

SECOND PRINT

INDUSTRIAL RELATIONS BILL 1990

Schedule of the Amendments referred to in Legislative Council's
Message of 23 October 1990

No. 1 Page 3, clause 3. Insert after the eleventh object:

- * to encourage the organisation of representative bodies of employers and employees and their registration under this Act; and

No. 2 Page 3, clause 4. From subclause (1), omit the definition of "Court".

No. 3 Page 4, clause 4. From subclause (1), omit the definition of "employee", insert instead:

"employee" means a person employed in any industry, whether on salary or wages or piece-work rates, or as a member of a butty-gang, and includes an apprentice and a trainee, and any person who is, pursuant to any provision of this Act, taken to be an employee for the purposes of this Act, but does not include a member of a family employed by a parent. The fact that a person is working under a contract for labour only, or substantially for labour only, or as lessee of any tools or other implements of production, or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller or insurance agent or in any other capacity in which the person is paid wholly or partly by commission, does not in itself prevent the person being taken to be an employee;

No. 4 Page 4, clause 4. From subclause (1), omit the definition of "enterprise association".

No. 5 Pages 4-5, clause 4. From subclause (1), omit the definition of "industrial action", insert instead:

"industrial action" means:

- (a) conduct in breach of an order or award; or
- (b) refusal to comply with reasonable and lawful directions of an employer; or
- (c) a lock-out or (without limiting the scope of that term) a closing of a place of employment, or a suspension of work, or a refusal by an employer to employ any number of employees with a view to compelling those employees, or to aid another employer to accept, a

condition of employment, unless it is an action by employees that has been authorised or agreed to by their employer or is an action by an employer that has been authorised or agreed to by the relevant industrial union representing employees of the employer;

No. 6 Page 7, clause 4. In subclause (1), in alphabetical order, insert:

"new matter", in relation to an award or agreement, means an industrial matter:

- (a) that was not determined by the award or agreement; or
- (b) that the Full Commission considers to be of such significance and urgency that it would be contrary to the public interest for the matter not to be dealt with by a variation of the award or agreement or by conciliation or arbitration; or
- (c) that the Full Commission considers to be associated with special and isolated circumstances; or
- (d) that was not the subject of conciliation or arbitration by the Commission in connection with the making of the award or agreement;

No. 7 Page 7, clause 4. In subclause (1), from the definition of "State employee organisation", omit "or enterprise association".

No. 8 Page 10, clause 9. Omit subclause 9 (1), insert instead:

(1) Nothing in this Act in any way alters any provisions of the Public Sector Management Act 1988 or of any regulations under that Act:

- (a) prescribing or authorising a person to prescribe the passing of an examination or other test as a necessary condition for promotion of an officer or employee, not being an apprentice, to a higher class, grade or division; or
- (b) providing that payment of increments of salary to an officer, not being an apprentice, as distinguished from adjustments of basic wages, is to be subject to the giving of a certificate by a person that the conduct of the officer and the discharge of the officer's duties warrant an increase of salary.

(2) In the event of the person refusing to give such a certificate, the officer is to be supplied with a written statement showing the reason why the certificate was refused.

No. 9 Page 15, clause 17. Omit subclause (8).

- No. 10 Page 15, clause 17. From subclause (9), omit "(9) Except as provided by subsection (8), this", insert instead "(8)This".
- No. 11 Page 17, clause 24. From subclause (1), omit "27 degrees Celsius", insert instead "26.75 degrees Celsius Wet Bulb".
- No. 12 Page 18, clause 25. In subclause (2), after "agreement", insert "ordinary".
- No. 13 Page 20, clause 30. Omit "or enterprise".
- No. 14 Page 22, clause 36. After "allowed" in paragraph (b), insert "if so provided for by an agreement or award".
- No. 15 Page 22, clause 37. Omit subclause (2).
- No. 16 Page 22, clause 37. Insert after subclause (1):

(2) Nothing in this Part provides a defence to an employer or exempts any person from any liability in any action or other proceedings brought against the employer by any person, whether an employee or not, for the recovery of compensation for injuries or recovery of wages or for any other purposes.

- No. 17 Page 23, clause 38. After clause 37, insert:

Overtime rates

38. Rates of pay for hours worked as overtime or in excess of ordinary working hours in any industry in respect of which overtime or work in excess of ordinary working hours is not prohibited by or under this Part must not be fixed by an award or agreement at less than the rates which were paid in the industry immediately before the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947 either under award or agreement or by well-established practice in the industry.

- No. 18 Pages 23-30, Division 4 of Part 2 (clauses 38-56). Omit the Division, insert instead:

Division 4 - Parental leave

Subdivision 1 - Operation of Division 4

Operation of Division 4

38. (1) Subject only to the provisions of this Division, employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(2) The provision by this Division of a penalty for the contravention of a provision of this Division does not operate to prejudice or affect any right or remedy in respect of such a contravention that an employee would have if such a penalty were not so provided.

Employer to inform employee of requirements

39. (1) On becoming aware that an employee is pregnant, the employee's employer must inform the employee of:

- (a) her entitlements under Subdivision 2; and
- (b) her responsibility to notify the employer of those matters in respect of which Subdivision 2 requires the employee to notify the employer.

(2) On becoming aware that an employee's spouse is pregnant, the employee's employer must inform the employee of:

- (a) his entitlements under Subdivision 3; and
- (b) his responsibility to notify the employer of those matters in respect of which Subdivision 3 requires the employee to notify the employer.

(3) On becoming aware that a child has been placed with an employee for adoption purposes, the employee's employer must inform the employee of:

- (a) his or her entitlements under Subdivision 4; and
- (b) his or her responsibility to notify the employer of those matters in respect of which Subdivision 4 requires the employee to notify the employer.

(4) An employer is not entitled to rely on an employee's failure to produce a certificate or give a notice as required by this Division unless the employer establishes that this section has been complied with in relation to the employee.

Subdivision 2 - Maternity leave

Nature of leave

40. Maternity leave is unpaid leave.

Definitions

41. For the purposes of this Subdivision:

"child" means a child of the employee under the age of one year;

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by an award or agreement;

"employee" includes a part-time employee but does not include an employee engaged in casual or seasonal work;

"paternity leave" means leave of the type provided for by Subdivision 3, whether prescribed by an award or otherwise;

"spouse" includes a de facto spouse.

Eligibility for maternity leave

42. (1) An employee who becomes pregnant, on production to her employer of the certificate required by section 44, is entitled to a period of up to 52 weeks' maternity leave, provided that such leave does not extend beyond the child's first birthday. This entitlement is to be reduced by any period of paternity leave taken by the employee's spouse and, apart from paternity leave of up to one week at the time of confinement, is not to be taken concurrently with paternity leave.

(2) Subject to sections 46 and 49, the period of maternity leave is to be unbroken and must, immediately following confinement, include a period of 6 weeks compulsory leave.

(3) An employee must have had at least 12 months' continuous service with the employee's employer immediately preceding the date on which she commences such leave.

Certification

43. (1) When applying for maternity leave, an employee must produce to her employer a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.

(2) An employee must also produce to her employer a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that, for the period of maternity leave, she will not engage in any conduct inconsistent with her contract of employment.

Notice requirements

44. (1) An employee must, not less than 10 weeks before the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(2) An employee must give not less than 4 weeks notice in writing to her employer of the date on which she proposes to commence maternity leave stating the period of leave to be taken.

(3) An employer, by not less than 14 days notice in writing to the employee, may require her to commence maternity leave at any time within the 6 weeks immediately prior to her presumed date of confinement.

(4) An employee is not in breach of this section as a consequence of failure to give the stipulated period of notice in accordance with subsection (2) if such failure is occasioned by the confinement occurring earlier than the presumed date.

Transfer to a safe job

45. (1) If, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee must, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

(2) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of sections 50-54.

(3) An employer who does not comply with any obligation imposed on the employer by this section is guilty of an offence.

Maximum penalty (subsection (3)): 20 penalty units.

Variation of period of maternity leave

46. (1) Provided the maximum period of maternity leave does not exceed the period to which an employee is entitled under section 43:

- (a) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and
- (b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of maternity leave may, with the consent of her employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of maternity leave

47. (1) Maternity leave, applied for but not commenced, is cancelled when the pregnancy of an employee terminates otherwise than by the birth of a living child.

(2) If the pregnancy of an employee then on maternity leave terminates otherwise than by the birth of a living child, it is the right of the employee to resume work at a time nominated by her employer which must not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

Special maternity leave and sick leave

48. (1) If the pregnancy of an employee not then on maternity leave terminates after 28 weeks otherwise than by the birth of a living child, then:

- (a) she is entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies to be necessary before her return to work; or
- (b) for illness other than the normal consequences of confinement she is to be entitled, either instead of or in addition to special maternity leave, to such paid sick leave as she is then entitled to and as a registered medical practitioner certifies to be necessary before her return to work.

(2) If an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as she is then entitled to and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies to be necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave does not exceed the period to which the employee is entitled under section 43.

(3) For the purposes of sections 50-54, maternity leave includes special maternity leave.

(4) An employee returning to work after the completion of a period of leave taken pursuant to this section is entitled to the position which she held immediately before commencing such leave or, in the case of an employee who was transferred to a safe job pursuant to section 46, to the position she held immediately before such transfer.

(5) If such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she is entitled to a position as nearly as possible comparable in status and pay as that of her former position.

(6) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subsection (6)): 20 penalty units.

Maternity leave and other leave entitlements

49. (1) Provided that the aggregate of any leave, including leave taken under this Subdivision, does not exceed the period to which the employee is entitled under section 43, an employee may, instead of or in conjunction with maternity leave, take any annual leave or long service leave or any part of it to which she is entitled.

(2) Paid sick leave or other paid absences authorised by an award or agreement (excluding annual leave or long service leave) are not available to an employee during her absence on maternity leave.

Effect of maternity leave on employment

50. Subject to this Subdivision, despite any award or other provision to the contrary, absence on maternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

51. (1) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with any relevant award or agreement.

(2) An employer must not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Subdivision.

Maximum penalty (subsection (2)): 20 penalty units.

Return to work after maternity leave

52. (1) An employee must confirm her intention of returning to work by notice in writing to the employer given not less than 4 weeks before the expiration of her period of maternity leave.

(2) An employee, on returning to work after maternity leave or expiration of the notice required by subsection (1), is entitled:

- (a) to the position which she held immediately before commencing maternity leave; or
- (b) in the case of an employee who was transferred to a safe job pursuant to section 46, to the position which she held immediately before the transfer; or
- (c) in the case of an employee who has worked part-time during the pregnancy, to the position she held immediately before commencing the part-time work.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position as nearly as possible comparable in status and pay to that of her former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

Replacement employees

53. (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this Subdivision, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Nothing in this Subdivision is to be construed as requiring an employer to engage a replacement employee.

Subdivision 3 - Paternity leave

Nature of leave

54. Paternity leave is unpaid leave.

Definitions

55. For the purposes of this Subdivision:

"child" means a child of the employee's spouse under the age of one year;

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by an award or agreement;

"employee" includes a part-time employee, but does not include an employee engaged in casual or seasonal work;

"maternity leave" means leave of the type provided for by Subdivision 2 (and includes special maternity leave) whether prescribed by an award, or agreement or otherwise;

"primary care-giver" means a person who assumes the principal role of providing care and attention to a child;

"spouse" includes a de facto spouse.

Eligibility for paternity leave

56. (1) A male employee, upon production to his employer of the certificate required by section 58, is entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, in the following circumstances:

- (a) an unbroken period of up to one week at the time of confinement of his spouse;
- (b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child if the leave does not extend beyond the child's first birthday. This entitlement is to be reduced by any period of maternity leave taken by the employee's spouse and is not to be taken concurrently with that maternity leave.

(2) An employee must have had at least 12 months' continuous service with the employee's employer immediately preceding the date on which he commences either period of leave.

Certification

57. (1) When applying for paternity leave, the employee must produce to his employer a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place.

(2) In relation to any period to be taken under section 57 (1) (b), the employee must also produce a statutory declaration stating:

- (a) that he is seeking that period of paternity leave to become the primary care-giver of a child; and
- (b) particulars of any period of maternity leave sought or taken by his spouse; and
- (c) that, for the period of paternity leave, he will not engage in any conduct inconsistent with his contract of employment.

Notice requirements

58. (1) An employee must, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certification required by section 58.

(2) An employee is not in breach of this section as a consequence of failure to give the notice required in subsection (1) if the failure is due to:

- (a) the birth occurring earlier than the expected date; or
- (b) the death of the mother of the child; or
- (c) other compelling circumstances.

(3) The employee must immediately notify his employer of any change in the information provided pursuant to section 58.

Variation of period of paternity leave

59. (1) Provided that the maximum period of paternity leave does not exceed the period to which the employee is entitled under section 57:

- (a) the period of paternity leave provided by section 57 (1) (b) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened; and
- (b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of paternity leave taken under section 57 (1) (b) may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

Cancellation of paternity leave

60. Paternity leave, applied for under section 57 (1) (b) but not commenced, is cancelled when the pregnancy of the employee's spouse terminates otherwise than by the birth of a living child.

Paternity leave and other leave entitlements

61. (1) Provided the aggregate of any leave, including leave taken under this Subdivision, does not exceed the period to which the employee is entitled under section 57, an employee may, instead of or in conjunction with paternity leave, take any annual leave or long service leave or any part of it to which he is entitled.

(2) Paid sick leave or other paid absences authorised by an award or agreement (excluding annual leave or long service leave) is not available to an employee during his absence on paternity leave.

Effect of paternity leave on employment

62. Subject to this Subdivision, despite any award, agreement or other provision to the contrary, absence on paternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

63. (1) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with any relevant award or agreement.

(2) An employer must not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Subdivision.

Maximum penalty (subsection (2)): 20 penalty units.

Return to work after paternity leave

64. (1) An employee must confirm his intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of the period of paternity leave provided by section 57 (1) (b).

(2) An employee, on returning to work after paternity leave or expiration of the notice required by subsection (1):

- (a) is entitled to the position which he held immediately before proceeding on paternity leave; or

(b) in the case of an employee who has worked part-time under this Division, to the position he held immediately before commencing the part-time work.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he is entitled to a position as nearly as possible comparable in status and pay to that of his former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

Replacement employees

65. (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this Subdivision, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Nothing in this Subdivision is to be construed as requiring an employer to engage a replacement employee.

Subdivision 4 - Adoption leave

Nature of leave

66. Adoption leave is unpaid leave.

Definitions

67. For the purposes of this Subdivision:

"child" means a person under the age of 5 years who has not previously lived continuously with the employee concerned for a period of 6 months, or who is not a child or step-child of the employee or of the spouse of the employee, and is placed with the employee for the purposes of adoption;

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by any relevant award or agreement;

"employee" includes a part-time employee, but not an employee engaged upon casual or seasonal work;

"primary care-giver" means a person who assumes the principal role of providing care and attention to a child;

"relative adoption" occurs where a child is adopted by a parent, a spouse of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage);

"spouse" includes a de facto spouse.

Eligibility

68. (1) An employee, upon production to the employer of the documentation required by section 70, is entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks, in the following circumstances:

- (a) an unbroken period of up to 3 weeks at the time of the placement of the child;
- (b) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This entitlement is to be reduced by:
 - (i) any period of leave taken pursuant to paragraph (a); and
 - (ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse,

but such leave is not to extend beyond one year after the placement of the child and is not to be taken concurrently with adoption leave taken by the employee's spouse.

(2) The employee must have had at least 12 months continuous service with that employer immediately preceding the date on which he or she proceeds upon such leave in either case.

Certification

69. (1) Before taking adoption leave, the employee must produce to the employer:

- (a) a statement from an adoption agency or another appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
- (b) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(2) In relation to any period to be taken under section 69 (1) (b), a statutory declaration stating:

- (a) that the employee is seeking adoption leave to become the primary care-giver of the child; and
- (b) particulars of any period of adoption leave sought or taken by the employee's spouse; and
- (c) that, for the period of adoption leave, the employee will not engage in any conduct inconsistent with his or her contract of employment.

Notice requirements

70. (1) On receiving notice of approval for adoption purposes, an employee must notify the employer of the approval and within 2 months of the approval must further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption, the employee must so notify the employer on deciding to take a child into custody pending an application for an adoption order.

(2) An employee who commences employment with an employer after the date of approval for adoption purposes must notify the employer of that date on commencing employment and of the period or periods of adoption leave which the employee proposes to take. Such an employee is not entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date on which he or she proceeds on the leave.

(3) An employee must, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before the placement, give notice in writing to the employer of that date, and of the date of commencement of any period of leave to be taken under section 69 (1) (a).

(4) An employee must, 10 weeks before the proposed date of commencing any leave to be taken under section 69 (1) (b) give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(5) An employee is not in breach of this Subdivision, as a consequence of failure to give the stipulated period of notice in accordance with subsections (3) and (4) if the failure is occasioned by the requirement of an adoption agency for the employee to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

Variation of period of adoption leave

71. (1) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under section 69:

- (a) the period of leave taken under section 69 (1) (b) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened; and
- (b) the period may be further lengthened by agreement between the employer and employee.

(2) The period of adoption leave taken under section 69 (1) (b) may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

Cancellation of adoption leave

72. (1) Adoption leave, applied for but not commenced, is cancelled should the placement of the child not proceed.

(2) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee must notify the employer forthwith and the employer must nominate a time not exceeding 4 weeks from receipt of notification for the employee's resumption of work.

Special leave

73. (1) The employer must grant to any employee who is seeking to adopt a child such unpaid leave not exceeding 2 days as is required by the employee to attend such compulsory interviews or examinations as are necessary as part of the adoption procedure.

(2) Where paid leave is available to the employee, the employer may require the employee to take such leave instead of special leave.

Adoption leave and other entitlements

74. (1) Provided the aggregate of any leave, including adoption leave taken under this Subdivision, does not exceed the period to which the employee is entitled under section 69, an employee may, instead of or in conjunction with adoption leave, take any annual leave or long service leave or any part of it to which he or she is entitled.

(2) Paid sick leave or other paid absences authorised by an award or agreement (excluding annual leave or long service leave), are not available to an employee during the employee's absence on adoption leave.

Effect of adoption leave on employment

75. Subject to this Subdivision, despite any award, agreement or other provision to the contrary, absence on adoption leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

76. (1) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Subdivision.

(2) An employer must not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Subdivision.

Maximum penalty (subsection (2)): 20 penalty units.

Return to work after adoption leave

77. (1) An employee must confirm the intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of the period of adoption leave provided by section 69 (1) (b).

(2) An employee, on returning to work after adoption leave, is entitled to:

- (a) the position held immediately before proceeding on such leave; or
- (b) in the case of an employee who has worked part-time under this Subdivision, the position held immediately before commencing such part-time work.

(3) Where such a position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as possible comparable in status and pay to that of the employee's former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this clause is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

Replacement employees

78. (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this Subdivision, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Nothing in this Subdivision is to be construed as requiring an employer to engage a replacement employee.

Subdivision 5 - Part-time work

Definitions

79. For the purposes of this Subdivision:

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by any relevant award or agreement;

"female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes;

"former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this Subdivision, whichever first occurs, or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly as possible comparable in status and pay to that of the position first mentioned in this definition;

"male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes;

"spouse" includes a de facto spouse.

Entitlement

80. With the agreement of the employer:

- (a) a male employee may work part-time in one or more periods at any time from the date of birth of the child until its fifth birthday or, in the case of an adoption, from the date of the placement of the child until its fifth birthday or the second anniversary of the placement (whichever occurs later); and
- (b) a female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable; and

- (c) a female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its fifth birthday; and
- (d) in the case of an adoption, a female employee may work part-time in one or more periods at any time from the date of the placement of the child until its fifth birthday or the second anniversary of the placement (whichever occurs later).

Return to former position

81. (1) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(2) Nothing in subsection (1) prevents the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(3) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subclause (3)): 20 penalty units.

Pro rata entitlements

82. Subject to the provisions of this Subdivision and the matters agreed to in accordance with section 84, part-time employment is to be in accordance with the provisions of this Subdivision which are to apply pro rata.

Part-time work agreement

83. (1) Before commencing a period of part-time employment under this Subdivision, the employee and the employer must agree:

- (a) that the employee may work part-time; and
- (b) on the hours to be worked by the employee, the days on which they will be worked and commencing times for the work; and
- (c) on the classification applying to the work to be performed; and
- (d) on the period of part-time employment.

(2) The terms of the agreement may be varied by consent.

(3) The terms of the agreement or any variation to it are to be reduced to writing and retained by the employer. A copy of the agreement and any variation to it must be provided to the employee by the employer.

(4) The terms of the agreement apply to the part-time employment.

Termination of employment

84. The employment of a part-time employee under this Division may be terminated in accordance with the provisions of this Subdivision but must not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this Division or has enjoyed or proposes to enjoy any benefits arising under this Division.

Maximum penalty: 20 penalty units.

Overtime

85. An employer may request, but not require, an employee working part-time under this Subdivision to work overtime.

Nature of part-time work

86. The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work otherwise performed under any relevant award or agreement.

Inconsistent award provisions

87. An employee may work part-time under this Subdivision despite any other provision of any relevant award or agreement which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked, including provisions:

- (a) limiting the number of employees who may work part-time; or
- (b) establishing quotas as to the ratio of part-time to full-time employees; or
- (c) prescribing a minimum or maximum number of hours a part-time employee may work,

and such provisions do not apply to part-time work under this Subdivision.

Replacement employees

88. (1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this Subdivision.

(2) A replacement employee may be employed part-time. Subject to this section, sections 83, 84, 85 and 88 apply to the part-time employment of a replacement employee.

(3) Before an employer engages a replacement employee under this Subdivision, the employer must inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Unbroken service as a replacement employee is to be treated as continuous service for the purposes of this Subdivision.

No. 19 Page 54, Part 2, Division 5, Subdivision 5. After clause 70, insert:

Subdivision 5 - Superannuation

Orders concerning superannuation contributions to a particular fund

71. (1) Without derogating from the general powers of the Commission in relation to superannuation, if an industrial matter relates to an allegation that an employer has been, or is, making contribution on behalf of eligible employees to an occupational superannuation scheme or fund at a level required by any relevant award or industrial agreement but the scheme or fund is not required by the relevant award or agreement to be used for that purpose, the Commission:

- (a) on its own initiative; or
- (b) on the application of a State registered organisation, the employee concerned or the Crown,

may determine to which occupational superannuation scheme or fund the employer should have been, or should be, making such contribution to comply with the relevant award or agreement and may order the employer to make such contribution accordingly.

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

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

- No. 20 Page 58, clause 78. In subclause (1) (a), after "benefits that", insert ", when aggregated,".
- No. 21 Page 58, clause 78. From subclause (1), omit ", or that it is in the interests of the employees concerned and their employer and not contrary to the public interest that the exemption should be granted".
- No. 22 Page 59. After clause 80, insert:

Crown employees

81. (1) The Commission, in making an award for employees of the Crown, must have regard to (but is not obliged to adopt) the conditions of employment awarded to other employees doing substantially the same class of work.

(2) The Commission is not to award any rates of wages or other payments or any other conditions of employment for employees of the Crown less favourable to those employees than those awarded by a corresponding award to other employees doing substantially the same kind of work, unless the Commission finds that there is sufficient reason to do so.

(3) For the purposes of this section, the fact that employees of the Crown may be permanently employed or are allowed additional privileges is not by itself to be regarded as a significant difference.

- No. 23 Page 60, clause 81. After subclause (3), insert:

(4) Awards are:

- (a) to be expressed in clear terms, avoiding any unnecessary technicalities; and
- (b) to comply with such other requirements relating to form as may be made by the regulations.

- No. 24 Page 60, clause 81. In subclause (4) (b), after "Commission", insert ", because of the urgency or other exceptional circumstances of the case,".

No. 25 Page 60, clause 81. After subclause (4) insert:

(5) When the Registrar receives minutes of an award as a consequence of a request made by the Commission, the Registrar may alter the wording or form of the minutes for the purpose of ensuring that the requirements made for awards by this section and the regulations may be complied with.

(6) If the Registrar alters the minutes, the Registrar must provide each of the parties concerned with a copy of the minutes in their altered form and take into account any submission made promptly by any of those parties about the alteration.

No. 26 Page 60, clause 81. From subclause (5), omit "sign minutes of the award and".

No. 27 Page 61, clause 82. From subclause (1), omit "commenced", insert instead "enforced".

No. 28 Page 61, clause 83. In subclause (4), after "12 months", insert "or more than 3 years specified in it as its nominal term".

No. 29 Page 62, clause 85. Omit the clause, insert instead:

Variation of awards

85. (1) The Commission may, without the consent of the parties to the making of an award, make an award varying the initial award during its nominal term, but only if the variation:

- (a) is necessary to avoid a substantial risk of death or personal injury; or
- (b) relates to an industrial matter that is a new matter in relation to the initial award; or
- (c) relates to a matter affecting the members of a State employer organisation or an industrial union that could have been a party to the making of the award but the Commission is satisfied was not such a party because of a failure to give notice to the organisation or union; or
- (d) is, in the opinion of the Commission, appropriate because of exceptional circumstances.

(2) Nothing in this section limits the powers of the Commission to vary an award once its nominal term has expired.

No. 30 Page 62, clause 86. From subclause (1), omit "for the purpose of its being replaced by another award (whether or not a new award) or by an agreement".

- No. 31 Page 63, clause 88. In subclause (2), after "the agreement", insert ", provided that the Commission has inserted in the award or order a provision exempting the parties to the agreement from the provisions of the award or order".
- No. 32 Page 63, clause 88. Omit subclause (3).
- No. 33 Page 65, clause 92. In subclause (5), after "12 months", insert "or more than 3 years specified in it as its normal term".
- No. 34 Page 65, clause 94. After subclause (2) (a), insert:
- (b) that the agreement was not entered into under duress; and
- No. 35 Page 65, clause 94. At the end of subclause (2) (b), insert:
- ; and
- (c) that the agreement is in the interests of the parties immediately concerned.
- No. 36 Page 65, clause 94. Omit subclause (3), insert instead:
- (3) If the Commission is of the opinion that the industrial agreement is in the interests of the parties immediately concerned, the Commission must, subject this section, approve the agreement for registration unless it is of the opinion that it would be contrary to the public interest for the industrial agreement to be registered.
- (4) Registration of the industrial agreement is not contrary to the public interest merely because the agreement is inconsistent with general Full Commission principles.
- (5) Despite subsection (8), if, in the opinion of the President, the agreement is inconsistent with general Full Commission principles, the functions of the Commission under this section are exercisable only by the Full Commission.
- No. 37 Page 66, clause 94. At the end of the clause, insert:
- (9) In this section "general Full Commission principles" means principles established by the Full Commission that apply in relation to the determination of wages and conditions of employment, other than principles that apply in relation to registration of agreements under this section.
- No. 38 Page 66, clause 96. Omit "conditions of employment specified in Schedule 3", insert instead "the minimum conditions of employment applicable to enterprise agreements initially determined by the Full Commission".
- No. 39 Page 67, clause 96. Omit "regulations", insert instead "orders".

- No. 40 Page 67, clause 98. In subclause (2), after "the enterprise agreement", insert ", provided that the Commission has inserted in the award, industrial agreement or order a provision exempting the parties to the enterprise agreement from the provisions of the award, industrial agreement or order".
- No. 41 Page 67, clause 99. Omit paragraph (a).
- No. 42 Page 67, clause 99. Omit paragraph (b), insert instead:
- (b) one industrial union that represents persons employed in the enterprise or represents persons intending to be employed in the enterprise.
- No. 43 Page 67, clause 99. At the end of the clause insert:
- (2) If persons employed or intending to be employed in an enterprise are represented by more than one industrial union, the only industrial union that is eligible to make an enterprise agreement with the enterprise employer is the industrial union selected by agreement of all of those industrial unions.
- No. 44 Page 69, clause 102. From subclause (3), omit "or all other parties".
- No. 45 Page 70, clause 104. From subclause (3), omit "guidelines" wherever occurring, insert instead "principles".
- No. 46 Page 70, clause 104. After subclause (3), insert:
- (4) The Commission may obtain and take into account the views of any State peak organisation as to whether or not an enterprise agreement is contrary to the public interest.
- No. 47 Page 71, clause 106. From subclause (1), omit "set out in Schedule 3", insert instead "those initially determined by the Full Commission".
- No. 48 Page 71, clause 106. From subclause (1), omit "regulations", insert instead "orders".
- No. 49 Page 71, clause 107. Omit "section 106", insert instead "section 141".
- No. 50 Page 71, clause 108. Omit subclause (1), insert instead:
- (1) The Commission is required, at yearly intervals after the commencement of this section, to review the adequacy or otherwise of all minimum conditions of employment of the kinds referred to in Schedule 3 and all other minimum conditions referred to in Schedule 3 applicable for the time being to full-time adult employees.
- No. 51 Page 72, clause 108. Omit subclauses (2)-(5).

No. 52 Page 72, clause 108. After subclause (1), insert:

(2) On completion of the review as required by subsection (1), the Commission may make a general order or award setting new and higher minimum wages of the kinds referred to in Schedule 3.

No. 53 Page 72, clause 108. From subclause (6), omit "For the purpose of reviewing the percentage fixed for the time being for a casual employee and referred to in item (4) of Schedule 3," insert instead "If the minimum conditions of employment include a guaranteed average hourly rate of pay for casual employees (being employees not entitled to annual leave or sick leave) as a percentage of a guaranteed average hourly rate of pay for a part-time employee, then (when reviewing that percentage)".

No. 54 Page 72, clause 108. From subclause (6), omit "Minister is required to recommend the making of a regulation", insert instead "Commission is required to make a general order or award".

No. 55 Page 73, clause 108. From subclause (6), omit "by or under this Subdivision", insert instead "as a minimum condition of employment".

No. 56 Page 73, clause 108. From subclause (7), omit "regulation made on the recommendation of the Minister", insert instead "general order or award made by the Commission".

No. 57 Page 73, clause 108. From subclause (7), omit "by item (2), (3), (5) or (6) of", insert instead "of a kind specified in".

No. 58 Page 73, clause 108. From subclause (8), omit "regulation recommended by the Minister", insert instead "general order or award made by the Commission".

No. 59 Page 73, clause 109. Omit subclause (2), insert instead:

(2) The first review required by this Subdivision is to be conducted in 1991.

No. 60 Page 73, clause 110. Omit the clause.

No. 61 Page 75, clause 114. From the definition of "contract of carriage", omit "section 116", insert instead "section 150".

No. 62 Page 75, clause 114. From the definition of "principal contractor", omit "section 116 (4)" wherever occurring, insert instead "section 150 (4)".

No. 63 Page 79, clause 118. Omit "Court" wherever occurring, insert instead "Commission".

No. 64 Page 80, clause 120. From subclause (1), omit "section 119", insert instead "section 153".

- No. 65 Page 80, clause 121. Omit "section 119" wherever occurring, insert instead "section 153".
- No. 66 Page 82, clause 123. From subclause (4), omit "section 117", insert instead "section 151".
- No. 67 Page 91, clause 138. From subclause (3), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 68 Page 91, clause 138. From subclause (3), omit " , in accordance with the rules of the Industrial Court, to the Industrial Court", insert instead "to the Commission".
- No. 69 Page 92, clause 138. From subclause (5), omit "Local Court or Industrial Court", insert instead "Industrial Magistrate or Commission".
- No. 70 Page 91, clause 138. After subclause (6), insert:
- (7) Where, in any proceedings under this section, the Industrial Magistrate or Commission finds that the employer has committed an offence under section 198 or 204, the Industrial Magistrate or Commission may, in addition to making any order under this section, impose a penalty which might have been imposed in proceedings for an offence under section 198 or 204.
- (8) Where the employer is a company and the company is wound-up prior to an order being made under subsection (3), the person may apply for orders under subsection (3) against a person who was a director of the company or who took part in the management of the company at the time the obligation under this section arose.
- (9) An order under subsection (3) against an employer which is a company may provide that, should the company have insufficient funds to comply with the order within a period of time determined by the Industrial Magistrate or Commission, some or all of the directors or persons who took part in the management of the company are personally liable for any amount outstanding under the order.
- No. 71 Page 92, clause 139. From subclause (1), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 72 Page 92, clause 139. From subclause (1), omit " , in accordance with the rules of the Industrial Court, to the Industrial Court", insert instead "to the Commission".
- No. 73 Pages 92-93, clause 139. From subclauses (2) and (3), omit "Local Court or Industrial Court" wherever occurring, insert instead "Industrial Magistrate or Commission".

- No. 74 Page 93, clause 139. From subclause (3) (b), omit "section 138", insert instead "section 172".
- No. 75 Page 93, clause 139. From subclause (4), omit "in a Local Court or the Industrial Court", insert instead "before an Industrial Magistrate or the Commission".
- No. 76 Page 93, clause 139. From subclause (4), omit "section 138", insert instead "section 172".
- No. 77 Page 93, clause 140. From subclause (1), omit "section 138 (1)" wherever occurring, insert instead "section 172".
- No. 78 Page 93, clause 140. From subclause (1), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 79 Page 93, clause 140. From subclause (1), omit " , in accordance with the rules of the Industrial Court, to the Industrial Court", insert instead "to the Commission".
- No. 80 Page 94, clause 140. From subclause (3), omit "a Local Court or the Industrial Court may make such order as it", insert instead "an Industrial Magistrate or the Commission may make such order as the Industrial Magistrate or the Commission".
- No. 81 Page 94, clause 140. From subclause (4), omit "section 138", insert instead "section 172".
- No. 82 Page 94, clause 141. From subclause (2), omit "20 penalty units", insert instead "50 penalty units".
- No. 83 Page 95, clause 143. From subclause (3), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 84 Pages 95-96, clause 143. From subclauses (3)-(5), omit " , in accordance with the rules of the Industrial Court, to the Industrial Court" wherever occurring, insert instead "to the Commission".
- No. 85 Page 95, clause 143. From subclause (4), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 86 Pages 95-96, clause 143. From subclause (5), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 87 Page 96, clause 143. From subclause (8), omit "a Local Court or the Industrial Court may make such order as the Court concerned", insert instead "an Industrial Magistrate or the Commission may make such order as the Industrial Magistrate or the Commission".

- No. 88 Page 96, clause 144. Omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 89 Page 96, clause 144. Omit "the Local Court", insert instead "a Local Court".
- No. 90 Page 96, clause 146. From subclause (1), omit "a Local Court or", insert instead "an Industrial Magistrate".
- No. 91 Page 96, clause 146. From subclause (1), omit "Industrial Court", insert instead "Commission".
- No. 92 Page 96, clause 146. From subclause (2), omit "the Court", insert instead "the Commission".
- No. 93 Page 97, clause 146. From subclause (2), omit "Local Court or", insert instead "Industrial Magistrate".
- No. 94 Page 97, clause 148. Omit subclause (1), insert instead:
- (1) The secretary or (with the authority of the State registered organisation) another officer of a State employee organisation or State employer organisation concerned in the industry to which the proceedings relate may take or otherwise be a party to any proceedings under this Subdivision, but only with the written consent of the person otherwise entitled to take or to be a party to the proceedings.
- No. 95 Page 98, clause 149. From subclause (3), omit "Court" wherever occurring, insert instead "Industrial Magistrate".
- No. 96 Page 100, clause 152. From subclause (2), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 97 Pages 100-101, clause 152. From subclauses (3)-(6), omit "A Local Court" wherever occurring, insert instead "An Industrial Magistrate".
- No. 98 Pages 100-101, clause 152. From subclauses (4)-(6), omit "the Court", wherever occurring, insert instead "the Industrial Magistrate".
- No. 99 Pages 100-101, clause 152. From subclauses (4) and (5), omit "the Local Court" wherever occurring, insert instead "the Industrial Magistrate".
- No. 100 Page 101, clause 152. From subclause (7), omit "Industrial Court" wherever occurring, insert instead "Commission".
- No. 101 Page 101, clause 152. From subclause (7), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 102 Page 101, clause 153. From subclause (1), omit "section 152", insert instead "section 186".

- No. 103 Page 101, clause 153. From subclause (1), omit "in a Local Court", insert instead "before an Industrial Magistrate".
- No. 104 Pages 101-102, clause 153. Omit "the Local Court" wherever occurring, insert instead "the Industrial Magistrate".
- No. 105 Pages 102, clause 153. From subclauses (3)-(5), omit "A Local Court" and "a Local Court" wherever occurring, insert instead "An Industrial Magistrate" and "an Industrial Magistrate", respectively.
- No. 106 Page 102, clause 153. After subclause (5), insert:
- (6) Despite anything else in this section, a person is entitled to be represented by an employee or officer of a State registered organisation.
- No. 107 Page 103, clause 155. In subclause (2) (c), after "credit union" insert "nominated by the employee".
- No. 108 Page 103, clause 155. Omit subclause (3), insert instead:
- (3) A payment is made with appropriate authority if the employer applies in writing to the Registrar for, and the Registrar issues to the employer, a certificate permitting the manner of payment.
- (4) The terms and conditions applying to the issuing of such certificates may be prescribed by the regulations.
- No. 109 Page 103, clause 155. In subclause (4), after "or by other means", insert ", subject to the employee's consent and the payment being made with appropriate authority under subsection (3)".
- No. 110 Page 104, clause 156. Omit subclause (2), insert instead:
- (2) If the employee at any time gives the employer written notice of withdrawal of such an authority, the employer must give effect to the notice as soon as is practicable.
- No. 111 Page 104, clause 158. In subclause (2), after "premises of the employer", insert ", except where such residence is essential to the duties the employee is required to perform".
- No. 112 Page 105, clause 162. After clause 161, insert:

Unauthorised deductions prohibited

162. Without limiting the generality of this Subdivision, an employer must not unilaterally deduct any amounts from an employee's wages in relation to alleged overpayments, breakages or damage to goods or plant at work, or shortfalls in cash.

Maximum penalty: 50 penalty units.

No. 113 Page 106, clause 163. From subclause (1), omit "50 penalty units", insert instead:

- (a) in the case of a corporation - 100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the breach continues; or
- (b) in any other case - 10 penalty units and an additional penalty of 1 penalty unit for each succeeding day during which the breach continues.

No. 114 Page 106, clause 163. From subclauses (2) and (4), omit "Industrial Court" wherever occurring, insert instead "Commission".

No. 115 Page 107, clause 163. After subclause (5), insert:

(6) In this section, "award" includes orders made under this Act other than an order made under this section, section 177 or 404 or any section prescribed by the regulations, but does not include any order under any section of this Act for the contravention of which a penalty is expressly provided by this Act.

No. 116 Page 107, clause 164. From subclause (1), omit "section 163", insert instead "section 198".

No. 117 Pages 107, clause 164. From subclauses (1) and (3), omit "Industrial Court" wherever occurring, insert instead "Commission".

No. 118 Page 107, clause 164. From subclause (1), omit "the Court", insert instead "the Commission".

No. 119 Page 107, clause 164. From subclause (2), omit "50 penalty units", insert instead:

- (a) in the case of a corporation - 100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the breach continues; or
- (b) in any other case - 10 penalty units and an additional penalty of 1 penalty unit for each succeeding day during which the breach continues.

- No. 120 Page 107, clause 165. From subclause (1), omit "of a State employee organisation", insert instead "or, with the written consent of the secretary, another officer of a State employee organisation or State employer organisation".
- No. 121 Page 108, clause 165. In subclause (4), after "Local Court", insert "or Commission".
- No. 122 Page 108, clause 165. In subclause (5), after "employee", insert "or employer".
- No. 123 Page 109, clause 167. Omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 124 Page 110, clause 168. From subclause (4), omit "20", insert instead "50".
- No. 125 Pages 110-111, clause 169. Omit "20" wherever occurring, insert instead "50".
- No. 126 Page 110, clause 169. In subclause (1), after "penalty units", insert "or, if the offence consisted of a wilful act or omission of an employer and was committed with the intention to deceive or defraud any person, 200 penalty units".
- No. 127 Page 110, clause 169. After subclause (1), insert:
- (2) An employer must ensure that false entries are not wilfully made, with the intention to deceive or defraud any person, in the records required to be kept under subsection (1).
- Maximum penalty: 200 penalty units.
- No. 128 Page 111, clause 169. From subclause (3), omit "subsection (1) or (2)", insert instead "subsection (1), (2) or (3)".
- No. 129 Page 112, clause 170. In subclauses (1) and (2), after "Local Court", wherever occurring, insert "or Commission".
- No. 130 Page 112, clause 171. In subclause (1) (c), omit "representing such an employer", insert instead ", if members of the organisation are bound by the award or agreement".
- No. 131 Page 114, clause 174. Omit subclause (2).
- No. 132 Page 114, clause 174. After subclause (1), insert:
- (2) If a member of the Commission has attempted mediation in relation to a question, dispute or difficulty, arbitration powers in relation to the question, dispute or difficulty are to be exercised by a different member if a party to the arbitration proceedings so requires.

