Supreme Court in relation to contempt of court.

(2) In the court's exercise of the protection, powers, jurisdiction and authority, the Rules of the Supreme Court relating to contempt of court apply, with necessary changes, and must be complied with.

(3) The registrar or another officer of the court may apply to the court for an order that a person be committed to prison for contempt of court.

(4) The court's jurisdiction to punish a contempt of the court may be exercised by—

- (a) for a contempt committed in the face and hearing of the court—the president, on the president's own initiative; or
- (b) otherwise—the full court.

(5) The court has jurisdiction to punish an act or omission as a contempt of the court, although a penalty is prescribed for the act or omission.

### **Disobeying penalty orders**

**437.(1)** A person must obey a penalty order, unless the person has a reasonable excuse.

Maximum penalty—the penalty provided for in the order.

(2) In this section—

**“penalty order”** means an order of the court or commission that provides for payment of a penalty if the order is disobeyed.

### **Improper conduct towards member of the commission, magistrate or registrar**

**438.(1)** A person must not—

- (a) wilfully insult or disturb an official; or
- (b) use insulting language to an official; or
- (c) interrupt an industrial tribunal's proceeding; or
- (d) by writing or speech, use words intended to—
  - (i) improperly influence an official; or
  - (ii) improperly influence a witness before an industrial tribunal; or
  - (iii) bring an official or industrial tribunal into disrepute.

Maximum penalty—40 penalty units or 1 year's imprisonment.

(2) A person who commits an offence under this section before an industrial tribunal may, by the tribunal's order, be excluded from the place where the tribunal is sitting.

(3) The making of an order under subsection (2) does not affect the offender's liability to be punished for the offence.

(4) A police officer, or a person acting under the authority of the industrial tribunal, may enforce the tribunal's order, using necessary reasonable force.

(5) In this section—

**“industrial tribunal”** means the commission, an Industrial Magistrates Court, or the registrar acting as registrar under this or another Act.

**“official”** means a member of the commission, a magistrate or the registrar exercising jurisdiction or powers or performing functions under this or another Act.

### **Disturbances near tribunals**

**439.** A person must not create, take part in, or continue a disturbance in or near a place where the court, the commission, an Industrial Magistrates Court or the registrar is sitting for this or another Act.

Maximum penalty—40 penalty units or 1 year's imprisonment.

### **Contempt by witness**

**440.(1)** A person must not, without lawful excuse—

- (a) if called to appear as a witness before an industrial tribunal—disobey the summons; or
- (b) if appearing as a witness before an industrial tribunal, whether or not in response to a summons—
  - (i) refuse to be sworn or to make an affirmation or declaration as a witness; or
  - (ii) refuse to answer a question that the person is required by the tribunal to answer; or

- (iii) refuse to produce records that the person is required by the tribunal to produce.

Maximum penalty—40 penalty units.

(2) In this section—

**“industrial tribunal”** means the court, the commission, an Industrial Magistrates Court or the registrar conducting a proceeding under this or another Act.

### **False or misleading statements**

**441.(1)** A person must not state anything to an official for this Act that the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was ‘false or misleading’ to the person’s knowledge.

(3) A person must not be prosecuted for an offence under this section if the person can be prosecuted for an offence under section 105 or 298.<sup>202</sup>

(4) In this section—

**“official”** means an inspector or the registrar.

### **False, misleading or incomplete documents**

**442.(1)** A person must not, for this Act, give an official a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

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<sup>202</sup> Section 105 (Person must not apply duress or make false statements in connection with QWA etc.)  
Section 298 (Power to enter and inspect)

- (a) informs the official, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(4) It is enough for a complaint against a person for an offence against subsection (1) or (3) to state that the statement made was 'false, misleading or incomplete' to the person's knowledge.

(5) A person must not be prosecuted for an offence under this section if the person can be prosecuted under section 83 or 298.<sup>203</sup>

(6) In this section—

“**official**” means an inspector, an authorised industrial officer or the registrar.

### **Obstructing officers**

**443.(1)** A person must not—

- (a) obstruct an officer exercising a power, or performing a function, under this or another Act; or
- (b) if lawfully required by an officer to produce or exhibit a document, or to allow a document to be examined—fail to comply with the request, unless the person has a reasonable excuse; or
- (c) wilfully mislead an officer in a way likely to affect the performance of the officer's function; or
- (d) if lawfully asked a question for this or another Act by an officer—fail to answer the question truthfully and to the best of the person's knowledge, information and belief.

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<sup>203</sup> Section 83 (Employer's declaration must be accurate) or 298 (Power to enter and inspect)

Maximum penalty—40 penalty units.

(2) A person must not be prosecuted for an offence under subsection (1) if the person can be prosecuted under section 298.<sup>204</sup>

(3) In this section—

“**officer**” means an officer of the court or commission.

### **Avoiding Act’s obligations**

**444.(1)** An employer, with intent to avoid an obligation under this Act to pay an employee for a public holiday or accrued leave, must not—

- (a) dismiss the employee; or
- (b) if the employee’s entitlement to long service leave is worked out under section 200<sup>205</sup>—interrupt the continuity of the employee’s service.

Maximum penalty—40 penalty units..

(2) If the Industrial Magistrates Court finds an employer has contravened subsection (1) in relation to long service leave, it must (in addition to any order it may make imposing a penalty) order the defendant to pay the dismissed employee a proportionate amount of long service leave on the basis of 13 weeks leave for 15 years service.

(3) In this section—

“**dismiss**” includes stand-down.

“**leave**” means annual, sick or long service leave.

“**obligation**” under this Act includes an obligation under an industrial instrument.

### **Non-payment of wages**

**445.(1)** A person must pay wages payable to an employee under a relevant industrial instrument or permit—

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<sup>204</sup> Section 298 (Power to enter and inspect)

<sup>205</sup> Section 200 (Service of casual employees)

- (a) to the employee; or
- (b) in accordance with the employee's written direction.

Maximum penalty—200 penalty units.

**(2)** An offence under subsection (1) may consist of—

- (a) a single failure to pay wages due on a particular day; or
- (b) a failure to pay wages due over a period of time.

**(3)** The offence starts on the day of the failure and continues until the wages are paid.

**(4)** A complaint or a series of complaints may be made for any period over which the offence continues.

**(5)** However, a complaint may only relate to offences that started within 6 years before the complaint is made.

**(6)** A magistrate may hear and decide a complaint for an offence under this section, and in addition to any penalty that the magistrate may impose—

- (a) if the magistrate finds the defendant guilty—must order the defendant to pay the employee the amount the magistrate finds to be payable to the employee; or
- (b) if the magistrate does not find the defendant guilty—may order the defendant to pay the employee the amount the magistrate finds, on the balance of probabilities, to be payable to the employee.

**(7)** A magistrate may make the order—

- (a) despite an express or implied provision of an agreement to the contrary; and
- (b) on the terms the magistrate considers appropriate.

### **Accepting reduced wages**

**446.(1)** An employee must not enter into an agreement with an employer to accept wages that, to the employee's knowledge, are reduced wages.

Maximum penalty—16 penalty units.

(2) The return by or for an employee, to or for the employer of a part of wages paid under a relevant industrial instrument or permit for work performed by the employee is evidence that the employee has entered into an agreement mentioned in subsection (1).

### **Publishing statement about employment on reduced wages**

**447.(1)** A person must not publish or cause to be published, whether or not for reward, a statement that can be reasonably interpreted to state that a person is ready and willing to—

- (a) employ a person on reduced wages; or
- (b) be employed on reduced wages.

Maximum penalty—16 penalty units.

(2) A proceeding for an offence under subsection (1) may be commenced against a publisher of the statement only if—

- (a) the publisher has been warned by an inspector that the publication of the statement, or of a statement substantially similar, is an offence under this Act; and
- (b) the publisher has published, or caused the publication of, the statement after receiving the warning; and
- (c) the Minister's consent to the proceeding is obtained.

(3) A proprietor of a newspaper or advertising medium is taken to have published the statement with knowledge of its unlawfulness, unless the proprietor shows that the proprietor—

- (a) had taken all reasonable precautions against committing the offence; and
- (b) had reasonable grounds to believe, and did believe, the publication to be lawful; and
- (c) had no reason to suspect the publication was unlawful.

(4) In this section—

“**publish**” includes—

- (a) exhibit; and



- (b) broadcast; and
- (c) publish to a person.

**“publisher”** means—

- (a) the printer or proprietor of a newspaper; or
- (b) the distributor or seller of a newspaper; or
- (c) the printer, maker, operator or proprietor of an advertising device or advertising medium; or
- (d) the printer of a document uttered for advertising purposes; or
- (e) a person acting under the authority of a person mentioned in paragraphs (a) to (d).

### **Offence to offer or accept premiums**

**448.(1)** This section applies subject to the *Private Employment Agencies Act 1983*.

**(2)** A person must not—

- (a) offer an employment premium; or
- (b) demand an employment premium; or
- (c) ask for an employment premium; or
- (d) accept, or agree to accept, an employment premium.