No. 133 Page 114, clause 176. Omit "not determined by the award", insert instead "a new matter in relation to the award".

No. 134 Page 114, clause 177. Omit subclauses (1)-(3), insert instead:

(1) For the purposes of this Division, an industrial matter is a new matter only if the Commission has certified that it is a new matter.

(2) This Division applies to industrial action concerning an industrial matter for which provision is made in an award or agreement the nominal term of which has not expired.

(3) This Division does not apply to industrial action concerning an industrial matter that is a new matter in relation to an award or agreement, except as provided by subsection (4).

(4) Even though industrial action concerns an industrial matter that is a new matter in relation to an award or agreement, this Division applies to the industrial action if:

- (a) it is in contravention of an award or agreement that is in force; or
- (b) it is in contravention of an order of the Commission; or
- (c) it can reasonably be attributed to the alleged or actual unfair dismissal of an employee.

No. 135 Pages 115-116, clause 178. From subclauses (1) and (4), omit "Court" wherever occurring, insert instead "Commission".

No. 136 Page 116, clause 178. From subclause (3) (b), omit "other person", insert instead "employer".

No. 137 Page 116, clause 178. After subclause (4), insert:

(5) Despite any other provision of this Part, no injunction or other penalty is to be granted or imposed in relation to industrial action unless the Full Commission has certified that:

- (a) the processes of conciliation and arbitration in relation to the causes of the industrial action have been attempted and that no reasonable purpose would be served either by continuing to attempt to conciliate or by arbitration; and
- (b) the persons against whom the injunction would be directed or on whom the other penalty would be imposed are in substantial breach of directions, orders or awards made by the Commission.

(6) In subsection (5), a reference to a penalty does not include a reference to a penalty for a criminal offence that might be imposed if the act or omission giving rise to the offence had occurred in such circumstances as did not constitute industrial action.

No. 138 Page 116, clause 179. From subclause (1), omit "section 178", insert instead "section 213".

No. 139 Pages 116-117, clause 179. From subclauses (1)-(3), omit "Court" wherever occurring, insert instead "Commission".

No. 140 Page 117, clause 179. In subclause (4) (a), before "corporation", insert "State registered organisation or any other".

No. 141 Page 117, clause 179. From subclause (4), omit "1,000 penalty units", "100 penalty units" wherever occurring, and "10 penalty units", insert instead "100 penalty units", "10 penalty units" and "1 penalty unit", respectively.

No. 142 Page 118, clause 180. From subclause (1), omit "section 179" wherever occurring, insert instead "section 214".

No. 143 Page 118, clause 180. From subclause (1), omit "Court" wherever occurring, insert instead "Commission".

No. 144 Page 118, clause 181. Omit ":", "(a)" and "; or".

No. 145 Page 119, clause 181. Omit paragraph (b).

No. 146 Page 119, clause 181. Omit "section 182", insert instead "section 217".

No. 147 Page 119, clause 182. Omit "section 181", insert instead "section 216".

No. 148 Page 120, clause 183. Omit subclause (2), insert instead:

(2) For the purposes of subsection (1), industrial action is unlawful, in any case, if it is based on a demarcation dispute in respect of which the Commission may make an order under section 257, 258 or 259.

No. 149 Page 120, clause 183. From subclause (3) (a), omit "State employee organisation or an employer", insert instead "State registered organisation or any other corporation".

No. 150 Page 120, clause 183. From subclause (3), omit "1,000 penalty units", "100 penalty units" wherever occurring, and "10 penalty units", insert instead "100 penalty units", "10 penalty units" and "1 penalty unit", respectively.

No. 151 Page 121, clause 185. Omit ", except as provided by section 183 (2)".

No. 152 Page 121, clause 186. Omit subclause (1) (a), insert instead:

- (a) a President and a Vice-President; and

No. 153 Page 121, clause 186. After subclause (1), insert:

(2) The Minister may not recommend a person for appointment as a member of the Commission (other than as a Conciliation Commissioner) unless the person:

- (a) is a Judge of the Supreme Court or of the Land and Environment Court; or
- (b) is a barrister of not less than 5 years' standing or a solicitor of not less than 7 years' standing; or
- (c) is a barrister or a solicitor of less than 5 years' or 7 years' standing, respectively, where at all times during a continuous period of not less than 7 years the person was on the roll of solicitors when not on the roll of barristers; or
- (d) is, in the opinion of the Governor, because of qualifications, experience and standing in the community, a fit and proper person to discharge the duties of a member of the Commission and:
 - (i) has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government; or
 - (ii) has, not less than 5 years previously, obtained a degree of a university or an educational qualification of a similar standard, after studies in the field of law, economics or industrial relations or some other field of study considered by the Governor to have substantial relevance to the duties of a member of the Commission.

No. 154 Page 122, clause 186. From subclause (2), omit "member of the Commission", insert instead "Conciliation Commissioner".

No. 155 Page 122, clause 186. After subclause (2), insert:

(3) A person is qualified to be appointed as President or Vice-President only if the person possesses (or, immediately before appointment as a Presidential Member, possessed) a qualification specified in subsection (2) (a), (b) and (c).

No. 156 Page 122, clause 186. After subclause (3) (a), insert:

(b) the Vice-President;

No. 157 Page 123, clause 186. In subclause (4), omit "an additional Deputy President", insert instead "additional Deputy Presidents".

No. 158 Page 123, clause 186. From subclause (7), omit "Deputy President", insert instead "Deputy Presidents and Vice-President".

No. 159 Page 123, clause 186. After subclause (7), insert:

(8) A person who was appointed as a member of the Commission because the person possessed a qualification referred to in subsection (2) (a), (b) and (c) is referred to in this Act as a judicial member of the Commission.

No. 160 Page 123, clause 187. Omit subclause (1), insert instead:

(1) The Vice-President is Acting President during the absence of the President or during any vacancy in the office of President.

(2) If the President and the Vice-President are or are to be absent from duty or there is a vacancy in the office of President during an absence of the Vice-President, the next senior Deputy President available is Acting President during the absences or during the vacancy in the office.

No. 161 Page 128, clause 196. In subclause (2), after "person", insert "nominated as prescribed by the regulations".

No. 162 Page 129, clause 200. After subclause (8), insert:

(9) In any proceedings, the Commission may exercise judicial or arbitral powers and may, at any time, attempt to resolve the matter before it by conciliation.

(10) For all purposes in or in connection with the exercise of any judicial power, the Commission is to be taken to be a superior court of record.

No. 163 Page 131, clause 205. Omit subclause (2), insert instead:

(2) The Full Commission consists of not fewer than 3 persons chosen by the President in accordance with the following:

(a) each person must be a member of the Commission;

(b) at least one person must be a judicial member of the Commission;

(c) none of the persons needs to be a Conciliation Commissioner, but only one of the persons may be a Conciliation Commissioner.

No. 164 Page 132, clause 206. After subclause (2) (a), insert:

- (b) if the President is not sitting but the Vice-President is sitting - the opinion of the Vice President; or

No. 165 Page 132, clause 206. From clause 206 (2) (b) and (c), omit "if the President is" wherever occurring, insert instead "if the President and Vice-President are".

No. 166 Page 133, clause 207. From subclause (3), omit "section 204", insert instead "section 239".

No. 167 Page 134, clause 209. From subclause (3), omit "clause 5 of Schedule 4", insert instead "clause 6 of Schedule 4".

No. 168 Page 134, clause 211. Omit "a Deputy President", insert instead "another Presidential Member".

No. 169 Page 136, clause 215. From subclause (5), omit "Court", insert instead "Full Commission".

No. 170 Page 136, clause 215. Omit subclause (7), insert instead:

(7) If an appeal under subsection (5) is upheld, the decision on the appeal has effect as an order of the Commission or an assessment of the Registrar instead of the order or assessment the subject of the appeal.

(8) If an appeal under subsection (6) is upheld, the decision on the appeal is to be carried into effect by the Registrar.

No. 171 Page 137, clause 218. At the end of subclause (2) (c), insert:

; and

- (d) any appeal from any order, award, decision, ruling or contract determination of a member of the Commission:

- (i) if a question of jurisdiction is involved; or

- (ii) if the Full Commission grants leave to appeal to the appellant on the ground that the matter raised by the appeal is of such importance that an appeal should lie; and

- (e) any matter the Commission is empowered to determine by any Act other than this Act, the Annual Holidays Act 1944, the Long Service Leave Act 1955 or the Long Service Leave (Metalliferous Mining Industry) Act 1963; and

- (f) any appeal from an Industrial Magistrate if a member of the Commission considers the appeal should be removed to the Full Commission; and
- (g) any proceedings relating to a lock-out; and
- (h) any question concerning the cancellation of the registration of an industrial union or an association of contract drivers or of contract carriers; and
- (i) any appeal from decisions of the Registrar, other than concerning the settlement of minutes of orders, awards, rulings, decisions or contract determinations of a member of the Commission.

No. 172 Page 137. After clause 218, insert:

Individual access to the Commission

219. (1) An individual employee may refer any industrial matter to the Commission and, if the President considers that it is in the public interest that the matter should be dealt with by the Commission, the Commission may exercise such of its functions as are appropriate to deal with the matter.

(2) The Registrar must give notice to the Labor Council of New South Wales, the employer and such State registered organisations as appear to the Registrar to be interested in or to be likely to be affected by the Commission's dealing with any industrial matter referred under this section.

(3) The persons to whom notice is required to be given may apply to the Commission to appear before it when the industrial matter is dealt with.

(4) This section applies to the initiation of any proceedings by an individual despite any other provisions of this Act.

No. 173 Page 140, clause 223. After subclause (2) (b), insert:

; and

- (c) rationalising coverage of State employee organisations within an industry,

No. 174 Pages 140-141, clause 223. From subclause (3) (a), omit "or the Court".

No. 175 Page 141, clause 223. At the end of subclause (3) (b), insert:

; and

- (c) must ensure that all State registered organisations with an interest in the proceedings are notified of the application and are given an opportunity to be heard; and
- (d) must take account of established industrial coverage by State registered organisations, the award structure in the particular industry and the views of employers and industrial unions in the industry as a whole.

No. 176 Page 141, clause 223. After subclause (8), insert:

(9) The functions of the Commission in relation to demarcation orders are exercisable only by a Presidential Member or the Full Commission.

No. 177 Page 142, clause 225. From subclause (1) (d), omit "section 129", insert instead "section 163".

No. 178 Page 143, clause 227. Omit the clause.

No. 179 Page 144, clause 229. From subclause (2), omit "an industrial union", insert instead "a State registered organisation".

No. 180 Page 144, clause 229. From subclause (5) (a), omit "industrial union", insert instead "State registered organisation".

No. 181 Page 145, clause 229. In subclause (6), after "concerned", insert ", irrespective of whether or not industrial action is taking place".

No. 182 Page 145. After clause 229, insert:

Ancillary orders in compulsory conferences

230. (1) A person summoned to attend a compulsory conference under section 264 may, at any time during the conference, make an application orally or in writing to the Conciliation Committee or Tribunal before which the conference is being held for an order:

- (a) under Division 9 of Part 2; or
- (b) under section 13 of the Annual Holidays Act 1944; or
- (c) under section 12 of the Long Service Leave Act 1955; or
- (d) under section 12 of the Long Service Leave (Metalliferous Mining Industry) Act 1963,

in respect of a matter arising out of or related to the question, dispute or difficulty the subject of the conference.

(2) The application is to be dealt with in accordance with the provisions of section 186 as if:

- (a) the applicant had elected to have the application dealt with in accordance with the provisions of that section; and
- (b) a reference in that section to an Industrial Magistrate included a reference to the Conciliation Committee or Tribunal before which the compulsory conference is being held.

(3) A Conciliation Committee or Tribunal to which an application is made may, if of the opinion that it is appropriate to do so, instead remit the application to an Industrial Magistrate to be dealt with by the Industrial Magistrate.

(4) An application for an order which is remitted to an Industrial Magistrate under this section is to be taken to have been made in accordance with the provision or provisions of the Act authorising the order to be made.

No. 183 Page 146, clause 230. Omit subclause (1).

No. 184 Page 147, clause 231. From subclause (1), omit "section 230", insert instead "section 266".

No. 185 Pages 147-148, clause 233. Omit subclauses (1) and (2).

No. 186 Page 148, clause 233. After subclause (3), insert:

(4) Nothing in subsection (1) shall empower the Commission to make or vary an award in a manner inconsistent with section 120.

No. 187 Page 148, clause 233. After subclause (4), insert:

(5) No:

- (a) order, award, or contract determination; or
- (b) interim order, award or contract determination,

is to be made pursuant to subsection (1) unless the causes of, and the circumstances appertaining to, the question, dispute or difficulty have been fully investigated and the member of the Commission or Chairperson of the Conciliation Committee or Tribunal concerned is satisfied that all reasonable steps have been taken to effect an amicable settlement of the question, dispute or difficulty.

No. 188 Page 149, clause 235. Omit subclause (1), insert instead:

(1) If industrial action concerning a question, dispute or difficulty to which this Subdivision applies is taking place, or is threatened, the Commission may, on application by a party to conciliation proceedings which have been completed, order a person to cease, or to refrain from, industrial action.

(2) Application for an order under this section may be made only by:

(a) the Minister; or

(b) a State registered organisation or other person, if the applicant is, or is likely to be, adversely affected by actual or threatened industrial action of the party against whom or which the order is sought; or

(c) a State registered organisation of which a member is, or members are, adversely affected or likely to be adversely affected by actual or threatened industrial action of the party against whom or which the order is sought.

(3) An order is not to be made under this section until:

(a) a certificate of attempted conciliation of the question, dispute or difficulty concerned has been lodged or made out as would be required by section 269 if arbitration of the question, dispute or difficulty were to proceed; or

(b) the Commission has exercised its functions under section 264.

(4) An order under this section must include a statement identifying the persons to be bound by the order who may be any one or more of the persons referred to in subsection (5).

No. 189 Page 150, clause 235. Omit subclause (3) (a).

No. 190 Page 151, clause 236. From subclauses (2)-(4), omit "Court" wherever occurring, insert instead "Commission".

No. 191 Page 151, clause 236. From subclause (3), omit "section 237", insert instead "section 273".

No. 192 Page 151, clause 236. From subclause (4) (b), omit "section 237", insert instead "section 273".

No. 193 Page 152, clause 237. Omit "Court" wherever occurring, insert instead "Commission".

- No. 194 Page 152, clause 237. From subclause (2) (a), omit "State employee organisation or an employer", insert instead "State registered organisation or any other corporation".
- No. 195 Page 152, clause 237. From subclause (2) (a), omit "1,000" and "100", insert instead "100" and "10", respectively.
- No. 196 Page 152, clause 237. From subclause (2) (b), omit "100" and "10", insert instead "10" and "1", respectively.
- No. 197 Page 152, clause 237. From subclause 2 (b), omit "units" where secondly occurring, insert instead "unit".
- No. 198 Page 152, clause 237. From subclause (3), omit "Section 236", insert instead "Section 272".
- No. 199 Page 153, clause 238. From subclause (1), omit "section 237" wherever occurring, insert instead "section 273".
- No. 200 Page 153, clause 238. From subclause (1), omit "Court" wherever occurring, insert instead "Commission".
- No. 201 Page 153. After clause 238, insert:

Subdivision 3 - Void Contracts

Power of Commission to declare certain contracts void

239. (1) The Commission may make an order or award declaring void in whole or in part or varying in whole or in part and either ab initio or from some other time any contract or arrangement or any condition or collateral arrangement relating thereto whereby a person performs work in any industry on the grounds that the contract or arrangement or any condition or collateral arrangement relating thereto:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest. Without limiting the generality of the words "public interest", regard shall be had in considering the question of public interest to the effect such a contract or a series of such contracts has had or may have on any system of apprenticeship and other methods of providing a sufficient and trained labour force; or

- (d) provides or has provided a total remuneration less than a person performing the work would have received as an employee performing such work; or
- (e) was designed to or does avoid the provisions of an award, industrial agreement, agreement registered under Subdivision 3 of Division 8 of Part 2 or contract determination.

(2) The Commission, in making an order or award pursuant to subsection (1) of this section, may make such order as to the payment of money in connection with any contract, arrangement, condition or collateral arrangement declared void, in whole or in part, or varied in whole or in part, as may appear to the Commission to be just in the circumstances of the case.

(3) The Commission, when making an order or award pursuant to subsection (1) or at any time thereafter, may make such further order as may appear to the Commission to be appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions):

- (a) any party to the contract, arrangement or collateral arrangement; or
- (b) any other person who is (in any way considered relevant by the Commission) associated with any such party,

from:

- (c) entering into any specified kind of contract, arrangement or collateral arrangement whereby a person performs work in an industry; or
- (d) doing any act (whether by way of newspaper advertising or otherwise) which may reasonably be construed as being intended to induce other persons to enter into any such contract, arrangement or collateral arrangement.

(4) An order under subsection (3) shall identify the person or persons upon whom it is binding and shall take effect in respect of any such person:

- (a) upon service on that person of a copy of the order; or
- (b) upon publication of the order in a daily newspaper circulating generally throughout New South Wales,
whichever first occurs.

(5) An order or award may be made pursuant to subsection (1), and an order may be made pursuant to subsection (3), on the application of:

- (a) in the case of an order or award under subsection (1) - any party to the contract, arrangement or collateral arrangement; or

- (b) in the case of an order under subsection (3):
 - (i) any party to the contract, arrangement or collateral arrangement; or
 - (ii) any person who, but for the making of an order or award pursuant to subsection (1), would be a party to the contract, arrangement or collateral arrangement; or
- (c) the secretary of a State employer organisation whose members employ persons working in the industry to which the contract, arrangement or collateral arrangement relates; or
- (d) the secretary of an industrial union whose members are employed in the industry to which the contract, arrangement or collateral arrangement relates; or
- (e) the Minister.
- (7) Without affecting the operation of any other provision of this Act:
 - (a) the Commission may make such order as to the payment of costs, in any proceedings under this section, as may appear to it to be just; and
 - (b) the Full Commission may make such order as to the payment of costs, in any proceedings before it which arise by way of appeal from proceedings under this section, as may appear to it to be just,

and the Commission or the Full Commission, as the case may be, may assess the amount of the costs.

(7) An application under this section in respect of a contract of carriage to which Division 8 of Part 2 applies may be made by a party to the contract or by an association of contract carriers of which a party to the contract is a member.

Subdivision 4 - Regulation of certain contracts

Regulation of certain contracts

240. (1) Subject to subsection (2), this section applies to any contract under or in pursuance of which:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

is carried out or performed.

(2) This section does not apply to any contract referred to in subsection (1):

- (a) to the extent to which the contract is a contract under or in pursuance of which the work is carried out or performed by persons in their capacity as employees; or
- (b) unless at least one of the parties to the contract (not being a person by whom the work is actually carried out) is a person who carries on the business of carrying out or performing, or arranging for the carrying out or performance of, that kind of work.

(3) On the application of the secretary of an industrial union whose members are employed in the industry or calling in connection with which:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

is carried out or performed, the Commission may, by order, prescribe the minimum rate at which a person shall be remunerated in relation to the carrying out or performance of that kind of work (otherwise than in the capacity of an employee) under or in pursuance of a contract to which this section applies.

(4) An order under this section may be made only if the Commission is satisfied (whether as a consequence of proceedings before it under section 275 or otherwise) that work of the kind to which the proposed order relates is being, or is likely to be, carried out or performed under or in pursuance of a contract that:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest (as referred to in section 275).

(5) Before making an order under this section, the Commission shall require the applicant for the order to cause notice of the application to be served on such persons or bodies as, in the opinion of the Commission, have an interest in the matters to which the proposed order relates, and shall allow those persons or bodies to appear and to be heard in relation to the making of the order.

(6) An order under this section shall take effect on the expiration of 28 days after the day on which it is published in the Gazette or, where a later day is specified in the order in that regard, on that later day.

(7) Where an order is in force under this section in relation to:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,
any contract to which this section applies (being a contract under or in pursuance of which any such work is, or is agreed to be, carried out or performed) shall be deemed to incorporate the provisions of the order that relate to that work.

(8) In the event of an inconsistency between a provision of an order in force under this section and a provision of a contract referred to in subsection (7), the provision of the order shall, to the extent of the inconsistency, prevail.

(9) The Commission may, on its own motion or on the application of the secretary of an industrial union whose members are employed in the industry or calling concerned, vary or revoke an order under this section.

(10) In this section:

"building work" means work carried out for the purpose of:

- (a) constructing, altering or adding to, renovating, decorating or painting any building or structure; or
- (b) excavating or filling the site on which any building or structure is proposed to be constructed; or
- (c) demolishing any building or structure,

and includes work which the regulations declare to be building work for the purposes of this definition, but does not include:

- (d) work carried out otherwise than on the site on which a building or structure is being, or is proposed to be, constructed or on which a building or structure is being demolished; or
- (e) work which the regulations declare not to be building work for the purposes of this definition;

"door-to-door handbill delivery work" includes work which the regulations declare to be door-to-door handbill delivery work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door handbill delivery work for the purposes of this definition;

"door-to-door sales work" includes work which the regulations declare to be door-to-door sales work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door sales work for the purposes of this definition.

- No. 202 Page 158, clause 239. Omit ", under section 26 of the Industrial Court Act 1990, the Registrar of the Court issues to the Industrial Registrar a certificate of a finding by the Court", insert instead "the Commission finds under this Subdivision, or finds on an application made under Subdivision 7,".
- No. 203 Page 158, clause 240. From subclause (1), omit "section", insert instead "Subdivision".
- No. 204 Page 159, clause 241. Omit "section", insert instead "Subdivision".
- No. 205 Page 159, clause 242. From subclause (1), omit "section 239", insert instead "section 277".
- No. 206 Pages 159-161, clauses 244-247. Omit the clauses, insert instead:

Order providing for stand-down

244. (1) An employer or a State employer organisation may apply to the Commission for the making of a stand-down order where the employer or an employer who is a member of the organisation has no useful work for employees because of industrial action, breakdown of machinery or any other act or omission for which the employer is not responsible.

(2) The Commission is to give high priority to the hearing and determination of applications under this section.

(3) The Commission must not make a stand-down order if:

- (a) the employer concerned is bound by an award or agreement, whether made or registered before or after the commencement of this section; and
- (b) the stand-down order would be inconsistent with any provisions of the award or agreement,

except with the concurrence of the parties to the award or agreement.

(4) A stand-down order is enforceable as if it were an award.

Effect of stand-down

245. (1) An employee who is stood down is not entitled to any salary, wages or other remuneration or allowance while stood down.

(2) The period during which an employee is stood down is to be reckoned as a period of employment with the employer for the purposes of any period of service on which leave or superannuation entitlements are based.

No. 207 Page 162, clause 249. Omit subclause (2).

No. 208 Page 162, clause 250. In subclause (1), after "may", insert ", within 2 years after the date of dismissal or such longer period as may be allowed by the Commission on the application of the dismissed employee,".

No. 209 Page 163, clause 250. In subclause (2) (b), after "in the former position", insert ", at the option of the employee".

No. 210 Page 163, clause 251. From subclause (1), omit "section 250", insert instead "section 286".

No. 211 Page 165. After clause 257, insert:

Other provisions not affected

258. (1) This Subdivision does not affect any other rights of a dismissed employee under this or any other Act or under any award, agreement or contract of employment.

(2) No agreement or contract, made or entered into before or after the commencement of this section, shall operate to annul, vary or exclude any of the provisions of this Subdivision.

No. 212 Page 165, clause 258. From subclause (2) (b), omit "an order of the Commission or a dispute order or", insert instead "a dispute order of the Commission or an".

No. 213 Page 165, clause 258. From subclause (2) (c), omit "employee", insert instead "registered".

No. 214 Page 166, clause 259. Omit subclause (2) (b), insert instead:

(b) 5% of the members in the section or class of employees who are or contemplate being involved in the industrial action; or

No. 215 Page 166, clause 259. In subclause (2) (c), after "action", insert "or a State employer organisation a member of which is such an employer; or

(d) the Minister.

No. 216 Page 166, clause 259. From subclause (3), omit "directed by the Minister or".

No. 217 Page 166, clause 259. From subclause (4), omit "employee", insert instead "registered".

No. 218 Pages 166, clause 260. From subclauses (1) and (2), omit "section 259 (2)" wherever occurring, insert instead "section 296 (2)".

No. 219 Page 166, clause 260. From subclause (1) (b), omit "directed by the Minister or".

No. 220 Page 167, clause 261. From subclause (1), omit "section 259 (2)", insert instead "section 296 (2)".

No. 221 Page 167, clause 261. From subclause (2), omit "directed by the Minister or".

No. 222 Page 167, clause 261. From subclause (2), omit "section 260 (1) (b)", insert instead "section 297 (1) (b)".

No. 223 Page 167, clause 261. Omit subclause (4) (a) and (b), insert instead "by the State".

No. 224 Page 168, clause 265. Omit subclause (1), insert instead:

(1) If an employer dismisses, or threatens to dismiss, an employee and the employee claims that the dismissal was, or that the threatened dismissal would be, harsh, unreasonable or unjust, the employee, or a State employee organisation on behalf of the employee, may apply for relief to the Commission.

No. 225 Pages 169, clause 265. After subclause (1), insert:

(2) For the purposes of this section, termination of employment includes termination with or without notice.

(3) Termination of employment by an employer must not be harsh, unreasonable or unjust.

(4) Without limiting the scope of subsection (1) or (3), except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the grounds of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin constitutes a harsh, unreasonable or unjust termination of employment.

(5) Nothing in subsection (4) derogates from the general powers of the Commission in determining cases on unfair dismissal or reinstatement in employment.

- No. 226 Page 169, clause 265. From subclause (2), omit "or the Registrar of the Court, as appropriate,".
- No. 227 Page 169, clause 265. From subclause (3), omit "or the Court".
- No. 228 Page 170, clause 266. Omit the clause, insert instead:

Discretion of Commission

266. (1) The Commission may, at its discretion, deal with an application made to it under this Subdivision.

(2) In exercising that discretion, the Commission may examine the extent (if any) to which any procedures in an award or agreement providing for the settlement of questions, disputes or difficulties concerning a dismissal or threat of dismissal have been complied with as far as reasonably practicable in the circumstances.

- No. 229 Page 170, clause 268. From subclause (1), omit "mediation fails", insert instead ", in the opinion of the member of the Commission attempting mediation, mediation has failed".
- No. 230 Pages 170-171, clause 268. From subclauses (1) and (2), omit "section 269" wherever occurring, insert instead "section 306".
- No. 231 Page 171, clause 268. From subclause (2), omit "Court", insert instead "Commission".
- No. 232 Page 171, clause 268. From subclause (3), omit "or the Court" wherever occurring.
- No. 233 Pages 171-173, clause 269. Omit "or the Court" wherever occurring.
- No. 234 Page 172, clause 269. Omit subclause (4), insert instead:

(4) When assessing any compensation payable, the Commission may take into account any remuneration received by the employee in alternative employment since the employee was dismissed.

- No. 235 Page 172, clause 269. From subclause (6), omit "The Commission or the Court may make any other order", insert instead "Whether or not it makes an order under this section, the Commission or the Court may make any order of a different kind".

No. 236 Page 173, clause 270. Omit the clause, insert instead:

Different member to hear application

270. If a member of the Commission has attempted mediation and, in the opinion of the member, mediation has failed, the application is to be heard and determined by a different member, if a party to the proceedings so requires.

No. 237 Page 173, clause 272. Omit "or the Court".

No. 238 Page 174, clause 274. Omit "section 273", insert instead "section 310".

No. 239 Page 174, clause 275. After clause 274, insert:

Penalty for unlawful dismissal etc.

275. (1) An employer who, for an unacceptable reason, dismisses an employee, injures an employee in his or her employment or alters an employee's position to the employee's prejudice is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) For the purposes of subsection (1), a reason is unacceptable only if it is that the employee concerned:

- (a) is an officer, delegate or member of a State employee organisation or is a member of a Conciliation Committee; or
- (b) is not a person referred to in paragraph (a), but is an elected representative of employees; or
- (c) has informed any person that a breach or suspected breach of an award or agreement has been committed by the employer; or
- (d) claims a benefit of an award or agreement to which he or she is entitled; or
- (e) has engaged in, or contemplates engaging in, any public or political activity (not being an activity that interferes with the performance of duties as an employee); or
- (f) has appeared as a witness, or has given evidence, in a proceeding relating to an industrial matter; or

(g) after applying for, and being unreasonably refused, leave without pay for the purpose, is absent from work through being engaged in other duties as a member of a State registered organisation in respect of a matter affecting the industry in which the employee is working or in other duties as a member of a Conciliation Committee; or

(h) after applying for, and being unreasonably refused, leave without pay for the purpose, is absent from work through being engaged in other duties as a member of an enterprise association in respect of a matter related to the enterprise the subject of an enterprise agreement to which the enterprise association is a party.

(3) Where an employer is convicted of an offence under this section, the Commission may order the employer:

(a) to reinstate the person to the position that the person occupied immediately before the dismissal or a position no less favourable than the position; and

(b) to pay the person the whole or part of the wages lost by the person because of the dismissal; and

(c) if the person has suffered any other loss as a consequence, to pay to the person in such sum as appears to the Commission to be appropriate.

(4) In any proceedings for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, the defendant has the onus of proving that the defendant was not actuated by the reason alleged in the charge.

(5) In any proceedings for an offence in respect of subsection (2) (g), it is not necessary for the prosecution to prove among the facts and circumstances constituting the offence that the employer unreasonably refused leave.

No. 240 Page 175. After clause 275 as inserted, insert:

Appeal to Full Commission

276. An appeal does not lie to the Full Commission from a decision made under this Subdivision, unless the Full Commission grants leave to appeal.

No. 241 Page 176. Before the heading to Part 5, insert:

Subdivision 9 - Special criminal jurisdiction

Definitions

277. In this Subdivision, "criminal proceedings" means a proceeding for any of the following offences:

- (a) an offence against the Occupational Health and Safety Act 1983 or the regulations under that Act;
- (b) an offence against the Workers Compensation Act 1987 or the regulations under that Act;
- (c) any other offence which this or any other Act provides may be prosecuted before the Commission.

Jurisdiction of Commission

278. (1) The jurisdiction of the Commission includes the power to hear and determine criminal proceedings.

(2) The criminal jurisdiction of the Commission may be exercised only by a judicial member of the Commission.

Powers of Commission in criminal proceedings

279. For the purposes of hearing and determining a criminal proceeding, the Commission has and may exercise all the functions of an Industrial Magistrate in relation to such proceedings.

Appeal etc.

280. (1) An appeal lies to the Full Commission from any order of the Commission in a criminal proceeding imposing a penalty, ordering the payment of a penalty or ordering that the proceeding be dismissed for any reason.

(2) The Commission may, on application by any party to a criminal proceeding, state a case for the opinion of the Full Commission, setting forth the facts and the grounds for any conviction made by the Commission.

(3) Section 180 applies to an appeal from an order of, and the stating of a case by, the Commission in a criminal proceeding to the Full Commission in the same way as it applies to an appeal from an order of, and the stating of a case by, an Industrial Magistrate to the Commission.

(4) Only judicial members of the Commission, other than the member against whose decision the appeal is made or who stated the case, may constitute the Full Commission for the purposes of this section.

Rules of evidence

281. Without limiting the operation of any other provision of this Subdivision, the Commission is bound by the rules of evidence in the exercise of its jurisdiction under this Subdivision.

No. 242 Page 177, clause 275. Omit subclause (1), insert instead:

(1) The Minister may seek leave to appeal to the Full Commission against a decision of the Commission (other than a decision of the Full Commission) and such leave may be granted if the Commission considers that the public interest is affected by the decision.

No. 243 Page 178, clause 276. Omit the clause.

No. 244 Pages 178-179, clause 277. Omit the clause.

No. 245 Page 179, clause 278. From subclause (1) (a), omit "(other than a matter required to be referred to the Court)".

No. 246 Page 180, clause 280. From subclause 322 (1) (a), omit "(other than a decision from which an appeal lies to the Court)".

No. 247 Page 180, clause 280. Omit subclause (4).

No. 248 Page 180, clause 281. Omit "Court" wherever occurring, insert instead "Full Commission".

No. 249 Page 181, clause 283. Omit "Court" wherever occurring, insert instead "Full Commission".

No. 250 Pages 181-182, clause 284. Omit "Court" wherever occurring, insert instead "Full Commission".

No. 251 Page 182, clause 285. Omit subclause (2) (c).

No. 252 Page 182, clause 285. In subclause (2), after "Commission", insert "but any such party may, without that leave, be represented by an agent who is not a barrister or solicitor or a person so qualified".

No. 253 Page 182, clause 285. After subclause (3), insert:

(4) Despite anything else contained in this section, a person is entitled to be represented by an employee or officer of a State registered organisation.

- No. 254 Page 184, clause 288. From subclause (7), omit "50", insert instead "100".
- No. 255 Page 185, clause 290. From subclause (1), omit "or the Industrial Court Act 1990".
- No. 256 Pages 188-189, clause 298. From subclauses (2)-(4), omit "Court" wherever occurring, insert instead "Full Commission".
- No. 257 Page 192, clause 304. Omit "Court", insert instead "Commission".
- No. 258 Pages 193-194, clause 307. Omit the clause.
- No. 259 Page 194, clause 308. From paragraph (d), omit "or an enterprise association".
- No. 260 Page 194, clause 309. From subclause (1), omit ", enterprise association".
- No. 261 Pages 195, clause 309. Omit subclause (1) (e).
- No. 262 Page 195, clause 309. From subclause (1) (f), omit "other than in the case of an application by an association to be registered as an enterprise association,".
- No. 263 Pages 196, clause 310. Omit the clause.
- No. 264 Page 197, clause 315. From subclauses (1) and (2), omit "Court" wherever occurring, insert instead "Commission".
- No. 265 Pages 198, clause 316. Omit "Court" wherever occurring, insert instead "Commission".
- No. 266 Page 199, clause 318. From subclause (3), omit ", an enterprise association".
- No. 267 Page 199, clause 319. From subclause (1), omit ", an enterprise association".
- No. 268 Pages 200-201, clause 320. Omit the clause.
- No. 269 Pages 201-202, clause 324. From subclause (1) (b), omit ", the Court or any other court or", insert instead "or any court or other".
- No. 270 Page 202, clause 325. From subclause (1), omit "or enterprise".
- No. 271 Page 203, clause 325. Omit subclause (2) (g).
- No. 272 Pages 203, clause 326. From subclauses (3) and (4), omit "Court" wherever occurring, insert instead "Commission".
- No. 273 Page 205, clause 328. From subclause (6) (a), omit "section 326 or 331", insert instead "section 365 or 370".

- No. 274 Pages 205-206, clause 331. Omit "Court" wherever occurring, insert instead "Commission".
- No. 275 Pages 205-206, clause 331. From subclauses (2), (5) and (6), omit "section 324" wherever occurring, insert instead "section 363".
- No. 276 Pages 207-208, clause 332. Omit "Court" wherever occurring, insert instead "Commission".
- No. 277 Page 207, clause 332. From subclause (7), omit "section 324", insert instead "section 363".
- No. 278 Page 207, clause 332. From subclause (8), omit "Section 331", insert instead "Section 370".
- No. 279 Page 208, clause 334. Omit "registered organisation or the branch of the State registered organisation concerned".
- No. 280 Page 210, clause 336. Omit "Court" wherever occurring, insert instead "Commission".
- No. 281 Pages 211, clause 337. Omit "section 335 (4)" wherever occurring, insert instead "section 374 (4)".
- No. 282 Page 211, clause 340. Omit "section 339", insert instead "section 378".
- No. 283 Page 215, clause 345. From subclause (1), omit "Court", insert instead "Commission".
- No. 284 Pages 215-216, clause 346. Omit "Court" wherever occurring, insert instead "Commission".
- No. 285 Page 216, clause 347. Omit "section 346", insert instead "section 385".
- No. 286 Page 216, clause 348. Omit "Court", insert instead "Commission".
- No. 287 Pages 216-217, clause 349. Omit "Court" wherever occurring, insert instead "Commission".
- No. 288 Page 217, clause 350. Omit "Court" wherever occurring, insert instead "Commission".
- No. 289 Pages 217-219, clause 351. Omit "Court" wherever occurring, insert instead "Commission".
- No. 290 Page 219, clause 352. Omit "Court", insert instead "Commission".
- No. 291 Page 219, clause 353. Omit "Court" wherever occurring, insert instead "Commission".

- No. 292 Pages 219-220, clause 354. Omit "Court" wherever occurring, insert instead "Commission".
- No. 293 Page 220, clause 354. From subclause (5) (c), omit "section 351", insert instead "section 390".
- No. 294 Page 221, clause 356. Omit "Court", insert instead "Commission".
- No. 295 Pages 223-224, clause 357. Omit "Court" wherever occurring, insert instead "Commission".
- No. 296 Page 224, clause 358. From subclause (1) (a), omit "at least 50% of the".
- No. 297 Page 224, clause 358. After subclause (1), insert:
- (2) The Commission is not to determine any such application unless satisfied that adequate notice of the application has been given to:
 - (a) each industrial union representing persons employed in the enterprise; and
 - (b) the persons employed in the enterprise; and
 - (c) the enterprise employer.
- No. 298 Page 224, clause 358. From subclause (2) omit "from the relevant enterprise employer", insert instead "from any person given a notice under subsection (2)".
- No. 299 Page 224, clause 358. From subclause (4) (a), omit "at least 50% of the".
- No. 300 Page 225, clause 358. From subclause (7), omit "subsection (5)", insert instead "subsection (6)".
- No. 301 Page 226, clause 360. Omit "section 359", insert instead "section 398".
- No. 302 Page 226, clause 360. Omit "section 358", insert instead "section 397".
- No. 303 Page 226, clause 361. From subclause (1), omit "section 359", insert instead "section 398".
- No. 304 Page 228, clause 366. Omit the clause.
- No. 305 Page 229, clause 368. From subclause (3), omit "6 months", insert instead "3 years".
- No. 306 Page 230, clause 369. From subclause (3), omit "6 months", insert instead "3 years".

- No. 307 Page 230, clauses 370. Omit "6 months", wherever occurring, insert instead "3 years".
- No. 308 Page 230, clause 372. Omit "Court", insert instead "Commission".
- No. 309 Page 231, clause 373. From subclause (2), omit "only".
- No. 310 Page 231, clause 373. From subclause (7), omit "a State employee organisation", insert instead "the appropriate industrial union covering the employer's workplace".
- No. 311 Page 231, clause 374. Omit the clause, insert instead:

Preference to unionists

374. (1) Despite any other provision of this Act, the Commission may, on application, insert (by way of variation or otherwise) in an award or agreement (whether made before or after the commencement of this section) a provision providing:

- (a) for absolute preference of employment to the members of the industrial union or unions specified in the award or agreement or to persons who have applied to become members of the industrial union or unions specified in the award or agreement. Such preference to members (and applicants for membership) of such industrial union or unions shall be limited to the point where such a member or applicant and a person who is not such a member or applicant are offering for service or employment at the same time or, in the case of retrenchment, to the point where either such a member (or such an applicant) or a person who is not such a member (or such an applicant) is to be dismissed from service or employment; and
- (b) that the provision inserted in any award or agreement pursuant to paragraph (a) is not to apply to or in respect of the employment in any industry or calling of a person who has been issued by the Registrar with a certificate of exemption pursuant to section 413 covering the industry or calling, if the period specified in the certificate or any renewal of it has not expired.

(2) The following matters are examples of matters in relation to which it may be directed under subsection (1) that preference is to be given:

- (a) engagement in employment;
- (b) promotion;
- (c) regrading;

- (d) transfer;
- (e) retention in employment;
- (f) taking of annual leave;
- (g) overtime;
- (h) vocational training.