Maximum penalty—16 penalty units.

**(3)** If a court finds a person (the **“defendant”**) guilty of accepting an employment premium, it must (in addition to any penalty order it may make) order the defendant to pay an amount, equivalent to the amount or value of the premium, to the person from whom the defendant accepted the premium.

**(4)** In this section—

**“employment premium”** includes a consideration, gift, allowance or forbearance for the employment of a person.

**Contraventions of awards, certified agreements or permits**

**449.(1)** A person must not contravene an award, certified agreement or permit.<sup>206</sup>

Maximum penalty—

- (a) for a first offence—
  - (i) if the offender is an employer that is a body corporate or an organisation—80 penalty units; or
  - (ii) if the offender is an employer that is not a body corporate—16 penalty units; or
  - (iii) if the offender is an employee—16 penalty units; or
- (b) for a second or subsequent offence consisting of a contravention of the same provision of the instrument or permit—
  - (i) if the offender is an employer that is a body corporate or an organisation—100 penalty units; or
  - (ii) if the offender is an employer that is not a body corporate—20 penalty units; or
  - (ii) if the offender is an employee—20 penalty units.

**(2)** For subsection (1), a second or subsequent offence is taken to be a first offence if more than 1 year has passed since the commission of the last similar offence of which the person was found guilty.

**(3)** An employer who pays (directly or by an agent) an employee, and an employee who receives from an employer (or the employer's agent) reduced wages is each taken to have contravened the instrument or permit.

**(4)** If an employee returns to an employer (or the employer's agent) a part of wages paid to the employee under a relevant award, certified agreement or permit—

- (a) the employee is taken to have received reduced wages; and
- (b) the employer (or the employer's agent) is taken to have paid reduced wages;

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<sup>206</sup> For the contravention of a QWA, see section 93 (Parties must not contravene QWA)

unless the return is in discharge, or partial discharge, of a lawful debt or obligation of the employee.

### **Injunction restraining contraventions**

**450.(1)** This section applies if a person has been found guilty of an offence involving the contravention of an industrial instrument, permit or this Act.

**(2)** If satisfied the contravention consisted of the person's wilful action or default, the full court, on application made to it, may grant an injunction restraining the person from—

- (a) continuing the contravention; or
- (b) committing further contraventions of the instrument, permit or this Act, whether similar to or different from the contraventions the person has been found guilty of.

**(3)** The person must obey the injunction.

Maximum penalty—200 penalty units.

### **Persons considered parties to offences**

**451.** Without limiting the Criminal Code, section 7,<sup>207</sup> an organisation or person who—

- (a) takes part in the commission of an offence under this Act; or
- (b) counsels, procures or aids the commission of an offence under this Act; or
- (c) encourages the commission of an offence under this Act; or
- (d) is concerned, directly or indirectly, in the commission of an offence under this Act;

is taken to have committed the offence and to be liable to the penalty prescribed for the offence.

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<sup>207</sup> Criminal Code, section 7 (Offender may be prosecuted under Code or other statute)

**Executive officers must ensure corporation complies with ss 396, 433 and 445**

**452.(1)** If a corporation commits an offence under section 396, 433 or 445,<sup>208</sup> the executive officers of the corporation—

- (a) are also taken to have committed the offence; and
- (b) are liable to the prescribed penalty and any other order the magistrate may make under those sections.

**(2)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the sections; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**(3)** In this section—

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not—

- (a) the person is a director; or
- (b) the person’s position is given the name of executive officer.

**Attempt to commit offence**

**453.** A person who attempts to commit an offence under this Act—

- (a) commits an offence; and
- (b) is liable to the same penalty as if the offence attempted had been committed.

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<sup>208</sup> Section 396 (Employee register), 433 (Contributing occupational superannuation) or 445 (Non-payment of wages)

## CHAPTER 11—LEGAL PROCEEDINGS

### General application of jurisdictional provisions

**454.** The provisions of this Act providing for the powers of and procedures before the court, the commission or an Industrial Magistrates Court apply in relation to the jurisdiction of the court, the commission or an Industrial Magistrates Court under this or another Act, unless the contrary intention appears.

### Evidentiary provisions affecting proceeding under industrial Act

**455.** In a proceeding under an industrial Act—

- (a) the appointment as employment advocate of a person claiming to be, or stated to be, the employment advocate, and the authority of the employment advocate to take a proceeding or do any act, must be presumed, until the contrary is proved; and
- (b) the appointment as inspector of a person claiming to be, or stated to be, an inspector, and the authority of an inspector to take a proceeding or do any act, must be presumed, until the contrary is proved; and
- (c) a signature purporting to be of the employment advocate is taken as the signature it purports to be, until the contrary is proved; and
- (d) a signature purporting to be of an inspector is taken as the signature it purports to be, until the contrary is proved; and
- (e) a document purporting to be a copy of a notice or order issued under this Act by an inspector is admissible as evidence of the issue of the notice or order and of the things in it; and
- (f) the limits of a district or part of the State, or of a road, stated in a complaint or other document made for the proceeding must be presumed, until the contrary is proved; and
- (g) judicial notice of the existence of industrial action, or of a proposed industrial action, may be taken, if the tribunal concerned considers the existence of the action, or the proposal for action, is so well known as to require no proof of the fact.

**Confidential material tendered in evidence**

**456.(1)** Subsection (2) applies if records, tendered to the court or commission, relate to—

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

(2) The records can not, without the consent of the person, party or witness, be inspected by anyone other than the president, a member of the commission or an expert witness.

(3) Subsection (2) does not apply to records relating to the financial position of a party or witness who claims that the financial position of an industry or business does not permit the payment of wages, or the granting of conditions—

- (a) claimed in the proceeding in which the records are tendered; or
- (b) under a proposed industrial instrument or order to which the proceeding relates.

(4) If the court or commission directs that information relating to a person's trade secrets or financial position be given in evidence, the evidence must be taken in private, if the person asks.

(5) The court, commission or registrar may direct—

- (a) a report, or part of a report, of a proceeding in an industrial cause not be published; or
- (b) evidence given, records tendered or things exhibited in a proceeding for an industrial cause be withheld from release or search.

(6) The direction may prohibit the publication, release or search absolutely, or except on conditions ordered by the court, commission or registrar.

(7) The direction must be complied with by all persons to whom it is directed.

Maximum penalty—16 penalty units.

(8) A direction may be given if the court, commission or registrar considers—

- (a) disclosure of the matter 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.

(9) A person must not give as evidence, or publish material, in contravention of this section or of a direction under this section.

Maximum penalty—16 penalty units.

(10) In this section—

“**expert witness**”, for records, means a person appointed by the court or commission to examine the records and to report on them.

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

**457.(1)** The following are admissible in a proceeding as evidence of a decision or action—

- (a) a copy of the decision, or of a record of other action of the court or commission, purporting to bear the seal of the court or commission;
- (b) a copy of, or a document purporting to be an extract from, the industrial gazette purporting to contain notice of a decision or other action of the court or commission.

(2) In a proceeding—

- (a) a copy of, or a document purporting to be an extract from, the industrial gazette purporting to contain notice of—
  - (i) a declaration of a general ruling published under section 132;<sup>209</sup> or
  - (ii) an amendment of an award or certified agreement;

is admissible as evidence of the making or approval of the declaration or amendment and, for the period for which the declaration or amendment remains in force, is evidence of the matters in the notice, until the contrary is proved; and

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<sup>209</sup> Section 132 (General rulings)

- (b) a copy of a certified agreement, certified as a true copy by the registrar, is admissible as evidence of—
  - (i) the agreement; and
  - (ii) its execution as shown in the copy; and
  - (iii) its certification by the commission; and
- (c) a copy of a QWA, certified as a true copy by the registrar, is admissible as evidence of—
  - (i) the agreement; and
  - (ii) its execution as shown in the copy; and
  - (iii) its approval by an enterprise commissioner; and
- (d) a copy of a permit issued by the commission, a magistrate or the registrar, certified as a true copy by the appropriate clerk of the Magistrates Court or the registrar, is admissible as evidence of the permit; and
- (e) a certificate issued by the registrar about an organisation's registration is evidence of the matters in the certificate; and
- (f) a certificate issued by the registrar that a stated person was, at a stated time, a stated officer, or a member, of a stated organisation is evidence of the matters.

### **Proof of certain facts by statement**

**458.** In a proceeding, a statement in a complaint or other process by which the proceeding is started that—

- (a) a calling was, at or about a stated time, transferred from 1 person to another; or
- (b) a stated person is or is not, or was or was not, at a stated time, an officer or member of an organisation; or
- (c) a stated person is liable to pay, but has not paid, contribution to the approved superannuation fund;

is proof of the matter stated, until the contrary is proved.



**Evidentiary value of certificate of trustee of superannuation fund**

**459.(1)** In a proceeding, a trustee's certificate stating, for a period of relevant service of an eligible employee concerned in the proceeding—

- (a) an amount was paid as contribution to a complying superannuation fund of which the trustee is a trustee; or
- (b) an amount worked out on the rate of return that stated contributions would have attracted to the fund;

is evidence of the matters stated, until the contrary is proved.

**(2)** In this section—

**“trustee's certificate”** means a certificate given, or purporting to have been given, by a trustee of a complying superannuation fund.

**Offence proceedings generally**

**460.(1)** A proceeding for an offence under an industrial Act is to be heard and decided by the court or a magistrate, within the limits of the court's or magistrate's jurisdiction.

**(2)** A proceeding before a magistrate is to be heard and decided summarily, but the Industrial Magistrates Court where the proceeding is taken is to be constituted by a magistrate sitting alone.

**(3)** If the parties to a proceeding commenced, or to be commenced, before a magistrate agree, by notice signed by them or their representatives, that the proceeding should be continued or taken before a magistrate at a particular place in the State (other than the place where the proceeding should be heard and decided under the *Justices Act 1886*)—

- (a) the magistrate at the particular place is authorised to hear and decide the proceeding; and
- (b) jurisdiction is conferred on each magistrate accordingly.

**(4)** If the proceeding has been commenced before the agreement is made, the magistrate, if satisfied the agreement exists, must—

- (a) adjourn the proceeding to the magistrate at the agreed place; and
- (b) send the record of the proceeding taken before the magistrate to the clerk of the Magistrates Court at the agreed place.

(5) For the adjourned proceeding, evidence heard or produced in the proceeding before it was adjourned, is taken to have been heard or produced before the magistrate to whom the proceeding is adjourned, unless the parties otherwise agree.

(6) Subject to subsection (7), a proceeding for an offence under this Act must be commenced—

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 18 months after the offence was committed.

(7) A proceeding for an offence under section 433 or 445<sup>210</sup> must be commenced within 6 years after the offence was committed.

### **Organisations may start proceedings**

**461.** Without limiting the authority of the State or a person to take a proceeding, an organisation (in its registered name) may commence a proceeding for—

- (a) contraventions of industrial instruments or permits; or
- (b) an offence under this Act; or
- (c) recovery of an amount payable to an employee.

### **Recovering amounts from organisations**

**462.(1)** This section applies for the recovery of—

- (a) a penalty imposed on an organisation under this Act; or
- (b) an amount ordered to be paid by an organisation under this Act.

(2) Process may be issued and executed against the organisation's property, whether the property is vested in trustees or is otherwise held for the organisation, as if the organisation, as a corporation, were the absolute owner of the property.

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<sup>210</sup> Section 433 (Contributing occupational superannuation) or 445 (Non-payment of wages)

(3) In this section—

“**property**” of an organisation means property that the organisation has—

- (a) legal title to; or
- (b) a beneficial interest in, to the extent of the interest.

## **CHAPTER 12—EMPLOYEES IN EMPLOYMENT OF STATE**

### **Application of Act to State**

**463.** This Act binds the State, other than in relation to—

- (a) a matter (other than something mentioned in paragraph (b)) about which another Act prescribes a way by which the matter must, or may, be determined, and a determination of the matter has been made in that way and is in force; or
- (b) a matter about which another Act prescribes a process or procedure by which to pursue the matter and does not allow for jurisdiction of the court or commission in relation to the matter; or
- (c) a matter about which another Act excludes the jurisdiction of the court or commission or the application of a decision within the meaning of this Act about the matter; or
- (d) section 235(2)<sup>211</sup> of the repealed Act when—
  - (i) an industrial instrument otherwise provides; or
  - (ii) the commission otherwise decides.

### **Conflict between industrial instruments etc. and statutory determination**

**464.(1)** This section applies if—

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<sup>211</sup> *Industrial Relations Act 1990*, section 235 (Payment for annual leave)

- (a) another Act—
  - (i) prescribes the way that a matter must, or may, be determined; and
  - (ii) does not prescribe that, in determining the matter, a relevant industrial instrument or decision of the court or commission must be complied with; and
- (b) a determination made about the matter under the other Act is inconsistent with an industrial instrument or decision, whether made before or after the instrument or decision.

(2) To the extent of any inconsistency between the determination and the instrument or decision—

- (a) for a directive or guideline for reserved matters under the *Public Service Act 1996*, section 34(1)—
  - (i) a certified agreement prevails over the determination; and
  - (ii) the determination prevails over any other instrument or a decision; and
- (b) for any other determination—the determination prevails over the instrument or decision.

### **Protection of public property and officers**

**465.(1)** Execution or attachment can not be made against property or revenues of the State or a department to enforce an industrial instrument or decision of the court, the commission or a magistrate.

(2) A person who is—

- (a) an employer of employees in a department; or
- (b) taken to be an employer of employees in a department for this Act;

is not personally liable under a relevant industrial instrument or for a contravention of a relevant industrial instrument.

(3) In this section—

**“execution or attachment”** includes process in the nature of execution or attachment.

**Ambit of reference to State**

**466.(1)** This Act binds an instrumentality or body that is not a department or part of a department but that is taken by an Act, or otherwise under law—

- (a) to be, or to represent, the State; or
- (b) to have the rights, privileges or immunities of the State;

as it binds an employer, other than the State.

**(2)** A reference in section 463<sup>212</sup> or 465 to the State does not include a reference to an instrumentality or body mentioned in subsection (1).

**Representation of public sector units**

**467.(1)** A public sector unit, or a person in a public sector unit, who is concerned as an employer in an industrial cause must be represented in an industrial tribunal by—

- (a) the unit's chief executive or an officer or employee of the unit authorised by the chief executive; or
- (b) if allowed under this Act—a lawyer or agent.

**(2)** In this section—

**“industrial tribunal”** means the court, the commission or an Industrial Magistrates Court.

**“public sector unit”** see *Public Service Act 1996*, section 20.

**Industrial cause affecting diverse employees**

**468.(1)** Subsection (2) applies if the Minister decides an industrial cause is one that affects, or is likely to affect, employees in more than 1 public sector unit.

**(2)** The chief executive of the department is taken to be—

- (a) the employer of all employees who are, or are likely to be, affected; and

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<sup>212</sup> Section 463 (Application of Act to State)

- (b) a party to the cause and to a proceeding in the court, the commission or an Industrial Magistrates Court in the cause;

instead of all other persons who, apart from this subsection, would be employers of the employees or any of them.

**(3) An—**

- (a) agreement made by the chief executive as employer; or  
(b) order made in a proceeding to which the chief executive is a party;

binds all persons, and their employees, to whom the agreement or order purports to apply.

## **CHAPTER 13—GENERAL**

### **Employees working in and outside State**

**469.(1)** This section applies if an employer—

- (a) has a workplace, or is present, in Queensland; and  
(b) engages in Queensland an employee whose employment is, with the employer's consent, performed partly in Queensland and partly in another State.

**(2)** An industrial instrument that binds the employer and employee for the employment performed in Queensland also binds them for the employment performed in the other State.

### **Student's work permit**

**470.(1)** A permit may be issued to a student taking part in a tertiary study course to work in a calling for a period.

**(2)** The permit may be issued, with or without conditions, by—

- (a) on the student's application—the registrar; or  
(b) on appeal from the registrar—the commission.

(3) The student must provide satisfactory proof on the application that the period of work in the calling is necessary to complete the course.

(4) The registrar or commission must state in the permit—

- (a) the period of work; and
- (b) the student's wage rate.

(5) When a permit is issued, the registrar must immediately notify the secretary of an employee organisation in the calling of—

- (a) the issue of the permit; and
- (b) the permit's conditions.

(6) This section applies, and a permit has effect, despite an award or certified agreement.

### **Aged or infirm persons permits**

**471.(1)** An application may be made to a magistrate for a permit for an aged or infirm person, alleged to be unable to earn the minimum wage provided for by an industrial instrument that applies to a calling, to work in the calling for less than the minimum wage.

(2) The application may be made by—

- (a) the aged or infirm person; or
- (b) an inspector.

(3) A magistrate may issue the permit, with or without conditions.

(4) On receiving an application, a magistrate must immediately notify the secretary of an employee organisation in the calling of—

- (a) the application; and
- (b) a time (at least 3 days and not more than 7 days from the date of the notice) when the magistrate will hear any objection to the issue of the permit.

(5) At the notified time, or at a time to which the matter is adjourned, the magistrate must hear any objections from the organisation's authorised representative.

(6) An organisation may apply, at any time under the rules of court, to a magistrate to cancel the permit.

(7) This section applies, and a permit has effect, despite an award or certified agreement.

### **Right of entry provisions void**

**472.** A provision of an industrial instrument, EFA, industrial agreement, arrangement (whether written or unwritten) or order that requires or allows an officer or employee of an organisation to do any of the following things is not enforceable—

- (a) enter premises—
  - (i) occupied by an employer who is bound by it; or
  - (ii) where work to which it applies is being carried on;
- (b) inspect any work, material, machinery, appliance, article, document or other thing on the premises;
- (c) interview an employee on the premises.