(3) Nothing in this section limits or in any way affects any law relating to preference in employment to persons who have served as members of the Naval, Military or Air Forces of the Commonwealth.

No. 312 Page 233, clause 375. Omit the clause, insert instead:

Conscientious objectors

375. (1) For the purposes of this section, "conscientious belief" includes any conscientious belief, whether the grounds for it are or are not of a religious character and whether the belief is or is not part of the doctrine of any religion.

(2) Any person who:

- (a) objects on the grounds of conscientious belief to being a member of an industrial union; and
- (b) applies in the prescribed manner to the Registrar for a certificate of exemption from membership of any such union; and
- (c) satisfies the Registrar that his objections on the grounds of conscientious belief are genuine; and
- (d) pays to the Registrar an amount equivalent to the subscription prescribed by the rules of the industrial union for membership of such union,
is to be issued by the Registrar with a certificate of exemption from membership of the industrial union.

(3) Any such certificate remains in force for the period specified in it and may be renewed from time to time by the Registrar on payment of such amount, not exceeding the amount referred to in subsection (2) (d), as the Registrar may require.

(4) Any amount received by the Registrar pursuant to this subsection shall be paid by him to the credit of the Consolidated Fund.

(5) Any person whose application for a certificate of exemption from membership of an industrial union, or for any renewal of it, under this subsection is refused, may, within the prescribed period after the decision of the Registrar refusing the application, appeal in the prescribed manner to the Commission from such decision.

(6) The Commission may on such an appeal make such order as it thinks fit.

(7) Notwithstanding subsections (1) to (6), no person can be compelled to join an industrial union.

No. 313 Page 235, clause 376. From subclause (5) (b), omit "; or", insert instead ",".

No. 314 Page 235, clause 376. Omit subclause (5) (c) and (d).

No. 315 Page 236, clause 376. After subclause (5), insert:

(6) Where an employer of a State registered organisation is convicted of an offence under subsection (1) or (2), and a person affected by the offence has suffered any loss as a consequence, the Commission may order the employer or State registered organisation to pay to the person in such sum as appears to the Commission to be appropriate.

No. 316 Page 236, clause 376. At the end of subclause (6) (b), insert:

; and

(c) if the person has suffered any other loss as a consequence, to pay to the person in such sum as appears to the Commission to be appropriate.

No. 317 Page 236, clause 376. From subclause (6), omit "Court", insert instead "Commission".

No. 318 Page 236, clause 376. From subclause (7), omit "section 375 (1)" wherever occurring, insert instead "section 413 (1)".

No. 319 Pages 236-237, clause 377. Omit "Court" wherever occurring, insert instead "Commission".

No. 320 Page 237, clause 377. After subclause (3) (a) insert:

(b) the person, outside of a closed shop arrangement, has chosen not to belong to a State employee organisation; or

No. 321 Page 237, clause 377. From subclause (3), omit "section 376 (6)", insert instead "section 414 (7)".

No. 322 Page 237, clause 378. Omit "50 penalty units, or if", insert instead "Where an officer has acted in breach of this section and".

- No. 323 Page 237, clause 378. Omit "or imprisonment for 5 years, or both".
- No. 324 Page 237, clause 379. Before "registered", insert "State".
- No. 325 Page 237, clause 380. Omit "or imprisonment for 5 years, or both".
- No. 326 Page 238, clause 381. Omit "or imprisonment for 5 years, or both".
- No. 327 Page 241, clause 386. From subclause (1) (b), omit "section 335, 340, 341, 347 or 429", insert instead "section 374, 379, 380, 386 or 467".
- No. 328 Pages 242-244, clause 387. Omit "section 388 or 389" wherever occurring, insert instead "section 426 or 427".
- No. 329 Page 242-243, clause 387. From subclause (1) (a) (ii), omit "section 388 (2) (b) or 389 (2) (b)", insert instead "section 426 (2) (b) or 427 (2) (b)".
- No. 330 Page 243, clause 387. Omit "Court" wherever occurring, insert instead "Commission".
- No. 331 Page 244, clause 388. From subclause (2) (b), omit "section 387 (1)", insert instead "section 425 (1)".
- No. 332 Page 245, clause 388. From subclause (4), omit "section 389", insert instead "section 427".
- No. 333 Page 245, clause 389. Omit "Court" wherever occurring, insert instead "Commission".
- No. 334 Page 245, clause 389. From subclause (2) (b), omit "section 387 (1)", insert instead "section 425 (1)".
- No. 335 Page 245, clause 389. From subclause (4), omit "section 388", insert instead "section 426".
- No. 336 Page 245, clause 390. Omit "section 388 or 389", insert instead "section 426 or 427".
- No. 337 Page 245, clause 390. Omit "Court", insert instead "Commission".
- No. 338 Page 246, clause 390. From paragraph (e), omit "Court's", insert instead "Commission's".
- No. 339 Page 246, clause 391. Omit "Court" wherever occurring, insert instead "Commission".
- No. 340 Page 246, clause 391. Omit "section 387 (5)" wherever occurring, insert instead "section 425 (5)".

- No. 341 Page 246, clause 391. From subclause (3), omit "section 388 or 389", insert instead "section 426 or 427".
- No. 342 Page 246, clause 392. Omit "Court", insert instead "Commission".
- No. 343 Page 247, clause 393. Omit "Court" wherever occurring, insert instead "Commission".
- No. 344 Page 248, clause 394. Omit "Court", insert instead "Commission".
- No. 345 Page 248, clause 394. Omit "200 penalty units", insert instead "50 penalty units".
- No. 346 Page 248, clause 395. Omit "Court", insert instead "Commission".
- No. 347 Page 249, clause 396. In subclause (6), after "register" where secondly occurring, insert ", but only if the member or person so authorised satisfies the Registrar that he or she is seeking information about those members for the purpose of standing as a candidate for election to an office in the organisation to which they belong".
- No. 348 Page 250, clause 397. From subclause (1), omit "or imprisonment for 2 years, or both".
- No. 349 Page 251, clause 398. Omit "or imprisonment for 2 years, or both".
- No. 350 Page 252, clause 400. From subclause (1), omit "(other than a political donation) of a relevant amount, and of all political donations", insert instead "of a relevant amount".
- No. 351 Page 253, clause 400. From subclause (6), omit ", other than a political donation,".
- No. 352 Page 253, clause 401. Omit subclause (1), insert instead:
- (1) A State registered organisation must, in accordance with this Subdivision:
 - (a) keep and maintain at its registered office a register of loans, grants and donations made by the organisation; and
 - (b) ensure that the committee of management of the organisation or branch of the organisation has approved the making of the loan, grant or donation.
- Maximum penalty: 50 penalty units.
- No. 353 Page 254, clause 401. From subclause (4), omit "section 400 (4)-(6)", insert instead "section 438 (4)-(6)".

- No. 354 Page 254, clause 403. From subclause (1) (b), omit "section 405", insert instead "section 443".
- No. 355 Page 254, clause 403. In subclause (2), after "accrual basis", insert "or cash basis".
- No. 356 Page 255, clause 403. Omit subclauses (3)-(5).
- No. 357 Page 255, clause 405. From subclause (1) (a), omit "section 403 (1)", insert instead "section 441 (1)".
- No. 358 Page 256, clause 406. Omit "section 403", insert instead "section 441".
- No. 359 Page 256, clause 406. Omit "section 405", insert instead "section 443".
- No. 360 Page 256, clause 406. Omit "100 penalty units or imprisonment for 2 years, or both", insert instead "50 penalty units".
- No. 361 Page 256, clause 407. From subclause (3), omit "section 405", insert instead "section 443".
- No. 362 Page 258, clause 409. From subclause (4) (a) (ii), omit "section 405", insert instead "section 443".
- No. 363 Page 260, clause 412. From subclause (1) (b), omit "section 405", insert instead "section 443".
- No. 364 Page 260, clause 412. From subclause (2) (d), omit "section 409 (4)", insert instead "section 447 (4)".
- No. 365 Page 261, clause 412. From subclause (6) (a), omit "section 409 (4)", insert instead "section 447 (4)".
- No. 366 Page 262, clause 413. From subclause (1), omit "section 412 (5) or (6)", insert instead "section 450 (5) or (6)".
- No. 367 Page 262, clause 413. From subclause (2) (a), omit "section 409 (4)", insert instead "section 447 (4)".
- No. 368 Page 264, clause 413. From subclause (11), omit "100", insert instead "50".
- No. 369 Page 264, clause 413. From subclause (12), omit "100", insert instead "50".
- No. 370 Page 264, clause 414. Omit "section 413" wherever occurring, insert instead "section 451".
- No. 371 Page 265, clause 415. Omit "Court" wherever occurring, insert instead "Commission".

- No. 372 Page 265, clause 415. From subclause (1), omit "sections 412 and 413", insert instead "sections 450 and 451".
- No. 373 Page 265, clause 416. From subclause (1), omit "section 413", insert instead "section 451".
- No. 374 Page 271, clause 426. From subclause (1), omit "section 424 (2) and (3) or (2) and (4)", insert instead "section 462 (2) and (3) or (2) and (4)".
- No. 375 Page 272, clause 427. From subclause (1), omit "section 422", insert instead "section 460".
- No. 376 Page 272, clause 427. In subclause (1), before "Commission", insert "Full".
- No. 377 Page 272, clause 427. From subclause (1), omit "section 424 or 426", insert instead "section 462 or 464".
- No. 378 Pages 272, clause 427. Omit "section 424 (2) and (3) or (2) and (4)" wherever occurring, insert instead "section 462 (2) and (3) or (2) and (4)".
- No. 379 Page 274, clause 428. From subclause (8), omit "section 422", insert instead "section 460".
- No. 380 Page 274, clause 429. From subclause (1), omit "section 428", insert instead "section 466".
- No. 381 Page 274, clause 430. From subclause (1), omit "section 428 (1) or (2)", insert instead "section 466 (1) or (2)".
- No. 382 Pages 275, clause 431. Omit "section 428" wherever occurring, insert instead "section 466".
- No. 383 Page 275, clause 431. From subclause (1), omit "Court, as prescribed by rules made under the Industrial Court Act 1990, for an inquiry by the Court", insert instead "Commission for an inquiry by the Commission".
- No. 384 Pages 275, clause 431. From subclauses (2) and (3), omit "Court" wherever occurring, insert instead "Commission".
- No. 385 Page 276, clause 433. From subclause (2), omit "Court" wherever occurring, insert instead "Commission".
- No. 386 Page 277, clause 434. Omit "section 368", insert instead "section 406".
- No. 387 Page 278, clause 437. Omit "section 428", insert instead "section 466".
- No. 388 Page 279, clause 439. Omit "section 441" wherever occurring, insert instead "section 479".

- No. 389 Page 281, clause 440. From subclause (1), omit "section 441", insert instead "section 479".
- No. 390 Page 282, clause 440. From subclause (2) (b), omit "Court or any other court", insert instead "Commission or any court".
- No. 391 Pages 282-283, clause 441. Omit "Court" wherever occurring, insert instead "Commission".
- No. 392 Page 282, clause 441. Omit "section 439 or 440" wherever occurring, insert instead "section 477 or 478".
- No. 393 Pages 283-284, clause 442. Omit "Court" wherever occurring, insert instead "Commission".
- No. 394 Page 284-285, clause 443. Omit "Court" wherever occurring, insert instead "Commission".
- No. 395 Page 286, clause 446. From subclause (1), omit "7", insert instead "28".
- No. 396 Page 286, clause 446. In subclause (2), after "organisation who", insert "wilfully".
- No. 397 Page 288, clause 452. Omit "or imprisonment for 3 months, or both".
- No. 398 Page 289, clause 453. Omit "or imprisonment for 2 years, or both".
- No. 399 Pages 289-291, clause 455. Omit "Court" wherever occurring, insert instead "Commission".
- No. 400 Page 291. After clause 455, insert:

Organisations and officials not vicariously liable

456. (1) Neither a State registered organisation nor a person who is a member of the committee or other executive body of such an organisation is liable to be convicted of an offence against this Act (or for any pecuniary penalty) because of an act or omission of a person in contravention of the express resolutions or directions of the organisation or its committee or other executive body.

(2) Subsection (1) does not apply:

- (a) to a State registered organisation, if the organisation or a member of the committee or other executive body of the organisation encouraged, assisted in or approved of the act or omission; or

- (b) to a member of the committee or other executive body of a State registered organisation, if the member encouraged, assisted in or approved of the act or omission.

No. 401 Page 292. Before Division 4 of Part 7, insert:

Certain actions under other laws do not lie in respect of industrial action etc.

457. (1) A relevant action does not lie against a State registered organisation, or an officer, member or employee of a State registered organisation in that capacity, in respect of:

- (a) industrial action that is occurring, or is about to occur in connection with an industrial dispute; or
- (b) conduct that is being, or is about to be, engaged in that hinders, prevents or discourages:
 - (i) the observance of an award or agreement; or
 - (ii) the performance of work in accordance with an award or agreement; or
 - (iii) the acceptance of, or offering for, work in accordance with an award or agreement; or
- (c) industrial action by persons engaged in public sector employment, being industrial action that is occurring, or is about to occur.

(2) a relevant action does not lie against an officer, member or employee of a State registered organisation in respect of conduct of that officer, member or employee in that capacity constituted by:

- (a) engaging, or proposing to engage, in industrial action in connection with an industrial dispute; or
- (b) engaging, or proposing to engage, in conduct that hinders, prevents or discourages:
 - (i) the observance of an award or agreement; or
 - (ii) the performance of work in accordance with an award or agreement; or
 - (iii) the acceptance of, or offering for, work in accordance with an award or agreement; or

- (c) in the case of an officer, member or employee of an organisation of employees engaged in public sector employment - engaging, or proposing to engage, in industrial action.

(3) In this section, "relevant action" means an action in tort or any other action in a court or tribunal, not being:

- (a) an action for damages (other than exemplary or punitive damages) in respect of loss or damage incurred as a result of the industrial action or conduct concerned; or
- (b) an action for an injunction or order to prevent personal injury or damage to or destruction of property; or
- (c) an action in respect of conversion, detinue or defamation; or
- (d) proceedings for a contravention of an award or agreement, or an order or direction of the Commission; or
- (e) a prosecution for an offence.

No. 402 Pages 293-295, clause 457. Omit "Court" wherever occurring (except in subclauses (1) (a) and (6)), insert instead "Commission".

No. 403 Page 293, clause 457. From subclause (1) (a), omit "an order of the Court,".

No. 404 Page 293, clause 457. From subclause (3), omit "must", insert instead "may, at its discretion,".

No. 405 Page 294, clause 457. From subclause (6), omit "the Court,".

No. 406 Page 294, clause 457. From subclause (9), omit "must cancel the registration of the organisation under this Act unless", insert instead "may, at its discretion, cancel the registration of the organisation under this Act, but may not do so if:".

No. 407 Page 294, clause 457. From subclause (9) (c), omit "section 458", insert instead "section 498".

No. 408 Pages 295-296, clause 458. Omit "Court" wherever occurring, insert instead "Commission".

No. 409 Page 295, clause 458. From subclause (1), omit "section 457", insert instead "section 497".

No. 410 Page 296, clause 459. Omit the clause.

No. 411 Pages 296-297, clause 460. Omit "Court" wherever occurring, insert instead "Commission".

No. 412 Pages 297-298, clause 462. Omit subclauses (1) (c), (d) and (e).

No. 413 Page 298, clause 462. Omit subclauses (2) and (3), insert instead:

(2) An organisation may be wound up in accordance with the rules of the organisation.

No. 414 Page 299, clause 464. From subclause (1), omit "or employees" wherever occurring.

No. 415 Page 299, clause 464. After subclause (1), insert:

(2) The Labor Council of New South Wales is to be taken to be the State peak organisation for employees.

No. 416 Page 299, clause 465. From paragraph (a), omit "the Court,".

No. 417 Pages 300-311, Part 8, clauses 468-498. Omit the clauses.

No. 418 Page 312, clause 500. After subclause (4), insert:

(5) Where the person for whom the work is procured by a private employment agent is not:

(a) an employee of the private employment agent; or

(b) an employee of the person for whom the work is being carried out,

such person is to be taken to be an employee of the person for whom the work is being carried out for the purposes of this Act, the regulations made under this Act and any other employment-related Act and the regulations made under it.

No. 419 Page 313, clause 501. From subclauses (1) and (3), omit "regulations" wherever occurring, insert instead "Commission".

No. 420 Page 313, clause 501. After subclause (3), insert:

(4) The State registered organisation or organisations of employees having constitutional coverage for the relevant industry, occupation or calling must be served with a copy of the application for exemption not less than 14 days before the application is heard. The State registered organisation or organisations have the right to intervene and be heard in such proceedings before the Commission.

No. 421 Page 314, clause 503. From subclause (6), omit "a Local Court", insert instead "the Commission".

- No. 422 Pages 315-316, clause 505. From subclauses (1) (e) and (5) omit "section 503 (4)" wherever occurring, insert instead "section 511 (4)".
- No. 423 Page 316, clause 505. From subclause (3) omit "section 504 (1) (c)", insert instead "section 512 (1) (b)".
- No. 424 Page 316. After clause 505, insert:

Referral of application to Industrial Magistrate

506. (1) The Director-General may refer an application for a licence to an Industrial Magistrate for inquiry as to whether or not:

- (a) an applicant for the licence; or
- (b) a proposed partner of the applicant for the licence in the business in respect of which the licence is applied for; or
- (c) a director of a corporation that is an applicant for the licence; or
- (d) a director of a corporation that is a proposed partner of an applicant for the licence in the business in respect of which the licence is applied for; or
- (e) a person whose appointment as a person in charge has been notified under section 511,

is a fit and proper person to hold a licence.

(2) The Industrial Magistrate to whom an application is referred must consider whether the applicant or other person concerned is, from his or her character and previous conduct, a fit and proper person to hold a licence and must give the Director-General a recommendation on the application.

(3) In conducting an inquiry under this section, an Industrial Magistrate has the same functions as if the Magistrate were sitting in a Local Court and the inquiry were a matter for hearing and determination in the Local Court.

(4) The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of a licence are to be given notice of the inquiry and are entitled to be heard personally or by counsel, attorney or agent.

- No. 425 Page 317, clause 506. From subclause (2) (a), omit "section 504 (1) (c)", insert instead "section 512 (1) (b)".
- No. 426 Page 318, clause 506. In subclause (3) (b), after "Police", insert "and any recommendation relating to the person furnished under section 514".

- No. 427 Page 320, clause 510. From subclauses (1) and (3), omit "5" wherever occurring, insert instead "20".
- No. 428 Page 321, clause 511. From paragraph (a), omit "section 509", insert instead "section 518".
- No. 429 Page 321, clause 511. From paragraph (f), omit "section 510", insert instead "section 519".
- No. 430 Page 322, clause 512. From subclause (6), omit "Local Court" wherever occurring, insert instead "Commission".
- No. 431 Page 322, clause 513. From subclause (1), omit "5", insert instead "20".
- No. 432 Page 323, clause 514. From subclauses (1) and (2), omit "a Local Court" wherever occurring, insert instead "the Commission".
- No. 433 Pages 323-324, clause 515. From subclauses (2)-(5), omit "Local Court" wherever occurring, insert instead "Commission".
- No. 434 Page 324, clause 515. From subclause (6), omit "a Local Court", insert instead "the Commission".
- No. 435 Page 327. After clause 521, insert:

Offences by corporations

522. (1) If a corporation contravenes any provision of this Part or a regulation made under it, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under the provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or the regulations.

- No. 436 Page 327, clause 522. At the end of the clause, insert:

(2) Except as provided by subsection (3), proceedings for an offence against this Part or the regulations made under it are to be disposed of summarily before an Industrial Magistrate.

(3) Proceedings for an offence against section 510 are to be prosecuted before the Commission.

No. 437 Page 327. After clause 523, insert:

Orders for refunds

524. (1) If, during the course of proceedings before the Commission for an offence against section 509, it appears to the Commission that a person who has carried on the business of a private employment agent without a licence under this Part has demanded and received any fee, charge or other remuneration from a person seeking to be employed, the Commission may make an order requiring the unlicensed person concerned to refund the fee, charge or other remuneration received.

(2) An appeal lies to the Full Commission from any order of the Commission under this section.

(3) Section 180 applies to an appeal from an order of the Commission under this section to the Full Commission in the same way as it applies to an appeal from an order of an Industrial Magistrate to the Commission.

No. 438 Page 328. After clause 524 as inserted, insert:

Injunctions

525. (1) If a penalty is imposed under this Part and the Commission is of the opinion that the breach was committed because of a wilful act or default of a person, the Commission may, on its own initiative or on application, and in addition to any penalty imposed, grant an injunction to restrain the person from committing further or other breaches of this Part.

(2) If any person disobeys such an injunction, the person is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A person who is charged with such an offence may be committed for trial for the offence by any Justice or Justices acting under the Justices Act 1902 or by the Commission. For the purposes of any such committal, the Commission has the powers of a Justice or Justices under that Act.

No. 439 Page 329, clause 525. From subclause (2), omit "5", insert instead "20".

No. 440 Page 331, clause 530. From subclause (2) (a), omit "a person", insert instead "two persons".

No. 441 Page 332, clause 531. Omit subclause (3).

- No. 442 Page 336, clause 540. From subclause (2), omit "section 539", insert instead "section 551".
- No. 443 Page 337, clause 541. From the definition of "joint sitting", omit "section 545", insert instead "section 557".
- No. 444 Page 338, clause 542. From subclause (2), omit "section 544", insert instead "section 556".
- No. 445 Page 339, clause 545. From subclause (1) (b), omit "section 544", insert instead "section 556".
- No. 446 Page 339, clause 545. From subclauses (1) and (2), omit "section 543" wherever occurring, insert instead "section 555".
- No. 447 Page 339, clause 546. From subclause (1), omit "section 544", insert instead "section 556".
- No. 448 Page 339, clause 546. From subclause (1), omit "section 545", insert instead "section 557".
- No. 449 Page 340, clause 547. Omit "section 543", insert instead "section 555".
- No. 450 Page 341. After clause 548, insert:

Appointment of Industrial Magistrates

549. (1) The Governor may appoint as Industrial Magistrates persons who have the qualifications required for a Magistrate.

(2) Persons so appointed have, throughout the State, the functions conferred or imposed by this or any other Act on an Industrial Magistrate.

(3) In the exercise of those functions, an Industrial Magistrate may do whatever might be done by a Magistrate constituting a Local Court.

Chief Industrial Magistrate

550. (1) The Governor may, by the same instrument as that by which the person is appointed as an Industrial Magistrate or by a different instrument, appoint a person as Chief Industrial Magistrate.

(2) The Governor may, from time to time, appoint an Industrial Magistrate to act as Chief Industrial Magistrate during the illness or absence of the Chief Industrial Magistrate.

(3) An Industrial Magistrate, while so acting, has and may exercise the functions of the Chief Industrial Magistrate and is to be taken to be the Chief Industrial Magistrate.

(4) The Chief Industrial Magistrate is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.

No. 451 Page 344, clause 551. From subclause (2), omit "section 550 (4)", insert instead "section 564 (4)".

No. 452 Page 344, clause 552. From subclause (1), omit "section 550 (4)", insert instead "section 564 (4)".

No. 453 Page 346, clause 555. After subclause (1) (d), insert:

; and

(e) enter any place to which a licence relates for the purpose of investigating any suspected breach of Part 8 (Private Employment Agencies) or the regulations made under Part 8, and require a person to produce for examination any books, papers, records or remittance advice required to be kept, made or given under that Part by the person; and

(f) during working hours, for the purpose of investigating any breach of the Occupational Health and Safety Act 1983 or of any associated occupational health and safety legislation within the meaning of that Act, enter any place, premises, ship or vessel of any kind of any employer engaged in an industry or enterprise in which members of the State employee organisation or persons in the same trade or occupation as those members are engaged.

No. 454 Page 347, clause 555. In subclause (2), after the words "non-working time", insert "wherever such employees would normally partake of a meal on the employer's premises or in such other place on the employer's premises as may be agreed between the employer and the State employee organisation".

No. 455 Page 349, clause 557. After clause 556, insert:

Reprinting of awards and contract determinations

557. (1) If an award or contract determination has been varied, the Registrar may reprint the award or determination incorporating the variation in a form certified by the Registrar to be correct at a specified date.

(2) Before reprinting the award or contract determination, the Registrar may alter the wording or form of the award or contract determination if, in the opinion of the Registrar, the alteration will result in the award or determination:

- (a) being expressed in clearer terms or so as to avoid unnecessary technicalities; or
- (b) complying with such requirements relating to form as may be made by the regulations.

(3) This section applies to awards and contract determinations, and to variations of them, whether made before or after the commencement of this section.

(4) Before making any alteration under subsection (2), the parties to the award or contract determination must be advised of the proposed alteration and be given the opportunity to be heard by the Registrar.

No. 456 Page 350, clause 558. Omit ", the Commission or the Court", insert instead "or the Commission".

No. 457 Page 350, clause 560. Omit the clause, insert instead:

Interference with the Commission or members

560. (1) A person must not:

- (a) wilfully insult or disturb a member of the Commission in the exercise of his or her functions as a member; or
- (b) interrupt the proceedings of the Commission; or
- (c) use insulting language towards a member of the Commission exercising his or her functions as a member; or
- (d) by writing or speech, use words calculated:
 - (i) to influence improperly a member of the Commission or a witness before the Commission; or
 - (ii) to bring a member of the Commission or the Commission into disrepute.

Maximum penalty:

- (i) in the case of a natural person - 50 penalty units; and
- (ii) in the case of a body corporate - 100 penalty units.

(2) A reference in this section to the Commission or a member of the Commission includes a reference to an Industrial Magistrate and to a person authorised to take evidence on behalf of the Commission.

- No. 458 Page 351, clause 561. From subclause (1) (a), omit "a Local Court constituted by a Magistrate sitting alone", insert instead "an Industrial Magistrate".
- No. 459 Page 351, clause 561. From subclause (1) (b), omit "Industrial Court", insert instead "Commission".
- No. 460 Page 351, clause 561. From subclause (2), omit "a Local Court", insert instead "an Industrial Magistrate".
- No. 461 Page 352, clause 561. From subclause (3), omit "Industrial Court", insert instead "Commission".
- No. 462 Page 352, clause 562. Omit the clause, insert instead:

Appeals etc. from Industrial Magistrate to Commission

562. (1) An appeal lies to the Commission against:

- (a) any order made under this Act by an Industrial Magistrate for the payment of money; or
- (b) any conviction or penalty imposed by an Industrial Magistrate for an offence against this Act, the Occupational Health and Safety Act 1983, the Workers Compensation Act 1987 or any regulation made under any of those Acts or for any other offence that has been dealt with before an Industrial Magistrate; or
- (c) the dismissal by an Industrial Magistrate of any proceedings brought under this Act.

(2) On the application of a party to any proceedings authorised by this Act to be brought before an Industrial Magistrate, an Industrial Magistrate may state a case for the opinion of the Commission.

(3) The provisions of the Justices Act 1902 that relate to appeals to the District Court and to the stating of cases by Justices for the opinion of the Supreme Court, the decisions of those Courts on those matters and the carrying out of any such decision apply, subject to the regulations under this Act, to appeals to the Commission, and cases stated for the opinion of the Commission, under this section.

(4) No other proceedings in the nature of an appeal or for prohibition may be taken.

No. 463 Page 353, clause 564. From subclause (1), omit "or the Industrial Court Act 1990" wherever occurring.

No. 464 Page 354, clause 564. From subclauses (4) and (5), omit "Court" wherever occurring, insert instead "Commission".

No. 465 Page 354, clause 565. From subclause (2), omit "Court concerned", insert instead "Industrial Magistrate concerned or the Commission".

No. 466 Page 356, clause 568. After clause 567, insert:

Service of documents

568. Service of any summons, notice, or other document, whether of the same or a different nature, issued or given under this Act or the regulations or under any rule made by the Commission may be effected within or outside New South Wales.

No. 467 Page 356, clause 568. In subclause (1), after "warrant", insert "in respect of the exercise of any powers conferred on an inspector by or under this Act or the regulations".

No. 468 Page 357, clause 568. From subclause (2) (b), omit "a contravention of this Act or the regulations", insert instead "the contravention of this Act or the regulations in relation to which the search warrant was issued".

No. 469 Page 357. After clause 569, insert:

Initial determination of minimum conditions

570. (1) The Full Commission is required, as soon as practicable after the commencement of this section, to determine the initial level of the minimum conditions applicable to enterprise agreements.

(2) The minimum conditions must include conditions of each of the kinds specified in Schedule 3.

(3) The Registrar must ensure that each initial determination made under this section is published in the Industrial Gazette as soon as practicable after it has been made.

No. 470 Page 361, Schedule 2. From the heading, omit "Sec. 74", insert instead "Sec. 108".

No. 471 Page 362, Schedule 2, clause 1. Omit paragraph (e), insert instead:

(e) while a procedure is being followed, normal work should continue unless it is unreasonable or impracticable for it to do so; and

No. 472 Page 362, Schedule 2, clause 1. At the end of paragraph (f), insert:

; and

(g) the employer must advise the employee of his or her right to be represented, or accompanied and advised, by an officer of any industrial union.

No. 473 Page 362, Schedule 2, clause 2. Omit paragraph (c), insert instead:

(c) while a procedure is being followed, normal work should continue unless it is unreasonable or impracticable for it to do so; and

No. 474 Page 362, Schedule 2. After clause 2, insert:

General right to apply to or notify the Commission

3. Nothing in this Schedule detracts from the right of a State registered organisation to apply to or notify the Commission in relation to individual grievances, disputes or difficulties.

No. 475 Pages 363-364, Schedule 3. Omit the Schedule, insert instead:

**SCHEDULE 3 - MINIMUM CONDITIONS OF EMPLOYMENT
FOR ENTERPRISE AGREEMENTS**

(Secs. 131, 586)

The minimum conditions of employment applicable to enterprise agreements must include conditions of the following kinds:

- (1) Minimum rates of wages:
 - (a) for full-time adult employees; and
 - (b) for full-time junior employees;
- (2) Maximum ordinary hours of employment;
- (3) Minimum hourly rates of pay for casual employees;
- (4) Minimum sick leave;
- (5) Minimum redundancy payment for employees

No. 476 Page 365, Schedule 4. From the heading, omit "Sec. 186", insert instead "Sec. 221".

No. 477 Page 365, Schedule 4. Omit clause 1.

No. 478 Page 365, Schedule 4. After clause 2, insert:

Status etc. of members

3. (1) A Presidential Member of the Commission has the same rank, title, status and precedence and the same remuneration and other rights as a Judge of the Supreme Court (other than the Chief Justice or the President of the Court of Appeal), except as provided by subclause (2) and clause 3.

(2) The Judges' Pensions Act 1953 does not apply to a non-judicial member of the Commission.

No. 479 Page 366, Schedule 4, clause 4. Omit subclause (1) (e).

No. 480 Page 367, Schedule 4, clause 4. Omit subclause (5).

No. 481 Page 373, Schedule 5. In clause 2 (2), after "concerned", insert ", to any representations made to the Registrar by the organisation".

No. 482 Page 373, Schedule 5. After clause 2 (3), insert:

(4) Despite anything else in this Act, the rules of a State registered organisation may provide that persons validly elected under the provisions of the Industrial Relations Act 1988 of the Commonwealth to positions in the New South Wales State Branch of a Federally- registered organisation are to be taken to be validly elected to positions in the State registered organisation.

(5) A State registered organisation may apply to the Commission for a declaration that it is substantially related to a branch of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth. Where such a declaration is granted, then, in the event of any conflict between that Act and this Act as to the rules of a registered body, that Act applies to the extent of the inconsistency.

No. 483 Page 377, Schedule 5, clause 6. From subclause (1) and (2), omit ", other than a political donation," wherever occurring.

No. 484 Pages 378-379, Schedule 5, clause 7. Omit the clause.

SECOND PRINT

INDUSTRIAL RELATIONS BILL 1990

NEW SOUTH WALES



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SCHEDULE 6 - RESPONDENTS TO OIL INDUSTRY AWARDS

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
Amendments.*

Clerk of the Parliaments

*Legislative Council
Sydney, October 1990*

NEW SOUTH WALES



Act No. , 1990

An Act to restate and reform the law concerning industrial relations.

See also [*Industrial Court Bill 1990*;] Industrial Legislation (Repeals, Amendments and Savings) Bill 1990.

NOTE - The words to be omitted are printed in italics; those to be inserted are printed in bold type.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Industrial Relations Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects

3. The objects of this Act are:
 - * to promote industrial harmony and co-operation between employers and employees and other parties involved in industrial relations in New South Wales; and
 - * to provide a framework for the orderly conduct of industrial relations in the context of the technological and economic environment, for the purpose of improving efficiency, productivity and equity, having regard to the interests of employers, employees and the community; and
 - * to provide for the making of awards and agreements to regulate the terms and conditions of employment; and
 - * to provide for the enforcement and observance of agreements, awards and orders made, and other obligations arising, under this Act; and
 - * to provide a framework for the prevention and settlement of questions, disputes or difficulties relating to a settled award or agreement by mediation, conciliation and arbitration; and
 - * to ensure that, in dealing with any industrial matter, and in the setting of wages and conditions of employment, proper regard is given to the interests (including interests relating to efficiency, productivity and equity) of the parties immediately concerned and to the interests (including economic interests) of the community as a whole; and

- * to facilitate the conduct of mediation, conciliation and arbitration in a prompt and fair manner and with the minimum of legal form and technicality; and
- * to encourage an enterprise, establishment or workplace consideration in the handling of industrial relations; and
- * to prevent or minimise the disruptive effects of any industrial action associated with the making of an award or agreement; and
- * to avoid industrial action relating to the settled terms of an award or agreement through the use of settlement procedures; and
- * to minimise the disruptive effects of any industrial action that occurs; and
- * to encourage the organisation of representative bodies of employers and employees and their registration under this Act; and
- * to recognise and facilitate the organisation of representative bodies of employers and employees, and to encourage their democratic control and efficient management; and
- * to promote the conduct of industrial relations in a non-discriminatory manner and to provide for equality of opportunity in employment matters.

Definitions

4. (1) In this Act:

"agreement" means an industrial agreement or an enterprise agreement;

"Commission" means the Industrial Relations Commission established by this Act;

["Court" means the Industrial Court established by the Industrial Court Act 1990;]

"Department" means the Department of Industrial Relations and Employment;

"Director-General" means the Director-General of the Department;

["employee" includes an apprentice and a trainee, but does not include a member of a family employed by a parent;]

"employee" means a person employed in any industry, whether on salary or wages or piece-work rates, or as a member of a butty-gang, and includes an apprentice and a trainee, and any person who is, pursuant to any provision of this Act, taken to be

an employee for the purposes of this Act, but does not include a member of a family employed by a parent. The fact that a person is working under a contract for labour only, or substantially for labour only, or as a lessee of any tools or other implements of production, or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller or insurance agent or in any other capacity in which the person is paid wholly or partly by commission, does not in itself prevent the person being taken to be an employee;

"enterprise" means a business, undertaking or project;

["enterprise association" means an association of employees registered under this Act as an enterprise association;]

"enterprise employer" means the employer or employers carrying on an enterprise;

["industrial action" means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which in either case is a restriction or limitation on, or a delay in, the performance of the work, where the terms and conditions of the work are wholly or partly governed by an award or agreement, or by a determination, order or direction of the Commission or the Court; or*
- (b) a ban, limitation or restriction on the performance of work, or on an acceptance of or offering for work, in accordance with the terms and conditions of an award or any such agreement, or of a determination, order or direction of the Commission or the Court; or*
- (c) a ban, limitation or restriction on the performance of work, or on an acceptance of or offering for work, that is adopted in connection with a question, dispute or difficulty concerning an industrial matter; or*
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work; or*
- (e) a lock-out or (without limiting the scope of that term) a closing of a place of employment, or a suspension of work, or a refusal by an employer to employ any number of employees with a view to compelling those employees, or to aid another*

employer in compelling employees, to accept conditions of employment; or

- (f) *a strike or (without limiting the scope of that term) the cessation of work by any number of employees acting in combination, or a concerted refusal under a common understanding by any number of employees to continue to work for an employer with a view to compelling their employer, or to aid other employees in compelling their employer, to accept conditions of employment, or with a view to enforcing compliance with demands made by them or other employees on employers; or*

- (g) *anything prescribed by the regulations as industrial action, unless it is an action by employees that has been authorised or agreed to by their employer or is an action by an employer that has been authorised or agreed to by or on behalf of employees of the employer;]*

"industrial action" means:

- (a) **conduct in breach of an order or award; or**
- (b) **refusal to comply with reasonable and lawful directions of an employer; or**
- (c) **a lock-out or (without limiting the scope of that term) a closing of a place of employment, or a suspension of work, or a refusal by an employer to employ any number of employees with a view to compelling those employees, or to aid another employer to accept, a condition of employment,**

unless it is an action by employees that has been authorised or agreed to by their employer or is an action by an employer that has been authorised or agreed to by the relevant industrial union representing employees of the employer;

"Industrial Gazette" means the publication of that name produced under the authority of the Registrar;

"industrial matters" means matters or things affecting or relating to work done or to be done, or the privileges, rights or duties of employers or employees in any industry, and not involving questions which are or may be the subject of proceedings for an indictable offence and, without limiting the scope of those matters or things, includes all or any matters relating to:

- (a) the wages, allowances or remuneration of any persons employed or to be employed in any industry, or the piece-work contract, or other prices paid or to be paid in an industry in respect of any such employment or intended employment, and the question whether piece-work or contract work or any other system of payment by results is to be allowed in, forbidden in or exclusively prescribed for, an industry, and whether monetary allowance is to be made by employers in respect of standing back or waiting time; and
- (b) the hours of employment, sex, age, qualification or status of employees, and the mode, terms and conditions of employment; and
- (c) the employment of apprentices and trainees; and
- (d) the employment of children or young persons, or of any persons or class of persons in any industry, or the right to dismiss or refuse to employ or reinstate in employment any particular person or class of persons in any industry; and
- (e) any established custom or usage of any industry, either general or in any particular locality; and
- (f) a question, dispute or difficulty in respect of an award, industrial agreement or enterprise agreement; and
- (g) any shop, factory, craft or industry dispute or any matter which may be a contributory cause of such a dispute; and
- (h) any claim that the same wage must be payable to persons of either sex performing the same work or work of the same value to their employer; and
- (i) the mode, terms and conditions of employment of any persons employed in any industry as staff employees and the rights of employers to require such employees to cease to be or to refrain from becoming members of a State employee organisation or to perform work of the nature usually performed by any such members,

but does not include any matter that relates to the training of apprentices or trainees or that is within the jurisdiction of the Vocational Training Board;

"industrial union" means an association registered under this Act as an industrial union of employees;

"industry" includes:

- (a) any business, trade, manufacture, undertaking or calling of employers; and
- (b) any calling, service, employment, handicraft, industrial occupation or vocation of employees; and
- (c) a branch of an industry and a group of industries;

"inspector" means an inspector appointed for the purposes of this Act;

"new matter", in relation to an award or agreement, means an industrial matter:

- (a) that was not determined by the award or agreement; or
- (b) that the Full Commission considers to be of such significance and urgency that it would be contrary to the public interest for the matter not to be dealt with by a variation of the award or agreement or by conciliation or arbitration; or
- (c) that the Full Commission considers to be associated with special and isolated circumstances; or
- (d) that was not the subject of conciliation or arbitration by the Commission in connection with the making of the award or agreement;

"region" means a part of the State prescribed by the regulations as a region;

"Registrar" means the Industrial Registrar;

"rule" means a rule made under this Act by the Commission and in force;

"State employee organisation" means an industrial union *[or enterprise association]*;

"State employer organisation" means an association registered under this Act as a State employer organisation;

"State peak organisation" means an association approved for the time being by the Commission as a peak organisation for employers or employees;

"State registered organisation" means a State employee organisation or a State employer organisation;

"Tribunal" means a Contract Regulation Tribunal established under this Act.

(2) In this Act, a reference to regulating or fixing conditions of employment of persons includes a reference to making provisions with respect to any industrial matter concerning the persons.