### **Preference provisions void**

**473.(1)** A provision of an industrial instrument, EFA, industrial agreement or order or an arrangement (whether written or unwritten) that requires or allows preference is not enforceable.

(2) In this section—

“**preference**” means preference within the meaning of section 228 of the repealed Act.

### **Copy of award and certified agreement to be displayed**

**474.(1)** This section applies to a workplace where an award or certified agreement has application.

(2) The employer must attach a copy of the award or agreement, at or near the entrance to the workplace in a position where it is easily read by the employees in the workplace.



Maximum penalty—20 penalty units.

(3) In this section—

“**workplace**” includes a factory, workroom or shop.

### **Incorporation of amendments in reprint of award or certified agreement**

**475.** If an award or certified agreement is amended, the registrar may reprint the award or certified agreement in a form certified as correct by the registrar.

### **Obsolete award or certified agreement**

**476.(1)** The registrar, after the inquiry the registrar considers sufficient, may notify in the industrial gazette an intention to declare a stated award or certified agreement, made or continued in force under this Act, obsolete.

(2) A person may, within the stated time and in the stated way, file an objection notice with the commission.

(3) The commission must hear and decide the objection.

(4) If no objection is filed within the stated time, or all objections filed are dismissed, the registrar may notify in the industrial gazette that the award or certified agreement is obsolete.

(5) The award or certified agreement then stops having effect.

### **Certificate of employment on termination**

**477.(1)** An employer, when asked by a person whose employment with the employer has been terminated, must give the person a certificate, signed by the employer, about the particulars prescribed under a regulation.

Maximum penalty—20 penalty units.

(2) In this section—

“**terminated**” means terminated by the employer or employee.

**False pretences relating to employment**

**478.(1)** A person must not—

- (a) pretend someone else has been employed by the person for a period, or in a capacity, other than that for, or in, which the other person was employed; or
- (b) assert in writing that someone else has been employed by the person for a period, or in a capacity, knowing the assertion to be false; or
- (c) assert in writing another matter relating to the person's employment of someone else, knowing the assertion to be false in a material particular.

Maximum penalty—40 penalty units.

**(2)** A person must not—

- (a) forge a certificate that purports to be a discharge from, or a record of, previous employment; or
- (b) use a document that purports to be a discharge from, or a record of, previous employment, knowing the document is not genuine or is false; or
- (c) pretend, or falsely claim, when seeking employment, to be a person named in a genuine document mentioned in paragraph (b) as a person to whom the document was given; or
- (d) seek to obtain employment by assuming someone else's name, living or dead, with intent to deceive.

Maximum penalty—40 penalty units.

**(3)** If, under a relevant industrial instrument in a calling, an employee's wages depends wholly or partly on the employee's age, experience or duration of previous employment, a person must not give information, or make a statement, about the particulars that the person knows is false—

- (a) when seeking employment in the calling; or
- (b) while an employee in the calling.

Maximum penalty—16 penalty units.

(4) A person's liability to be dealt with for an offence under subsection (1) or (2) does not affect the person's liability to be dealt with under the Criminal Code for forgery or false pretences.

(5) However, the person must not be dealt with under both this Act and the Criminal Code for the same conduct.

### **Protection from liability**

**479.(1)** An official is not civilly liable for an act done, or omission made, honestly and without negligence under this or another Act mentioned in section 376(5).<sup>213</sup>

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) the employment advocate; or
- (d) the Commonwealth employment advocate; or
- (e) the registrar; or
- (f) an officer of the court or commission; or
- (g) an inspector or an officer of the Commonwealth public service exercising the powers and performing the functions of an inspector; or
- (h) a person acting under the direction of an inspector.

### **Payments to financially distressed**

**480.(1)** Subsection (2) applies if a person is—

- (a) suffering hardship because an employer has failed to pay the person the whole or part of wages; and

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<sup>213</sup> Section 376 (Appointment of inspectors)

(b) unlikely to be able to recover by lawful means the whole or a substantial part of the unpaid wages.

(2) The Governor in Council may authorise payment of an amount, not more than the person is unlikely to recover, to the person from the unclaimed moneys fund.

(3) The payment does not relieve the employer from liability to pay the unpaid wages.

(4) If the person later receives remuneration in full or part satisfaction of the employer's liability, the person must immediately pay the department (for payment to the unclaimed moneys fund) an amount equal to the lesser of—

- (a) the value of the remuneration received, as assessed by the Minister; or
- (b) the amount of the payment made to the person and not previously repaid by the person under this subsection.

(5) The amount payable to the department—

- (a) is a debt payable to the department; and
- (b) may be recovered by action in a court of competent jurisdiction.

(6) In this section—

**“remuneration”** means remuneration, in money or kind.

**“unclaimed moneys fund”** means the unclaimed moneys fund kept in the Treasury.

### **Notices and applications to be written**

**481.** If a person must give a notice or make an application under this Act, the notice or application must be written, unless otherwise provided.

### **Inaccurate descriptions**

**482.** No misnomer, inaccurate description or omission in or from a document given under this Act prevents or abridges the operation of this Act in relation to the subject matter of the misnomer, inaccurate description or omission, if the subject matter is sufficiently clear to be understood.

**Confidentiality of information**

**483.** A person must not disclose information acquired when performing functions or exercising powers under this Act to someone else, unless the disclosure is—

- (a) made for this Act when performing a function under this Act; or
- (b) authorised by—
  - (i) the Minister; or
  - (ii) a court order, for hearing and determining a proceeding before the court; or
  - (iii) a regulation; or
- (c) required or permitted by another Act.

Maximum penalty—16 penalty units.

**Application of Act generally**

**484.(1)** If a provision of this Act does not apply to a person or a class of person, a decision is inoperative to the extent that it purports to apply to the person or a member of the class about the provision's subject matter.

**(2)** In its application, this Act does not create a right, privilege or benefit for a person for a period of service as an employee if, for the period, a similar right, privilege or benefit was given to or received by the person under a corresponding provision of the repealed Act.

**Regulation-making power**

**485.(1)** The Governor in Council may make regulations under this Act.

- (2)** A regulation may be made—
- (a) requiring an employer who is a party to a certified agreement or QWA to supply information for statistical purposes; and
  - (b) requiring an employer who is a party to a QWA to supply copies of documents prescribed under the regulation to the employee; and

- (c) about the required form of QWAs or ancillary documents (including a requirement that the document be in the English language); and
  - (d) about the witnessing of signatures on QWAs or ancillary documents; and
  - (e) about the making and retention by employers of records relating to the employment of persons under QWAs, and the inspection of the records; and
  - (f) creating an offence under a regulation; and
  - (g) fixing a penalty for an offence under a regulation (including different penalties for successive offences against a regulation) of not more than 20 penalty units.
- (3) A regulation may exempt a person from a provision of this Act.
- (4) The exemption may be subject to a specified condition.
- (5) If a person's exemption is conditional, the exemption applies only while the person complies with the condition.
- (6) If—
- (a) an exemption applies to a person; and
  - (b) a decision purports to apply to the person for something covered by the exemption;
- the decision is inoperative to that extent.

## **CHAPTER 14—INDUSTRIAL RELATIONS ADVISORY COUNCIL**

### **Establishment of council**

**486.(1)** The industrial relations advisory council (the “**council**”) is to be established.

- (2) The council is to be made up of a maximum of 12 members.

(3) The council consists of—

- (a) employers, or officers or employees of employer organisations; and
- (b) employees, or officers or employees of employee organisations; and
- (c) persons who have knowledge of, or experience in, industrial relations; and
- (d) the chief executive, who is the chairperson.

(4) The members mentioned in subsections (3)(a) to (c) (the “**appointed members**”) are to be appointed by the Minister.

(5) The Minister must appoint an appointed member as the deputy chairperson.

### **Term of office**

**487.(1)** The appointment of a member is for the term (not longer than 3 years) stated in the notice of the member’s appointment.

(2) An appointed member may resign the appointment at any time, by signed notice given to the Minister.

### **Deputies of members**

**488.(1)** This section applies if a member, other than the chairperson, can not perform the functions of the appointment because of absence, illness, or another cause.

(2) The Minister may appoint a person to act as the deputy of the member during the member’s inability.

(3) While a deputy of a member acts, the deputy must perform the functions, may exercise the powers, and has the entitlements, of the member.

### **Remuneration of appointed members**

**489.** An appointed member is entitled to the allowances and reasonable expenses approved by the Minister.

**Functions of council**

**490.(1)** The council's functions are—

- (a) to investigate, and report to the Minister on, a matter about industrial relations—
  - (i) referred to it by the Minister; or
  - (ii) considered by the council to be appropriate to be brought to the Minister's attention; and
- (b) to investigate, and report to the Minister on, a particular industrial matter that has come to its attention; and
- (c) to investigate, and report to the Minister on, other matters that come within the operation of an industrial Act; and
- (d) to review an industrial Act and its operation; and
- (e) to make the recommendations to the Minister it considers appropriate about a matter within the scope of its functions.

**(2)** In performing its functions, the council—

- (a) must consult with—
  - (i) the president on a matter relating to the exercise or performance of the court's jurisdiction, functions and powers; and
  - (ii) the chief commissioner on a matter relating to the exercise or performance of the commission's jurisdiction, functions or powers; and
- (b) may consult with an organisation or other association of persons, or an individual; and
- (c) may confer with the Minister about a matter it is investigating; and
- (d) must consider the attainment of the objects of the industrial Act concerned.

**Conduct of council meetings**

**491.(1)** Meetings of the council are to be—



(a) called by the chairperson; and

(b) held when the chairperson decides, but at least 3 times a year.

(2) The chairperson must preside at all meetings at which the chairperson is present, and in the chairperson's absence, the deputy chairperson must preside.

(3) A quorum of the council consists of 6 members of whom the chairperson or deputy chairperson must be 1.

(4) Business must not be conducted at a meeting unless a quorum is present.

(5) Business before a meeting at which a quorum is present must be decided by majority vote of the members present and entitled to vote.

(6) A member present at a meeting and entitled to vote who refrains from voting on an item of business before the council, other than with the chairperson's leave on the ground of conflict of interests, is taken to have voted in the negative.

(7) If there is an equality of votes on an item of business, the presiding member has a second or casting vote.

(8) Minutes of each meeting are to be recorded in writing, and the original only of the minutes must be produced at, or for, a meeting.

(9) Records of the council are in the chairperson's custody.

## **CHAPTER 15—SAVINGS AND REPEALS**

### **Savings**

**492.(1)** A person prescribed under any Act to be an employee within the meaning of the repealed Act continues to be an employee within the meaning of this Act.

(2) Subsection (3) applies to an award, decision, exemption, judgment, ruling, permit or licence or other act of authority (the "**instrument**") that was—

- (a) made, given, done, granted, certified or approved by the court, the commission, a magistrate or the registrar under the repealed Act, and in relation to which there is a corresponding provision under this Act; and
- (b) in force immediately before the commencement of this Act.

**(3)** The instrument—

- (a) 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
- (b) may be amended, revoked or suspended under this Act.

**(4)** A proceeding started before the commencement of this section under a provision of the repealed Act and pending at the date of the repeal may be carried on and prosecuted as if it had been started under the corresponding provision of this Act.

**(5)** A proceeding is taken to be part heard after the start of the hearing until the decision in the proceeding is given.

### **Regulation and rules to continue**

**493.(1)** The following instruments made under the repealed Act continue in force as if they had been made under this Act—

- (a) the *Industrial Relations Regulation 1990*;
- (b) the *Industrial Court Rules 1990*.

**(2)** The instruments are to be read with the changes necessary to make them consistent with this Act and to adapt their operation to the provisions of this Act.

### **Repeals**

**494.(1)** The following Acts are repealed—

(a) the *Industrial Relations Act 1990*.<sup>214</sup>

(2) A proclamation commencing this section may fix different days or times for the repeal of different provisions of an Act to be repealed under subsection (1).

(3) One or more further proclamations may be made fixing different days or times for the repeal of different provisions of the Act until the Act is entirely repealed.

## CHAPTER 16—TRANSITIONALS

### PART 1—LIMITED CONTINUATION OF CERTAIN CONDITIONS

#### Preservation of certain general conditions in existing instruments

**496.(1)** The repealed Act, sections 221, 222, 230, 233, 235, 236 and 237, continues to apply to an existing award or agreement for 18 months after the commencement of this section.

(2) In this section—

**“existing award or agreement”** means an award, industrial agreement, certified agreement or EFA in force immediately before the commencement of this section and continued in force under this Act.

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<sup>214</sup> Despite the repeal of the *Industrial Relations Act 1990* the following provisions continue in force (commenced 27 March 1997 (see 1997 SL No. 77))—

- (a) part 14, other than sections 387, 475, 477, 479 and 480;
- (b) the other provisions of that Act as far as they related to part 14, other than sections 387, 476, 477, 479 and 480.

## **PART 2—EXISTING AWARDS**

### **Definitions for pt 2**

**497.** In this part—

**“interim period”** means the period of 18 months beginning on the day section 128<sup>215</sup> commences.<sup>216</sup>

**“special consent provision”** means a provision of an award that gives effect to a decision of the commission that is expressed to be made in accordance with 1 or more of the following principles—

- (a) the Enterprise Bargaining Principle adopted in the State Wage Case (1992) 139 QGIG 369;
- (b) the Enterprise Awards and Agreement Principle adopted in the State Wage Case (1994) 145 QGIG 314;
- (c) Principle 2.2 (Consent Award, Industrial Agreement or Award Variation to Give Effect to an Enterprise Agreement) adopted in the State Wage Case (1995) 148 QGIG 320 and incorporated in State Wage Case (1995) 150 QGIG 1116.

### **Exercise of commission’s powers under this part**

**498.** In exercising its powers under this part, the commission must consider the desirability of helping parties to awards to agree on appropriate amendments of their awards, rather than have parts of awards cease to have effect under section 500<sup>217</sup> at the end of the interim period.

### **Amendment of awards during the interim period**

**499.(1)** An award that is in force immediately before the commencement of this section continues to have effect after the commencement.

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<sup>215</sup> Section 128 (Allowable award matters)

<sup>216</sup> “^@^@Interim period” 27 March 1997 to 27 September 1998.

<sup>217</sup> Section 500 (Parts of awards stop having effect at the end of the interim period)

(2) If a party to the award applies to the commission to amend the award, the commission may, during the interim period, amend the award so that it only deals with allowable award matters.

(3) For this section, an exceptional matters order is taken to relate wholly to allowable award matters.

(4) Special consent provisions can not be amended under this section.

(5) The commission may deal with the application by arbitration only if satisfied the applicant has made reasonable attempts to reach agreement with the other parties to the award about how the award should be amended and the treatment of matters that are not allowable award matters.

(6) Subsection (7) applies if—

(a) an award provides for wage rates the commission considers—

(i) are not operating as minimum rates; or

(ii) were made on the basis that they were not intended to operate as minimum rates; and

(b) the application seeks to have the wage rates amended so that they are stated as minimum wage rates.

(7) The commission may amend the award so that it provides for minimum wage rates consistent with—

(a) sections 122 and 123;<sup>218</sup> and

(b) the limitation on the commission's power in section 129.<sup>219</sup>

(8) If the commission amends the award mentioned in subsection (7), it must include provisions that ensure overall entitlements to pay provided by the award are not reduced by the amendment, unless the commission considers it would be in the public interest not to include the provisions.

(9) The commission must, if it considers it appropriate, review an award to decide whether it meets the following criteria—

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<sup>218</sup> Sections 122 (Objects of ch 3) and 123 (Performance of commission's functions under this chapter)

<sup>219</sup> Section 129 (Limitation on commission's powers for awards)

- (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
- (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
- (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees;
- (d) whenever possible, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
- (e) whenever possible, it contains provisions enabling the employment of regular part-time employees;
- (f) it is stated in plain English and is easy to understand in both structure and content;
- (g) it does not contain provisions that are obsolete or need updating;
- (h) whenever possible, it provides support to training arrangements through appropriate wages for apprentices and trainees and a supported wage system for people with disabilities;
- (i) it does not contain discriminatory provisions.

**(10)** If the commission decides the award does not meet the criteria in subsection (9), it may take the steps it considers appropriate to facilitate the amendment of the award so that it meets the criteria.

### **Parts of awards stop having effect at the end of the interim period**

**500.(1)** At the end of the interim period each award stops having effect to the extent that it provides for matters other than allowable award matters.

**(2)** For this section—

- (a) an exceptional matters order is taken to relate wholly to allowable award matters; and

- (b) an award that is made under section 55(4)<sup>220</sup> is taken to relate wholly to allowable award matters.

### **Limited continuation of awards after the interim period**

**501.(1)** This section applies to a person who, immediately before the end of the interim period, was receiving an entitlement under an award that is not an allowable award matter.

(2) Despite section 500, the entitlement is taken to be included in the award and may be enforced as if it were in the award.

(3) This section expires 1 year after the end of the interim period.

### **Amendment of awards after the end of the interim period**

**502.(1)** As soon as practicable after the end of the interim period, the commission must review each award that—

- (a) is in force; and  
(b) the commission considers has been affected by section 500.

(2) The commission must amend the award to remove provisions that have stopped having effect under section 500.

(3) The commission may also amend the award so that, for an allowable award matter, it is stated in a way that reasonably represents employees entitlements for the matter as provided in the award as in force immediately before the end of the interim period.

(4) Subsection (5) applies if, immediately before the end of the interim period, the award provided for wage rates the commission considers were—

- (a) not operating as minimum rates; or  
(b) made on the basis that they were not intended to operate as minimum rates.

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<sup>220</sup> Section 55 (What happens if commission terminates a bargaining period under s 54(3) or (7))

(5) The commission may amend the award so that it provides for minimum wage rates consistent with—

- (a) sections 122 and 123;<sup>221</sup> and
- (b) the limitation on the commission's power in section 129.<sup>222</sup>

(6) If the commission amends the award mentioned in subsection (5), it must include provisions that ensure overall entitlements to pay provided by the award are not reduced by the amendment, unless the commission considers it would be in the public interest not to include the provisions.