(3) For the purposes of this Act, enterprises carried on by corporations that are taken to be related to each other for the purposes of the Companies (New South Wales) Code may be taken to constitute one enterprise or separate enterprises.

(4) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Certain persons to be employees

5. (1) The persons described in Schedule 1, if not otherwise employees employed to do the work referred to in that Schedule, are, for the purposes of this Act, to be taken to be employees and any person described in that Schedule as the employer of such an employee is, for those purposes, to be taken to be an employer.

(2) The provisions of Schedule 1 relating to employers and employees have effect.

Application of Act to employees in rural industries

6. (1) This section applies to employees employed in rural industries, namely:

- (a) on farms, in orchards or vineyards, or on agricultural or pastoral holdings in connection with dairying, poultry farming or bee keeping, or the sowing, raising, harvesting or treating of grain, fodder, fruit or other farm produce, or the management, rearing or grazing of horses, cattle, sheep or other livestock, or the shearing or crutching of sheep, or the classing, scouring, sorting or pressing of wool, on any farm or station, or at other farm or station work; or
- (b) in or in connection with the formation, tending, protection or regeneration of forests; or
- (c) in flower or vegetable market gardens or nurseries; or
- (d) at clearing, fencing, trenching, draining or otherwise preparing land for any of the purposes referred to in this subsection.

(2) Employees to whom this section applies are subject to this Act other than Division 3 of Part 2 (Fixing of hours).

(3) This section does not affect any craftsman or any award or agreement regulating the conditions of employment of craftsmen generally and does not affect any employee employed under the Public Sector Management Act 1988 or any award or agreement regulating the conditions of that employment.

Act binds the Crown

7. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2 - CONDITIONS OF EMPLOYMENT

Division 1 - General powers of the Commission to make awards

Awards

8. The Commission may, on any reference or application to it, make an award in accordance with this Act:

- (a) fixing the prices for work done by employees, and the rates of wages payable to employees, other than aged, infirm or slow workers; or
- (b) fixing the number of hours and the times to be worked in order to entitle employees to the prices or wages so fixed; or
- (c) fixing the rates for overtime and holidays and other special work, including allowances as compensation for overtime, holidays or other special work; or
- (d) declaring what deduction may be made from the wages of employees for board or residence or board and residence, and for any customary privileges or payments in kind conceded to such employees; or
- (e) determining any other industrial matter, whether or not it relates to a condition of employment referred to in paragraph (a), (b), (c) or (d); or

- (f) rescinding or varying any award.

Restrictions on awards

[9. (1) An award does not affect any provisions of the Public Sector Management Act 1988 or of any regulations under that Act.]

9. (1) Nothing in this Act in any way alters any provisions of the Public Sector Management Act 1988 or of any regulations under that Act:

- (a) prescribing or authorising a person to prescribe the passing of an examination or other test as a necessary condition for promotion of an officer or employee, not being an apprentice, to a higher class, grade or division; or**
- (b) providing that payment of increments of salary to an officer, not being an apprentice, as distinguished from adjustments of basic wages, is to be subject to the giving of a certificate by a person that the conduct of the officer and the discharge of the officer's duties warrant an increase of salary.**

(2) In the event of the person refusing to give such a certificate, the officer is to be supplied with a written statement showing the reason why the certificate was refused.

(3) [(2)] An award does not affect any provisions of the Police Regulation Act 1899, or any rules under that Act, making promotion of any employee employed under that Act to a higher rank conditional on any requirement as to satisfactory conduct, efficiency and qualification (whether by examination or otherwise) of the employee.

- (4) [(3)] Nothing in this Act authorises the making of an award that:**
- (a) is inconsistent with the operation of Part 3 of the Government and Related Employees Appeal Tribunal Act 1980; or**
 - (b) is inconsistent with the operation of section 6 (1) of the Police Regulation (Appeals) Act 1923; or**
 - (c) is inconsistent with any function conferred or imposed by or under the provisions of the Police Regulation Act 1899 with respect to the discipline, promotion or transfer of a member of the Police Force; or**
 - (d) is inconsistent with any function conferred or imposed by section 6, 9, 10, 10A, 12A, 12B, 12C, 12G or 18 of the Police Regulation Act 1899; or**

- (e) is inconsistent with any function conferred or imposed by or under the provisions of the Police Regulation (Superannuation) Act 1906.

(5) [(4)] In making an award as to the wages of an employee of an institution carried on wholly or partly for charitable purposes, the Commission:

- (a) is to make allowance for any provision by the institution of food, clothing, lodging or maintenance for the employee; and
- (b) may exempt the institution from all or any terms of the award if the value of the food, clothing, lodging or maintenance allowed for, together with payments made to the employee as wages, are at least equal to the value of the labour of the employee.

Power to review conditions

10. When an application is made for a new award, or the renewal of an award, the Commission is required to review the conditions of the industry concerned, together with the wages payable in that industry, if either party applies for such a review.

Commission may fix quantity of work to be done

11. The Commission may, in fixing wages, fix the quantity of work to be done or services to be provided.

Commission's obligations in fixing wages

12. The Commission is required to fix such prices for work done and rates of wages as the Commission considers just and reasonable to meet the circumstances of the case, but must take into account the objects of this Act and the requirements of Division 2.

Conciliation Committee may exercise functions

13. (1) The functions of the Commission under this Part (Division 8 excepted) may be exercised by a Conciliation Committee, but only in respect of the industry or enterprise for which the Conciliation Committee is established.

(2) The functions of the Commission under Division 8 may be exercised by a Tribunal.

(3) Any function so exercised is to be taken to have been exercised by the Commission.

(4) This section does not limit the exercise of functions under this Part to Conciliation Committees and Tribunals.

(5) Nothing authorises the exercise of any function of the Commission contrary to any requirement made by this Part.

Division 2 - Fixing of wage rates

Definitions

14. In this Division:

"Australian Industrial Relations Commission" means the tribunal of that name constituted under the Industrial Relations Act 1988 of the Commonwealth and includes any successor to that tribunal under that Act or any Act of the Commonwealth amending or replacing that Act;

"Commonwealth decision" means a decision of the Australian Industrial Relations Commission that generally affects, or is likely to generally affect:

- (a) the wages or other remuneration; or
- (b) the working conditions,

of employees in New South Wales who are subject to its awards;

"minimum wage" means a wage of the same nature as the "minimum wage" or "minimum standard" introduced by the Commonwealth Conciliation and Arbitration Commission on 8 July 1966 into the Metal Trades Award made by that Commission, as the minimum wage to be paid to any adult employee in New South Wales to whom that award applies, as varied from time to time.

Minimum adult basic wage

15. (1) An award or industrial agreement that fixes rates of wages by reference or in relation to an adult basic wage is not to be made or entered into for a wage lower than the adult basic wage in force on the day ("**the effective day**") from which the award or agreement applies or is required to be taken to have applied.

(2) The adult basic wage in force when this section commences is \$121.40 per week.

(3) This section does not apply to an award made, or industrial agreement entered into, for wages for apprentices or trainees trained by employers under the Australian Traineeship System.

(4) If the effective day is a day before this section commences, the adult basic wage in force on that day is to be determined in accordance with the provisions of the Industrial Arbitration Act 1940 as in force on the effective day.

National wage decisions

16. (1) As soon as practicable after the making of a Commonwealth decision, the Full Commission must, on application or of its own motion, give consideration to the decision and, unless satisfied that there are good reasons for not doing so:

- (a) must order, for the purposes of awards, industrial agreements and orders under this Act, the adoption, wholly or partly and with or without modification, of the principles, guidelines, conditions and other matters having effect under the Commonwealth decision; and
- (b) may order the variation of such awards, industrial agreements and orders to give effect to the adoption.

(2) When the Full Commission makes such an order, it must direct the amount (if any) by which the adult basic wage, in force at the time of the order, is to be varied in order to achieve consistency with the order and must further direct that the variation is to take effect with respect to a particular case on:

- (a) a specified date; or
- (b) the commencement of a pay period determined by reference to a specified date; or
- (c) a date determined by some other method specified by the Full Commission.

(3) In the exercise of its jurisdiction under this section, the Full Commission may make such orders regarding the variation of awards and industrial agreements either generally or with reference to particular awards or industrial agreements as it may consider to be appropriate.

(4) Subject to any orders made by the Full Commission, the Registrar must as soon as practicable after any order has been made under subsection (3), vary the terms of awards and industrial

agreements made under this Act to the extent necessary to give effect to the order.

(5) While an order under this section is in force:

(a) an award or industrial agreement or a variation of an award or industrial agreement; or

(b) an order under this Act, other than an order by the Full Commission amending or revoking the order under this section, may not be made in such a way as to be inconsistent with the order under this section.

(6) This section permits conditions of employment fixed by an award or industrial agreement to be varied by the Commission without the concurrence of the parties to the making of the award or agreement.

(7) In this section:

"award" includes a contract determination under Division 8.

Action on variation of basic wage

17. (1) In this section:

"basic wage variation direction" means a direction under section 16 (2).

(2) On and from the commencement of a basic wage variation direction, the adult basic wage, in force for the purposes of awards and industrial agreements in force on, or made before and coming into force on or after, that commencement is varied in accordance with the direction in so far as those awards and agreements operate after that commencement.

(3) As soon as practicable after the Commission gives a basic wage variation direction, the Registrar must, by notice published in the Gazette, notify:

(a) the adult basic wage as varied in accordance with the direction; and

(b) the terms of the further direction as to when the basic wage variation direction is to take effect; and

(c) the day on which the last preceding notification was published under this subsection.

(4) The notification:

- (a) is evidence of the matters specified in it; and
- (b) comes into force when the direction to which it relates takes effect; and
- (c) ceases to be in force immediately before the next succeeding such notification comes into force.

(5) If a notification under this section has been published, the terms of all awards and industrial agreements, being terms affecting rates of wages, are to be regarded as having been varied to the extent necessary to give effect to the provisions of subsection (2).

(6) The Registrar may (subject to appeal to the Commission), on application made as prescribed or on the Registrar's own motion, vary the terms of any award or agreement, being terms affecting rates of wages, to the extent necessary to give effect to the provisions of subsection (2).

(7) The Registrar may refer any such application or any matter arising out of any such application or arising under subsection (6) to the Commission for direction.

[(8) This section does not apply to any award or industrial agreement to the extent to which that award or agreement expressly excludes its operation.]

[(9) Except as provided by subsection (8), this] (8) This section permits conditions of employment fixed by an award or industrial agreement to be varied by the Commission without the concurrence of the parties to the making of the award or agreement.

References to the basic wage in other Acts

18. A reference in any other Act to the adult basic wage for the time being in force is a reference to the adult basic wage specified in the notification under section 17 that is in force at the relevant time.

Minimum wage

19. An award may include a provision fixing, as the minimum wage for adults whose rates of wages are fixed by the award, a rate of wages in excess of the adult basic wage in force at the time the award was made.

Savings

20. This Division does not affect the provisions of any award or agreement prescribing the method of calculating hourly, daily, monthly or yearly rates of pay.

Inability to pay award rates

21. (1) This section applies if it is proved to the Commission:

- (a) by the production of books used in connection with the carrying on of an industry or by other evidence produced or tendered, that significant unemployment or other serious consequences to employees or employers, or both, in an industry has resulted or will result from the operation of an award or industrial agreement; or
- (b) that the employees in an industry or the employees of any employer in an industry are or may become entitled to any benefit or payment under any profit-sharing or co-partnership scheme.

(2) If this section applies, the Commission, on being satisfied that it is in the best interests of the employees to do so, may, either absolutely or on terms:

- (a) refrain from making any award; or
- (b) rescind or cancel any award or the registration of an industrial agreement; or
- (c) exempt from the provisions of an award or industrial agreement any employees who are or may be entitled to any benefit or payment under any profit-sharing or co-partnership scheme and their employer.

(3) Subsection (2) (c) permits conditions of employment fixed by an award or industrial agreement to be varied by the Commission without the concurrence of the parties to the making of the award or agreement.

Division 3 - Fixing of hours

Subdivision 1 - Standard hours

General operation of Division

22. (1) The ordinary working hours in all industries to which this Act applies are, for the purposes of this Act, to be as prescribed in or under

this Division and the following provisions of this Division are to be observed in the making of awards and by the parties in making industrial agreements.

(2) Nothing in this Division applies to the coal mining industry.

(3) Nothing in this Division applies to the making of an enterprise agreement or so as to prevent such an agreement from being registered or enforced.

Ordinary working hours

23. (1) In all industries, the number of ordinary working hours of an employee must be in accordance with one of the following:

- (a) not more than 8 hours during any consecutive 24 hours; or
- (b) not more than 40 hours per week; or
- (c) not more than 80 hours in 14 consecutive days; or
- (d) not more than 120 hours in 21 consecutive days; or
- (e) not more than 160 hours in 28 consecutive days.

(2) If, in any industry, meal time or crib time was, at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947, included in the hours of labour by award or industrial agreement, or by well-established practice in the industry, that meal time or crib time is to be counted as working time.

(3) If a working period has been fixed by an award or industrial agreement before or after the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947, the working period is not to be altered to any of the longer working periods referred to in this Division except by consent of the parties or by award or order of the Commission.

Underground occupations

24. (1) The working time of an employee in a shift in underground occupations or occupations in which the conditions as to temperature, ventilation and lighting are similar to those obtaining in underground occupations, is not to exceed 6 hours if, for 4 hours of the working time of the shift, the temperature of the place where the employee is occupied exceeds [27 degrees Celsius] 26.75 degrees Celsius Wet Bulb.

(2) For the purposes of this section, any number of employees whose regular time for beginning work is approximately the same and whose

regular time of terminating work is approximately the same are to be considered to be a shift of employees.

Variation in working hours

25. (1) If under an award or industrial agreement the ordinary working hours on any day or days in any week are fixed at fewer than 8, those hours on the other days of the week may exceed 8 per day.

(2) If under an award or industrial agreement **ordinary** working hours are or may be worked on fewer than 6 days per week, those hours may exceed 8 per day.

Overtime

26. No employee is to be required to work without payment of overtime on more than 6 out of 7 consecutive days except in an industry which is subject to an award or agreement providing for shift work or except in cases of emergency not under the control of the employer.

Increase or reduction in working hours

27. (1) The Full Commission may, in the public interest, increase the ordinary working hours or the number of days on which they may be worked or both such hours and days beyond those specified in this Division.

(2) The Full Commission may reduce below the number of hours specified in this Division the ordinary working hours:

- (a) of any employees engaged in work which, in the opinion of the Full Commission, is prejudicial to health; or
- (b) in any case in which the reduction would, in the opinion of the Full Commission, not be contrary to the public interest.

(3) If in any industry the ordinary time of work was, at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947, fixed by award or industrial agreement or by well-established practice in the industry, that time is not to be exceeded afterwards in respect of that industry.

Making of awards concerning hours of work

28. (1) The Full Commission may, on application, make an award prescribing for an industry or in respect of any employees, or class of

employees, in an industry (not being aged, infirm or slow workers) ordinary working hours other than those specified in section 23.

(2) This section does not authorise the Full Commission to prescribe ordinary working hours in excess of those specified in section 23.

(3) This section does not authorise the Full Commission to make an award prescribing for an industry or in respect of any employees, or class of employees, in an industry ordinary working hours that are fewer than those specified in section 23 unless:

- (a) that industry, those employees or that class of employees was or were, immediately before the making of the award, bound by an agreement or some other award under which the ordinary working hours relating to it or them were fewer than those specified in section 23 and the ordinary working hours so prescribed are not fewer than those contained in that agreement or that other award; or
- (b) the Full Commission is satisfied that the making of the award is not contrary to the public interest.

Industrial agreements concerning hours of work

29. (1) This section applies to an industrial agreement which:

- (a) was or is made after the commencement of the Industrial Arbitration (Amendment) Act 1981; and
- (b) provides for ordinary working hours for employees, or any class of employees, in an industry that are fewer than those specified in section 23 and fewer than those specified in any other industrial agreement or award that bound those employees or that class of employees immediately before the making of the agreement.

(2) An industrial agreement to which this section applies has no force or effect unless the Full Commission orders that the agreement be endorsed with a certificate certifying that the agreement is not contrary to the public interest.

(3) As soon as practicable after an industrial agreement to which this section applies is filed at the office of the Registrar for approval for registration, the Registrar is to refer the agreement to the Full Commission for endorsement on the agreement of such a certificate.

(4) When an industrial agreement is referred to it, the Full Commission:

- (a) is to cause to be listed for hearing the question of whether the agreement should be endorsed with the certificate; and
 - (b) is to cause notice, in such form and manner as it may determine, of the time and place set down for the hearing to be given to the parties to the agreement; and
 - (c) at that time and place, or at some other time and place to which the proceedings for the determination of that question are adjourned, is to hear and determine that question and make an order that the agreement be endorsed with the certificate, or that the agreement be not so endorsed, as it thinks fit.
- (5) The Full Commission is not to order that an agreement be endorsed with the certificate unless it is satisfied that the agreement is not contrary to the public interest.

Determination of public interest

30. For the purpose of satisfying itself that the making of an award, or that an industrial agreement referred to it, is not contrary to the public interest, the Full Commission is to have regard to the economic consequences of the proposed award or agreement, with special reference to any adverse effects on the viability of any industry [*or enterprise*] and to its likely effects on the level of employment and on inflation.

Intervention by the Crown

31. (1) The Crown may intervene in any proceedings before the Full Commission in relation to:

- (a) the making of an award under section 28; or
 - (b) the hearing, under section 29, of a question of whether an industrial agreement should be endorsed with a certificate referred to in that section.
- (2) The Crown may make such representations as it thinks fit in order to safeguard the public interest.
- (3) The Crown may, if in the opinion of the Minister the public interest is or would be likely to be adversely affected by any such award or industrial agreement, apply to the Commission at any time for an order suspending, varying or rescinding the award or agreement, and the Commission has jurisdiction to make such an order if it thinks fit.

**Subdivision 2 - Existing awards
and industrial agreements**

Effect of Subdivision 1 on existing awards and industrial agreements

32. (1) The terms of each award or industrial agreement in force at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947 are to be regarded as having been varied to the extent necessary to give effect to the provisions of Subdivision 1 as from that commencement.

(2) Wages and salaries fixed on a weekly or longer basis by any award or industrial agreement in force at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947 or any award made or agreement entered into after that commencement are not to be reduced by reason of any reduction of the ordinary working hours by or under Subdivision 1.

Effect on rates of pay

33. (1) If the ordinary working hours in an industry for the time being subject to an award or industrial agreement are reduced by or under Subdivision 1, the rate of wages specified in the award or agreement as payable on a daily or hourly basis is by this section increased to such rate as will provide each employee working full time with the same amount of wages as he or she would have received for working full time under the provisions of the award or agreement before the reduction of hours.

(2) If the ordinary working hours in an industry for the time being subject to an award or industrial agreement are reduced by or under Subdivision 1, any piecework rate specified in the award or agreement is by this section increased to such rate as will provide each employee working full time with the same remuneration as he or she would have received working full time at the same speed under the provisions of the award or agreement before the reduction of hours.

(3) The increase in the rate of wages and piecework rate effected by this section takes effect, in a case in which the Commission exercises the jurisdiction conferred by section 27 (2), as from the date of the reduction by the Commission of the ordinary working hours, or as from such future date as is specified in the order.

(4) Any increase in the rate of wages or piecework rate under this section is binding and enforceable in the same manner as it would be if it had been made by an award of the Commission.

Subdivision 3 - Overtime

Definition of "overtime"

34. In this Subdivision:

"overtime" means time worked in excess of the days or hours limited by or under this Act.

Overtime may be provided for in award or agreement

35. Overtime in any industry may be permitted by the terms of any award or agreement.

Payment or time off for overtime

36. If overtime is so permitted:

- (a) it must be paid for at a rate to be fixed by an award or agreement; or
- (b) time off instead is to be allowed if so provided for by an agreement or award.

Subdivision 4 - Miscellaneous

Offence

37. (1) Any person who makes an arrangement or contract (whether express or implied and whether orally or in writing) which provides for the working of hours in excess of those prescribed by or under this Division or who contravenes any of the provisions of this Division is guilty of an offence.

Maximum penalty: 50 penalty units.

[(2) This section does not apply to the making of any arrangement or contract relating to the making of an enterprise agreement.]

(2) Nothing in this Part provides a defence to an employer or exempts any person from any liability in any action or other proceedings brought against the employer by any person, whether an employee or not, for the recovery of compensation for injuries or recovery of wages or for any other purposes.

Overtime rates

38. Rates of pay for hours worked as overtime or in excess of ordinary working hours in any industry in respect of which overtime or work in excess of ordinary working hours is not prohibited by or under this Part must not be fixed by an award or agreement at less than the rates which were paid in the industry immediately before the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act 1947 either under award or agreement or by well-established practice in the industry.

[Division 4 - Maternity leave]

Definitions

38. In this Division:

"confinement", in relation to a female employee, means her confinement caused by the birth of a child or other termination of a pregnancy;

"expected date of confinement", in relation to a female employee who is pregnant, means a date certified by a medical practitioner to be the date on which the medical practitioner expects the employee to be confined in respect of her pregnancy;

"employee" means a person who is:

- (a) a worker as defined in the Annual Holidays Act 1944; and
- (b) employed full-time or part-time;

"maternity leave" means unpaid leave in accordance with this Division in respect of a pregnancy;

"ordinary maternity leave" means maternity leave which is not special maternity leave;

"special maternity leave" means maternity leave under section 47.

Operation of this Division

39. (1) The provisions of this Division do not affect or override any entitlement that a female employee may have under a provision of any other Act or any award, agreement or contract of employment in relation to sick leave or other leave or payment for such leave.

(2) No arrangement, contract or agreement made or entered into either before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Division.

(3) If a female employee is entitled under a provision of any other Act or any award, agreement or contract of employment to a benefit that is more favourable to the employee than a benefit provided in this Division, this Division does not apply to the extent that it is inconsistent with the provision.

Entitlement to maternity leave

40. (1) Every female employee is entitled to be absent on maternity leave from the service of her employer if she has continuously served that employer during the whole of the period of 12 months immediately before her absence.

(2) For the purposes of this section, section 4 (11) (c) of the Long Service Leave Act 1955 applies to and in respect of the service of an employee in the same way as it applies to and in respect of the service of a worker.

Employer to inform employees of notice requirements

41. (1) On becoming aware that an employee is pregnant, the employee's employer must inform the employee of

- (a) her entitlements under this Division; and
- (b) her responsibility to notify the employer of those matters in respect of which this Division requires the employee to notify the employer.

(2) An employer is not entitled to rely on an employee's failure to give a notice as required by this Division unless the employer establishes that this section has been complied with in relation to the employee.

Employee to give medical certificate and notice of intention to take maternity leave

42. (1) A female employee who wishes to take ordinary maternity leave must:

- (a) not less than 10 weeks before the expected date of her confinement give to her employer a certificate from a medical practitioner that certifies as to her pregnancy and states the expected date of confinement; and
- (b) not less than 4 weeks before the date on which she intends to commence ordinary maternity leave, give to her employer a notice in writing that states her intention to take maternity leave and

specifies the period of leave she intends to take and the date of commencement of that period.

(2) If an employee is unable to comply with the requirement in subsection (1) (b) because of her confinement occurring earlier than the expected date, she is, if her confinement results in the birth of a living child, entitled to give the notice referred to in that subsection not later than 2 weeks after her confinement.

(3) Any absence by a female employee in respect of a pregnancy is not to be regarded as absence on ordinary maternity leave for the purposes of this Division unless she has given to her employer a certificate and a notice in accordance with this section.

(4) Any absence by a female employee in respect of a pregnancy, other than absence during the period of leave specified in the notice given by her under this section or absence during that period as last varied in accordance with section 44, is not to be regarded as absence on ordinary maternity leave unless the absence is caused by:

- (a) the confinement of the employee occurring before the commencement of the period, if the confinement results in the birth of a living child; or*
- (b) the employer of the employee requiring her under section 43 to commence ordinary maternity leave.*

Employer may vary date of commencement of leave in certain cases

43. If an employee has given to her employer a certificate referred to in section 42 and:

- (a) has given to her employer a notice under that section stating that she intends to commence maternity leave on a date later than 6 weeks before the expected date of her confinement; or*
- (b) has not given to her employer a notice under that section prior to 8 weeks before the expected date of her confinement,*

her employer may, by not less than 14 days' notice in writing, require her to commence ordinary maternity leave on a specified date within the period of 6 weeks before the expected date of confinement.

Employee may vary period of leave

44. (1) An employee who has given to her employer a notice ("the original notice") under section 42 may, by a further notice in writing given

to her employer in accordance with this section, vary the period of maternity leave she specified in the original notice.

(2) Such a further notice may be given any number of times before the commencement of ordinary maternity leave and may be given after the commencement of ordinary maternity leave:

- (a) once without the consent of her employer; and
- (b) any number of times with the consent of her employer; and
- (c) once without the consent of her employer in the circumstances referred to in section 46 (2) (in addition to any variation made under paragraph (a)).

(3) The further notice varying the period of maternity leave must be given:

- (a) before the commencement of ordinary maternity leave:
 - (i) if the commencement is delayed, at least 4 weeks before the commencement of the period as last notified to the employer before the giving of the further notice; and
 - (ii) if the commencement is brought forward, at least 4 weeks before the commencement of the period as varied in the further notice; and
- (b) after the commencement of ordinary maternity leave:
 - (i) if the period is extended, at least 4 weeks before the last day of the period as last notified to the employer before the giving of the further notice; and
 - (ii) if the period is shortened, at least 4 weeks before the last day of the period as varied in the further notice.

Ordinary maternity leave to include period of 6 weeks after confinement

45. Except as provided by section 46, the period of ordinary maternity leave taken by an employee is to include the period of 6 weeks immediately following her confinement.

Maternity leave where pregnancy terminates otherwise than by the birth of a living child

46. (1) If the pregnancy of an employee who is not absent on ordinary maternity leave terminates otherwise than by the birth of a living child, the employee ceases, if otherwise entitled to ordinary maternity leave in respect of that pregnancy, to be so entitled.

(2) If the pregnancy of an employee who is absent on ordinary maternity leave terminates at least 28 weeks before the expected date of her confinement otherwise than by the birth of a living child, the employee may shorten the period of her maternity leave in accordance with section 44.

(3) An employee who under this section shortens the period of her maternity leave is not entitled to resume work sooner than 6 weeks after the date of her confinement unless she has given to her employer a certificate from a medical practitioner stating that the pregnancy of the employee terminated otherwise than by the birth of a living child.

Special maternity leave

47. An employee who is not absent on ordinary maternity leave but who is entitled to take maternity leave is, in respect of a pregnancy, entitled to be absent on special maternity leave for such period or periods as a qualified medical practitioner certifies as necessary:

- (a) in respect of any illness related to the pregnancy; and
- (b) in respect of the normal consequences of confinement if, at least 28 weeks before the expected date of confinement, her pregnancy terminates otherwise than by the birth of a living child.

Maternity leave not to exceed 52 weeks

48. (1) An employee is not, in respect of the same pregnancy, entitled to be absent on maternity leave (whether special or ordinary) for a period which exceeds, or for periods which in total exceed, 52 weeks.

(2) If an employee has, in respect of a pregnancy, been absent on maternity leave for 52 weeks, any further absence by the employee in respect of that pregnancy is not to be regarded as absence on maternity leave for the purposes of this Division.

Annual holiday or long service leave may be substituted for or added to maternity leave

49. An employee who is entitled under this Division to maternity leave in respect of a pregnancy may take any annual holiday leave or long service leave to which she is entitled in substitution for or in addition to maternity leave so long as the total of all periods of annual holiday leave, long service leave and maternity leave (whether special or ordinary) taken in respect of that pregnancy does not exceed 52 weeks.

Effect of resumption of employment on further maternity leave

50. An employee who resumes her employment after being absent from that employment on maternity leave in respect of a pregnancy is not entitled to any further maternity leave in respect of that pregnancy except by absence on special maternity leave taken under section 47 (a).

Notice to be given confirming intention to return to work

51. (1) An employee who is absent on maternity leave must, not more than 6 weeks and not less than 4 weeks before the last day of the period of leave specified in the latest notice to her employer under this Division, give to her employer a notice in writing confirming her intention to return to work.

(2) An employee who fails to give to her employer a notice in accordance with this section is to be regarded as having terminated her employment with the employer on the day after the last day on which the notice is required under this section to be given.

Employee entitled to former position after maternity leave

52. (1) In this section:

"former position", in relation to an employee who has taken maternity leave in respect of a pregnancy, means:

- (a) the position held by her in the employment of her employer immediately before she commenced the maternity leave; or
- (b) if, only because of the pregnancy, she had transferred or been transferred from one such position to another such position before commencing maternity leave, the position held by her in that employment immediately before she so transferred or was transferred to another position.

(2) An employer is to make available to an employee who returns to work at the conclusion of maternity leave:

- (a) the former position of the employee; or
- (b) if the former position of the employee has ceased to exist but there is another position available, or other positions available, in the employment of the employer for which the employee is capable or qualified, that position or such of those positions as is as close as possible in status and remuneration to that of her former position.

Maximum penalty: 20 penalty units.

(3) *An employer must not employ a person in the former position of an employee who is taking or will be taking maternity leave unless the employer has informed that person of the rights of that employee under this section in relation to her former position.*

Maximum penalty: 20 penalty units.

Absence on maternity leave not to affect continuity of service

53. (1) *The absence of an employee on maternity leave is not for any purpose to be regarded as interrupting or affecting the continuity of the service by the employee with her employer.*

(2) *Any period during which an employee is absent on maternity leave is not to be taken into account in calculating for any purpose the period of service of the employee.*

Employee may be transferred to a more suitable position

54. *If*

- (a) *an employee who is pregnant gives to her employer a certificate from a medical practitioner stating that illness or risks arising out of her pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present position; and*
- (b) *there is another position available, or other positions available, in the employment of the employer which is or are suitable to be performed by the employee and which the employee is capable of performing*

the employer must, if the employer considers it to be practicable, make available to the employee that position or such of those positions as is as close as possible in status and remuneration to that of her present position.

Maximum penalty: 20 penalty units.

Employer not to terminate employment on ground of pregnancy or absence on maternity leave

55. *An employer must not terminate the employment of an employee merely because the employee is or has been pregnant or absent on maternity leave.*

Maximum penalty: 20 penalty units.

Civil remedies not affected

56. The provision by this Division of a penalty for a contravention of a provision of this Division does not operate to prejudice or affect any right or remedy in respect of such a contravention that an employee would have if such a penalty were not so provided.]

Division 4 - Parental leave

Subdivision 1 - Operation of Division 4

Operation of Division 4

39. [38.] (1) Subject only to the provisions of this Division, employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(2) The provision by this Division of a penalty for the contravention of a provision of this Division does not operate to prejudice or affect any right or remedy in respect of such a contravention that an employee would have if such a penalty were not so provided.

Employer to inform employee of requirements

40. [39.] (1) On becoming aware that an employee is pregnant, the employee's employer must inform the employee of:

- (a) her entitlements under Subdivision 2; and**
- (b) her responsibility to notify the employer of those matters in respect of which Subdivision 2 requires the employee to notify the employer.**

(2) On becoming aware that an employee's spouse is pregnant, the employee's employer must inform the employee of:

- (a) his entitlements under Subdivision 3; and**
- (b) his responsibility to notify the employer of those matters in respect of which Subdivision 3 requires the employee to notify the employer.**

(3) On becoming aware that a child has been placed with an employee for adoption purposes, the employee's employer must inform the employee of:

- (a) his or her entitlements under Subdivision 4; and
- (b) his or her responsibility to notify the employer of those matters in respect of which Subdivision 4 requires the employee to notify the employer.

(4) An employer is not entitled to rely on an employee's failure to produce a certificate or give a notice as required by this Division unless the employer establishes that this section has been complied with in relation to the employee.

Subdivision 2 - Maternity leave

Nature of leave

41. [40.] Maternity leave is unpaid leave.

Definitions

42. [41.] For the purposes of this Subdivision:

"child" means a child of the employee under the age of one year;

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by an award or agreement;

"employee" includes a part-time employee but does not include an employee engaged in casual or seasonal work;

"paternity leave" means leave of the type provided for by Subdivision 3, whether prescribed by an award or otherwise;

"spouse" includes a de facto spouse.

Eligibility for maternity leave

43. [42.] (1) An employee who becomes pregnant, on production to her employer of the certificate required by section 44, is entitled to a period of up to 52 weeks' maternity leave, provided that such leave does not extend beyond the child's first birthday. This entitlement is to be reduced by any period of paternity leave taken by the employee's spouse and, apart from paternity leave of up to one week at the time of confinement, is not to be taken concurrently with paternity leave.

(2) Subject to sections 46 and 49, the period of maternity leave is to be unbroken and must, immediately following confinement, include a period of 6 weeks compulsory leave.

(3) An employee must have had at least 12 months' continuous service with the employee's employer immediately preceding the date on which she commences such leave.

Certification

44. [43.] (1) When applying for maternity leave, an employee must produce to her employer a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.

(2) An employee must also produce to her employer a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that, for the period of maternity leave, she will not engage in any conduct inconsistent with her contract of employment.

Notice requirements

45. [44.] (1) An employee must, not less than 10 weeks before the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(2) An employee must give not less than 4 weeks notice in writing to her employer of the date on which she proposes to commence maternity leave stating the period of leave to be taken.

(3) An employer, by not less than 14 days notice in writing to the employee, may require her to commence maternity leave at any time within the 6 weeks immediately prior to her presumed date of confinement.

(4) An employee is not in breach of this section as a consequence of failure to give the stipulated period of notice in accordance with subsection (2) if such failure is occasioned by the confinement occurring earlier than the presumed date.

Transfer to a safe job

46. [45.] (1) If, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the

employee to continue at her present work, the employee must, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

(2) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of sections 50-54.

(3) An employer who does not comply with any obligation imposed on the employer by this section is guilty of an offence.

Maximum penalty (subsection (3)): 20 penalty units.

Variation of period of maternity leave

47. [46.] (1) Provided the maximum period of maternity leave does not exceed the period to which an employee is entitled under section 43:

- (a) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and
- (b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of maternity leave may, with the consent of her employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

Cancellation of maternity leave

48. [47.] (1) Maternity leave, applied for but not commenced, is cancelled when the pregnancy of an employee terminates otherwise than by the birth of a living child.

(2) If the pregnancy of an employee then on maternity leave terminates otherwise than by the birth of a living child, it is the right of the employee to resume work at a time nominated by her employer which must not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

Special maternity leave and sick leave

49. [48.] (1) If the pregnancy of an employee not then on maternity leave terminates after 28 weeks otherwise than by the birth of a living child, then:

- (a) she is entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies to be necessary before her return to work; or
- (b) for illness other than the normal consequences of confinement she is to be entitled, either instead of or in addition to special maternity leave, to such paid sick leave as she is then entitled to and as a registered medical practitioner certifies to be necessary before her return to work.

(2) If an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as she is then entitled to and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies to be necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave does not exceed the period to which the employee is entitled under section 43.

(3) For the purposes of sections 50-54, maternity leave includes special maternity leave.

(4) An employee returning to work after the completion of a period of leave taken pursuant to this section is entitled to the position which she held immediately before commencing such leave or, in the case of an employee who was transferred to a safe job pursuant to section 46, to the position she held immediately before such transfer.

(5) If such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she is entitled to a position as nearly as possible comparable in status and pay as that of her former position.

(6) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subsection (6)): 20 penalty units.

Maternity leave and other leave entitlements

50. [49.] (1) Provided that the aggregate of any leave, including leave taken under this Subdivision, does not exceed the period to which the

employee is entitled under section 43, an employee may, instead of or in conjunction with maternity leave, take any annual leave or long service leave or any part of it to which she is entitled.

(2) Paid sick leave or other paid absences authorised by an award or agreement (excluding annual leave or long service leave) are not available to an employee during her absence on maternity leave.

Effect of maternity leave on employment

51. [50.] Subject to this Subdivision, despite any award or other provision to the contrary, absence on maternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

52. [51.] (1) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with any relevant award or agreement.

(2) An employer must not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Subdivision.

Maximum penalty (subsection (2)): 20 penalty units.

Return to work after maternity leave

53. [52.] (1) An employee must confirm her intention of returning to work by notice in writing to the employer given not less than 4 weeks before the expiration of her period of maternity leave.

(2) An employee, on returning to work after maternity leave or expiration of the notice required by subsection (1), is entitled:

- (a) to the position which she held immediately before commencing maternity leave; or
- (b) in the case of an employee who was transferred to a safe job pursuant to section 46, to the position which she held immediately before the transfer; or
- (c) in the case of an employee who has worked part-time during the pregnancy, to the position she held immediately before commencing the part-time work.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position as nearly as possible comparable in status and pay to that of her former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

Replacement employees

54. [53.] (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this Subdivision, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Nothing in this Subdivision is to be construed as requiring an employer to engage a replacement employee.

Subdivision 3 - Paternity leave

Nature of leave

55. [54.] Paternity leave is unpaid leave.

Definitions

56. [55.] For the purposes of this Subdivision:

"child" means a child of the employee's spouse under the age of one year;

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by an award or agreement;

"employee" includes a part-time employee, but does not include an employee engaged in casual or seasonal work;

"maternity leave" means leave of the type provided for by Subdivision 2 (and includes special maternity leave) whether prescribed by an award, or agreement or otherwise;

"primary care-giver" means a person who assumes the principal role of providing care and attention to a child;

"spouse" includes a de facto spouse.

Eligibility for paternity leave

57. [56.] (1) A male employee, upon production to his employer of the certificate required by section 58, is entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, in the following circumstances:

- (a) an unbroken period of up to one week at the time of confinement of his spouse;
- (b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child if the leave does not extend beyond the child's first birthday. This entitlement is to be reduced by any period of maternity leave taken by the employee's spouse and is not to be taken concurrently with that maternity leave.

(2) An employee must have had at least 12 months' continuous service with the employee's employer immediately preceding the date on which he commences either period of leave.

Certification

58. [57.] (1) When applying for paternity leave, the employee must produce to his employer a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place.

(2) In relation to any period to be taken under section 57 (1) (b), the employee must also produce a statutory declaration stating:

- (a) that he is seeking that period of paternity leave to become the primary care-giver of a child; and
- (b) particulars of any period of maternity leave sought or taken by his spouse; and
- (c) that, for the period of paternity leave, he will not engage in any conduct inconsistent with his contract of employment.

Notice requirements

59. [58.] (1) An employee must, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certification required by section 58.

(2) An employee is not in breach of this section as a consequence of failure to give the notice required in subsection (1) if the failure is due to:

- (a) the birth occurring earlier than the expected date; or
- (b) the death of the mother of the child; or
- (c) other compelling circumstances.

(3) The employee must immediately notify his employer of any change in the information provided pursuant to section 58.

Variation of period of paternity leave

60. [59.] (1) Provided that the maximum period of paternity leave does not exceed the period to which the employee is entitled under section 57:

- (a) the period of paternity leave provided by section 57 (1) (b) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened; and
- (b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of paternity leave taken under section 57 (1) (b) may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

Cancellation of paternity leave

61. [60.] Paternity leave, applied for under section 57 (1) (b) but not commenced, is cancelled when the pregnancy of the employee's spouse terminates otherwise than by the birth of a living child.

Paternity leave and other leave entitlements

62. [61.] (1) Provided the aggregate of any leave, including leave taken under this Subdivision, does not exceed the period to which the employee is entitled under section 57, an employee may, instead of or in conjunction with paternity leave, take any annual leave or long service leave or any part of it to which he is entitled.

(2) Paid sick leave or other paid absences authorised by an award or agreement (excluding annual leave or long service leave) is not available to an employee during his absence on paternity leave.

Effect of paternity leave on employment

63. [62.] Subject to this Subdivision, despite any award, agreement or other provision to the contrary, absence on paternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

64. [63.] (1) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with any relevant award or agreement.

(2) An employer must not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Subdivision.

Maximum penalty (subsection (2)): 20 penalty units.

Return to work after paternity leave

65. [64.] (1) An employee must confirm his intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of the period of paternity leave provided by section 57 (1) (b).