(7) The commission must, if it considers it appropriate, review each award mentioned in subsection (1) to decide whether it meets the following criteria—

- (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
- (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
- (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees;
- (d) whenever possible, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
- (e) whenever possible, it contains provisions enabling the employment of regular part-time employees;
- (f) it is stated in plain English and is easy to understand in both structure and content;
- (g) it does not contain provisions that are obsolete or need updating;

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<sup>221</sup> Sections 122 (Objects of ch 3) and 123 (Performance of commission's functions under this chapter)

<sup>222</sup> Section 129 (Limitation on commission's powers for awards)



- (h) whenever possible, it provides support to training arrangements through appropriate wages for apprentices and trainees and a supported wage system for people with disabilities;
- (i) it does not contain discriminatory provisions.

(8) If the commission decides the award does not meet the criteria in subsection (7), it may take the steps it considers appropriate to facilitate the amendment of the award so that it meets the criteria.

### **Matters to be dealt with by full bench**

**503.(1)** A full bench may establish principles about amending awards under this part.

(2) After the principles have been established, the commission's power to amend an award under this part is exercisable only by a full bench, unless the contents of the award—

- (a) give effect to determinations of a full bench under this part; or
- (b) are consistent with principles established by a full bench under this section.

## **PART 3—EXISTING INDUSTRIAL AGREEMENTS**

### **Existing industrial agreement continues**

**504.(1)** An industrial agreement that is in force immediately before the commencement of this section continues to have effect after the commencement.

(2) The provisions of the repealed Act (other than those relating to the making of an industrial agreement) continue to apply to the industrial agreement, subject to this part.

(3) The commission may amend the industrial agreement, before its term expires, in accordance with a written agreement filed by the parties to the industrial agreement in the registrar's office.

(4) However, the term of the industrial agreement can not be extended by agreement.

(5) The industrial agreement may be terminated, before its term expires, by written agreement filed by the parties to the industrial agreement in the registrar's office.

### **Industrial agreement displaced by QWA**

**505.** If a QWA comes into operation in relation to an employee who is bound by the industrial agreement, the industrial agreement stops having effect in relation to the employee.

## **PART 4—EXISTING CERTIFIED AGREEMENTS**

### **New termination provisions for existing certified agreements**

**506.(1)** A certified agreement that is in force immediately before the commencement of this section continues to have effect after the commencement.

(2) Section 38<sup>223</sup> applies to a certified agreement entered into before the commencement of this section if, whether before or after the commencement—

- (a) the period of operation stated in the agreement has ended; or
- (b) if it has been extended or further extended under the repealed Act, section 168—the period as extended or further extended has ended.

### **EFAs that prevail over certified agreements**

**507.(1)** This section applies if—

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<sup>223</sup> Section 38 (Terminating a certified agreement after its nominal expiry date)

- (a) an EFA is continued in force by part 5;<sup>224</sup> and
- (b) any part of the period of operation stated in the agreement (the “**post-commencement EFA period**”), or that period as extended or further extended, happens after the commencement of this section; and
- (c) the EFA is, during the post-commencement EFA period, to any extent inconsistent with a certified agreement, whether made before or after the commencement of this section; and
- (d) the certified agreement was certified after implementation of the EFA was approved.

(2) The EFA prevails over the certified agreement, to the extent of the inconsistency, during the post-commencement EFA period.

### **Certified agreements that prevail over EFAs**

**508.(1)** This section applies if—

- (a) an EFA is continued in force by part 5;<sup>225</sup> and
- (b) a certified agreement, whether made before or after the commencement of this section, is to any extent inconsistent with the EFA; and
- (c) section 507 does not apply to the inconsistency.

(2) The certified agreement prevails over the EFA, to the extent of the inconsistency.

### **Section 55(4) awards and exceptional matters orders prevail over pre and post commencement certified agreements**

**509.** Section 30(2)<sup>226</sup> applies to certified agreements made before or after the commencement of this Act.

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<sup>224</sup> Part 5 (Existing EFAs)

<sup>225</sup> Part 5 (Existing EFAs)

<sup>226</sup> Section 30 (Effect of a certified agreement in relation to awards and other agreements)

## **PART 5—EXISTING EFAS**

### **Existing EFA continues**

**510.(1)** An EFA that is in force immediately before the commencement of this section continues to have effect after the commencement.

**(2)** The provisions of the repealed Act (other than those relating to the making of an EFA) continue to apply to the EFA, subject to this part.

**(3)** However, the period of operation of the EFA can not be extended after the commencement.

### **EFA displaced by QWA**

**511.** If a QWA comes into operation in relation to an employee who is bound by the EFA, the EFA stops having effect in relation to the employee.

### **EFA displaced by certain awards or orders**

**512.** The following prevail over an EFA, to the extent of any inconsistency—

- (a) an exceptional matters order;
- (b) an award made under section 55(4).<sup>227</sup>

## **PART 6—UNFAIR DISMISSALS**

### **Dismissals before commencement of this section**

**513.** The repealed Act, part 12, division 5 continues to apply to a dismissal within the meaning of that division that happened before the commencement of this section.

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<sup>227</sup> Section 55 (What happens if commission terminates a bargaining period under s 54(3) or (7))

## **PART 7—REPRESENTATION RIGHTS OF EMPLOYEE ORGANISATIONS**

### **Applications under the repealed Act, s 45**

**514.** If an application has been made under the repealed Act, section 45—

- (a) that section continues to apply to the hearing; and
- (b) an order made as a result of the hearing has effect as if it had been made under that section before its repeal.

## **PART 8—REFERENCES AND APPOINTMENTS**

### **References to Industrial Relations Act 1990**

**515.** In an Act or document, a reference to the repealed Act may, if the context permits, be taken to be a reference to this Act.

### **Appointments continue**

**516.** A person who immediately before the commencement of this section held an office or appointment under the repealed Act continues to hold the office or appointment, but does so subject to this Act.

**SCHEDULE 1****INTERNATIONAL COVENANT ON ECONOMIC,  
SOCIAL AND CULTURAL RIGHTS**

sch 5

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## SCHEDULE 1 (continued)

**PART II***Article 2*

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

*Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

*Article 4*

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the

## SCHEDULE 1 (continued)

present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

*Article 5*

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III***Article 6*

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational



## SCHEDULE 1 (continued)

guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

*Article 7*

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular—

- (a) Remuneration which provides all workers, as a minimum, with—
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

*Article 8*

1. The States Parties to the present Covenant undertake to ensure—

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and

## SCHEDULE 1 (continued)

social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

*Article 9*

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

## SCHEDULE 1 (continued)

*Article 10*

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

*Article 11*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

## SCHEDULE 1 (continued)

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed—

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

*Article 12*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for—

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

## SCHEDULE 1 (continued)

***Article 13***

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right—

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid

## SCHEDULE 1 (continued)

down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

*Article 14*

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

*Article 15*

1. The States Parties to the present Covenant recognize the right of everyone—

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## SCHEDULE 1 (continued)

**2.** The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

**3.** The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

**4.** The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**SCHEDULE 2****FAMILY RESPONSIBILITIES CONVENTION**

sch 5

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that ‘all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity’, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and



## SCHEDULE 2 (continued)

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are 'aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women', and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

## SCHEDULE 2 (continued)

*Article 1*

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms “**dependent child**” and “**other member of the immediate family who clearly needs care or support**” mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as “**workers with family responsibilities**”.

*Article 2*

This Convention applies to all branches of economic activity and all categories of workers.

*Article 3*

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or

## SCHEDULE 2 (continued)

wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term “**discrimination**” means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

*Article 4*

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken—

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

*Article 5*

All measures compatible with national conditions and possibilities shall further be taken—

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as childcare and family services and facilities.

## SCHEDULE 2 (continued)

*Article 6*

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

*Article 7*

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

*Article 8*

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

*Article 9*

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

## SCHEDULE 2 (continued)

***Article 10***

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions—Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

***Article 11***

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

***Article 12***

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

***Article 13***

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

## SCHEDULE 2 (continued)

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 14*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 15*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall

## SCHEDULE 2 (continued)

draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

***Article 16***

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

***Article 17***

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

***Article 18***

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

## SCHEDULE 2 (continued)

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 19*

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.