(2) An employee, on returning to work after paternity leave or expiration of the notice required by subsection (1):

- (a) is entitled to the position which he held immediately before proceeding on paternity leave; or
- (b) in the case of an employee who has worked part-time under this Division, to the position he held immediately before commencing the part-time work.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he is entitled to a position as nearly as possible comparable in status and pay to that of his former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

Replacement employees

66. [65.] (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this Subdivision, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Nothing in this Subdivision is to be construed as requiring an employer to engage a replacement employee.

Subdivision 4 - Adoption leave

Nature of leave

67. [66.] Adoption leave is unpaid leave.

Definitions

68. [67.] For the purposes of this Subdivision:

"child" means a person under the age of 5 years who has not previously lived continuously with the employee concerned for a period of 6 months, or who is not a child or step-child of the employee or of the spouse of the employee, and is placed with the employee for the purposes of adoption;

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and**
- (b) any period of leave or absence authorised by the employer or by any relevant award or agreement;**

"employee" includes a part-time employee, but not an employee engaged upon casual or seasonal work;

"primary care-giver" means a person who assumes the principal role of providing care and attention to a child;

"relative adoption" occurs where a child is adopted by a parent, a spouse of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage);

"spouse" includes a de facto spouse.

Eligibility

69. [68.] (1) An employee, upon production to the employer of the documentation required by section 70, is entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks, in the following circumstances:

- (a) an unbroken period of up to 3 weeks at the time of the placement of the child;**
- (b) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This entitlement is to be reduced by:**
 - (i) any period of leave taken pursuant to paragraph (a); and**
 - (ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse,**

but such leave is not to extend beyond one year after the placement of the child and is not to be taken concurrently with adoption leave taken by the employee's spouse.

(2) The employee must have had at least 12 months continuous service with that employer immediately preceding the date on which he or she proceeds upon such leave in either case.

Certification

70. [69.] (1) Before taking adoption leave, the employee must produce to the employer:

- (a) a statement from an adoption agency or another appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
- (b) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(2) In relation to any period to be taken under section 69 (1) (b), a statutory declaration stating:

- (a) that the employee is seeking adoption leave to become the primary care-giver of the child; and
- (b) particulars of any period of adoption leave sought or taken by the employee's spouse; and
- (c) that, for the period of adoption leave, the employee will not engage in any conduct inconsistent with his or her contract of employment.

Notice requirements

71. [70.] (1) On receiving notice of approval for adoption purposes, an employee must notify the employer of the approval and within 2 months of the approval must further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption, the employee must so notify the employer on deciding to take a child into custody pending an application for an adoption order.

(2) An employee who commences employment with an employer after the date of approval for adoption purposes must notify the employer of that date on commencing employment and of the period or periods of adoption leave which the employee proposes to take. Such

an employee is not entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date on which he or she proceeds on the leave.

(3) An employee must, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before the placement, give notice in writing to the employer of that date, and of the date of commencement of any period of leave to be taken under section 69 (1) (a).

(4) An employee must, 10 weeks before the proposed date of commencing any leave to be taken under section 69 (1) (b) give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(5) An employee is not in breach of this Subdivision, as a consequence of failure to give the stipulated period of notice in accordance with subsections (3) and (4) if the failure is occasioned by the requirement of an adoption agency for the employee to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

Variation of period of adoption leave

72. [71.] (1) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under section 69:

- (a) the period of leave taken under section 69 (1) (b) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened; and
- (b) the period may be further lengthened by agreement between the employer and employee.

(2) The period of adoption leave taken under section 69 (1) (b) may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

Cancellation of adoption leave

73. [72.] (1) Adoption leave, applied for but not commenced, is cancelled should the placement of the child not proceed.

(2) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee must notify the employer forthwith and the employer must nominate a time not exceeding 4 weeks from receipt of notification for the employee's resumption of work.

Special leave

74. [73.] (1) The employer must grant to any employee who is seeking to adopt a child such unpaid leave not exceeding 2 days as is required by the employee to attend such compulsory interviews or examinations as are necessary as part of the adoption procedure.

(2) Where paid leave is available to the employee, the employer may require the employee to take such leave instead of special leave.

Adoption leave and other entitlements

75. [74.] (1) Provided the aggregate of any leave, including adoption leave taken under this Subdivision, does not exceed the period to which the employee is entitled under section 69, an employee may, instead of or in conjunction with adoption leave, take any annual leave or long service leave or any part of it to which he or she is entitled.

(2) Paid sick leave or other paid absences authorised by an award or agreement (excluding annual leave or long service leave), are not available to an employee during the employee's absence on adoption leave.

Effect of adoption leave on employment

76. [75.] Subject to this Subdivision, despite any award, agreement or other provision to the contrary, absence on adoption leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

77. [76.] (1) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Subdivision.

(2) An employer must not terminate the employment of an employee on the ground of the employee's application to adopt a child

or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Subdivision.

Maximum penalty (subsection (2)): 20 penalty units.

Return to work after adoption leave

78. [77.] (1) An employee must confirm the intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of the period of adoption leave provided by section 69 (1) (b).

(2) An employee, on returning to work after adoption leave, is entitled to:

- (a) the position held immediately before proceeding on such leave; or
- (b) in the case of an employee who has worked part-time under this Subdivision, the position held immediately before commencing such part-time work.

(3) Where such a position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as possible comparable in status and pay to that of the employee's former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this clause is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

Replacement employees

79. [78.] (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this Subdivision, the employer must inform

that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Nothing in this Subdivision is to be construed as requiring an employer to engage a replacement employee.

Subdivision 5 - Part-time work

Definitions

80. [79.] For the purposes of this Subdivision:

"continuous service" means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Subdivision; and
- (b) any period of leave or absence authorised by the employer or by any relevant award or agreement;

"female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes;

"former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this Subdivision, whichever first occurs, or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly as possible comparable in status and pay to that of the position first mentioned in this definition;

"male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes;

"spouse" includes a de facto spouse.

Entitlement

81. [80.] With the agreement of the employer:

- (a) a male employee may work part-time in one or more periods at any time from the date of birth of the child until its fifth birthday or, in the case of an adoption, from the date of the placement of the child until its fifth birthday or the second anniversary of the placement (whichever occurs later); and

- (b) a female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable; and
- (c) a female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its fifth birthday; and
- (d) in the case of an adoption, a female employee may work part-time in one or more periods at any time from the date of the placement of the child until its fifth birthday or the second anniversary of the placement (whichever occurs later).

Return to former position

82. [81.] (1) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(2) Nothing in subsection (1) prevents the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(3) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty (subclause (3)): 20 penalty units.

Pro rata entitlements

83. [82.] Subject to the provisions of this Subdivision and the matters agreed to in accordance with section 84, part-time employment is to be in accordance with the provisions of this Subdivision which are to apply pro rata.

Part-time work agreement

84. [83.] (1) Before commencing a period of part-time employment under this Subdivision, the employee and the employer must agree:

- (a) that the employee may work part-time; and
- (b) on the hours to be worked by the employee, the days on which they will be worked and commencing times for the work; and

- (c) on the classification applying to the work to be performed; and
- (d) on the period of part-time employment.

(2) The terms of the agreement may be varied by consent.

(3) The terms of the agreement or any variation to it are to be reduced to writing and retained by the employer. A copy of the agreement and any variation to it must be provided to the employee by the employer.

(4) The terms of the agreement apply to the part-time employment.

Termination of employment

85. [84.] The employment of a part-time employee under this Division may be terminated in accordance with the provisions of this Subdivision but must not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this Division or has enjoyed or proposes to enjoy any benefits arising under this Division.

Maximum penalty: 20 penalty units.

Overtime

86. [85.] An employer may request, but not require, an employee working part-time under this Subdivision to work overtime.

Nature of part-time work

87. [86.] The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work otherwise performed under any relevant award or agreement.

Inconsistent award provisions

88. [87.] An employee may work part-time under this Subdivision despite any other provision of any relevant award or agreement which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked, including provisions:

- (a) limiting the number of employees who may work part-time; or
- (b) establishing quotas as to the ratio of part-time to full-time employees; or

(c) prescribing a minimum or maximum number of hours a part-time employee may work,
and such provisions do not apply to part-time work under this Subdivision.

Replacement employees

89. [88.] (1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this Subdivision.

(2) A replacement employee may be employed part-time. Subject to this section, sections 83, 84, 85 and 88 apply to the part-time employment of a replacement employee.

(3) Before an employer engages a replacement employee under this Subdivision, the employer must inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Maximum penalty: 20 penalty units.

(4) Unbroken service as a replacement employee is to be treated as continuous service for the purposes of this Subdivision.

Division 5 - Employment protection, sick leave and equal pay

Subdivision 1 - Termination of employment

Provisions in awards and industrial agreements

90. [57.] (1) On application, the Commission is to insert employment protection provisions in an award or industrial agreement.

(2) Employment protection provisions are provisions relating to the obligations, duties, responsibilities and rights of an employer and an employee on the termination or proposed termination of the employment of the employee.

(3) The provisions may be inserted in an award or industrial agreement by way of variation or otherwise.

(4) This section applies to an award or industrial agreement whether made before or after the commencement of this section.

Matters to be considered

91. [58.] (1) In exercising its functions under this Subdivision, the Commission:

- (a) is to have regard to those established principles which it considers to be relevant; and
- (b) may have regard to such other matters as it thinks fit.

(2) Established principles are principles established, or disclosed in orders made, under the Employment Protection Act 1982.

(3) The Full Commission may establish principles for the exercise of functions under this Subdivision.

Subdivision 2 - Protection of accrued entitlements

Definitions

92. [59.] (1) In this Division:

"transfer of a business" means the transfer, transmission, conveyance, assignment or succession, whether by agreement or by operation of law, of the whole or any part of a business, undertaking or establishment;

"transferred employee" means a person who becomes an employee of an employer ("**the new employer**") as a result of the transfer of a business to that employer from another employer ("**the former employer**").

(2) A person is to be regarded as a transferred employee even if the person's employment with the former employer is terminated before the transfer of business, so long as:

- (a) the person is employed by the new employer after the transfer of business; and
- (b) the circumstances of that termination and employment indicate an intention to avoid the operation of this Subdivision.

(3) For the purposes of the operation of this Subdivision, the termination of employment of such a transferred employee is to be considered not to have occurred.

Application of Subdivision

93. [60.] This Subdivision applies to a transferred employee only where the transfer of business occurs or occurred on or after 1 April 1987.

Continuity of service for determining entitlements

94. [61.] (1) This section applies for the purpose of determining a transferred employee's entitlements under an award or agreement as an employee of the new employer.

(2) For the purpose of determining those entitlements:

- (a) the continuity of the employee's contract of employment is to be considered not to have been broken by the transfer of business; and
- (b) a period of service with the former employer (including service before the commencement of this Subdivision) is to be considered to be a period of service with the new employer.

(3) Service with the former employer includes service which because of this section is required to be considered to be service with that employer as a result of a previous transfer of the business.

Entitlements when award or agreement breached

95. [62.] (1) This section applies only to an entitlement ("the avoided entitlement") that a former employer has, in breach of an award or agreement, failed to provide to a transferred employee.

(2) If the avoided entitlement is to the payment of money for work done, this Subdivision does not operate:

- (a) to create an entitlement to payment by the new employer; or
- (b) to relieve the former employer from liability for the payment.

(3) If the avoided entitlement is to anything else and the new employer is required because of this Subdivision to provide the entitlement, the new employer is entitled to be indemnified by the former employer for the reasonable cost of providing it.

Prevention of double entitlement

96. [63.] This Subdivision does not entitle a transferred employee to claim a benefit from more than one employer in respect of the same period of service.

Subdivision 3 - Provisions relevant to automation

Provision to be inserted on application

97. [64.] On application, the Commission is to insert (by way of variation or otherwise) in an award or industrial agreement provisions relevant to automation, as provided in this Subdivision.

Obligations etc. of employer

98. [65.] Provisions relevant to automation include provisions as to the obligations, duties and responsibilities of an employer on the introduction or proposed introduction of mechanisation or technological changes in the industry concerned.

Notice of termination of employment

99. [66.] (1) Provisions relevant to automation include provisions as to:

- (a) the employees to whom notices of termination of services (being not less than 3 months' notice) are to be given on account of the introduction or proposed introduction of mechanisation or technological changes; and
- (b) the form and effect of those notices and the consequences of a failure to give those notices.

(2) Provisions as to the consequences of a failure to give any required notice may include requirements that the ordinary rate of pay is to be paid for the period that is the difference between the period of notice given and the period required to be given.

(3) The period of notice required to be given is to be regarded as service with the employer whether or not that period of notice is actually given.

Other notifications

100. [67.] Provisions relevant to automation include provisions as to the notifications to be given by the employer to the Registrar, the Director-General of the Department of Technical and Further Education or the Director-General of the Department concerning notices of termination of services given to employees.

Other relevant and consequential matters

101. [68.] The Commission may also insert in the award or industrial agreement provisions concerning such other matters as it considers relevant to or consequential on the matters referred to in this Subdivision.

Subdivision 4 - Sick leave and equal pay

Sick leave

102. [69.] (1) If application is made to it for conditions of the following kind, they are to be inserted in an award or industrial agreement by the Commission:

Conditions entitling each employee to not less than one week's sick leave on full pay for each year of service with an employer and enabling sick leave to accumulate from year to year so that sick leave not taken in each year of service will be available to the employee for a period of at least 3 years from the end of each such year.

(2) Nothing in this section prevents the Commission from:

- (a) inserting provisions in an award or industrial agreement as to the terms and conditions under which sick leave may be given and taken or imposing limitations on the amount of sick leave that may be accumulated by an employee; or
- (b) in accordance with Division 7, exempting an employer from the provisions of an award relating to sick leave.

(3) An employee may, on giving written notice to the employer concerned, exclude himself or herself from an exemption relating to sick leave.

(4) The Commission is not to insert in an award or industrial agreement conditions relating to sick leave applicable for the time being that are less favourable than those that can be applied for under this section.

Equal pay

103. [70.] (1) If an application is made to it for conditions for equal pay for employees of either sex, they are to be inserted in an award or industrial agreement by the Commission.

(2) The Commission is required to insert such conditions into an award or industrial agreement only if the award or industrial agreement relates to wage rates for male and female employees performing work of the same or a like nature and of equal value.

Subdivision 5 - Superannuation

Orders concerning superannuation contributions to a particular fund

104. [71.] (1) Without derogating from the general powers of the Commission in relation to superannuation, if an industrial matter relates to an allegation that an employer has been, or is, making contribution on behalf of eligible employees to an occupational superannuation scheme or fund at a level required by any relevant award or industrial agreement but the scheme or fund is not required by the relevant award or agreement to be used for that purpose, the Commission:

- (a) on its own initiative; or
- (b) on the application of a State registered organisation, the employee concerned or the Crown,

may determine to which occupational superannuation scheme or fund the employer should have been, or should be, making such contribution to comply with the relevant award or agreement and may order the employer to make such contribution accordingly.

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

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

Division 6 - Australian Traineeship System

Provisions in awards and industrial agreements

105. [71.] (1) On application, the Commission may make an award containing Australian Traineeship System provisions or may insert Australian Traineeship System provisions in an existing award or in an industrial agreement, as the case requires.

(2) Australian Traineeship System provisions are provisions relating to the conditions of employment of trainees trained by employers under the Australian Traineeship System.

(3) Australian Traineeship System provisions may be inserted in an award or industrial agreement by way of variation or otherwise.

(4) This section applies to an award or industrial agreement whether made before or after the commencement of this section.

Matters to be considered

106. [72.] In exercising its functions under this Division, the Commission is to comply with such guidelines as may be issued from time to time by the Minister in relation to the Australian Traineeship System, but may have regard to such other matters as it considers appropriate.

Division 7 - Awards and agreements

Subdivision 1 - General requirements

Parties to negotiate in good faith

107. [73.] (1) In all negotiations relating to an award or an agreement, the parties or intending parties to the award or agreement are required to act in good faith.

(2) The Commission is to take into account the extent to which the requirement to act in good faith has been observed by each party concerned when the Commission decides:

- (a) whether or not to exercise any of its functions with respect to an award or agreement; or
- (b) which of any alternative functions the Commission will exercise in that regard; or

(c) how any such function should be exercised.

(3) This section is not intended to create an offence or to render any award or agreement void or voidable.

Mandatory procedures for dealing with grievances of individuals and other matters

108. [74.] (1) An award relating to conditions of employment is not to be made, and an agreement is not to be approved for registration, unless it (or another award or agreement that applies to the same parties) contains procedures to avoid questions, disputes or difficulties concerning the interpretation, application or operation of the award or agreement and to settle them, should they arise, being procedures required to be followed:

- (a) by individual employees to whom the award or agreement applies for the purpose of avoiding grievances and for settling them, should they arise; and
- (b) by the employers and employees bound by the award or agreement.

(2) The procedures for individual employees bound by an award or agreement must provide for the avoidance of grievances over an employer's action that disadvantages each such employee and that relates:

- (a) to a matter of settled rights (that is a question, dispute or difficulty concerning the interpretation, application or operation of an award or agreement); or
- (b) to discrimination in employment within the meaning of the Anti-Discrimination Act 1977,

and for the settlement of any such grievance, should it arise.

(3) The procedures for the employers bound by an award or agreement and the employees bound by the award or agreement who are employed by each such employer must provide for:

- (a) the avoidance of disputes or difficulties concerning the interpretation, application or operation of the award or agreement; and
- (b) the settlement of questions concerning those matters; and
- (c) the settlement of disputes or difficulties concerning those matters, should any such disputes or difficulties arise.

(4) The procedures contained in awards and industrial agreements must include such provisions as, in the opinion of the Commission, are not less likely to lead to the avoidance of the grievances, questions, disputes or difficulties to which they apply (or the settlement of those matters, should they arise) than the provisions contained in Schedule 2.

Exemption for small businesses

109. [75.] (1) Nothing in this Act requires:

- (a) the inserting in an award or agreement of procedures for the avoidance or settlement of grievances between employees and their small business employers; or
 - (b) the compliance by a small business employer, or an employee of such an employer, with any such procedures with which, in the absence of this section, the employer would be required to comply because of the provisions of an award or agreement.
- (2) In this section, "small business employer" means:
- (a) an employer of not more than 20 employees; or
 - (b) an employer with a management structure under which all persons employed by the employer are subject to the direct supervision and control of the chief executive of the employer or the employer.

Subdivision 2 - Awards

Purpose of an award

110. [76.] The purpose of an award is to regulate (wholly or partly) the conditions of employment of persons employed in an industry or enterprise in any one or more trades or occupations.

Effect of an award

111. [77.] (1) An award made under this Act by the Commission:

- (a) is binding on such of the employers and employees engaged in the industry or enterprise to which the award relates as the Commission directs, whether or not a State employer organisation or an industrial union representing them was a party to the making of the award; and
- (b) is binding on each State employer organisation representing employers in the industry or enterprise to which the award

relates and on each industrial union representing employees in each such industry or enterprise; and

- (c) applies only to conditions of employment within such locality as is specified in the award.

(2) An award has effect subject to such conditions and exemptions as the Commission may specify when making the award.

Exemptions

112. [78.] (1) The Commission may grant an exemption from an award, but only if it is satisfied:

- (a) that the employees concerned are entitled under an Act or a scheme conducted by or on behalf of their employer to benefits that, **when aggregated**, are not less favourable than those provided for in the award; and
- (b) that it is in the best interests of those employees that the exemption should be granted[,

or that it is in the interests of the employees concerned and their employer and not contrary to the public interest that the exemption should be granted].

(2) An exemption expires after it has been in force for 3 years (or such shorter period as the Commission specifies when granting it) but may be extended by the Commission for a further period or further periods of not more than 3 years.

Review of exemptions

113. [79.] (1) The Commission may review any exemption:

- (a) on its own initiative, after service on such persons as the Commission considers appropriate of a notice to show cause why the exemption should not be varied or revoked on the ground that the benefits provided by the award are more favourable than those for the time being applying; or
- (b) on the application of a State employer organisation, an employer or an industrial union a member or employee of which is affected by the exemption; or
- (c) at the request of the Minister or following a report by the Registrar.

(2) After reviewing an exemption, the Commission may confirm or confirm and extend the exemption or vary its terms or any condition subject to which it was granted or revoke the exemption.

Content of an award

114. [80.] (1) An award must include provisions:

- (a) in accordance with this Act, fixing (wholly or partly) conditions of employment for employees; and
- (b) setting out or adopting procedures to be followed by individual employees and parties subject to the award to avoid grievances and to settle them, if any should arise.

(2) An award is not to contain any provision relating to age that would prevent a person from beginning, continuing or completing an apprenticeship or traineeship.

(3) An award is not to provide for its variation (whether by arbitration or otherwise) by any person while the award is in force.

Crown employees

115. [81.] (1) The Commission, in making an award for employees of the Crown, must have regard to (but is not obliged to adopt) the conditions of employment awarded to other employees doing substantially the same class of work.

(2) The Commission is not to award any rates of wages or other payments or any other conditions of employment for employees of the Crown less favourable to those employees than those awarded by a corresponding award to other employees doing substantially the same kind of work, unless the Commission finds that there is sufficient reason to do so.

(3) For the purposes of this section, the fact that employees of the Crown may be permanently employed or are allowed additional privileges is not by itself to be regarded as a significant difference.

Formal considerations

116. [81.] (1) An award can be made only on the application of:

- (a) an employer or employers of not less than 20 employees in an industry; or

- (b) a State employer organisation whose members are employers in an industry; or
 - (c) an industrial union whose members are employees in an industry.
- (2) The Commission may make an award on its own initiative, whether or not as a consequence of the reference of a matter to the Commission by the Minister, despite subsection (1).
- (3) An award is required to be in writing, expressed to be an award and signed by at least one member of the Commission.
- (4) Awards are:
- (a) to be expressed in clear terms, avoiding any unnecessary technicalities; and
 - (b) to comply with such other requirements relating to form as may be made by the regulations.
- (5) [(4)] The Commission may, if it intends to make an award:
- (a) request one or more of the parties concerned to submit proposed minutes of the award to the Registrar within 7 days of the date of the request (or within such shorter or longer period as is specified by the Commission); or
 - (b) if the Commission, because of the urgency or other exceptional circumstances of the case, considers it appropriate, direct the Registrar to prepare proposed minutes of the award.
- (6) [(5)] When the Registrar receives minutes of an award as a consequence of a request made by the Commission, the Registrar may alter the wording or form of the minutes for the purpose of ensuring that the requirements made for awards by this section and the regulations may be complied with.
- (7) [(6)] If the Registrar alters the minutes, the Registrar must provide each of the parties concerned with a copy of the minutes in their altered form and take into account any submission made promptly by any of those parties about the alteration.
- (8) [(5)] When the Commission makes an award, it is required to *[sign minutes of the award and]* ensure that the day on which the award is handed down is recorded.
- (9) [(6)] An award is to be published by the Registrar in the Industrial Gazette as soon as practicable after it is handed down.

(10) [(7)] In this section, a reference to minutes of an award is, where the regulations so provide, a reference to such particulars of or concerning the award as are required by the regulations.

Commencement of award

117. [82.] (1) An award comes into force when it is handed down but legal proceedings relating to enforcement of an award cannot be [commenced] enforced until 7 days have expired after the day on which it is published in the Industrial Gazette.

(2) The Commission or the Court may, on such terms as it thinks fit, order that the operation of the whole or any part of an award under appeal be stayed pending determination of the appeal or further order of the Commission or the Court.

Term of award

118. [83.] (1) An award applies for the period, which is to be not less than 12 months nor more than 3 years, specified in it as its nominal term and, after that period, until rescinded by the Commission.

(2) An amending award may have a term equivalent to the residue of the term of the award it amends, even though the residue may be less than 12 months.

(3) An award may be expressed so as to have applied from the day on which an application that resulted in the making of the award was lodged with the Registrar or from any subsequent day.

(4) If an award fixes any condition of employment for particular work intended to be carried out over a period of less than 12 months or more than 3 years specified in it as its nominal term, the award may be expressed so as to apply for that period, despite subsection (1).

Variation of an award, generally

119. [84.] (1) The Commission may vary an award by making a further award with the mutual consent of the parties affected by the variation.

(2) An award as varied from time to time must comply with the requirements of this Subdivision.

[Variation of an award: new matters]

85. *The Commission may, without the consent of the parties to the making of an award, make an award varying the award, but only if the variation:*

- (a) relates to a significant matter not determined by the initial award;
or*
- (b) is necessary to avoid a substantial risk of death or personal injury.]*

Variation of awards

120. [85.] (1) The Commission may, without the consent of the parties to the making of an award, make an award varying the initial award during its nominal term, but only if the variation:

- (a) is necessary to avoid a substantial risk of death or personal injury; or
- (b) relates to an industrial matter that is a new matter in relation to the initial award; or
- (c) relates to a matter affecting the members of a State employer organisation or an industrial union that could have been a party to the making of the award but the Commission is satisfied was not such a party because of a failure to give notice to the organisation or union; or
- (d) is, in the opinion of the Commission, appropriate because of exceptional circumstances.

(2) Nothing in this section limits the powers of the Commission to vary an award once its nominal term has expired.

Rescission of an award

121. [86.] (1) The parties to the making of an award or the parties affected by an award for the time being may mutually consent to the rescission of an award by the Commission *[for the purpose of its being replaced by another award (whether or not a new award) or by an agreement]*.

(2) The Commission may, without that consent, rescind an award after the period specified in it as its term.

Subdivision 3 - Industrial agreements

Purpose of an industrial agreement

122. [87.] The purpose of an industrial agreement is to regulate (wholly or partly) the conditions of employment of persons represented by one or more industrial unions who are employed in an industry or enterprise in any one or more trades or occupations at a particular place of work or in an industry specified in the agreement.

Effect of registered industrial agreement

123. [88.] (1) A registered industrial agreement, as in force for the time being, is enforceable as if it were an award.

(2) The provisions of a registered industrial agreement, as in force for the time being, prevail over the provisions of any award or order of the Commission that deal with the same matters in so far as they purport to apply to a person bound by the agreement, **provided that the Commission has inserted in the award or order a provision exempting the parties to the agreement from the provisions of the award or order.**

[(3) While a registered industrial agreement is in force, the functions of the Commission relating to conditions of employment fixed by the agreement are exercisable only with the concurrence of each party to the agreement.]

Parties to an industrial agreement

124. [89.] An industrial agreement may be made between one or more industrial unions and:

- (a) an employer; or
- (b) a State employer organisation.

Content of an industrial agreement

125. [90.] (1) An industrial agreement must include provisions:

- (a) identifying the parties to the agreement; and
- (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
- (c) identifying each award and other industrial agreement (if any) that fixes conditions of employment that will apply to

employees bound by the agreement but are conditions that are not fixed by the agreement; and

- (d) setting out or adopting procedures to be followed by individual employees and parties subject to the agreement to avoid grievances and to settle them, if they should arise; and
- (e) declaring that the agreement was not entered into under duress by any party to it.

(2) An industrial agreement applies to conditions of employment at any place of employment.

(3) An industrial agreement may provide that it applies to conditions of employment only at a place or places specified in the agreement, despite subsection (2).

(4) An industrial agreement is not to provide for its variation (whether by arbitration or otherwise) by any person while the agreement is in force.

Formal considerations

126. [91.] An industrial agreement is required to be in writing and signed by or on behalf of the parties to it.

Term of industrial agreement

127. [92.] (1) An industrial agreement is required to specify its nominal term, which is to be not less than 12 months nor (if the agreement is made after the commencement of this section) more than 3 years.

(2) An amending industrial agreement may have a term equivalent to the residue of the term of the industrial agreement it amends, even though the residue may be less than 12 months.

(3) Unless each of the parties agrees to terminate the agreement during its term or after its term has expired, the agreement can be terminated only at or after the expiration of its term by one of the parties giving to the other party or all other parties at least 3 months' notice of intention to terminate.

(4) Termination of the agreement is not effective unless the Registrar has been given written notice of an agreement to terminate or of service of the notice of intention to terminate.

(5) If an industrial agreement fixes any condition of employment for particular work intended to be carried out over a period of less than 12 months or more than 3 years specified in it as its nominal term, the agreement may be expressed so as to apply for that period, despite subsection (1).

Variation of industrial agreement

128. [93.] (1) The parties to an industrial agreement may by mutual consent make a further such agreement that varies the former agreement.

(2) An industrial agreement as varied from time to time must comply with the requirements of this Subdivision.

Registration of industrial agreement required

129. [94.] (1) An industrial agreement may be lodged with the Registrar for registration.

(2) The Commission is to approve for registration each industrial agreement so lodged, but only if the Commission is satisfied:

- (a) that the agreement is not contrary to the public interest; and
- (b) **that the agreement was not entered into under duress; and**
- (c) [(b)] that the agreement complies with all other requirements made by this Subdivision; and
- (d) [(c)] **that the agreement is in the interests of the parties immediately concerned.**

[(3) An industrial agreement that, in the opinion of the Commission, fails to comply with the Commission's wage fixation guidelines is contrary to the public interest.]

(3) If the Commission is of the opinion that the industrial agreement is in the interests of the parties immediately concerned, the Commission must, subject to this section, approve the agreement for registration unless it is of the opinion that it would be contrary to the public interest for the industrial agreement to be registered.

(4) Registration of the industrial agreement is not contrary to the public interest merely because the agreement is inconsistent with general Full Commission principles.

(5) Despite subsection (8), if, in the opinion of the President, the agreement is inconsistent with general Full Commission principles,

the functions of the Commission under this section are exercisable only by the Full Commission.

(6) [(4)] The Commission may obtain and take into account the views of any State peak organisation as to whether an industrial agreement is contrary to the public interest.

(7) [(5)] The Registrar is to register each industrial agreement approved for registration.

(8) [(6)] The functions of the Commission under this section are to be exercised by a member of the Commission.

(9) In this section "general Full Commission principles" means principles established by the Full Commission that apply in relation to the determination of wages and conditions of employment, other than principles that apply in relation to registration of agreements under this section.

Persons bound by an industrial agreement

130. [95.] An industrial agreement, as in force for the time being, is binding on:

- (a) the parties to the agreement; and
- (b) every member for the time being of an industrial union that is a party to the agreement, being a member to whom the agreement applies; and
- (c) every member for the time being of a State employer organisation that is, or a member of which is, a party to the agreement; and
- (d) each person from time to time employed by the employer or each employer for whom the agreement was made who, although not a member of such an industrial union, is employed in a trade or occupation to which the agreement relates; and
- (e) each successor to any such employer.

Subdivision 4 - Enterprise agreements

Definition

131. [96.] In this Subdivision, "minimum conditions of employment" means [conditions of employment specified in Schedule 3] the minimum conditions of employment applicable to enterprise agreements initially determined by the Full Commission, as amended or replaced

from time to time by *[regulations]* orders made pursuant to this Subdivision.

Purpose of an enterprise agreement

132. *[97.]* The purpose of an enterprise agreement is to regulate (wholly or partly) the conditions of employment of persons who are employed in a single enterprise in any one or more trades or occupations.

Effect of a registered enterprise agreement

133. *[98.]* (1) A registered enterprise agreement, as in force for the time being, is enforceable as if it were an award.

(2) The provisions of a registered enterprise agreement, as in force for the time being, prevail over the provisions of any award, industrial agreement or order of the Commission that deal with the same matters in so far as they purport to apply to a person bound by the enterprise agreement, **provided that the Commission has inserted in the award, industrial agreement or order a provision exempting the parties to the enterprise agreement from the provisions of the award, industrial agreement or order.**

(3) While a registered enterprise agreement is in force, the functions of the Commission relating to conditions of employment fixed by the agreement are exercisable only with the concurrence of each party to the agreement.

Parties to an enterprise agreement

134. *[99.]* (1) An enterprise agreement may be made between an enterprise employer and/:

- [(a) an enterprise association registered for the enterprise; or]*
- [(b) one or more industrial unions that represent persons employed in the enterprise or represent persons intending to be employed in the enterprise.]*
- (b) one industrial union that represents persons employed in the enterprise or represents persons intending to be employed in the enterprise.**

(2) If persons employed or intending to be employed in an enterprise are represented by more than one industrial union, the only industrial union that is eligible to make an enterprise agreement with

the enterprise employer is the industrial union selected by agreement of all of those industrial unions.

Content of an enterprise agreement

135. [100.] (1) An enterprise agreement must include provisions:

- (a) identifying the parties to the agreement; and
- (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
- (c) identifying each award and industrial agreement (if any) that fixes conditions of employment that will apply to employees bound by the agreement but are conditions that are not fixed by the agreement; and
- (d) setting out or adopting procedures to be followed by individual employees and parties subject to the agreement to avoid grievances and to settle them, if they should arise; and
- (e) declaring that the agreement was not entered into under duress by any party to it.

(2) An enterprise agreement must include provisions fixing, or identifying an award or industrial agreement that fixes, conditions of each of the kinds referred to in Schedule 3 (relating to minimum conditions of employment) for each of the employees the agreement will bind.

(3) An enterprise agreement applies to conditions of employment only at such places as the enterprise concerned was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made.

(4) An enterprise agreement may provide that it applies only to conditions of employment at a place or places specified in the agreement, despite subsection (3).

Formal considerations

136. [101.] An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

Term of enterprise agreement

137. [102.] (1) An enterprise agreement is required to specify its nominal term, which is to be not less than 12 months nor more than 3 years.

(2) An amending enterprise agreement may have a term equivalent to the residue of the term of the enterprise agreement it amends, even though the residue may be less than 12 months.

(3) Unless each of the parties agrees to terminate the agreement during its term or after its term has expired, the agreement can be terminated only at or after the expiration of its term by one of the parties giving to the other party [*or all other parties*] at least 3 months' notice of intention to terminate.

(4) Termination of the agreement is not effective unless the Registrar has been given written notice of an agreement to terminate or of service of the notice of intention to terminate.

Variation of enterprise agreement

138. [103.] (1) The parties to an enterprise agreement may by mutual consent make a further such agreement that varies the former agreement.

(2) An enterprise agreement as varied from time to time must comply with the requirements made by this Subdivision.

Registration of enterprise agreement required

139. [104.] (1) An enterprise agreement may be lodged with the Registrar for approval for registration.

(2) The Commission is to approve for registration each enterprise agreement so lodged, but only if the Commission is satisfied:

- (a) that the agreement is not contrary to the public interest; and
- (b) that each condition of employment of a kind referred to in Schedule 3 (relating to minimum conditions of employment) that will be fixed by the agreement is no less favourable to an employee intended to be bound by the agreement than the minimum condition of the same kind presently applicable to the employee; and

- (c) that the agreement was not entered into under duress; and
 - (d) that the agreement complies with all other requirements made by this Subdivision.
- (3) An enterprise agreement that, in the opinion of the Commission, fails to comply with the Commission's wage fixation *[guidelines]* **principles** is not contrary to the public interest if the parties to it satisfy the Commission:
- (a) that it will improve the productivity and efficiency of the enterprise concerned to such an extent as to justify failure to comply with those *[guidelines]* **principles** ; and
 - (b) that it is in the interests of the parties who will be bound by it.
- (4) **The Commission may obtain and take into account the views of any State peak organisation as to whether or not an enterprise agreement is contrary to the public interest.**
- (5) *[(4)]* The Registrar is to register each enterprise agreement approved for registration.
- (6) *[(5)]* An enterprise agreement has no force or effect unless it is registered.
- (7) *[(6)]* The functions of the Commission under this section are to be exercised by a Deputy President designated by the President for the purposes of this section.

Persons bound by enterprise agreement

140. [105.] A registered enterprise agreement, as in force for the time being, is binding on:

- (a) the parties to the agreement; and
- (b) every member for the time being of any State employee organisation that is a party to the agreement, being a member to whom the agreement applies; and
- (c) each person from time to time employed in the enterprise for which the agreement was made who, although not a member of such an organisation, is employed in a trade or occupation to which the agreement relates; and
- (d) each successor to an enterprise employer who was a party to the agreement.

Minimum conditions of employment

141. [106.] (1) The minimum conditions of employment applicable to an employee who is bound by a registered enterprise agreement are *[set out in Schedule 3]* those initially determined by the Full Commission, as amended or replaced from time to time by *[regulations]* orders made pursuant to this Subdivision.

(2) A minimum condition that is applicable to an employee who is bound by a registered enterprise agreement is to be taken to be fixed by the agreement unless the same condition, or a condition of the same kind that is more favourable to the employee, is fixed for the employee:

- (a) by an express provision of the agreement; or
- (b) by a provision of an award or industrial agreement, being an award or industrial agreement applicable to the employee; or
- (c) by an order or a direction made or given by the Commission, being an order or a direction applicable to the employee.

(3) Nothing in this Subdivision affects the application of the provisions of this Act relating to maternity leave or of the Annual Holidays Act 1944, the Long Service Leave Act 1955 or the Long Service Leave (Metalliferous Mining Industry) Act 1963 to an employee bound by a registered enterprise agreement.

Effect of change of minimum conditions

142. [107.] The fact that a minimum condition of employment is amended or replaced while an enterprise agreement is in force does not prevent *[section 106]* **section 141** from giving effect to the amended or replaced condition for the purposes of that agreement.

Review and variation of minimum conditions

143. [108.] *[(1) The Minister is required, at yearly intervals after the commencement of this section, to review the adequacy or otherwise of the guaranteed weekly wage referred to in Schedule 3 applicable for the time being to full-time adults.]*

(1) The Commission is required, at yearly intervals after the commencement of this section, to review the adequacy or otherwise of all minimum conditions of employment of the kinds referred to in Schedule 3 applicable for the time being to full-time adult employees.

[(2) For the purpose of reviewing that wage, the Minister is required:

(a) to nominate, by order published in the Gazette, 5 awards that, in the Minister's opinion, fix the lowest weekly rates of pay for full-time adults and which regulate the working conditions of a significant number of employees; and

(b) to compare the average of those lowest weekly rates of pay at the time of the review with that wage.

(3) If that average rate differs from that wage, the Minister is to recommend the making of a regulation to vary the guaranteed weekly wage to the amount equivalent to that average rate.

(4) The Minister is required, at two-yearly intervals after the commencement of this section, to review (and may, at such other times as the Minister thinks fit, review) the adequacy or otherwise of the minimum conditions fixed by Schedule 3, other than the guaranteed weekly wage referred to in item (1) (a) of that Schedule.

(5) For the purpose of reviewing each of the percentages fixed for the time being for full-time junior employees and referred to in item (1) (b) of that Schedule, the Minister is required:

(a) to compare the average of the corresponding percentages fixed at the time of the review by the awards nominated for the time being under subsection (2) with the percentage so fixed; and

(b) if that average percentage differs from the percentage so fixed, to recommend the making of a regulation to vary the percentage so fixed to the average percentage.]

(2) On completion of the review as required by subsection (1), the Commission may make a general order or award setting new and higher minimum wages of the kinds referred to in Schedule 3.

(3) [(6)] [For the purpose of reviewing the percentage fixed for the time being for a casual employee and referred to in item (4) of Schedule 3,] If the minimum conditions of employment include a guaranteed average hourly rate of pay for casual employees (being employees not entitled to annual leave or sick leave) as a percentage of a guaranteed average hourly rate of pay for a part-time employee, then (when reviewing that percentage) the [Minister is required to recommend the making of a regulation] Commission is required to make a general order or award to vary the percentage so fixed to any different calculated percentage that results from the application of the following formula:

$$\text{Calculated percentage} = 100 + \left(\frac{x + y}{52} \times 100 \right)$$

where:

x represents the number of weeks which, in the opinion of the Minister at the time of the review, represent an aggregate of the public holidays fixed under the Banks and Bank Holidays Act 1912 for the whole of New South Wales;

y represents the minimum number of weeks of sick leave for a year fixed *[by or under this Subdivision]* as a minimum condition of employment at that time.

(4) [(7)] A *[regulation made on the recommendation of the Minister]* general order or award made by the Commission and expressed to have been made as a consequence of a review of minimum conditions under this Subdivision may amend or replace any condition of employment fixed for the time being *[by item (2), (3), (5) or (6) of]* of a kind specified in Schedule 3 or replace any such condition with a new condition of the same kind.

(5) [(8)] A *[regulation recommended by the Minister]* general order or award made by the Commission under this section as a consequence of a review of minimum conditions takes effect (or is to be treated as having taken effect) on 1 July of the year in which the review was conducted.

When reviews are to be conducted

144. [109.] (1) A review required to be conducted under this Subdivision is to be conducted between April and June of the relevant year.

[(2) The first review required by this Subdivision of the guaranteed weekly wage referred to in item (1) (a) of Schedule 3 is to be conducted in 1991 and the first two-yearly reviews required by this Subdivision are to be conducted in 1992.]

(2) The first review required by this Subdivision is to be conducted in 1991.

[Assistance of the Commission]

110. The Minister may request the assistance of the Commission in conducting any review of minimum conditions under this Division and,

when the Commission is requested to do so for that purpose, the Commission is required to supply the Minister, in accordance with the Minister's directions, with such information as may be requested by the Minister.]

Access to agreements through Registrar

145. [111.] (1) The Registrar is to keep a register of enterprise agreements, which is to include amending enterprise agreements, notices of termination of such agreements and such other particulars as the Registrar considers appropriate.

(2) The Registrar is to permit any of the following persons without payment of any fee to inspect, and to make copies of, any document kept in the register:

- (a) a person carrying into effect provisions of this Act for enforcing the agreement;
- (b) a person carrying into effect provisions of this Act with the concurrence of the parties to the agreement;
- (c) a person, or any person of a class of persons, prescribed for the purposes of this section by the regulations.

(3) Any other person may inspect, or make copies of, any document kept in the register, but only on payment of the prescribed fee.

Notice to be given of working conditions

146. [112.] (1) An employer of employees whose conditions of employment are affected by a registered enterprise agreement must cause a copy of the agreement, as in force for the time being, to be fixed and maintained in a conspicuous place in all premises to which the agreement applies so as to be easily read by employees in those premises.

(2) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment fixed by a registered enterprise agreement, the employer must give the person:

- (a) access to a copy of the agreement for perusal by the person; or

- (b) notice of the existence of the agreement and an accurate summary of the provisions of the agreement that would be relevant to the person as an employee.

Maximum penalty: 10 penalty units.

Restriction on duplication of special conditions

147. [113.] (1) In the making of awards or orders, and in the giving of directions under this Act, the Commission is not to insert or impose nor have regard to provisions of enterprise agreements.

(2) In deciding whether or not an industrial agreement is contrary to the public interest, the Commission is not to have regard to provisions of enterprise agreements.

Division 8 - Public vehicles and carriers

Subdivision 1 - Preliminary

Definitions

148. [114.] In this Division:

"contract of bailment" means a contract under which:

- (a) a public vehicle that is a taxi-cab is bailed to a person to enable the person to ply for hire in a transport district established under the Transport Administration Act 1988; or
- (b) a public vehicle that is a private hire car is bailed to a person to transport passengers in such a transport district;

"contract of carriage" has the meaning given by [section 116] section 150;

"member of the family", in relation to a person, means the person's spouse, father, mother, grandfather, grandmother, step-father, step-mother, child, step-child, brother, sister, half-brother, half-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law;

"principal contractor" means:

- (a) a person who under [section 116 (4)] section 150 (4) is to be considered to be a principal contractor; or
- (b) except as provided by [section 116 (4)] section 150 (4) - the person for whom the carrier under a contract of carriage agrees to transport the load to which the contract relates;

"public vehicle" means a taxi-cab or private hire car, within the meaning of the Transport Licensing Act 1931;

"registered agreement" means an agreement registered under Subdivision 3.

Contracts to which Division applies

149. [115.] The contracts to which this Division applies are contracts of bailment and contracts of carriage.

Contract of carriage - meaning

150. [116.] (1) A contract of carriage is a contract (whether written or oral or partly written and partly oral and whether entered into before or after the commencement of this section) for the transportation of a load (other than passengers) by means of a motor lorry in the course of a business of transporting loads of that kind by motor lorry, but only:

- (a) where the carrier is not a partnership or body corporate - if no person except the carrier is, except in the prescribed circumstances, employed (whether pursuant to a contract of employment or not and whether by the carrier or not) in driving or riding on the motor lorry, or any other motor lorry, in the course of that business; or
- (b) where the carrier is a partnership - if no person other than a partner is, except in the prescribed circumstances, employed (whether pursuant to a contract of employment or not and whether by the partnership or not) in driving or riding on the motor lorry, or any other motor lorry, in the course of that business; or
- (c) where the carrier is a body corporate - if no person is, except in the prescribed circumstances, employed (whether pursuant to a contract of employment or not and whether by the body corporate or not) in driving or riding on the motor lorry, or any other motor lorry, in the course of that business unless the person is:
 - (i) a director of the body corporate or a member of the family of a director of the body corporate; or
 - (ii) a person who, together with the members of his or her family, has a controlling interest in the body corporate;or

- (iii) a member of the family of a person who, together with the members of his or her family, has a controlling interest in the body corporate.

(2) A reference in this Division to a contract of carriage does not include a reference to a contract of employment or a contract of carriage:

- (a) that is, if the carrier is a common carrier, made in the ordinary course of the business of the carrier as a common carrier; or
- (b) that is one of 2 or more contracts of carriage of packaged goods made with 2 or more different principal contractors, none of whom is a principal contractor by virtue of subsection (4), and executed by the use of the same motor lorry; or
- (c) for the carriage of mail; or
- (d) for the carriage of bread, milk or cream for sale or delivery for sale; or
- (e) for the carriage of goods that are to be sold pursuant to orders solicited during the carriage of the goods; or
- (f) for the carriage of livestock; or
- (g) if the principal contractor is a primary producer or a member of the family of a primary producer and the contract is for the transportation of primary produce; or
- (h) for the transportation of primary produce from or to land used for primary production.

(3) If a person:

- (a) is in possession of a private hire car otherwise than as a bailee or employee; and
- (b) is, in a transport district established under the Transport Administration Act 1988, engaged in transporting passengers in the private hire car pursuant to a licence under the Transport Licensing Act 1931 of which the person is not the holder,

the provisions of this Division apply to and in respect of that person in the same way as they would apply if the person were in possession of the private hire car under a contract of bailment made with the holder of the licence.

(4) If:

- (a) a contract of carriage is made by the acceptance by an agent of the carrier of an offer to enter into the contract not directed specifically to that carrier; and
- (b) the agent accepted the offer in the course of a business of acting as agent for the receipt and acceptance, on behalf of 2 or more prospective carriers, of offers to enter into contracts of carriage; and
- (c) the agent has a discretion in the selection of the prospective carrier on whose behalf an offer received in the course of that business will be accepted by the agent,

the agent is, for the purposes of this Division, to be regarded as the principal contractor under the contract to the exclusion of the offeror.

(5) For the purposes of subsection (2) (a), the carrier under a contract of carriage made as referred to in subsection (4) is to be regarded as having held himself or herself out as ready to transport the load to which the contract relates for the person required by subsection (4) to be regarded as the principal contractor and not to have held himself or herself out as ready to transport the load for the offeror so referred to.

Subdivision 2 - Associations of contractors, drivers and carriers

Association of employing contractors

151. [117.] (1) The Registrar may, on application, register any group or organisation as an association of employing contractors so long as, throughout the period of 6 months immediately before the making of the application, the members of the group or organisation have been:

- (a) bailors under contracts of bailment made with not fewer than 25 different bailees; or
- (b) principal contractors under contracts of carriage with not fewer than 25 different carriers.

(2) An application for registration:

- (a) is to be made in the prescribed form; and
- (b) must be signed by a majority of the members of the governing body of the applicant group or organisation or, if there is no such governing body, by a majority of the members of the group or organisation.

(3) A group or organisation is registered when the Registrar causes its name to be entered in the register of associations of employing contractors kept by the Registrar together with particulars of the class of contracts in relation to which it is registered and such other particulars as may be prescribed.

Cancellation of registration

152. [118.] (1) The *[Court] Commission* may order cancellation of the registration of an association of employing contractors:

- (a) if the *[Court] Commission* is satisfied that, throughout the period of 6 months immediately before the day of the making of the order, the members of the association had not been parties to contracts with at least 25 different carriers, being contracts of the class in relation to which it is registered; or
- (b) if the *[Court] Commission* is satisfied that the group or organisation comprising the association has ceased to exist; or
- (c) for any other reason that to the *[Court] Commission* seems appropriate.

(2) If the *[Court] Commission* makes such an order, the Registrar is to cancel the registration of the association by removing from the register of associations of employing contractors the name of the association and all entries in the register that relate to it.

Associations of contract drivers and contract carriers

153. [119.] (1) The Registrar may, on application:

- (a) register as an association of contract drivers any group or organisation (including an industrial union) claiming to represent not fewer than 50 bailees of public vehicles; or
- (b) register as an association of contract carriers any group or organisation (including an industrial union) claiming to represent not fewer than 50 carriers each of whom is engaged in the transportation of any load, other than passengers, under contracts of carriage.

(2) An application for registration:

- (a) is to be made in the prescribed form; and
- (b) must be signed by a majority of the members of the governing body of the applicant group or organisation or, if there is no

such governing body, by a majority of the members of the group or organisation.

(3) The Registrar is to cause notice of an application under this section to be published as prescribed.

Objections to registration of drivers' and carriers' associations

154. [120.] (1) Any person may, by notice in writing served on the Registrar within the prescribed period, object to the granting of an application under **section 153** on the ground:

- (a) that the applicant does not genuinely represent the interests under this Act of the bailees or carriers that it claims to represent; or
- (b) that the interests under this Act of bailees or carriers whom the applicant claims to represent are already represented by an association of contract drivers or an association of contract carriers.

(2) The Registrar is to fix a time and place for the hearing by the Registrar of objections under this section and is to notify the applicant and all objectors of that time and place.

(3) At the hearing of the objection, the objectors and the applicant are entitled to be heard and, after considering the evidence given and the submissions made at the hearing, the Registrar must, if the Registrar sustains the objection, refuse the application to which the objection relates.

(4) The Registrar must notify in writing all objectors to the granting of the application, and the applicant, of the Registrar's decision on the objections and of the reasons for that decision.

Grant or refusal of applications

155. [121.] (1) Whether or not an objection is made, the Registrar can refuse to register an application under [section 119] **section 153** on any ground on which an objection could be made to the application and must notify the applicant in writing of the refusal and of the reasons for the refusal.

(2) A group or organisation that has made an application under [section 119] **section 153** is registered when the Registrar causes its name to be entered in the register of associations of contract drivers or the register of associations of contract carriers kept by the Registrar,

together with particulars of the class of contracts in relation to which it is registered and such other particulars as may be prescribed.

(3) A branch of a group or organisation is not to be registered separately as an association under this section unless, in the opinion of the Registrar, it is of sufficient importance to be separately registered.

Withdrawal or cancellation of registration

156. [122.] (1) The Registrar may issue a certificate of withdrawal with respect to an association of contract drivers or an association of contract carriers if satisfied that:

- (a) an application for such a certificate has been made in the prescribed manner; and
- (b) written notice of the intention to apply for such a certificate has been given within the period and in the manner prescribed; and
- (c) such other conditions as may be prescribed have been complied with.

(2) The Court may order cancellation of the registration of an association of contract drivers or an association of contract carriers or a particular group, class or section of such an association:

- (a) if the Court is satisfied that the group or organisation comprising the association has ceased to exist; or
- (b) for any other reason that seems appropriate to the Court.

(3) If, in relation to an association of contract drivers or an association of contract carriers:

- (a) an order has been made under subsection (2); or
- (b) a certificate of withdrawal has been issued under subsection (1) and the period of 28 days immediately following the issue of the certificate has expired,

the Registrar is to cancel the registration of the association by removing from the relevant register the name of the association and all entries in the register that relate to it.

(4) If the registration of an association is cancelled, the Commission may cancel:

- (a) any contract determination in force with respect to members of the association; or

(b) any registered agreement so in force.

(5) The Commission may, on such grounds as it thinks fit, modify or revoke the right of an association to enrol and represent, for the purposes of this Act, bailees of public vehicles or carriers.

(6) The cancellation under this section of the registration of an association or of a determination or agreement does not operate to relieve the association or any of its members from any obligations incurred before the cancellation under the determination or agreement or under an order of the Commission.

Change of name or amalgamation of associations

157. [123.] (1) If an association (whether of employing contractors, contract drivers or contract carriers) has changed its name or 2 or more associations have amalgamated, the Registrar may, on application, record any such change of name or amalgamation in the appropriate register or registers.

(2) The application is to be made in the prescribed manner and in the prescribed form and is to be signed by a majority of the members of the governing body or bodies or committee or committees of management of the association or associations concerned.

(3) A recording made under this section is to be considered to be a re-registration of the applicant association or associations under the name specified in the application, but the change of name or amalgamation does not affect any rights, liabilities or obligations of the applicant association or associations which existed immediately before the recording was made.

(4) The Registrar may, in respect of an application made under this section by an association or associations of contract drivers or contract carriers, or both, refuse the application and require the association or associations to make an application for registration under [section 117] section 151 under the changed or amalgamated name.

Certificates of registration etc.

158. [124.] (1) On the registration of an association of employing contractors, contract drivers or contract carriers, the Registrar is to issue to the association a registration certificate in the prescribed form and the certificate is conclusive evidence that the requirements of this Act as to registration have been satisfied.

(2) On application made to the Registrar by a person claiming to be the secretary of an association of employing contractors, contract drivers or contract carriers, the Registrar may, if satisfied that the person has been duly elected or appointed as the secretary of the association and that the requirements of the constitution of the association relating to that election or appointment have been complied with, issue a certificate in the prescribed form that the person is the secretary of the association.

(3) A document purporting to be a certificate under subsection (2) is admissible in evidence in any proceedings under this Act and, in the absence of proof to the contrary, is evidence that the person specified is the secretary of the association specified in the certificate.

(4) A person to whom a certificate has been issued under subsection (2) must, on ceasing to hold office as secretary of the association specified in the certificate, or on being requested by the Registrar to do so, forthwith return the certificate to the Registrar for cancellation.

Maximum penalty: 5 penalty units.

Registers to be kept

159. [125.] (1) The Registrar is to keep a register of associations of employing contractors, a register of associations of contract drivers and a register of associations of contract carriers which are to be open to inspection by any person at the office of the Registrar at all times when that office is open for business.

(2) The registers are to be kept in the prescribed form.

(3) A certificate purporting to be signed by the Registrar and purporting to contain a copy of a recording made in a register kept under this section:

- (a) is admissible in evidence in any proceedings under this Act; and
- (b) is evidence of the matters specified in the certificate; and
- (c) until the contrary is proved, is to be considered to be a true and correct copy of the recording.

Subdivision 3 - Agreements

Agreements concerning contract conditions

160. [126.] (1) An association of contract drivers may enter into an agreement in writing with a bailor of a public vehicle, or with an

association of employing contractors representing bailors of public vehicles, with respect to the conditions of contracts of bailment made with that bailor or with bailors represented by the association.

(2) An association of contract carriers may enter into an agreement in writing with a principal contractor, or with an association of employing contractors, with respect to the conditions of contracts of a specified class made with carriers by that principal contractor or with principal contractors represented by the association.

Agreement binding on parties etc.

161. [127.] (1) If an agreement under this Subdivision is registered and is for a term, specified in the agreement, not exceeding 5 years from the date on which it is entered into, the agreement, or the agreement as varied in accordance with this Subdivision, is binding on the parties to the agreement and (in the case of a party that is an association) on all members of the association.

(2) An agreement under this Subdivision is registered when it is filed in the office of the Registrar.

(3) An agreement that, by the operation of this Subdivision, is binding on a corporation as a member of an association of contract carriers is, except to the extent that the agreement otherwise provides, also binding on:

- (a) any director of the corporation, or any member of the family of any such director, who personally does work under a contract to which the agreement relates and to which the corporation is a party; and
- (b) any holder of shares in the corporation who personally does work under any such contract if that holder, together with the members of his or her family, has a controlling interest in the corporation; and
- (c) any member of the family of the holder of shares in the corporation who personally does work under any such contract if that holder, together with the members of his or her family, has a controlling interest in the corporation.

(4) A registered agreement may be varied or rescinded by the parties to it by filing in the office of the Registrar written notice of the variation or rescission.

(5) If a provision of a contract of a class to which a registered agreement relates is inconsistent with a provision of the agreement, the agreement prevails and the contract is to be considered to have been varied to the extent necessary to remove the inconsistency.

Agreement continues in force after expiration

162. [128.] A registered agreement continues in force after the expiration of the term specified in it until varied or rescinded by the parties or by the Commission or until notice of termination is given by a party to the agreement to the other party or parties and to the Registrar.

Subdivision 4 - Contract Regulation Tribunals

Application for Tribunal to exercise functions

163. [129.] (1) An application for the exercise by a Tribunal of a function of the Commission under this Division may be made by:

- (a) a bailor under a contract of bailment, if the average number of different bailees with whom the bailor entered into contracts of bailment on each working day during the period of one month that last preceded the making of the application was not less than 10; or
- (b) a principal contractor under a contract of carriage, if the average number of different carriers with whom the principal contractors entered into contracts of carriage on each working day during the period of one month that next preceded the making of the application was not less than 10; or
- (c) an association of employing contractors, or any other association, which represents bailors or principal contractors who are, or some of whom are, parties to contracts of the class in respect of which the Tribunal is established; or
- (d) an association of contract drivers or an association of contract carriers which represents bailees or carriers who are, or some of whom are, parties to contracts of the class for which the Tribunal is established.

(2) An application must:

- (a) be in or to the effect of the prescribed form; and
- (b) contain the prescribed particulars; and
- (c) be signed by such persons of such classes as may be prescribed.

(3) Only a Tribunal established for the class of contracts with which the function is concerned can exercise a function of the Commission under this Division.

Jurisdiction of Commission with respect to contracts of bailment

164. [130.] (1) The Commission may inquire into any matter arising under contracts of bailment and may make a contract determination with respect to any of the following matters under those contracts:

- (a) the minimum rate of commission, expressed as a percentage of the chargeable fares earned, which the bailor is to allow the bailee;
- (b) the amounts (if any) to be paid by the bailor to the bailee as attendance money when the bailee is required to attend at a place where the public vehicle concerned is to be bailed to the bailee but no such bailment takes place and for special duties such as preparing and driving a public vehicle to a registering or licensing authority for inspection;
- (c) annual or other holidays, sick leave and long service leave for the bailee or payments to the bailee instead of any such leave;
- (d) the minimum number of hours per day, per week or for any longer period during which the bailor is to bail the vehicle, if drivable, to the bailee;
- (e) if satisfied that it is imperative to do so in the interest of bailors, bailees and the public - the maximum number of hours per day, per week or for any longer period that a bailee may drive a public vehicle;
- (f) other conditions.

(2) Subsection (1) (a) does not authorise the Commission to fix penalty rates of commission in relation to excess hours of work or work on specified days but, in fixing a rate of commission under subsection (1) (a), the Commission may take into account all the circumstances in which a public vehicle is driven for reward.

(3) The Commission may, after inquiry, make a contract determination with respect to the reinstatement of a contract of bailment that has terminated.

Jurisdiction of Commission with respect to contracts of carriage

165. [131.] (1) The Commission may inquire into any matter arising under contracts of carriage and may make a contract determination with respect to remuneration of the carrier, and any condition, under such a contract.

(2) In exercising its jurisdiction under this section, the Commission may:

- (a) include in the remuneration of persons affected by its determination such allowance instead of annual or other holidays, sick leave or long service leave as it thinks fit; or
- (b) otherwise make provision for all or any of those matters.

(3) The Commission may, after inquiry, make a contract determination with respect to the reinstatement of a contract of carriage that has terminated.

(4) If a Tribunal has not been established for a particular class of contracts of carriage, the powers and jurisdiction conferred on a Tribunal by this Act may, pending establishment of a Tribunal for that class of contracts, be exercised in relation to that class by a Conciliation Commissioner.

Conference to precede contract determination

166. [132.] (1) When application is made to the Commission to exercise its jurisdiction under this Subdivision, the Commission must, before it considers the application, summon to attend and confer with the Commission the applicant and such other persons served with the application as the Commission may direct.

(2) The conference is to be held in private unless the Commission otherwise directs and, at the conference, the Commission is to:

- (a) ascertain which of the matters with which the application is concerned are in dispute and which are not; and
- (b) ascertain whether there are any special circumstances or problems existing with respect to contracts of the class with which the application is concerned; and

- (c) take all reasonable steps to effect an amicable settlement of any matters in dispute.
- (3) After conferring on an application, the Commission may:
 - (a) dismiss the application; or
 - (b) proceed to hear the application or specify a time and place at which it will be heard; or
 - (c) adjourn the application for such period or periods as it thinks fit.
- (4) Before hearing an application, the Commission may require service of the application on such persons as it may direct.
- (5) If, at a conference held under this section, agreement is reached on any matter, the Commission may:
 - (a) require that the agreement be reduced to writing; and
 - (b) give effect to the agreement as a contract determination.

Subdivision 5 - Contract determinations

Contract determinations

167. [133.] (1) After hearing an application for it to exercise its jurisdiction under Subdivision 4, the Commission may:

- (a) dismiss the application; or
- (b) make a contract determination with respect to the application.
- (2) When the Commission makes a contract determination:
 - (a) it may defer the operation of the determination wholly or in part for such period or periods, and subject to such conditions, as it thinks fit; and
 - (b) it may specify a period at the end of which the determination ceases to have effect; and
 - (c) it must specify the class or classes of contracts in respect of which the determination is to operate; and
 - (d) in specifying the class or classes of contracts in respect of which the determination is to operate, it may limit its operation to contracts of that class, or those classes, made:
 - (i) in the case of contracts of bailment - with one or more named bailors; or
 - (ii) in the case of contracts of carriage - with one or more principal contractors.

Contract determinations generally

168. [134.] (1) In making a contract determination, the Commission may defer operation of the determination, or any part of its operation, for such period, and subject to such conditions (if any), as it may specify.

(2) The Commission may vary or rescind a contract determination which has been made by it and, when it rescinds a determination, it may replace that determination with a new determination.

(3) When making a contract determination or at any time after making a contract determination, the Commission may exempt from the determination or from any part of the determination:

- (a) a specified type of work done by carriers to whom the determination applies; or
- (b) any group of bailees or carriers specified in the determination either by name or by reference to the type of work done by those bailees or carriers; or
- (c) any one or more bailors or principal contractors.

Binding force of determination

169. [135.] (1) Subject to the right of appeal under this Act, and to such exemptions and conditions as the Commission may determine and direct, a contract determination is binding:

- (a) on all bailors and bailees or all principal contractors and carriers who are parties to contracts of the class to which the determination relates as the Commission may direct; and
- (b) within the locality and for the period not exceeding 3 years specified in it and after that until varied or rescinded.

(2) A contract determination that is binding on a carrier which is a corporation is, except to the extent that the determination otherwise provides, also binding on:

- (a) any director of the corporation, or any member of the family of any such director, who personally does work under a contract to which the determination relates and to which the corporation is a party; and
- (b) any holder of shares in the corporation who personally does work under any such contract if that holder, together with the members of his or her family, has a controlling interest in the corporation; and

- (c) any member of the family of the holder of shares in the corporation who personally does work under any such contract if that holder, together with the members of his or her family, has a controlling interest in the corporation.

(3) If a provision of a contract of a class to which a contract determination relates is inconsistent with a provision of the determination, the determination prevails and the contract is to be considered to have been varied to the extent necessary to remove the inconsistency.

Date of determination

170. [136.] The Commission may, in its discretion, direct that a contract determination made by it is to take effect on and from a specified day that is after the lodging with the Registrar of the application for the determination, but in any case the determination does not become operative or enforceable as a contract determination until 14 days after its publication in the Gazette.

Evasion of Act

171. [137.] (1) The Commission may inquire into any contract which could result in the transportation of any load, other than passengers, by motor lorry and may, after such an inquiry, declare that, in the opinion of the Commission:

- (a) the contract was entered into for the purpose of defeating, evading or avoiding the provisions of this Act relating to contracts of carriage; and
- (b) but for being entered into for that purpose the contract would have been a contract of carriage.

(2) If a declaration is made under this section, the contract to which the declaration relates is, for the purposes of this Act, a contract of carriage.

Division 9 - Enforcement of conditions of employment

Subdivision 1 - Recovery of wages and similar amounts

Recovery of wages due under awards, agreements or permits

172. [138.] (1) If an employer employs any person to do any work for which the price or rate is fixed:

- (a) by an award; or
- (b) by an industrial agreement or enterprise agreement; or
- (c) by the conditions of a permit issued under this Act to an aged, infirm or slow worker,

the employer is liable to pay in full to the person the price or rate so fixed without any deduction, except as may be authorised by the award, agreement or permit.

(2) If any such award, agreement or permit fixes a price, rate or amount (not being a price or rate for work done) to be paid in the circumstances set out in it in relation to any other matter, the employer is in those circumstances liable to pay that price, rate or amount in full in money to the person entitled to it without any deduction, except as may be authorised by the award, agreement or permit.

(3) The person may apply in the prescribed manner to [*a Local Court*] **an Industrial Magistrate** or [*in accordance with the rules of the Industrial Court, to the Industrial Court*] **to the Commission** for an order directing the employer to pay the full amount of any balance due to the person:

- (a) in respect of the fixed price or rate or the fixed price, rate or amount; or
- (b) under any provision of an award, industrial agreement or enterprise agreement that provides that the employer is liable to bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or agreement or that, in the circumstances described in the award or agreement, the employer is liable to reimburse, compensate or recompense the employee to the extent of any loss sustained or expense incurred by the employee.

(4) The price or rate, or price, rate or amount, or liability, can be made the subject of such an order only to the extent that it became due during the period of 6 years immediately preceding the date of the application.

(5) The [*Local Court or Industrial Court*] **Industrial Magistrate or Commission** may make such order as it considers just, award costs to either party and assess the amount of those costs.

(6) Such an order may be so made despite any smaller payment or any express or implied agreement to the contrary.

(7) Where, in any proceedings under this section, the Industrial Magistrate or Commission finds that the employer has committed an offence under [section 163 or 169] section 198 or 204, the Industrial Magistrate or Commission may, in addition to making any order under this section, impose a penalty which might have been imposed in proceedings for an offence under [section 163 or 169] section 198 or 204.

(8) Where the employer is a company and the company is wound-up prior to an order being made under subsection (3), the person may apply for orders under subsection (3) against a person who was a director of the company or who took part in the management of the company at the time the obligation under this section arose.

(9) An order under subsection (3) against an employer which is a company may provide that, should the company have insufficient funds to comply with the order within a period of time determined by the Industrial Magistrate or Commission, some or all of the directors or persons who took part in the management of the company are personally liable for any amount outstanding under the order.

Recovery of cost of work not fixed by award or agreement

173. [139.] (1) If:

- (a) work is done by an employee for an employer; and
- (b) a price or rate is not fixed by an award, industrial agreement or enterprise agreement, or by the conditions of a permit issued under this Act to an aged, infirm or slow worker, for that work done by the employee; and
- (c) a price or rate for work of that kind done otherwise than by that employee is fixed by an award or such an agreement, or by the conditions of such a permit, being an award, agreement or permit that is applicable to other work done by that employee or the same work done by that employee in different circumstances, being work done under the contract of employment with the same employer,

the employee may apply in the prescribed manner to [*a Local Court*] an Industrial Magistrate or[, *in accordance with the rules of the Industrial Court, to the Industrial Court*] to the Commission for leave to recover remuneration for the work.

(2) Leave is not to be granted unless the [*Local Court or Industrial Court*] Industrial Magistrate or Commission is of the opinion that, in

the circumstances, it would be just and equitable for the employer to remunerate the employee for the work, or any of the work, to which the application for leave relates. If leave is granted, the *[Local Court or Industrial Court]* **Industrial Magistrate or Commission** must specify the work to which the leave relates.

(3) If leave is granted, the *[Local Court or Industrial Court]* **Industrial Magistrate or Commission** is required:

- (a) to fix a price or rate for the work to which the leave relates, being a price or rate of the kind referred to in subsection (1) (c); and
- (b) to treat the application for leave as an application for an order under *[section 138]* **section 172** directing the employer to pay the full amount of any balance due to the employee in relation to the work to which the leave relates.

(4) For the purposes of allowing recovery *[in a Local Court or the Industrial Court]* **before an Industrial Magistrate or the Commission** under *[section 138]* **section 172**, work in relation to which leave is granted under this section is to be taken to be:

- (a) work that the employer employed the employee to do; and
- (b) work for which the price or rate has been fixed by an award at the price or rate fixed under this section.

(5) The fixing of a price or rate under this section:

- (a) has effect only in relation to the application pursuant to which it is fixed; and
- (b) except for that purpose, is not to be treated as the making or variation of an award within the meaning of this Act.

Recovery under contract of employment

174. *[140.]* (1) A person who is employed as referred to in *[section 138 (1)]* **section 172** and who has entered into a contract with his or her employer fixing a price, rate or amount to be paid in relation to any matter associated with that employment (other than a price or rate referred to in *[section 138 (1)]* **section 172**) may apply in the prescribed manner to *[a Local Court]* **an Industrial Magistrate** or *[, in accordance with the rules of the Industrial Court, to the Industrial Court]* **to the Commission** for an order directing the employer to pay the full amount of any balance due to the employee in respect of the price, rate or amount fixed by the contract.

(2) The balance can be made the subject of such an order only to the extent that it became due during the period of 6 years immediately preceding the date of the application, but not before 24 April 1986 (the date of commencement of the Industrial Arbitration (Amendment) Act 1986).

(3) In any proceedings under this section, *[a Local Court or the Industrial Court may make such order as it]* **an Industrial Magistrate or the Commission may make such order as the Industrial Magistrate or the Commission considers just and award costs to either party.**

(4) An application under this section may be made in the same proceedings as an application under *[section 138]* **section 172** or in separate proceedings.

Wages payable to employees of contractors

175. [141.] (1) Any person who enters into a contract with a contractor for the carrying out by the contractor of any work involving the payment of wages is liable for the payment of those wages unless, on each payment made to the contractor under the contract, the person receives a written statement signed by the contractor that no wages are due and owing by the contractor in respect of the work at the time of the payment.

(2) Any person who knowingly makes or signs a false statement that no wages are due or owing by the person in respect of any work is guilty of an offence.

Maximum penalty: *[20 penalty units]* **50 penalty units.**

(3) This section does not apply to a payment made, in relation to a contract, to the official receiver or the trustee of the estate of a bankrupt contractor or to the liquidator of a contractor, being a company, that is being wound up.

Pay for musicians

176. [142.] (1) In any contract for the performance of any work involving the supply for reward of any musical entertainment, the consideration for the contract is not to be less than a sum sufficient to pay to each person engaged in the performance of the work, or the supply of the musical entertainment, the price or rate fixed by any award, industrial agreement or enterprise agreement for a person performing the work or so engaged.

(2) Any person who offers, enters into or is in any way concerned with a contract which does not comply with this section or who knowingly performs work or engages in or takes part in a musical performance in pursuance of a contract which does not comply with this section is guilty of an offence.

Maximum penalty: 20 penalty units.

Recovery of remuneration under contract of bailment or carriage

177. [143.] (1) If a contract determination or agreement registered under Division 8 applies to a contract of bailment of a public vehicle, the bailor must pay to the bailee in full in money, or permit the bailee to retain from money that would otherwise be payable to the bailor, without any deduction not authorised by the determination or agreement, all commission and other payments due to the bailee under the contract in accordance with the determination or agreement.

(2) If a contract determination or agreement registered under Division 8 applies to a contract of carriage, the principal contractor under the contract must pay to the carrier under the contract in full in money or, with the consent of the carrier, by cheque all remuneration due to the carrier under the contract in accordance with the determination or agreement.

(3) A bailee under a contract of bailment of a public vehicle to which a contract agreement or determination registered under Division 8 applies may apply in the prescribed manner to *[a Local Court] an Industrial Magistrate or [in accordance with the rules of the Industrial Court, to the Industrial Court] to the Commission* for an order directing the bailor to pay to the bailee the amount, or the balance of the amount, due to the bailee under subsection (1).

(4) A carrier under a contract of carriage to which a contract determination or agreement registered under Division 8 applies may apply in the prescribed manner to *[a Local Court] an Industrial Magistrate or [in accordance with the rules of the Industrial Court, to the Industrial Court] to the Commission* for an order directing the principal contractor under the contract to pay to the carrier the amount, or the balance of the amount, due to the carrier under subsection (2).

(5) The bailor under a contract of bailment of a public vehicle to which a contract determination or agreement registered under Division 8 applies may apply in the prescribed manner to *[a Local*

Court] an **Industrial Magistrate** or[, *in accordance with the rules of the Industrial Court, to the Industrial Court*] to the **Commission** for an order directing the bailee under the contract to pay to the bailor any amount, or the balance of any amount, that, pursuant to the contract, was payable to the bailor.

(6) An application under this section may not be made in respect of any money that became payable under a contract earlier than 6 years before the date of the application.

(7) An order may be made under this section despite a prior acceptance of an amount smaller than the amount for which an order could be made and despite any express or implied agreement to the contrary.

(8) In proceedings under this section, [*a Local Court or the Industrial Court may make such order as the Court concerned*] an **Industrial Magistrate** or the **Commission** may make such order as the **Industrial Magistrate** or the **Commission** considers just, award costs to either party and assess the amount of those costs.

Recovery of amount in a Local Court

178. [144.] Any amount ordered to be paid by [*a Local Court*] an **Industrial Magistrate** under this Subdivision may, to the extent that it does not exceed \$10,000 or such greater amount as may be prescribed by the regulations, be recovered as if it were a judgment of [*the Local Court*] a **Local Court** for the payment of a debt of the same amount.

Alternative proceedings in other Courts

179. [145.] A person entitled to apply for an order for the payment of money under this Subdivision may, instead of applying for such an order, recover the money as a debt in any court of competent jurisdiction.

Appeal to the [*Industrial Court*] Commission

180. [146.] (1) A person aggrieved by a judgment or order of [*a Local Court or*] an **Industrial Magistrate** given or made under this Subdivision may, within the prescribed period, appeal to the [*Industrial Court*] **Commission**.

(2) On such an appeal [*the Court*] the **Commission** may affirm, vary, or rescind the judgment or order appealed from and may make such

order as the *[Local Court or] Industrial Magistrate* should have made, including an order as to costs of the judgment or order appealed from or of the appeal.

Age of claimant not a bar

181. *[147.]* A person may take proceedings under this Subdivision, and may recover any balance due, and costs, even if the person was not of or above the age of 18 years at the time of doing the work, when the money became due or at the time of taking the proceedings.

Representation by State employee organisation

[148. (1) Proceedings under this Subdivision may, with the written consent of the person otherwise entitled to take them, be taken, in the name and on behalf of the person by the secretary or other officer of a State employee organisation concerned in the industry or enterprise to which the proceedings relate.]

182. *[148.]* (1) The secretary or (with the authority of the State registered organisation) another officer of a State employee organisation or State employer organisation concerned in the industry to which the proceedings relate may take or otherwise be a party to any proceedings under this Subdivision, but only with the written consent of the person otherwise entitled to take or to be a party to the proceedings.

(2) Any amount ordered to be paid in the proceedings may be paid to the secretary or other officer and the receipt of the secretary or other officer is a sufficient discharge for the employer for the amount mentioned in the receipt.

(3) Any amount so paid to the secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by the employer) must be held on trust for the person on whose behalf the proceedings were taken.

Other persons who may bring proceedings

183. *[149.]* (1) Proceedings that may be taken by a bailee under this Subdivision may, instead of being taken by the bailee, be taken in the name and on behalf of the bailee by the secretary or other officer of an association of contract drivers registered under Division 8.

(2) Proceedings that may be taken by a carrier under this Subdivision may, instead of being taken by the carrier, be taken:

- (a) with the consent of the carrier - in the name and on behalf of the carrier by the secretary or other officer of an association of contract carriers registered under Division 8; or
- (b) if the carrier is a partnership - by any partner in the partner's own name for the benefit of the partnership; or
- (c) if the carrier is a corporation:
 - (i) in the director's own name by a director of the corporation; or
 - (ii) in the shareholder's own name by a shareholder in the corporation authorised by the corporation to take the proceedings,

for the benefit of the corporation.

(3) This section does not authorise the taking of proceedings by more than one person in respect of the same amount sought to be recovered. If proceedings are so taken, the *[Court] Industrial Magistrate* concerned may order that any of those proceedings be stayed, or dismissed, on such terms as that *[Court] Industrial Magistrate* thinks fit.

(4) Any amount ordered to be paid as a result of proceedings taken in accordance with this section is, after deducting any costs properly incurred in connection with the proceedings and not paid by the bailor or principal contractor, to be paid:

- (a) where the proceedings were taken in accordance with subsection (1) - to the secretary or other officer who took the proceedings; or
- (b) where the proceedings were taken in accordance with subsection (2) - to the person in whose name the proceedings were taken,

to be held on trust for the person by whom, but for this section, the proceedings would have been taken.

(5) Where money is so paid, the receipt of the secretary, other officer or person is a sufficient discharge for the amount paid.

Payment of unclaimed wages

184. [150.] (1) If:

- (a) an employee has left the employment of an employer without being paid the full amount due to the employee in respect of the employment; and
- (b) the employer has been unable, during a period of 30 days after the termination of the employment, to make the payment because the location of the employee is unknown to the employer, and cannot with reasonable diligence be found,

the employer must, immediately after the expiration of that period, pay the full amount to the Director-General who must hold the amount for the benefit of the employee.

(2) A receipt issued on behalf of the Director-General for money so paid is a sufficient discharge to an employer for the amount mentioned in the receipt.

(3) Any employer who fails to comply with this section is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) Any amount paid to the Director-General under this section must be paid into an account in the Special Deposits Account in the Treasury and is required to be dealt with in accordance with section 14 of the Public Finance and Audit Act 1983 as if, at the time it was so paid, it had been placed to the credit of the Special Deposits Account pursuant to that section.

Payment of other unclaimed amounts

185. [151.] (1) If:

- (a) money is due to a bailee or carrier in respect of a contract of bailment, or a contract of carriage, that has been terminated; and
- (b) the bailor or principal contractor under the contract has been unable during the period of 30 days after termination of the contract to pay the money to the bailee or carrier because the location of the bailee or carrier is unknown and cannot with reasonable diligence be found,

the bailor or principal contractor must immediately pay the money to the Director-General, to be held in trust for the bailee or carrier.

(2) Payment by a bailor or principal contractor of an amount in accordance with this section is a sufficient discharge for that amount.

(3) If the money is still held after the expiration of 6 years after termination of the contract, it is to be paid to the Special Deposits Account referred to in section 4 of the Public Finance and Audit Act 1983.

(4) A bailor or principal contractor who fails to comply with this section is guilty of an offence.

Maximum penalty: 20 penalty units.

Small claims [in Local Courts] before Industrial Magistrate

186. [152.] (1) In this section:

"order" means an order:

- (a) under this Subdivision; or
- (b) under section 13 of the Annual Holidays Act 1944; or
- (c) under section 12 of the Long Service Leave Act 1955; or
- (d) under section 12 of the Long Service Leave (Metalliferous Mining Industry) Act 1963;

"prescribed application" means an application for an order in which the applicant makes an election under subsection (2).

(2) A person who makes an application to [a Local Court] an Industrial Magistrate for an order may, in the application, elect to have the application dealt with in accordance with the provisions of this section.

(3) [A Local Court] An Industrial Magistrate is not to make an order in respect of a prescribed application for the payment of an amount that exceeds:

- (a) except as provided by paragraph (b) - \$10,000; or
- (b) where some other amount is prescribed for the purposes of this section - that other amount.

(4) [A Local Court] An Industrial Magistrate is not to make an order in respect of a prescribed application until [the Court] the Industrial Magistrate has brought, or has used its best endeavours to bring, the parties to the application for the order to a settlement acceptable to those parties and, if such a settlement is made, [the Local Court] the Industrial Magistrate is required to make an order that, to

the extent authorised by this Act, gives effect to the terms of the settlement.

(5) *[A Local Court]* **An Industrial Magistrate** may, at any stage of proceedings in respect of a prescribed application, make such amendment of the application as *[the Court]* **the Industrial Magistrate** thinks fit either at the request or with the approval of the applicant but, if it appears to *[the Local Court]* **the Industrial Magistrate** that any other party to the proceedings has not had sufficient notice of the amendment, *[the Court]* **the Industrial Magistrate** is required to adjourn the proceedings to such time and place as *[the Court]* **the Industrial Magistrate** thinks fit.