**SCHEDULE 3****TERMINATION OF EMPLOYMENT CONVENTION**

sch 5

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the  
International Labour Office, and having met in its Sixty-eighth Session  
on 2 June 1982, and

Noting the existing international standards contained in the Termination  
of Employment Recommendation, 1963, and

Noting that since, the adoption of the Termination of Employment  
Recommendation, 1963, significant developments have occurred in the  
law and practice of many member States on the questions covered by  
that Recommendation, and

Considering that these developments have made it appropriate to adopt  
new international standards on the subject, particularly having regard to  
the serious problems in this field resulting from the economic  
difficulties and technological changes experienced in recent years in  
many countries,

Having decided upon the adoption of certain proposals with regard to  
termination of employment at the initiative of the employer, which is  
the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an  
international Convention;

adopts this twenty-second day of June of the year one thousand nine  
hundred and eighty-two the following Convention, which may be cited as  
the Termination of Employment Convention, 1982:

## SCHEDULE 3 (continued)

**PART I—METHODS OF IMPLEMENTATION,  
SCOPE AND DEFINITIONS***Article 1*

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

*Article 2*

**1.** This Convention applies to all branches of economic activity and to all employed persons.

**2.** A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention—

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

**3.** Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

**4.** In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned,

## SCHEDULE 3 (continued)

where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

*Article 3*

For the purpose of this Convention the terms “**termination**” and “**termination of employment**” mean termination of employment at the initiative of the employer.

## SCHEDULE 3 (continued)

**PART II—STANDARDS OF GENERAL  
APPLICATION***Division A—Justification for termination**Article 4*

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

*Article 5*

The following, inter alia, shall not constitute valid reasons for termination—

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

## SCHEDULE 3 (continued)

*Article 6*

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

*Division B—Procedure prior to or at the time of termination**Article 7*

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

*Division C—Procedure of appeal against termination**Article 8*

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

## SCHEDULE 3 (continued)

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

*Article 9*

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities—

- (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
- (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

## SCHEDULE 3 (continued)

***Article 10***

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

***Division D—Period of notice******Article 11***

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

***Division E—Severance allowance and other income protection******Article 12***

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to—
  - (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

## SCHEDULE 3 (continued)

- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

**PART III—SUPPLEMENTARY PROVISIONS  
CONCERNING TERMINATIONS OF EMPLOYMENT  
FOR ECONOMIC, TECHNOLOGICAL,  
STRUCTURAL OR SIMILAR REASONS**

*Division A—Consultation of workers' representatives*

*Article 13*

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall—
- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations



## SCHEDULE 3 (continued)

contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term **“the workers' representatives concerned”** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

*Division B—Notification to the competent authority**Article 14*

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

## SCHEDULE 3 (continued)

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

**PART IV—FINAL PROVISIONS***Article 15*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 16*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

## SCHEDULE 3 (continued)

***Article 17***

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

***Article 18***

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

***Article 19***

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full

## SCHEDULE 3 (continued)

particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

***Article 20***

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

***Article 21***

**1.** Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

**2.** This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

## SCHEDULE 3 (continued)

***Article 22***

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.

**SCHEDULE 5****DICTIONARY**

section 5

**“additional approval requirements”**, for chapter 2, part 2, see section 68.

**“administer”**, for chapter 7, part 6, see section 331.

**“agreement”**, for chapter 2, part 3, see section 115.

**“allowable award matter”** see section 128.

**“amendment agreement”**, for chapter 2, part 2, see section 68.

**“ancillary document”**, for chapter 2, part 2, see section 68.

**“Anti-Discrimination Conventions”** means—

- (a) the Equal Remuneration Convention; and
- (b) the Convention of the Elimination of all Forms of Discrimination against Women; and
- (c) the Discrimination (Employment and Occupation) Convention; and
- (d) articles 3 and 7 of the International Covenant on Economic, Social and Cultural Rights (the English text of which is in schedule 1).

**“apprentice”** see *Vocational Education, Training and Employment Act 1991*, section 4.

**“apprenticeship”**, for chapter 2, part 3, see section 115.

**“appropriately qualified”**, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

A person’s classification level in the public service.

**“approval notice”**, for chapter 2, part 2, see section 68.

## SCHEDULE 5 (continued)

**“approved apprenticeship”**, for chapter 2, part 3, see section 115.

**“approved superannuation fund”** means a complying superannuation fund—

- (a) nominated in an industrial instrument; or
- (b) agreed between an employer and employee under section 432.

**“approved traineeship”**, for chapter 2, part 3, see section 115.

**“approving authority”**, for chapter 2, part 3, see section 115.

**“assistant registrar”** see section 315.

**“attempt to commit an offence”** see Criminal Code, section 4.

**“Australian commission”** means the Australian Industrial Relations Commission.

**“award”**—

- (a) generally—
  - (i) means—
    - (A) an award made under chapter 3 or continued in force under this Act; or
    - (B) an award as amended under the chapter; and
  - (ii) for a person bound by an exceptional matters order—includes the exceptional matters order; and
- (b) for chapter 2, part 3—see also section 115.

**“bargaining agent”**, for chapter 2, part 2, see section 68.

**“business hours”** of an employer means the hours of operation of the employer’s business.

**“calling”** means—

- (a) a craft, manufacture, occupation, trade, undertaking or vocation; or
- (b) a section of something mentioned in paragraph (a).

## SCHEDULE 5 (continued)

**“certified agreement”** means—

- (a) an agreement certified under chapter 2, part 1 or continued in force under this Act; or
- (b) a certified agreement as amended under the part.

**“certified copy”**, for chapter 2, part 2, see section 68.

**“chief commissioner”** see section 270.

**“commission”** see section 269.<sup>228</sup>

**“commissioner”** see section 270.

**“Commonwealth Act”** means the *Workplace Relations Act 1996* (Cwlth).

**“Commonwealth award”** means an award made under the Commonwealth Act.

**“Commonwealth employment advocate”** means the employment advocate, or an authorised officer, under the Commonwealth Act.

**“complying superannuation fund”** see *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**“continuous service”**—

- (a) for chapter 4, part 3, see section 160; and
- (b) for chapter 4, part 4, see section 190.

**“court”** see section 252.

**“decision”**—

- (a) means a decision of the court, the commission, a magistrate or the registrar; and
- (b) includes—
  - (i) an award, declaration, determination, direction, judgment, order or ruling; and

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<sup>228</sup> As to whether or not a reference to the commission includes a reference to the commission constituted by an enterprise commissioner, see section 288(2).



## SCHEDULE 5 (continued)

- (ii) an agreement approved, certified, or amended by the commission and an extension of the agreement.

**“demarcation dispute”** includes—

- (a) a dispute arising between 2 or more organisations, or within an organisation, about the rights, status or functions of members of the organisations or organisation in relation to the employment of the members; or
- (b) a dispute arising between employers and employees, or between members of different 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 employee organisation.

**“designated award”**, for chapter 2, part 3, see section 115.

**“discrimination”** means discrimination—

- (a) that would contravene the *Anti-Discrimination Act 1991*; or
- (b) on the basis of family responsibilities.

**“Discrimination (Employment and Occupation) Convention”** means the Discrimination (Employment and Occupation) Convention 1958.

**“dismiss”**, for chapter 5, part 5, see section 232.

**“dual commissioner”** see section 320.

**“eligible association”** means an association that is eligible to be, but is not, registered as an organisation under the *Industrial Organisations Act 1997*.

**“eligible employee”** means an employee who, under a relevant industrial instrument, is an eligible employee for entitlement to occupational superannuation benefits.

**“eligible rollover fund”** see *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**“employee”**—

- (a) generally—see section 7; and

## SCHEDULE 5 (continued)

(b) for chapter 2, part 2—see also section 68; and

(c) for chapter 4, part 3—see also section 160.

**“employee organisation”** see *Industrial Organisations Act 1997*.

**“employer”**—

(a) generally—see section 8; and

(b) for chapter 2, part 2—see also section 68; and

(c) for chapter 9, part 2, division 2—see also section 404.

**“employer organisation”** see *Industrial Organisations Act 1997*.

**“EFA”** means an enterprise flexibility agreement continued in force under this Act.

**“Equal Remuneration Convention”** means the Equal Remuneration Convention 1951.

**“equal remuneration for work of equal value”**, for chapter 4, part 2, see section 150.

**“exceptional matters order”** means an order of the commission under section 130.

**“exercising”**, for chapter 7, part 6, see section 331.

**“existing employee”**, for chapter 2, part 2, see section 68.

**“extension agreement”**, for chapter 2, part 2, see section 68.

**“Family Responsibilities Convention”** means the Workers with Family Responsibilities Convention 1981 (the English text of which is in schedule 2).

**“file”**, for chapter 2, part 2, see section 68.

**“filing receipt”**, for chapter 2, part 2, see section 68.

**“filing requirements”**, for chapter 2, part 2, see section 68.

**“full bench”** means a full bench of the commission.

**“industrial Act”** means—

(a) this Act; or

## SCHEDULE 5 (continued)

(b) the *Industrial Organisations Act 1997*.

**“industrial action”** means a lockout or strike.

**“industrial agreement”** means an industrial agreement under the repealed Act continued in force under this Act.

**“industrial authority”**—

(a) for chapter 4, part 4—see section 190; and

(b) otherwise—means a commission, court, board, tribunal or other entity having authority under the law of the Commonwealth or another State to exercise powers of conciliation or arbitration for industrial matters or industrial disputes.