(6) *[A Local Court]* **An Industrial Magistrate** is not, in respect of a prescribed application, bound by the rules and practice as to evidence but may inform itself of any matter in such manner as *[the Court]* **the Industrial Magistrate** thinks fit.

(7) Despite anything to the contrary in this or any other Act, an appeal to the *[Industrial Court]* **Commission** from an order made by *[a Local Court]* **an Industrial Magistrate** in respect of a prescribed application may not be instituted without the leave of the *[Industrial Court]* **Commission**.

Representation of parties to small claims

187. *[153.]* (1) A party to proceedings authorised by *[section 152]* **section 186** to be brought *[in a Local Court]* **before an Industrial Magistrate** may be represented by an agent, but is not entitled to be represented by an agent who practises as a barrister or solicitor or as an advocate for fee or reward unless *[the Local Court]* **the Industrial Magistrate** so approves.

(2) This section does not prevent:

- (a) an officer within the meaning of the Companies (New South Wales) Code of a corporation from representing the corporation; or
- (b) where a corporation that is a body corporate constituted under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986 is a party to the proceedings - the proprietor or lessee or, if there is more than one proprietor or lessee, one of the proprietors or lessees constituting the body corporate from representing the corporation.

(3) *[A Local Court]* **An Industrial Magistrate** is not, under this section, to approve of a party to any proceedings being represented by an agent who practises as a barrister or solicitor or otherwise for fee or reward unless:

- (a) all parties to the proceedings agree; and
- (b) *[the Local Court]* **the Industrial Magistrate** is satisfied that the parties, other than the party who applies for approval of an agent, or any of them will not be disadvantaged.

(4) When, apart from this subsection, it appears to *[a Local Court]* **an Industrial Magistrate** that an agent who practises as a barrister or solicitor or otherwise for fee or reward should be permitted to represent a party to any proceedings, *[the Local Court]* **the Industrial Magistrate** may grant the approval subject to such conditions as *[the Local Court]* **the Industrial Magistrate** considers reasonable to ensure that any other party to the proceedings is not disadvantaged by the agent appearing in the proceedings. In such a case, the entitlement of the agent to represent the party is subject to compliance with those conditions.

(5) Contravention of any provision of this section does not invalidate any proceedings before *[a Local Court]* **an Industrial Magistrate** in which the contravention occurs or any order made in those proceedings.

(6) Despite anything else in this section, a person is entitled to be represented by an employee or officer of a State registered organisation.

(7) *[(6)]* In this section, "agent" includes a person who takes proceedings in the name and on behalf of another person.

Advertisements relating to wages

188. *[154.]* (1) A person who inserts or causes to be inserted in a newspaper any advertisement in which the person offers or seeks employment at a wage lower than the price or rate or on conditions less favourable than those fixed by any award, industrial agreement or enterprise agreement applicable to the employment is guilty of an offence.

(2) The printer or publisher of any newspaper in which any such advertisement is published must, on demand, furnish an inspector or the secretary of the State employee organisation to which the award

relates or of any such organisation that is a party to the agreement concerned with the name and address of the person who inserted the advertisement, or caused the advertisement to be inserted.

Maximum penalty: 20 penalty units.

Subdivision 2 - Manner of paying wages etc.

Employees to be paid in money

189. [155.] (1) Remuneration payable to an employee is to be paid in money and, if demanded, at least once each fortnight.

Maximum penalty: 50 penalty units.

(2) A payment is to be regarded as a payment in money if it is made:

- (a) in cash; or
- (b) with appropriate authority under subsection (3), by cheque payable to the employee; or
- (c) with appropriate authority under subsection (3), into an account in the name of the employee (whether or not jointly with another person) at a bank, permanent building society or credit union **nominated by the employee.**

[(3) Appropriate authority for the purposes of subsection (2) is:

- (a) the authority in writing of the employee (so long as that authority has not been withdrawn); or*
- (b) authority conferred by an award, industrial agreement, enterprise agreement or contract determination.]*

(3) A payment is made with appropriate authority if the employer applies in writing to the Registrar for, and the Registrar issues to the employer, a certificate permitting the manner of payment.

(4) The terms and conditions applying to the issuing of such certificates may be prescribed by the regulations.

(5) *[(4)]* Payment into an account can be made by a transfer of funds (which may be an electronic transfer) or by other means, **subject to the employee's consent and the payment being made with appropriate authority under subsection (3).**

Employee can authorise deductions

190. [156.] (1) An employer can deduct and pay on behalf of an employee from any remuneration payable to the employee any

payments authorised in writing by the employee or by an award or agreement to be deducted and paid.

[(2) Such an authority can be withdrawn in writing by the employee at any time.]

(2) If the employee at any time gives the employer written notice of withdrawal of such an authority, the employer must give effect to the notice as soon as is practicable.

Employees not to be paid in goods, board or lodging

191. [157.] (1) An employer must not either directly or indirectly require or compel an employee to accept goods of any kind or board or lodging instead of money or in payment or part payment of remuneration.

(2) The receipt or acceptance of any goods or board or lodging is not to be considered to be payment or part payment of remuneration.

Employer not to stipulate how remuneration to be spent

192. [158.] (1) An employer must not either directly or indirectly impose as a condition, express or implied, of the employment of an employee any terms:

- (a) as to the place where or the manner in which or the person with whom any remuneration paid to the employee is to be spent; or
- (b) requiring the employee to reside on land or premises of the employer, except where such residence is essential to the duties the employee is required to perform.

(2) An employer must not dismiss an employee on account of the place where, the manner in which or the person with whom any remuneration paid by the employer was or was not spent, or on account of the employee not residing on the land or premises of the employer, **except where such residence is essential to the duties the employee is required to perform.**

Recovery of remuneration - no set-off for goods supplied etc.

193. [159.] In any proceedings by an employee against his or her employer to recover any amount due as remuneration the defendant is not entitled to any set-off or reduction of the claim in respect of:

- (a) any goods had or received by, or services provided to, the employee as or on account of remuneration; or

- (b) any goods sold, delivered or supplied at any shop or other premises of the employer or in the profits of which the employer has any share or interest; or
- (c) any goods supplied to the employee by any person under the direction of the defendant or the defendant's agent.

No action against employee for goods supplied etc.

194. [160.] An employer is not entitled to maintain any action in any court against an employee for or in respect of:

- (a) any goods sold, delivered or supplied to the employee by the employer while in the employer's employment as or on account of the employee's remuneration; or
- (b) any goods sold, delivered or supplied to the employee at any shop or other premises of the employer or in the profits of which the employer has any share or interest.

Entitlement to payment in advance

195. [161.] If by agreement, custom or otherwise an employee is entitled to receive in anticipation of the regular period of the payment of his or her remuneration an advance as part or on account of it:

- (a) it is not lawful for the employer to withhold the advance; and
- (b) it is not lawful for the employer to make any deduction in respect of the advance on account of discount, interest or otherwise.

Unauthorised deductions prohibited

196. [162.] Without limiting the generality of this Subdivision, an employer must not unilaterally deduct any amounts from an employee's wages in relation to alleged overpayments, breakages or damage to goods or plant at work, or shortfalls in cash.

Maximum penalty: 50 penalty units.

Effect of unlawful payments etc.

197. [162.] (1) Payment of remuneration to an employee in a manner that is not lawful under this Subdivision is not to be considered to be payment or part payment of that remuneration, except to the extent (if any) permitted by the Commission.

(2) Any contract that provides for payment of remuneration to an employee in a manner that is not lawful under this Subdivision is void and of no effect to the extent that it so provides.

Subdivision 3 - Breach of awards, agreements or determinations

Penalty for breach of award etc.

198. [163.] (1) If any person contravenes the provisions of an award, industrial agreement, enterprise agreement, contract determination or agreement registered under Division 8, the person is guilty of an offence.

Maximum penalty: [50 penalty units].

- (a) in the case of a corporation - 100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the breach continues; or
- (b) in any other case - 10 penalty units and an additional penalty of 1 penalty unit for each succeeding day during which the breach continues.

(2) If, in proceedings for an offence under subsection (1) relating to a breach of an award, industrial agreement or enterprise agreement, it appears that the breach complained of relates to the failure of the defendant to pay in full any wages (whether or not being wages for overtime) due to an employee at the price or rate fixed by the award or agreement or any other money due to or recoverable by an employee under an award, industrial agreement or enterprise agreement, the Local Court or [Industrial Court] Commission may also make such an order with respect to such wages or money as might have been made in proceedings taken under Subdivision 1.

(3) Any such order may be made without motion, and is a bar to proceedings under Subdivision 1 in respect of those wages or that money.

(4) If, in proceedings for an offence under subsection (1) relating to a breach of a contract determination or agreement registered under Division 8, it appears that the breach complained of relates to the failure of the defendant to pay any money that may be recovered under Subdivision 1, the Local Court or [Industrial Court] Commission may also make such an order with respect to that money as might have been made in proceedings under Subdivision 1.

(5) Any such order may be made without motion and is a bar to proceedings under Subdivision 1 in respect of that money.

(6) In this section, "award" includes orders made under this Act other than an order made under this section, section 177 or 404 or any section prescribed by the regulations, but does not include any order under any section of this Act for the contravention of which a penalty is expressly provided by this Act.

Injunctions

199. [164.] (1) If a penalty is imposed under [section 163] section 198 and the [Industrial Court] Commission is of opinion that the breach was committed because of the wilful act or default of a person, [the Court] the Commission may, on its own initiative or on application, and in addition to any penalty imposed, grant an injunction to restrain the person from committing further or other breaches of the award, industrial agreement, enterprise agreement, contract determination or agreement registered under Division 8, or from causing further or other such breaches to be committed.

(2) If any person disobeys such an injunction the person is guilty of an offence.

Maximum penalty: [50 penalty units].

- (a) in the case of a corporation - 100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the breach continues; or
- (b) in any other case - 10 penalty units and an additional penalty of 1 penalty unit for each succeeding day during which the breach continues.

(3) Proceedings for an offence under this section are to be disposed of summarily by the [Industrial Court] Commission.

Proceedings for offences

200. [165.] (1) Proceedings for a breach of an award, an industrial agreement or an enterprise agreement may be taken by the Minister, an officer of the Department, an employer, or the secretary [of a State employee organisation] or, with the written consent of the secretary, another officer of a State employee organisation or State employer organisation concerned in the industry or enterprise covered by the

award, industrial agreement or enterprise agreement concerned, not later than 12 months after the date of such breach.

(2) Proceedings for a breach of a contract determination or agreement registered under Division 8 may be taken by the Minister, an officer of the Department, a bailor under a contract of bailment of a public vehicle, a principal contractor under a contract of carriage or the secretary of an association registered under Division 8.

(3) Any proceedings taken under this section by the Minister or an officer of the Department may be prosecuted by any officer of the Department.

(4) The Local Court or Commission may award costs to either party and assess the amount of costs.

(5) Evidence given in proceedings under Subdivision 1 is not admissible against an employee or employer in proceedings under this section.

(6) In this section, "award" includes an order made under this Act, other than an order of a kind prescribed by the regulations, but does not include any order under any section of this Act for which a penalty is expressly provided by this Act.

Proceedings by and against unincorporated associations

201. [166.] (1) For the purposes of this Subdivision, the secretary of an unincorporated association is to be taken to be the employer of a person employed for the purposes or on behalf of the association. Any proceeding that may be taken under this Subdivision by or against the association may be taken by or against the secretary on behalf of the association.

(2) The secretary is authorised to retain out of the funds of the association sufficient money to meet payments made by the secretary on behalf of the association under this section.

(3) In this section, "secretary" includes a person having possession or control of any funds of an unincorporated association.

Secretary of union etc. receiving money for breach of award etc.

202. [167.] A secretary of a State employee organisation, association of employing contractors, association of contract drivers or association of contract carriers, or any person acting or purporting to act on behalf

of any such an organisation or association, who receives any money paid in respect of any act constituting a breach of an award, industrial agreement or enterprise agreement, or a breach of a contract determination or an agreement registered under Division 8, otherwise than in pursuance of the order or with the previous approval of the Registrar or *[a Local Court]* an **Industrial Magistrate** is guilty of an offence.

Maximum penalty: 50 penalty units.

Subdivision 4 - Details of wages and hours

Particulars of wages to be supplied to employees

203. [168.] (1) On the payment by an employer of any wages to an employee covered by an award, industrial agreement or enterprise agreement, whether or not the payment is required to be made by the award or agreement, the employer must supply to the employee when the payment is made such written particulars as may be prescribed regarding:

- (a) the date of payment; and
- (b) the classification of the employee under the award or agreement; and
- (c) the period in respect of which the payment is made; and
- (d) times worked or work done by the employee; and
- (e) matters in respect of which the payment is made; and
- (f) deductions made; and
- (g) the amount paid; and
- (h) how the amount paid is made up.

(2) If the Registrar is satisfied that arrangements that do not comply with those requirements have been made or are proposed to be made for furnishing the employees of an employer or any class of employees of an employer with particulars of their employment or wages are:

- (a) sufficient to meet the reasonable requirements of those employees or of that class of employees, as the case may be; or
- (b) acceptable to the State employee organisation or organisations representing the majority of those employees, or of that class of employees, as the case may be,

the Registrar may, if the Registrar considers it to be in the best interests of the employees concerned to do so, by a certificate grant to

that employer exemption from those requirements in respect of the employees of that employer or in respect of that class of employees, as the case may require.

(3) Any such exemption may be absolute or be granted subject to conditions specified in it, and may at any time be revoked by the Registrar by notice in writing to the person to whom it was granted.

(4) An employer who fails to comply with the requirements of this section or, while an exemption under this section is in force in respect of an employer, with the conditions of such an exemption, is guilty of an offence.

Maximum penalty: [20] 50 penalty units.

(5) In any proceedings for that offence, a certificate purporting to be signed by the Registrar and to set out particulars of an exemption or notice stated in the certificate to have been granted or given under this section is evidence of the matters contained in the certificate without proof of the signature or official character of the person appearing to have signed it.

Time-sheets and pay-sheets to be kept

204. [169.] (1) Every employer:

- (a) carrying on an industry or enterprise to which an award, industrial agreement or enterprise agreement relates; or
- (b) in a declared trade or declared calling within the meaning of the Industrial and Commercial Training Act 1989,

must ensure that there is kept, from day to day at the workshop or factory or place where the employer carries on business or, with the approval of the Registrar, at some other place, in the medium and form prescribed, time-sheets and pay-sheets relating to the employees of the employer.

Maximum penalty: [20] 50 penalty units or, if the offence consisted of a wilful act or omission of an employer and was committed with the intention to deceive or defraud any person, 200 penalty units.

(2) An employer must ensure that false entries are not wilfully made, with the intention to deceive or defraud any person, in the records required to be kept under subsection (1).

Maximum penalty: 200 penalty units.

(3) [(2)] The employer must ensure that those daily records are preserved in good order and legible condition and are, for a period of at least 6 years, available for inspection, unless they are kept in accordance with different requirements approved in writing by the Registrar.

Maximum penalty: [20] 50 penalty units.

(4) [(3)] Any person who is in any way directly or indirectly knowingly concerned in the commission of any offence under [subsection (1) or (2)] subsection (1), (2) or (3) is to be taken to have committed that offence.

(5) [(4)] An employer carrying on an industry or enterprise to which an award, industrial agreement or enterprise agreement relates must ensure that a copy of the award and this Act is exhibited and kept exhibited at the workshop or factory where the employer carries on business or the premises in or upon which persons are employed by the employer in that industry so as to be legible by the employees.

Maximum penalty: [20] 50 penalty units.

(6) [(5)] If an employer is required to exhibit and keep exhibited a copy of an award, it is sufficient if the copy is the latest copy of the award certified by the Registrar.

(7) [(6)] Such daily or other periodic records as are prescribed by the regulations must be kept by:

(a) the bailor of a public vehicle under a contract of bailment to which a contract determination or an agreement registered under Division 8 applies; and

(b) the principal contractor under a contract of carriage to which such a determination or agreement applies,

in such manner as may be prescribed or approved by the Commission for a period of at least 6 years after the last entry in it.

Maximum penalty: [20] 50 penalty units.

Subdivision 5 - Amendment of proceedings

Power to amend

205. [170.] (1) Where in any proceedings under this Division it appears that the award, industrial agreement, enterprise agreement, contract determination or agreement registered under Division 8 referred to in the application, information or complaint, as the case

may be, is not the one appropriate to the proceedings and that some other award, agreement or determination is appropriate to the proceedings, the Local Court or Commission may amend the application or information and proceed to deal with the matter as though proceedings had been instituted under the application, information or complaint as so amended.

(2) If the amendment appears to the Local Court or Commission to be of such a kind as to provide reasonable grounds to suspect that the employer, bailor or principal contractor, as the case may be, may have been deceived or misled with respect to the nature of the proceedings the Local Court or Commission may, on such terms as it thinks fit, adjourn the hearing.

(3) Nothing in this section limits the operation of section 65 of the Justices Act 1902.

PART 3 - SETTLEMENT OF DIFFERENCES CONCERNING AWARDS AND AGREEMENTS

Division 1 - Questions, disputes or difficulties concerning awards and agreements

Reference of matters to the Commission

206. [171.] (1) If a question, dispute or difficulty arises in respect of an award or agreement, the question, dispute or difficulty may be referred to the Commission by:

- (a) a party to the making of the award or agreement; or
- (b) a State employee organisation, if members of the organisation are bound by the award or agreement; or
- (c) an employer bound by the award or agreement or a State employer organisation *[representing such an employer]*, if members of the organisation are bound by the award or agreement.

(2) If a question, dispute or difficulty arises in respect of:

- (a) an award or agreement; or
- (b) alleged discrimination in employment within the meaning of the Anti-Discrimination Act 1977,

an individual employee bound by an award or agreement may refer the question, dispute or difficulty to the Commission if the question,

dispute or difficulty to be referred relates to a grievance the employee claims to have over action taken by the employer of the employee that disadvantages the employee.

(3) Any such question, dispute or difficulty may be referred even though the nominal term of the award or agreement concerned may have expired.

(4) When exercising its functions under this Division, the Commission must, as far as is reasonably practicable, give effect to the intention of the Commission:

- (a) at the time the award was made or the agreement was approved for registration; and
- (b) at the time any relevant ruling or other decision was made by the Commission.

(5) The Commission is not to deal with a question, dispute or difficulty referred to it under this Division by an individual employee unless it was referred with leave of the Commission.

Settlement procedure to be followed first

207. [172.] The Commission is not to deal with a question, dispute or difficulty referred to it under this Division unless it is satisfied that any provisions of the award or agreement providing for the settlement of the question, dispute or difficulty have been complied with as far as is reasonably practicable in the circumstances.

Mediation by Commission

208. [173.] (1) The Commission is to attempt to clarify the issues involved and settle the question, dispute or difficulty by mediation and, for that purpose, may request the persons concerned to attend a conference presided over by a member of the Commission.

(2) If the question, dispute or difficulty was referred by or on behalf of an individual employee and the mediation is conducted at a hearing before the Commission, the public is to be excluded, no transcript of the proceedings is to be kept (unless the Commission otherwise directs) and the rules of evidence do not apply.

Decision of Commission

209. [174.] (1) If mediation fails, the Commission is to deal with the question, dispute or difficulty by arbitration.

[(2) The Commission is not to dispose of the question, dispute or difficulty by changing conditions of employment fixed by an award or agreement without the concurrence of the parties to the making of the award or agreement.]

(2) If a member of the Commission has attempted mediation in relation to a question, dispute or difficulty, arbitration powers in relation to the question, dispute or difficulty are to be exercised by a different member if a party to the arbitration proceedings so requires.

Effect of decisions

210. [175.] The decision of the Commission of a question, dispute or difficulty referred to it under this Division binds the persons who are subject to the award or agreement concerned.

Questions involving new matters

211. [176.] If the Commission decides that a question, dispute or difficulty referred to it under this Division that relates to an award raises an industrial matter that is *[not determined by the award]* **a new matter in relation to the award**, the Commission may exercise its functions of conciliation and arbitration under Subdivision 2 of Division 6 of Part 4 with respect to the question.

Division 2 - Injunctions

Application of Division

[177. (1) This Division applies to industrial action concerning an industrial matter for which provision is made in an award or agreement the nominal term of which has not expired unless the industrial action relates to a new matter.

(2) For the purposes of this Division, industrial action relates to a new matter only if the Commission has certified that the matter is not one for which provision has been made by an award or agreement the nominal term of which has not expired.

(3) Even if industrial action relates to a new matter, this Division applies to such action if

- (a) it is in contravention of an award or agreement that is in force; or*
- (b) it is in contravention of an order of the Commission; or*
- (c) it can reasonably be attributed to the alleged or actual unfair dismissal of an employee.]*

212. [177.] (1) For the purposes of this Division, an industrial matter is a new matter only if the Commission has certified that it is a new matter.

(2) This Division applies to industrial action concerning an industrial matter for which provision is made in an award or agreement the nominal term of which has not expired.

(3) This Division does not apply to industrial action concerning an industrial matter that is a new matter in relation to an award or agreement, except as provided by subsection (4).

(4) Even though industrial action concerns an industrial matter that is a new matter in relation to an award or agreement, this Division applies to the industrial action if:

- (a) it is in contravention of an award or agreement that is in force; or
- (b) it is in contravention of an order of the Commission; or
- (c) it can reasonably be attributed to the alleged or actual unfair dismissal of an employee.

(5) [(4)] This Division also applies to threatened industrial action that, if engaged in, would be industrial action to which this Division applies.

Injunction relating to certain industrial action

213. [178.] (1) If industrial action to which this Division applies is taking place, or is threatened, the [Court] Commission may grant an injunction requiring any one or more of the persons referred to in subsection (2) to act, or to refrain from acting, in a specified manner.

(2) The persons referred to in this subsection are:

- (a) a party to the industrial action or a likely party to the threatened industrial action; and
- (b) a member, officer or employee of a State registered organisation that is such a party; and
- (c) a person who is adversely affected by the industrial action or is likely to be adversely affected by the threatened industrial action.

- (3) Application for an injunction may be made only by:
- (a) the Minister; or
 - (b) a State registered organisation or *[other person]* employer, if the applicant is, or is likely to be, adversely affected by actual or threatened industrial action of the party against whom or which the injunction is sought; or
 - (c) a State registered organisation of which a member is, or members are, adversely affected or likely to be adversely affected by actual or threatened industrial action of the party against whom the order is sought.
- (4) An injunction may be granted in interlocutory proceedings and the *[Court]* Commission may require the applicant to give (in the case of the Minister, on behalf of the State) undertakings satisfactory to the *[Court]* Commission as to the payment of costs.
- (5) Despite any other provision of this Part, no injunction or other penalty is to be granted or imposed in relation to industrial action unless the Full Commission has certified that:
- (a) the processes of conciliation and arbitration in relation to the causes of the industrial action have been attempted and that no reasonable purpose would be served either by continuing to attempt to conciliate or by arbitration; and
 - (b) the persons against whom the injunction would be directed or on whom the other penalty would be imposed are in substantial breach of directions, orders or awards made by the Commission.
- (6) In subsection (5), a reference to a penalty does not include a reference to a penalty for a criminal offence that might be imposed if the act or omission giving rise to the offence had occurred in such circumstances as did not constitute industrial action.

Breach of injunction

214. *[179.]* (1) If the person who obtained an injunction under *[section 178]* section 213 (in this section called "the aggrieved party") lodges with the Registrar of the *[Court]* Commission an application that:

- (a) is to the effect of the form, and includes the information, required by the rules; and

(b) alleges a breach of the injunction, the Registrar of the *[Court] Commission* is to issue a summons requiring the person alleged to be in breach of the injunction (in this section called "the defendant") to show cause why the *[Court] Commission* should not take action under subsection (3).

(2) The *[Court] Commission* is to hear the evidence of the aggrieved party and of any person appearing in answer to the summons and either:

- (a) if the defendant is found not to be in breach of the injunction - to dismiss the summons; or
- (b) to take action under subsection (3).

(3) Unless the summons is dismissed under subsection (2), the *[Court] Commission* may, after considering the history of the industrial action, or the threatened industrial action, that led to the injunction and after considering the record of the parties, do any one or more of the following:

- (a) dismiss the summons after finding that, although the defendant was in breach of the injunction, the circumstances were such that the *[Court] Commission* should take no action on the breach;
- (b) require the defendant to enter into a recognizance with or without securities;
- (c) impose a penalty for a breach of the injunction;
- (d) suspend for a specified time entitlements under an award or agreement, or cancel an agreement;
- (e) alter the coverage of a State employee organisation to exclude certain persons from membership;
- (f) suspend the contract of employment of the person in breach of the injunction;
- (g) suspend for a specified time, or suspend and later cancel, the registration of a State employee organisation or a State employer organisation.

(4) The maximum penalty that may be imposed under subsection (3) (c) for a breach of an injunction is:

- (a) in the case of a State registered organisation or any other corporation - *[1,000 penalty units]* 100 penalty units and an additional penalty of *[100 penalty units]* 10 penalty units for each succeeding day during which the breach continues; or

- (b) in any other case - *[100 penalty units]* **10 penalty units** and an additional penalty of *[10 penalty units]* **1 penalty unit** for each succeeding day during which the breach continues.

Consequential amendment of rules

215. *[180.]* (1) If, under *[section 179]* **section 214**, the *[Court]* **Commission:**

- (a) alters the coverage of a State employee organisation to exclude certain persons from membership; or
 - (b) suspends or cancels the registration of such an organisation,
- the *[Court]* **Commission** may, on the application of the Minister or on its own initiative, order that the rules of the organisation be amended suitably or cancelled and may make such other orders as are necessary to give effect to, or in consequence of, the order made under *[section 179]* **section 214**, including an order altering the rules of any other State employee organisation in such a way as to make eligible for membership of that other organisation persons who were members of the organisation of which the coverage was altered or the registration suspended or cancelled.

(2) The rules of the State employee organisation are to be taken to have been amended:

- (a) on the date of the order or, if a later date is specified in the order for the purpose, on the later date; and
- (b) in the manner specified in the order.

(3) This section does not prevent a further amendment, or the cancellation, of a rule of a State employee organisation amended under this section.

Division 3 - General

Certain payments prohibited

216. *[181.]* A person who/:

- (a) */*engages in industrial action based on a claim for wages or benefits, or both, in respect of time spent in engaging in that or any other industrial action*[/; or]*

[(b) pays wages or provides benefits, or both, in respect of time spent in engaging in industrial action,]

is guilty of an offence unless payment of the wages or provision of the benefit is authorised by the Commission under *[section 182]* section 217.

Maximum penalty: 100 penalty units.

Commission may authorise payments or benefits

217. *[182.]* (1) The Commission may, on the application of a State employee organisation, authorise the payment of wages or the provision of a benefit that would otherwise constitute an offence under *[section 181]* section 216.

(2) The Commission may authorise an employer to pay wages or provide a benefit:

- (a) only if the State employee organisation applicant satisfies the Commission that the relevant industrial action was based on a reasonable concern for health or safety; and
- (b) only to the particular employees whose health or safety caused the reasonable concern.

(3) For the purposes of subsection (2), industrial action is not based on a reasonable concern for health or safety if the employees whose health or safety is alleged to be involved have engaged in industrial action instead of complying with a direction by the employer:

- (a) to move to a specified safe place in the work place or to another suitable work place; and
- (b) to do other appropriate and available work there if required.

(4) In considering whether or not to act under subsection (1), the Commission is to have regard to:

- (a) the beliefs reasonably and genuinely held by the employees; and
- (b) the actions of the employees; and
- (c) the actions of the employer; and
- (d) a report assessing the existence or otherwise of a hazard to health or safety by an inspector appointed for the purposes of the Factories, Shops and Industries Act 1962 or by an inspector appointed for the purposes of another Act, being an inspector whose functions relate to workplace safety.

Unlawful industrial action

218. [183.] (1) A person who engages in unlawful industrial action is guilty of an offence.

[(2) For the purposes of subsection (1), industrial action is unlawful:

- (a) in any case, if it is based on a demarcation dispute in respect of which the Commission may make an order under section 221, 222 or 223; or*
- (b) where the person engaging in the unlawful industrial action is a State employee organisation, a State employer organisation or an employer, if its purpose is to support another such organisation involved in industrial action or a secondary boycott.]*

(2) For the purposes of subsection (1), industrial action is unlawful, in any case, if it is based on a demarcation dispute in respect of which the Commission may make an order under section 257, 258 or 259.

(3) The maximum penalty that may be imposed for an offence under subsection (1) is:

- (a)** in the case of a *[State employee organisation or an employer]* **State registered organisation or any other corporation - [1,000 penalty units] 100 penalty units** and an additional penalty of *[100 penalty units]* **10 penalty units** for each succeeding day during which the offence continues; or
- (b)** in any other case - *[100 penalty units]* **10 penalty units** and an additional penalty of *[10 penalty units]* **1 penalty unit** for each succeeding day during which the offence continues.

Defences

219. [184.] (1) It is a defence to a prescribed summons and it is a defence to a prosecution of a person for engaging in industrial action, whether or not it is unlawful industrial action, if it is proved:

- (a)** that the employer of the person, or an agent of the employer, provoked or incited the industrial action concerned by unjust or unreasonable behaviour; or
- (b)** that, in the case of a lock-out by the person, the lock-out was directed at persons directly involved in industrial action and was in retaliation against that industrial action; or
- (c)** that the person was, at the time of the industrial action concerned, an officer of a State employee organisation or a

State employer organisation and was not knowingly concerned in, or a party to:

- (i) any act of the organisation that approved or authorised the industrial action; or
- (ii) any omission by the organisation to try to prevent the industrial action.

(2) In this section, "prescribed summons" means:

- (a) a summons issued to answer for a breach of an injunction granted under Division 2 in relation to actual or potential industrial action; or
- (b) a summons issued to answer for a breach of a dispute order granted under Subdivision 2 of Division 6 of Part 4 in relation to actual or potential industrial action.

Secondary boycotts

220. [185.] This Part does not apply in relation to secondary boycotts[, *except as provided by section 183 (2)*].

PART 4 - THE INDUSTRIAL RELATIONS COMMISSION AND CONCILIATION COMMITTEES

Division 1 - The Commission

Establishment of the Commission

221. [186.] (1) There is established by this Act the Industrial Relations Commission of New South Wales consisting of:

[(a) a President; and]

- (a) a President and a Vice-President; and
- (b) Deputy Presidents; and
- (c) Conciliation Commissioners,

appointed, on the recommendation of the Minister, by commission of the Governor.

(2) The Minister may not recommend a person for appointment as a member of the Commission (other than as a Conciliation Commissioner) unless the person:

- (a) is a Judge of the Supreme Court or of the Land and Environment Court; or

- (b) is a barrister of not less than 5 years' standing or a solicitor of not less than 7 years' standing; or
 - (c) is a barrister or a solicitor of less than 5 years' or 7 years' standing, respectively, where at all times during a continuous period of not less than 7 years the person was on the roll of solicitors when not on the roll of barristers; or
 - (d) is, in the opinion of the Governor, because of qualifications, experience and standing in the community, a fit and proper person to discharge the duties of a member of the Commission and:
 - (i) has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government; or
 - (ii) has, not less than 5 years previously, obtained a degree of a university or an educational qualification of a similar standard, after studies in the field of law, economics or industrial relations or some other field of study considered by the Governor to have substantial relevance to the duties of a member of the Commission.
- (3) [(2)] The Minister may not recommend a person for appointment as a *[member of the Commission]* Conciliation Commissioner unless, in the opinion of the Minister, the person has the skills and experience in the field of industrial relations that are appropriate for the office to which the person is recommended for appointment.
- (4) [(3)] A person is qualified to be appointed as President or Vice-President only if the person possesses (or, immediately before appointment as a Presidential Member, possessed) a qualification specified in subsection (2) (a), (b) and (c).
- (5) [(3)] The members of the Commission have seniority according to the following order of precedence:
- (a) the President;
 - (b) the Vice-President;
 - (c) [(b)] the Deputy Presidents, according to the days on which their commissions took effect or, if the commissions of 2 or more of them took effect on the same day, according to the precedence assigned to them by their commissions;

(d) [(c)] the Conciliation Commissioners, according to the days on which their commissions took effect or, if the commissions of 2 or more of them took effect on the same day, according to the precedence assigned to them by their commissions.

(6) [(4)] The Minister may recommend the appointment of [an additional Deputy President] **additional Deputy Presidents**, or additional Conciliation Commissioners, for a period not exceeding 12 months but may do so only if satisfied that the appointment is necessary to enable the Commission to exercise its functions effectively during that period.

(7) [(5)] On being appointed, a member of the Commission is to take the prescribed oaths of office.

(8) [(6)] The Registrar is to keep a record of oaths taken under this section.

(9) [(7)] The President and the [Deputy President] **Deputy Presidents and Vice-President** are referred to in this Act as **Presidential Members**.

(10) [(8)] A person who was appointed as a member of the Commission because the person possessed a qualification referred to in subsection (2) (a), (b) or (c) is referred to in this Act as a **judicial member of the Commission**.

(11) [(8)] The Commission is to have a seal and the seal is to be judicially noticed.

(12) [(9)] Schedule 4 has effect with respect to the members of the Commission.

Acting President

222. [187. (1) If the President is or is to be absent from duty or there is a vacancy in the office of President, the Minister may appoint a Deputy President to be Acting President during the absence of the President or during the vacancy in the office.]

(1) **The Vice-President is Acting President during the absence of the President or during any vacancy in the office of President.**

(2) **If the President and the Vice-President are or are to be absent from duty or there is a vacancy in the office of President during an absence of the Vice-President, the next senior Deputy President**

available is Acting President during the absences or during the vacancy in the office.

(3) [(2)] An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.

Dual Federal and State appointments

223. [188.] (1) A member of the Commission may hold office as a member of a prescribed industrial authority constituted under a law of the Commonwealth.

(2) A member of a prescribed industrial authority constituted under a law of the Commonwealth may, if otherwise eligible, be appointed as a member of the Commission unless the law of the Commonwealth otherwise provides.

(3) A person who is a member of the Commission and also a member of a prescribed Commonwealth authority may, in accordance with any agreement made between the President and the head of the Commonwealth authority:

- (a) exercise functions as a member of the Commonwealth authority; and
- (b) in relation to a particular matter, exercise functions that the person has in relation to the matter both as a member of the Commission and as a member of the Commonwealth authority.

(4) The appointment, as a member of the Commission, of a person who is a member of a prescribed Commonwealth authority may be for a fixed term and such a member holds office until:

- (a) the expiration of the term; or
- (b) he or she ceases to be a member of the Commonwealth authority; or
- (c) he or she resigns, or is removed, from office as a member of the Commission,

whichever first occurs.

(5) A member of a Commonwealth authority who is a member of the Commission is not to be remunerated as a member of the Commission but may be paid such amounts as the Minister considers to be reasonable for travelling expenses incurred in discharging the duties of a member of the Commission.

**Division 2 - Conciliation Committees and Contract Regulation
Tribunals**

Establishment of Conciliation Committees

224. [189.] The Commission constituted by a Presidential Member may, on application, establish a Conciliation Committee to operate in relation to an identifiable industry or enterprise.

Membership of Conciliation Committees

225. [190.] (1) A Conciliation Committee is to consist of:

- (a) a Conciliation Commissioner who is to be the Chairperson of the Conciliation Committee; and
- (b) equal numbers, determined by the Commission, of representatives of employers and representatives of employees.

(2) The members of a Conciliation Committee other than the Chairperson are to be appointed by the Registrar following nomination as prescribed by the regulations.

(3) The Registrar is not to appoint a nominee member of a Conciliation Committee unless:

- (a) the Registrar is satisfied that the nominee is a person who is, or has been, engaged in the industry or enterprise for which the Committee is established or is acquainted with the working of the industry or enterprise; and
- (b) the Registrar is satisfied that the nominee supports the establishment of the Committee; and
- (c) the nominee agrees, in writing lodged with the Registrar, to comply with the provisions of this Act and to endeavour at all times to achieve its objects.

(4) If the Registrar is satisfied that there has been a failure to nominate a representative of employers, or a representative of employees, for appointment as a member of a Conciliation Committee, the Registrar may appoint as such a representative a person who, in the opinion of the Registrar, is acquainted with the working of the relevant industry or enterprise.

Establishment of Tribunals

226. [191.] The Commission may, on its own initiative or on application by an association of employing contractors, contract drivers

or contract carriers, establish a Contract Regulation Tribunal in respect of any class of contracts that are contracts to which Division 8 of Part 2 applies.

Membership of Tribunals

227. [192.] (1) A Tribunal is to consist of:

- (a) a Conciliation Commissioner who is to be the Chairperson of the Tribunal; and
- (b) such number of members, nominated in the prescribed manner by the prescribed person, as the Commission determines, being:
 - (i) if the class of contracts for which the Tribunal is established is a class of contracts of bailment of public vehicles - members representing bailors of public vehicles bailed under contracts of that class; or
 - (ii) if the class of contracts for which the Tribunal is established is a class of contracts of carriage - members representing principal contractors under contracts of that class; and
- (c) an equal number of members, nominated in the prescribed manner by the prescribed person, being:
 - (i) if the class of contracts for which the Tribunal is established is a class of contracts of bailment of public vehicles - members representing bailees of public vehicles bailed under contracts of that class; or
 - (ii) if the class of contracts for which the Tribunal is established is a class of contracts of carriage - members representing carriers under contracts of that class.

(2) The members of a Tribunal other than the Chairperson are to be appointed by the Registrar.

(3) The Registrar is not to appoint a nominee member of a Tribunal unless the Registrar is satisfied that the person:

- (a) is or has been a party to contracts of the class with which the Tribunal is concerned; or
- (b) is acquainted with conditions prevailing in relation to contracts of that class.

(4) If the Registrar is satisfied that there has been a failure to nominate a person who is willing to be a member of a Tribunal to represent bailors, principal contractors, bailees or carriers, as the case

may be, the Registrar may, subject to subsection (3), appoint a person without the person having been nominated.

Oath to be taken by members

228. [193.] (1) A member of a Conciliation Committee or Tribunal (other than a Conciliation Commissioner) is to take the prescribed oath of office.

(2) The Registrar is to keep a register of the taking of oaths under this section.

(3) A member of a Conciliation Committee or Tribunal who has taken the oath of office is not required to take a further oath of office on becoming a member of another Committee or Tribunal if the taking of the oath by the member was recorded in the register.

Remuneration of members

229. [194.] A member of a Conciliation Committee or Tribunal is not entitled to remuneration as such a member but is entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

Deputy members

230. [195.] (1) A deputy for each member of a Conciliation Committee is to be appointed, and a deputy for a member of a Tribunal may be appointed, in the same way as the member.

(2) A deputy, while representing a member in the absence of the member, is to be taken to be the member.

(3) This Act applies to a deputy representing a member of a Conciliation Committee or Tribunal in the same way as it applies to the member.

Vacation of office by members

231. [196.] (1) The office of a member of a Conciliation Committee or Tribunal (other than a Conciliation Commissioner) is vacated if

- (a) the member dies; or
- (b) the member resigns the office by instrument in writing addressed to the Registrar; or

- (c) the nominator of the member withdraws the nomination by giving notice to that effect to the Registrar; or
- (d) the Committee or Tribunal is dissolved.

(2) If a member of a Conciliation Committee or Tribunal (other than a Conciliation Commissioner) ceases to hold the office, the Registrar may appoint an appropriately qualified person **nominated as prescribed by the regulations** to the vacant office.

Continuation of hearing

232. [197.] A Conciliation Committee or Tribunal newly established by an appointment to fill a vacancy in its membership may, as so established, continue to hear, and may determine, any matter under consideration by it at the time the vacancy occurred.

Dissolution of Conciliation Committee or Tribunal

233. [198.] (1) The Commission constituted by a Presidential Member may, on application or on its own initiative, dissolve a Conciliation Committee.

(2) The Commission may, on its own initiative or on application, dissolve a Tribunal.

(3) Each Conciliation Committee and each Tribunal is dissolved 3 years after it is established.

(4) Any Conciliation Committee or Tribunal that is dissolved may be re-established.

Notices of appointment etc.