**“industrial cause”** includes an industrial matter and industrial dispute.

**“industrial commission”** see section 269.

**“industrial court”** see section 252.

**“industrial dispute”** means—

(a) a dispute, including a threatened, pending or probable dispute, about an industrial matter; or

(b) a situation that is likely to give rise to a dispute about an industrial matter.

**“industrial instrument”** means an award, certified agreement or QWA.

**“industrial matter”** see section 9.

**“industrial magistrate”** see section 308.

**“industrial registrar”** see section 315.

**“industrial relations commission”** see section 269.

**“initial day”**, for chapter 2, part 3, see section 115.

**“injured employee”**, for chapter 5, part 5, see section 232.

**“injury”**, for chapter 5, part 5, see section 232.

**“inspector”** means a person who holds an appointment as an inspector under section 376.

## SCHEDULE 5 (continued)

**“invalid reason”**, for a dismissal, see section 217(b).

**“joint session”** means a proceeding in which a commissioner sits with a member of an industrial authority.

**“law”**, for chapter 4, part 3, see section 160.

**“lockout”** means an employer’s action in closing a workplace, or suspending or discontinuing the employer’s business, or any branch of it, or an employer’s failure to continue to employ a number of employees, with intent—

- (a) to compel or induce employees to agree to employment conditions or to comply with demands made on them by the employer, or another employer, contrary to this Act; or
- (b) to cause loss or inconvenience to employees; or
- (c) to incite, instigate, aid, abet or procure another lockout; or
- (d) to help another employer to compel or induce employees to agree to employment conditions or comply with demands made by the other employer.

**“long paternity leave”**, for chapter 4, part 3, see section 160.

**“magistrate”** see section 308.

**“management committee”** see *Industrial Organisation Act 1997*.

**“maternity leave”**, for chapter 4, part 3, see section 160.

**“medical certificate”**, for chapter 4, part 3, see section 160.

**“member”** of the commission means—

- (a) a commissioner; or
- (b) an enterprise commissioner.

**“multiple-business agreement”** see section 13.

**“negotiating party”** see section 40.

**“new employee”**, for chapter 2, part 2, see section 68.

**“no-disadvantage test”** see chapter 2, part 3.

## SCHEDULE 5 (continued)

**“nominal expiry date”**—

- (a) of a certified agreement—see section 14; and
- (b) of a QWA—see section 68.

**“obstruct”** includes assault, hinder, intimidate, resist or threaten.

**“officer”** of the court or commission, see sections 315(4) and 349(4).

**“officer”** of an organisation, or branch of an organisation, see *Industrial Organisations Act 1997*.

**“organisation”** see *Industrial Organisations Act 1997*.

**“owner”**, for chapter 4, part 4, see section 190.

**“parental leave”**, for chapter 4, part 3, see section 160.

**“part 3 long paternity leave”**, for chapter 4, part 3, see section 160.

**“part 3 maternity leave”**, for chapter 4, part 3, see section 160.

**“part 3 short paternity leave”**, for chapter 4, part 3, see section 160.

**“paternity leave”**, for chapter 4, part 3, see section 160.

**“party”**—

- (a) for an industrial instrument or permit—includes a person bound by the instrument or permit; or
- (b) for chapter 2, part 2—see section 68.

**“pay”** an employee includes pay, with the employee’s written consent, on account of the employee.

**“penalty provision”**—

- (a) for chapter 2, part 1, division 9—see section 62; and
- (b) for chapter 2, part 2, division 7—see section 96.

**“period of operation”**, for chapter 2, part 2, see section 68.

**“permit”** means—

- (a) a students permit; or
- (b) an aged or infirm persons permit.

## SCHEDULE 5 (continued)

**“person dissatisfied”** with a decision in a proceeding means—

- (a) a party to the proceeding; or
- (b) a person bound by the decision; or
- (c) if an inspector started the proceeding—any inspector.

**“place”** means—

- (a) any land, building, structure, vehicle, vessel or aircraft; or
- (b) part of anything mentioned in paragraph (a).

**“president”** see section 253.

**“QWA”** means a Queensland workplace agreement under chapter 2, part 2.

**“QWA date”**, for chapter 2, part 2, see section 68.

**“QWA industrial action”**, for chapter 2, part 2, division 8, see section 100.

**“records”** means any document containing data.

**“reduced wages”** means wages at a rate less than that provided for under a relevant industrial instrument or permit.

**“refusal notice”**, for chapter 2, part 2, see section 68.

**“registrar”** see section 315.

**“relevant award”**, for chapter 2, part 3, see section 115.

**“relevant or designated award”**, for chapter 2, part 2, see section 68.

**“regular part-time employee”** means an employee who—

- (a) works less than full-time ordinary hours; and
- (b) has reasonably predictable hours of work; and
- (c) is entitled to receive, on a proportionate basis, equivalent wages and employment conditions to those specified in an award for full-time employees who do the same type of work.

**“repealed Act”** means the *Industrial Relations Act 1990*.

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

## SCHEDULE 5 (continued)

**“short paternity leave”**, for chapter 4, part 3, see section 160.

**“single business”** see section 12.

**“spouse”** of an employee includes—

- (a) a former spouse; and
- (b) a person of the opposite sex to the employee who lives with the employee in a marriage-like relationship, although not legally married to the employee.

**“strike”**—

- (a) means the conduct of 2 or more employees who are, or have been, employed by the same employer, or different employers, consisting in—
  - (i) a wilful failure to perform work required of them under their employment contracts; or
  - (ii) a performance of work in a way in which it is not customarily performed; or
  - (iii) the adoption of a practice or strategy resulting in a restriction, limitation or delay in the performance of work or a restriction or limitation of the product of work; or
  - (iv) a ban, restriction or limitation on the performance of work or on acceptance or offering for work; or
  - (v) a wilful failure of the employees to attend for work that is not allowed by the employer; or
  - (vi) a wilful failure to perform any work at all by employees who attend for work that is not allowed by the employer;that is because of a combination, agreement or understanding (expressed or implied) entered into by the employees or any of them and that has a purpose—
  - (vii) to compel or induce an employer to agree to employment conditions, or to employ, or cease to employ, a person or class of person, or to comply with demands made by the employees or any of them or by any other employees; or

## SCHEDULE 5 (continued)

- (viii) to cause loss or inconvenience to an employer in the conduct of business; or
  - (ix) to incite, instigate, aid, abet or procure another strike; or
  - (x) to help employees in the employment of another employer to compel or induce the employer to agree to employment conditions or to employ, or cease to employ, a person or class of person or to comply with demands made by any employees; and
- (b) includes conduct capable of constituting a strike even though the conduct relates to part only of the functions the employees must perform in their employment; but
- (c) does not include action by an employee if—
- (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
  - (ii) the employee did not unreasonably contravene a direction of his or her employer to perform other available work (whether at the same or another workplace) that was safe and appropriate for the employee to perform.

**“take”** a statutory declaration, for chapter 7, part 6, see section 331.

**“termination agreement”**, for chapter 2, part 2, see section 68.

**“Termination of Employment Convention”** means the Termination of Employment Convention 1982 (the English text of which is in schedule 3).

**“termination notice”**, for chapter 2, part 2, see section 68.

**“trainee”** see *Vocational Education, Training and Employment Act 1991*, section 4.

**“transfer”** of a calling includes the transmission, assurance, conveyance, assignment and succession of the calling (either by operation of law or by agreement and either before or after the commencement of this Act).

**“wage rate”** includes pay rate and prices for work.



## SCHEDULE 5 (continued)

**“wages”**—

- (a) means an amount payable to an employee for—
  - (i) work performed, or to be performed, by the employee; or
  - (ii) a public holiday; or
  - (iii) leave the employee is entitled to; or
  - (iv) termination of employment; and
- (b) includes—
  - (i) an amount payable from wages for the employee, with the employee’s written consent; and
  - (ii) a salary.

**“working day”**, for chapter 2, part 2, see section 16.

**“young employee”** means a person under 21 years engaged in a calling (other than an apprentice or a person subject to the *Vocational Education, Training and Employment Act 1991*) who receives a lower wage rate than that fixed by an industrial instrument for employees 21 years or over in the calling.

## ENDNOTES

### 1 Index to endnotes

2	Date to which endnotes incorporated . . . . .	392
3	Key . . . . .	392
4	List of legislation . . . . .	393
5	List of annotations . . . . .	393

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Workplace Relations Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## **4 List of legislation**

### **Workplace Relations Act 1997 No. 1**

date of assent 14 February 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 27 March 1997 (1997 SL No. 77)

## **5 List of annotations**

### **Commencement**

**s 2** amd R1 (see RA s 37)

### **CHAPTER 15—SAVINGS AND REPEALS**

**ch hdg** amd R1 (see RA s 7(1)(k))

### **Repeals**

**s 494** amd R1 (see RA s 40)

### **Amended Acts—sch 4**

**s 495** om R1 (see RA s 40)

### **Limited continuation of awards after the interim period**

**s 501** exp 27 September 1999 (see ss 497 and 501(3))

### **SCHEDULE 4—AMENDED ACTS**

om R1 (see RA s 40)