234. [199.] On the appointment of a member to a Conciliation Committee or Tribunal or on the cessation of office of a member of a Conciliation Committee or Tribunal, the Registrar is to cause a notice of that appointment or cessation of office to be published in the Gazette or in the Industrial Gazette.

Division 3 - Functions of the Commission generally

Functions to be exercised by the Commission

235. [200.] (1) In addition to any other functions conferred or imposed on it by this or any other Act, it is a function of the Commission to settle by mediation, conciliation and arbitration

industrial matters and matters arising under contracts to which Division 8 of Part 2 applies.

(2) The Commission may, on its own initiative, inquire into any industrial matter.

(3) In the exercise of its functions, the Commission must take into account the public interest and, for that purpose, is to have regard to the objects of this Act.

(4) The Commission may exercise, on its own initiative, any function exercisable by it on application or by direction.

(5) In the exercise of its functions, the Commission:

- (a) is to act as quickly as is practicable; and
- (b) may, subject to this Act, determine its own procedure; and
- (c) is not bound to act in a formal manner; and
- (d) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers to be just; and
- (e) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(6) The Commission must consider, and report upon, any matter referred to it by the Minister.

(7) The Commission may, at any stage, adjourn a matter before it to enable the parties to negotiate an amicable settlement of the matter.

(8) It is the duty of a member of the Commission to maintain up to date knowledge of industrial affairs and conditions.

(9) In any proceedings, the Commission may exercise judicial or arbitral powers and may, at any time, attempt to resolve the matter before it by conciliation.

(10) For all purposes in or in connection with the exercise of any judicial power, the Commission is to be taken to be a superior court of record.

Exercise of functions by the Commission

236. [201.] (1) The Commission is to exercise its functions under this Act:

- (a) if the function is the making, variation or rescission of an award and the exercise of the function has not been referred to a Committee - on its own initiative or on application in accordance with the rules; or
 - (b) if the function is the approval for registration of an industrial agreement or an enterprise agreement - on the lodging with the Registrar of the agreement; or
 - (c) if the function is the making of a contract determination or the conducting of an inquiry for the purpose of making a contract determination:
 - (i) on application to the Commission by an association of employing contractors, contract drivers or contract carriers or otherwise in accordance with the rules; or
 - (ii) on its own initiative; or
 - (d) in any other circumstances prescribed by or under this or any other Act as circumstances in which the Commission is to exercise its functions.
- (2) The Commission may require a document to be served outside the State.
- (3) In the exercise of its functions, the Commission has the powers conferred by the Royal Commissions Act 1923 on a commissioner appointed under Division 1 of Part 2 of that Act.
- (4) The Royal Commissions Act 1923 (except section 13 and Division 2 of Part 2) applies, with any necessary modifications, to a witness summoned by, or appearing before, the Commission.

Anti-discrimination matters

237. [202.] (1) In the exercise of its functions, the Commission is to take into account the principles contained in the Anti-Discrimination Act 1977 relating to discrimination with respect to employment.

(2) An issue that is the subject of proceedings before the Equal Opportunity Tribunal constituted under the Anti-Discrimination Act 1977 may not be the subject of proceedings before the Commission without the leave of the Commission.

(3) The Commission may, at its discretion, admit in proceedings before it evidence given before, or findings made by, the Equal Opportunity Tribunal.

Frivolous or vexatious proceedings

238. [203.] (1) The Commission may dismiss any matter referred to it or any application under this Act if it considers the reference or application to be frivolous or vexatious.

(2) On the dismissal or hearing of a matter referred to it or an application under this Act, the Commission may award costs:

- (a) against the applicant if it considers that the application was frivolous or vexatious; or
- (b) against a party who, in the opinion of the Commission, instituted proceedings without reasonable cause.

Division 4 - Organisation of the Commission

Arrangement of business

239. [204.] The President is to direct the business of the Commission.

Constitution of Commission for exercise of functions

240. [205.] (1) In order to exercise its functions, the Commission may be constituted by:

- (a) 1 member or 2 or more members; or
- (b) the Full Commission.

[(2) The Full Commission consists of not fewer than 3 members of whom at least one must be a Conciliation Commissioner, other than a member excluded by subsection (3)].

(2) The Full Commission consists of not fewer than 3 persons chosen by the President in accordance with the following:

- (a) each person must be a member of the Commission;**
- (b) at least one person must be a judicial member of the Commission;**
- (c) none of the persons needs to be a Conciliation Commissioner, but only one of the persons may be a Conciliation Commissioner.**

(3) The Full Commission constituted to hear an appeal from a decision of the Commission is not to include a member of the Commission as constituted when it made the decision.

(4) The Commission constituted by a member or members may exercise its functions even though the Commission constituted by another member or other members is at the same time exercising functions of the Commission.

(5) More than one sitting of the Commission may be held at the one time.

Commission divided in opinion

241. [206.] (1) If the members sitting as the Commission for the purposes of a proceeding are divided in opinion as to the decision to be made by the Commission, the decision of the Commission is to be taken to be:

- (a) if the majority of the members are all of the same opinion - the opinion of the majority; or
 - (b) if the members are equally divided in opinion - the opinion that prevails under subsection (2).
- (2) The opinion that prevails in an equally divided Commission is:
- (a) the opinion of the President if the President is sitting; or
 - (b) **if the President is not sitting but the Vice-President is sitting - the opinion of the Vice-President; or**
 - (c) [(b)] *[if the President is]* **if the President and Vice-President are not sitting and only one Deputy President is sitting - the opinion of the Deputy President; or**
 - (d) [(c)] *[if the President is]* **if the President and Vice-President are not sitting and more than one Deputy President is sitting - the opinion of the senior Deputy President; or**
 - (e) [(d)] **in any other case - the opinion of the senior Conciliation Commissioner.**

Panels of members

242. [207.] (1) As far as is practicable, the President is to assign each industry and each enterprise to a panel of members of the Commission consisting of a Presidential Member and at least one Conciliation Commissioner.

(2) The functions of the Commission in relation to an industry or enterprise are, as far as practicable, to be exercised by a member, or members, of the panel to which the industry or enterprise is assigned.

(3) The Presidential Member who is a member of a panel is to allocate the work of the panel, subject to *[section 204]* **section 239**.

(4) A member of a panel to whom work is allocated is to comply with any direction given by the Presidential Member who allocated the work.

(5) A member of the Commission may be a member of more than one panel.

Regional matters

243. [208.] (1) If the President considers that a matter before the Commission is of significance for a particular region, the matter may be allocated for hearing and determination by the appropriate regional member.

(2) A regional member is a member of the Commission appointed by the Governor:

(a) by the instrument of appointment as a member of the Commission; or

(b) by a separate instrument,
as a regional member for a specified region.

(3) Appointment as a regional member does not affect the functions of a member of the Commission conferred or imposed on the member otherwise than as a regional member.

Continuation of hearing in absence of member

244. [209.] (1) If the hearing of a matter has commenced before the Commission constituted by one member and the member becomes unavailable before the matter is determined, the President must appoint another member to constitute the Commission for the purposes of the matter.

(2) If the hearing of a matter has commenced before the Commission constituted by two or more members and one of the members becomes unavailable before the matter is determined, the President:

(a) must, if the hearing is before the Full Commission; or

(b) may, in any other case,

appoint a member to participate as a member of the Commission for the purposes of the matter.

(3) For the purposes of a matter referred to in subsection (1) or (2), a member becomes unavailable if he or she:

- (a) ceases to be a member; or
- (b) is prevented from taking part in the proceeding relating to the matter by the operation of *[clause 5 of Schedule 4] clause 6 of Schedule 4* (which relates to the disclosure of conflicting pecuniary and other interests); or
- (c) becomes unavailable for any other reason.

(4) The Commission as reconstituted under this section is to have regard to the evidence given, the arguments adduced and any award, order or determination made in relation to the matter before the Commission was reconstituted.

Responsibility of designated Presidential Members

245. *[210.]* (1) A function conferred or imposed by this Act on a designated Presidential Member is to be exercised by one or more Presidential Members designated by the President by order in writing as a Presidential Member responsible for the exercise of the function.

(2) Anything done by, or in relation to, a person purporting to act under a designation under this section is not invalid because:

- (a) there was a defect or irregularity in relation to the designation; or
- (b) the designation had ceased to have effect.

Delegation by President

246. *[211.]* The President may delegate to *[a Deputy President]* another Presidential Member any of the functions of the President, other than this power of delegation.

Division 5 - The Industrial Registrar

Appointment of Industrial Registrar and staff

247. *[212.]* An Industrial Registrar, a Deputy Industrial Registrar and such other staff as may be necessary to provide for the exercise of the functions conferred and imposed by this Act are to be appointed and employed under Part 2 of the Public Sector Management Act 1988.

Functions of Registrar and Deputy Industrial Registrar

248. [213.] (1) The Registrar has the functions conferred and imposed on the Registrar by or under this or any other Act.

(2) The Deputy Registrar may exercise the functions of the Registrar:

- (a) as directed by the Registrar; and
- (b) during the absence of, or a vacancy in the office of, the Registrar.

(3) Anything done or omitted by the Deputy Registrar in exercising a function of the Registrar has effect as if it had been done or omitted by the Registrar.

Adjournment of Commission by Registrar or Deputy Registrar

249. [214.] (1) This section applies if a member of the Commission before whom a matter is to be heard is unable to attend on the day, and at the time, appointed for the hearing of the matter.

(2) If this section applies, the Registrar or the Deputy Registrar is to adjourn the hearing to a day considered by the Registrar or Deputy Registrar to be convenient.

Recovery of costs and other amounts ordered to be paid

250. [215.] (1) If the Commission orders the payment of costs, they are to be assessed and certified by the Registrar.

(2) If the Commission orders the making of a payment (other than costs or a penalty) the amount ordered to be paid is to be certified by the Registrar.

(3) A certificate given under subsection (1) or (2) must identify the person liable to pay the certified amount.

(4) A certificate of the Registrar that:

- (a) is given under subsection (1) or (2); and
- (b) is filed in the office of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate,

operates as such a judgment.

(5) An appeal lies to the *[Court]* Full Commission against:

- (a) an order by the Commission for the payment of costs; or
- (b) the amount of costs assessed by the Registrar; or
- (c) both such an order and the amount so assessed.

(6) An appeal lies to the Commission against the amount of a payment certified by the Registrar under subsection (2).

[(7) The decision of the Court or the Commission on an appeal under subsection (6) is to be taken to be the decision of the Registrar.]

(7) If an appeal under subsection (5) is upheld, the decision on the appeal has effect as an order of the Commission or an assessment of the Registrar instead of the order or assessment the subject of the appeal.

(8) If an appeal under subsection (6) is upheld, the decision on the appeal is to be carried into effect by the Registrar.

Regional offices

251. *[216.]* The Industrial Registrar is to establish an office of the Registry in each region.

Division 6 - Functions of the Commission

Subdivision 1 - Jurisdiction generally

Original jurisdiction

252. *[217.]* (1) The Commission may inquire into any industrial matter and, on reference or on application to it may, in accordance with this Act, make an order or award determining any industrial matter.

(2) This section does not authorise any action by the Commission that is inconsistent with the provisions of the Police Regulation Act 1899 or the Public Sector Management Act 1988.

Jurisdiction of the Full Commission

253. *[218.]* (1) The Full Commission has the jurisdiction conferred on it by this or any other Act.

- (2) The Full Commission is to hear and determine:
- (a) any industrial matter which the Minister has referred to the Full Commission; and
 - (b) any matter in respect of which the Commission has jurisdiction under Division 8 of Part 2 in respect of a contract of bailment of a public vehicle or a contract of carriage and which the Minister has referred to the Full Commission; and
 - (c) any matter in a proceeding before a member of the Commission which the member considers should be referred to the Full Commission; and
 - (d) any appeal from any order, award, decision, ruling or contract determination of a member of the Commission:
 - (i) if a question of jurisdiction is involved; or
 - (ii) if the Full Commission grants leave to appeal to the appellant on the ground that the matter raised by the appeal is of such importance that an appeal should lie; and
 - (e) any matter the Commission is empowered to determine by any Act other than this Act, the Annual Holidays Act 1944, the Long Service Leave Act 1955 or the Long Service Leave (Metalliferous Mining Industry) Act 1963; and
 - (f) any appeal from an Industrial Magistrate if a member of the Commission considers the appeal should be removed to the Full Commission; and
 - (g) any proceedings relating to a lock-out; and
 - (h) any question concerning the cancellation of the registration of an industrial union or an association of contract drivers or of contract carriers; and
 - (i) any appeal from decisions of the Registrar, other than concerning the settlement of minutes of orders, awards, rulings, decisions or contract determinations of a member of the Commission.
- (3) The Full Commission may delegate any of its functions in relation to a particular matter to a member of the Commission sitting alone.

Individual access to the Commission

254. [219.] (1) An individual employee may refer any industrial matter to the Commission and, if the President considers that it is in the public interest that the matter should be dealt with by the Commission, the Commission may exercise such of its functions as are appropriate to deal with the matter.

(2) The Registrar must give notice to the Labor Council of New South Wales, the employer and such State registered organisations as appear to the Registrar to be interested in or to be likely to be affected by the Commission's dealing with any industrial matter referred under this section.

(3) The persons to whom notice is required to be given may apply to the Commission to appear before it when the industrial matter is dealt with.

(4) This section applies to the initiation of any proceedings by an individual despite any other provisions of this Act.

Restriction of jurisdiction of Commission

255. [219.] (1) The Commission has no jurisdiction to make an award or order with respect to a matter that relates to the training of apprentices or trainees or that is within the jurisdiction of the Vocational Training Board.

(2) An award or order made without jurisdiction as referred to in subsection (1) is void.

(3) This section does not affect an appeal to the Commission under section 88 of the Industrial and Commercial Training Act 1989.

Powers of Commission

256. [220.] The Commission may:

- (a) confer with any person as to anything affecting the settlement of an industrial matter or a matter arising under a contract to which Division 8 of Part 2 applies; or
- (b) except to the extent that this Act provides otherwise - on its own initiative or in proceedings before it:
 - (i) make an award or vary or rescind an award made by the Commission; or

- (ii) require any proceedings to be discontinued before a Conciliation Committee or a Tribunal so that the proceedings may be continued otherwise before the Commission; or
- (iii) make a contract determination or vary or rescind a contract determination made by the Commission.

Demarcation questions and codification of awards

257. [221.] (1) The Commission may, by its order, determine any question as to the demarcation of the industrial interests of industrial unions.

(2) The Commission may, by its order, codify into one award, with or without amendments, all awards affecting:

- (a) an employer, or a class or section of employers, in an industry or group of industries; or
- (b) members of an industrial union employed by the same employer or by a class or section of employers.

(3) The Commission may, by its order, determine any question as to the demarcation of the interests of associations registered under Division 8 of Part 2 in the regulation of the conditions of contracts to which that Division applies.

(4) Application for an order under this section may be made:

- (a) by the Minister, a State employer organisation, an employer or an industrial union if it would be an order under subsection (1) or (2); or
- (b) by the Minister, a bailor of a public vehicle, a principal contractor or an association registered under Division 8 of Part 2 if it would be an order under subsection (3).

Demarcation of callings

258. [222.] (1) If it appears to the Commission that a question has arisen as to the right of employees in particular callings to do particular work in an industry to the exclusion of employees in other callings, the Commission may, on the application of any of those employees, by its order, determine the question.

(2) Subsection (1) does not preclude the Commission from making an order or award in relation to a question as to the right of employees

in a particular calling to do specified work in an industry to the exclusion of other employees.

(3) The determination of the Commission has effect as an award.

Demarcation - orders of the Commission

259. [223.] (1) Without limiting the powers of the Commission in relation to demarcation, the Commission, on the application of the Minister, a State employer organisation, an employer or an industrial union or on its own initiative, may make one or more of the following orders:

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

(2) The power to make orders under this section is to be used for the purposes of:

- (a) rationalising coverage by industrial unions for employees of enterprise employers; and
- (b) allowing representation of employees by a single industrial union at new places of employment or places where the nature of work has been, or is intended to be, substantially changed; and
- (c) **rationalising coverage of State employee organisations within an industry,**

and may be used for such other purposes as the Commission considers appropriate.

(3) In considering whether to make an order under this section, the Commission:

- (a) must have regard to any agreement of which the Commission becomes aware and to any order of the Commission *[or the*

Court] that deals with the right of an industrial union to represent under this Act the industrial interests of a particular class or group of employees; and

- (b) may seek advice on any relevant matter from any State peak organisation; and
- (c) must ensure that all State registered organisations with an interest in the proceedings are notified of the application and are given an opportunity to be heard; and
- (d) must take account of established industrial coverage by State registered organisations, the award structure in the particular industry and the views of employers and industrial unions in the industry as a whole.

(4) An order made under this section may be of general application or expressed to be subject to specified conditions or limitations.

(5) When the Commission makes an order under this section, then, unless satisfied that no alteration of the rules of any industrial union concerned is necessary, the Commission is required, after giving each such industrial union an opportunity to be heard, to specify such alterations (if any) of the rules of any such union as are, in the Commission's opinion, necessary to give effect to the order.

(6) An alteration of the rules of an industrial union specified under this section takes effect on the day on which the order is made or at a later time specified by the Commission.

(7) The Registrar may do such other things as are necessary to give effect to an order made under this section, including the alteration of the copy of any rules held by the Registrar.

(8) The copy of the rules of an industrial union altered under this section by the Registrar is, to the extent of the alteration, to be taken to be a copy of the official rules of the union.

(9) The functions of the Commission in relation to demarcation orders are exercisable only by a Presidential Member or the Full Commission.

Commission may refer matter to Conciliation Committee or Tribunal

260. [224.] (1) The Commission may refer to a Conciliation Committee matters in respect of which the Commission has jurisdiction except a matter that is authorised by this Act to be referred to a Tribunal.

(2) The Commission may refer to a Tribunal a matter in respect of which the Commission has jurisdiction, being a matter that is authorised by this Act to be referred to a Tribunal.

(3) A Conciliation Committee or Tribunal may exercise the jurisdiction of the Commission in relation to a matter referred to the Committee or Tribunal under subsection (1) or (2).

(4) A Conciliation Committee or Tribunal may refer to the Commission for its opinion and direction any matter arising in the exercise of jurisdiction by the Committee or Tribunal under this section.

Exercise by Conciliation Committee or Tribunal of function of the Commission

261. [225.] (1) A function of the Commission authorised by this Act to be exercised by a Conciliation Committee or a Tribunal may be so exercised only if:

- (a) the exercise of the function is referred to the Committee or Tribunal by the Commission or the Minister; or
- (b) the function relates to the employment of apprentices or trainees and is referred to the Committee by the Commissioner for Vocational Training; or
- (c) application for the exercise of the function is made to the Committee:
 - (i) by an employer or employers of not fewer than 20 employees in the industry or enterprise for which the Committee was established; or
 - (ii) by a State registered organisation whose members are employers or employees in that industry or enterprise; or
- (d) application for the exercise of the function is made to the Tribunal in accordance with *[section 129]* **section 163.**

(2) Any function so exercised is to be taken to have been exercised by a member of the Commission sitting alone.

Commission may reserve decision

262. [226.] (1) The Commission may reserve its decision in any proceedings before it.

(2) A reserved decision of a member or members of the Commission may be given:

- (a) by the member or members at a subsequent sitting of the Commission; or
- (b) if the decision of a member is set out in writing and signed by the member - by being delivered by a member of the Commission, or by the Registrar, at a time and place of which the parties have been given reasonable notice.

Subdivision 2 - Conciliation and arbitration

[Application of Subdivision]

227. (1) *This Subdivision applies to a question, dispute or difficulty concerning an industrial matter:*

- (a) *for which no provision is made in an award or agreement; or*
- (b) *for which provision is made in an award or agreement the nominal term of which has expired.*

(2) *This Subdivision does not apply in relation to a secondary boycott.*

Forum preference

263. [228.] A party giving notice of a question, dispute or difficulty to which this Subdivision applies may indicate a preference for it to be dealt with:

- (a) by a particular member of the Commission; or
- (b) by a Conciliation Committee, if the matter is within the jurisdiction of a Conciliation Committee; or
- (c) by a Tribunal, if the matter is within the jurisdiction of a Tribunal,

but such a preference is not in any way binding on the Commission or the President.

Compulsory conference - the Commission

264. [229.] (1) If subsection (2), (3) or (4) applies or the Commission has reasonable cause to believe that any of those subsections applies, the Commission may summon a person to a compulsory conference:

(a) to confer; or
(b) to give evidence; or
(c) to produce documents or exhibits,
in an endeavour to bring the interested parties to a settlement which will determine the matter in relation to which the subsection applies.

(2) This subsection applies if *[an industrial union]* a **State registered organisation**, or an employer, becomes aware that:

- (a) a question, dispute or difficulty concerning an industrial matter that could lead to industrial action has arisen; or
- (b) there is threatened, probable or contemplated industrial action; or
- (c) industrial action has commenced.

(3) This subsection applies if an association registered under Division 8 of Part 2 or a bailor of a public vehicle, or a principal contractor under a contract of carriage, becomes aware of a question, dispute or difficulty that might lead, or has lead:

- (a) to owners of public vehicles being in breach of contracts of bailment of those vehicles or refusing to enter into contracts of bailment of those vehicles; or
- (b) to principal contractors under contracts of carriage being in breach of those contracts or persons refusing to enter into contracts of carriage as principal contractors; or
- (c) to bailees of public vehicles or carriers under contracts of carriage being in breach of those contracts; or
- (d) to persons refusing to enter into contracts as bailees of public vehicles or as carriers under contracts of carriage.

(4) This subsection applies if a question, dispute or difficulty arising from the reorganisation of the business of a principal contractor affects, or is likely to affect, the number of carriers used by the principal contractor or their remuneration.

(5) Notice that subsection (2), (3) or (4) applies must be given to the Registrar:

- (a) if subsection (2) applies - by the *[industrial union]* **State registered organisation** or the employer, immediately on becoming aware that the subsection applies; or

- (b) if subsection (3) applies - by the association registered under Division 8 of Part 2 or by the bailor or principal contractor, immediately on becoming aware that the subsection applies; or
- (c) if subsection (4) applies - by the principal contractor, immediately on becoming aware that the subsection applies.

(6) At a compulsory conference, the Commission is to investigate the merits of the question, dispute or difficulty concerned, **irrespective of whether or not industrial action is taking place.**

(7) If the Commission considers that:

- (a) the public interest is, or could be, affected by a question, dispute or difficulty referred to in subsection (2), (3) or (4); and
- (b) all reasonable steps have been taken to effect an amicable settlement of the question, dispute or difficulty,

it may make an award, order or contract determination expressed to be an interim award, order or determination made under this subsection.

(8) An interim award, order or contract determination made under subsection (7):

- (a) is, as far as practicable, to restore or maintain the conditions existing between the parties immediately before the occurrence of the events out of which the question, dispute or difficulty has arisen or might arise; and
- (b) is to remain in force for such period, not exceeding one month after its making, as is specified in it.

(9) If subsection (2) applies, the functions conferred and imposed on the Commission by this section may be exercised by a Conciliation Committee.

(10) If subsection (3) or (4) applies, the functions conferred and imposed on the Commission by this section may be exercised by the appropriate Tribunal in accordance with Division 8 of Part 2.

Ancillary orders in compulsory conferences

265. [230.] (1) A person summoned to attend a compulsory conference under section 264 may, at any time during the conference, make an application orally or in writing to the Conciliation Committee or Tribunal before which the conference is being held for an order:

- (a) under Division 9 of Part 2; or
- (b) under section 13 of the Annual Holidays Act 1944; or
- (c) under section 12 of the Long Service Leave Act 1955; or
- (d) under section 12 of the Long Service Leave (Metalliferous Mining Industry) Act 1963,

in respect of a matter arising out of or related to the question, dispute or difficulty the subject of the conference.

(2) The application is to be dealt with in accordance with the provisions of section 186 as if:

- (a) the applicant had elected to have the application dealt with in accordance with the provisions of that section; and
- (b) a reference in that section to an Industrial Magistrate included a reference to the Conciliation Committee or Tribunal before which the compulsory conference is being held.

(3) A Conciliation Committee or Tribunal to which an application is made may, if of the opinion that it is appropriate to do so, instead remit the application to an Industrial Magistrate to be dealt with by the Industrial Magistrate.

(4) An application for an order which is remitted to an Industrial Magistrate under this section is to be taken to have been made in accordance with the provision or provisions of the Act authorising the order to be made.

Conciliation

266. [230.] [(1) A question, dispute or difficulty to which this Subdivision applies is to be dealt with by conciliation and (unless a certificate of attempted conciliation is issued during the conciliation procedure) not by arbitration.]

[(2)] A member of the Commission, or a Conciliation Committee or Tribunal, when exercising the function of the Commission of attempting conciliation under this section, is to do everything that seems to be proper to assist the parties to agree on terms for the settlement of the question, dispute or difficulty, including:

- (a) arranging, in the case of a member of the Commission, for conferences of the parties or their representatives presided over by the member or taking place in the absence of the member; or

- (b) arranging, in the case of a Conciliation Committee or Tribunal, for conferences of the parties and their representatives in the absence of the Chairperson.

Completion of conciliation

267. [231.] (1) If, during the process of attempting conciliation under [section 230] section 266:

- (a) the member of the Commission or Chairperson of the Conciliation Committee or Tribunal concerned comes to the conclusion that there is no likelihood that the conciliation attempt will result in agreement by the parties on terms of settlement of the question, dispute or difficulty; or
 - (b) the parties for whom conciliation is being attempted inform the member of the Commission or Chairperson of the Conciliation Committee or Tribunal that they have come to that conclusion,
- the conciliation procedure is to be regarded as completed unless the member of the Commission or Chairperson refuses, for substantial reason, to regard it as completed.

(2) The conciliation procedure is to be regarded as completed if the member of the Commission or Chairperson comes to the conclusion that industrial action, or duress, necessitates arbitration.

(3) Nothing in this Act prevents the exercise of conciliation powers merely because arbitration powers have been exercised under this Act.

Arbitration after attempted conciliation

268. [232.] If the conciliation procedure does not completely settle a question, dispute or difficulty, the Commission is to deal with the outstanding matters by arbitration.

Arbitration procedure

269. [233.] [(1) *Arbitration by the Commission is not to proceed until the member of the Commission who was responsible for the conciliation attempt has:*

- (a) *lodged with the President; or*
- (b) *if the member was the President, has made out, a certificate of attempted conciliation.*
- (2) *Compliance with subsection (1) may be waived:*
 - (a) *by the Commission, on the application of the Minister; or*
 - (b) *by the member of the Commission involved, if the member considers waiver to be desirable in the public interest.]*
- (1) [(3)] During arbitration proceedings, the Commission may do any one or more of the following:
 - (a) give a direction in relation to the question, dispute or difficulty the subject of the proceedings;
 - (b) make an award;
 - (c) make a dispute order or any other kind of order.
- (2) [(4)] Nothing in subsection (1) shall empower the Commission to make or vary an award in a manner inconsistent with section 120.
- (3) [(4)] In this section, a reference to a member of the Commission responsible for a conciliation attempt includes a reference to the member who was Chairperson of a Conciliation Committee or Tribunal responsible for the attempt.
- (4) [(6)] No:
 - (a) order, award, or contract determination; or
 - (b) interim order, award or contract determination,is to be made pursuant to subsection (1) unless the causes of, and the circumstances appertaining to, the question, dispute or difficulty have been fully investigated and the member of the Commission or Chairperson of the Conciliation Committee or Tribunal concerned is satisfied that all reasonable steps have been taken to effect an amicable settlement of the question, dispute or difficulty.

Exercise of arbitration powers after attempted conciliation

270. [234.] (1) If a member of the Commission has attempted conciliation in relation to a question, dispute or difficulty, arbitration powers in relation to the question, dispute or difficulty are to be exercised by a different member if a party to the arbitration proceedings so requires.

(2) A member of the Commission is not to be taken to have attempted conciliation merely because:

- (a) after having begun to exercise arbitration powers, the member attempted conciliation; or
- (b) the member arranged for a conference of the parties involved in the question, dispute or difficulty, or their representatives, to be presided over by the member, but the conference did not take place or was not presided over by the member; or
- (c) the member arranged for those parties or their representatives to confer among themselves at a conference at which the member was not present.

Dispute orders

271. [235. (1) If industrial action is taken:

- (a) by a party to attempted conciliation, after the issue of a certificate of attempted conciliation; or*
- (b) by an industrial union, an employer or a State employer organisation, when negotiating the terms of an industrial agreement; or*
- (c) by an enterprise association, an industrial union or an enterprise employer, when negotiating the terms of an enterprise agreement,*
the Commission may, of its own initiative or on application by the Minister, a party to the industrial action or another person adversely affected by the industrial action, order a person to cease, or to refrain from, industrial action.]

(1) If industrial action concerning a question, dispute or difficulty to which this Subdivision applies is taking place, or is threatened, the Commission may, on application by a party to conciliation proceedings which have been completed, order a person to cease, or to refrain from, industrial action.

(2) Application for an order under this section may be made only by:

- (a) the Minister; or**
- (b) a State registered organisation or other person, if the applicant is, or is likely to be, adversely affected by actual or threatened industrial action of the party against whom or which the order is sought; or**

- (c) a State registered organisation of which a member is, or members are, adversely affected or likely to be adversely affected by actual or threatened industrial action of the party against whom or which the order is sought.
- (3) An order is not to be made under this section until:
 - (a) a certificate of attempted conciliation of the question, dispute or difficulty concerned has been lodged or made out as would be required by section 269 if arbitration of the question, dispute or difficulty were to proceed; or
 - (b) the Commission has exercised its functions under section 264.
- (4) An order under this section must include a statement identifying the persons to be bound by the order who may be any one or more of the persons referred to in subsection (5).
- (5) [(2)] The order may be made against:
 - (a) a party to industrial action or a likely party to potential industrial action; or
 - (b) a member, officer or employee of a State employee organisation or State employer organisation that is such a party; or
 - (c) a person who is adversely affected by the industrial action.
- (6) [(3)] The order:
 - [(a)] *must include a statement identifying the parties to be bound by the order; and*
 - (a) [(b)] takes effect when it is made or, if a later time is stated in the order, at the later time; and
 - (b) [(c)] must specify any conditions imposed; and
 - (c) [(d)] must state a time within which it is to be complied with and a further time within which application may be made to the Commission for an order that the dispute order has been complied with; and
 - (d) [(e)] may be made subject to conditions; and
 - (e) [(f)] may be varied or revoked at any time.
- (7) [(4)] In determining whether or not to make an order under this section, and whether or not to impose conditions, the Commission is to have regard to whether or not conciliation or arbitration has been attempted in good faith by the parties to the question, dispute or

difficulty that led to the industrial action and any other relevant conduct of the parties.

(8) [(5)] An order under this section is not to be taken as operating to prevent or delay conciliation or arbitration.

(9) [(6)] An order under this section may be referred to as a dispute order.

Contravention of dispute order

272. [236.] (1) This section applies to a person the subject of a dispute order (in this section called "**the defendant**") who:

- (a) fails to apply to the Commission within the time allowed by the Commission in the dispute order for an order that the dispute order has been complied with; or
- (b) makes such an application to the Commission and the Commission refuses to make the order applied for.

(2) If this section applies to a person, the Registrar is to lodge as soon as possible with the Registrar of the [Court] Commission a certificate that:

- (a) is to the effect of the form, and includes the information, required by rules of the [Court] Commission; and
- (b) identifies the defendant.

(3) The Registrar of the [Court] Commission must, on a certificate being lodged under subsection (2), summon the person identified in the certificate to appear before the [Court] Commission and show cause why the [Court] Commission should not take action under [section 237] section 273.

(4) On the return of the summons, the [Court] Commission:

- (a) is to dismiss the summons if the defendant appears and proves that there was no basis for the certificate that gave rise to the summons; or
- (b) is to take action under [section 237] section 273 if:
 - (i) the defendant fails to answer the summons; or
 - (ii) after hearing any evidence given by or on behalf of the defendant, the [Court] Commission decides that the certificate was properly issued.

Action by the [Court] Commission

273. [237.] (1) If the [Court] Commission is to take action under this section it may, after considering the history of the industrial action that led to the dispute order and the conduct of the parties, by its order, do any one or more of the following:

- (a) dismiss the summons if it finds that, although the dispute order was contravened, the circumstances were such that the [Court] Commission should take no action on the contravention;
- (b) require a person or a State registered organisation to enter into a recognizance with or without sureties;
- (c) impose a penalty not exceeding the maximum penalty provided by subsection (2) for a contravention of the dispute order;
- (d) suspend for a specified time entitlements under an award or agreement or cancel an agreement;
- (e) alter the coverage of a State employee organisation to exclude certain persons from membership;
- (f) suspend the contract of employment of a person in breach of the dispute order;
- (g) suspend for a specified time, or suspend and later cancel, the registration of a State registered organisation;
- (h) make any order that the [Court] Commission considers would aid in bringing industrial action to an end.

(2) The maximum penalty that may be imposed under subsection (1) for a contravention of a dispute order is:

- (a) in the case of a [State employee organisation or an employer] State registered organisation or any other corporation - [1,000] 100 penalty units and an additional penalty of [100] 10 penalty units for each succeeding day during which the dispute order is contravened; or
- (b) in any other case - [100] 10 penalty units and an additional penalty of [10] 1 penalty [units] unit for each succeeding day during which the dispute order is contravened.

(3) [Section 236] Section 272 and subsection (1) (a)-(g) apply in relation to an order made under subsection (1) (h) in the same way as they apply in relation to a dispute order.

Consequential amendment of rules

274. [238.] (1) If, under [section 237] section 273, the [Court] Commission:

- (a) alters the coverage of a State employee organisation to exclude certain persons from membership; or
 - (b) suspends or cancels the registration of such an organisation,
- the [Court] Commission may, on the application of the Minister or on its own initiative, order that the rules of the organisation be amended suitably or cancelled and may make such other orders as are necessary to give effect to, or in consequence of, the order made under [section 237] section 273, including an order altering the rules of any other State employee organisation in such a way as to make eligible for membership of that other organisation persons who were members of the organisation of which the coverage was altered or the registration suspended or cancelled.

(2) The rules of the State employee organisation are to be taken to have been amended:

- (a) on the date of the order or, if a later date is specified in the order for the purpose, on the later date; and
- (b) in the manner specified in the order.

(3) This section does not prevent a further amendment, or the cancellation, of a rule of a State employee organisation amended under this section.

Subdivision 3 - Void Contracts

Power of Commission to declare certain contracts void

275. [239.] (1) The Commission may make an order or award declaring void in whole or in part or varying in whole or in part and either ab initio or from some other time any contract or arrangement or any condition or collateral arrangement relating thereto whereby a person performs work in any industry on the grounds that the contract or arrangement or any condition or collateral arrangement relating thereto:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest. Without limiting the generality of the words "public interest", regard shall be had in considering

the question of public interest to the effect such a contract or a series of such contracts has had or may have on any system of apprenticeship and other methods of providing a sufficient and trained labour force; or

- (d) provides or has provided a total remuneration less than a person performing the work would have received as an employee performing such work; or
- (e) was designed to or does avoid the provisions of an award, industrial agreement, agreement registered under Subdivision 3 of Division 8 of Part 2 or contract determination.

(2) The Commission, in making an order or award pursuant to subsection (1) of this section, may make such order as to the payment of money in connection with any contract, arrangement, condition or collateral arrangement declared void, in whole or in part, or varied in whole or in part, as may appear to the Commission to be just in the circumstances of the case.

(3) The Commission, when making an order or award pursuant to subsection (1) or at any time thereafter, may make such further order as may appear to the Commission to be appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions):

- (a) any party to the contract, arrangement or collateral arrangement; or
- (b) any other person who is (in any way considered relevant by the Commission) associated with any such party,

from:

- (c) entering into any specified kind of contract, arrangement or collateral arrangement whereby a person performs work in an industry; or
- (d) doing any act (whether by way of newspaper advertising or otherwise) which may reasonably be construed as being intended to induce other persons to enter into any such contract, arrangement or collateral arrangement.

(4) An order under subsection (3) shall identify the person or persons upon whom it is binding and shall take effect in respect of any such person:

- (a) upon service on that person of a copy of the order; or
- (b) upon publication of the order in a daily newspaper circulating generally throughout New South Wales,

whichever first occurs.

(5) An order or award may be made pursuant to subsection (1), and an order may be made pursuant to subsection (3), on the application of:

- (a) in the case of an order or award under subsection (1) - any party to the contract, arrangement or collateral arrangement; or
- (b) in the case of an order under subsection (3):
 - (i) any party to the contract, arrangement or collateral arrangement; or
 - (ii) any person who, but for the making of an order or award pursuant to subsection (1), would be a party to the contract, arrangement or collateral arrangement; or
- (c) the secretary of a State employer organisation whose members employ persons working in the industry to which the contract, arrangement or collateral arrangement relates; or
- (d) the secretary of an industrial union whose members are employed in the industry to which the contract, arrangement or collateral arrangement relates; or
- (e) the Minister.

(6) Without affecting the operation of any other provision of this Act:

- (a) the Commission may make such order as to the payment of costs, in any proceedings under this section, as may appear to it to be just; and
- (b) the Full Commission may make such order as to the payment of costs, in any proceedings before it which arise by way of appeal from proceedings under this section, as may appear to it to be just,

and the Commission or the Full Commission, as the case may be, may assess the amount of the costs.

(7) An application under this section in respect of a contract of carriage to which Division 8 of Part 2 applies may be made by a party

to the contract or by an association of contract carriers of which a party to the contract is a member.

Subdivision 4 - Regulation of certain contracts

Regulation of certain contracts

276. [240.] (1) Subject to subsection (2), this section applies to any contract under or in pursuance of which:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

is carried out or performed.

(2) This section does not apply to any contract referred to in subsection (1):

- (a) to the extent to which the contract is a contract under or in pursuance of which the work is carried out or performed by persons in their capacity as employees; or
- (b) unless at least one of the parties to the contract (not being a person by whom the work is actually carried out) is a person who carries on the business of carrying out or performing, or arranging for the carrying out or performance of, that kind of work.

(3) On the application of the secretary of an industrial union whose members are employed in the industry or calling in connection with which:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

is carried out or performed, the Commission may, by order, prescribe the minimum rate at which a person shall be remunerated in relation to the carrying out or performance of that kind of work (otherwise than in the capacity of an employee) under or in pursuance of a contract to which this section applies.

(4) An order under this section may be made only if the Commission is satisfied (whether as a consequence of proceedings before it under section 275 or otherwise) that work of the kind to which the proposed order relates is being, or is likely to be, carried out or performed under or in pursuance of a contract that:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest (as referred to in section 275).

(5) Before making an order under this section, the Commission shall require the applicant for the order to cause notice of the application to be served on such persons or bodies as, in the opinion of the Commission, have an interest in the matters to which the proposed order relates, and shall allow those persons or bodies to appear and to be heard in relation to the making of the order.

(6) An order under this section shall take effect on the expiration of 28 days after the day on which it is published in the Gazette or, where a later day is specified in the order in that regard, on that later day.

(7) Where an order is in force under this section in relation to:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

any contract to which this section applies (being a contract under or in pursuance of which any such work is, or is agreed to be, carried out or performed) shall be deemed to incorporate the provisions of the order that relate to that work.

(8) In the event of an inconsistency between a provision of an order in force under this section and a provision of a contract referred to in subsection (7), the provision of the order shall, to the extent of the inconsistency, prevail.

(9) The Commission may, on its own motion or on the application of the secretary of an industrial union whose members are employed in the industry or calling concerned, vary or revoke an order under this section.

(10) In this section:

"building work" means work carried out for the purpose of:

- (a) constructing, altering or adding to, renovating, decorating or painting any building or structure; or
- (b) excavating or filling the site on which any building or structure is proposed to be constructed; or

(c) demolishing any building or structure,
and includes work which the regulations declare to be building work for the purposes of this definition, but does not include:

(d) work carried out otherwise than on the site on which a building or structure is being, or is proposed to be, constructed or on which a building or structure is being demolished; or

(e) work which the regulations declare not to be building work for the purposes of this definition;

"door-to-door handbill delivery work" includes work which the regulations declare to be door-to-door handbill delivery work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door handbill delivery work for the purposes of this definition;

"door-to-door sales work" includes work which the regulations declare to be door-to-door sales work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door sales work for the purposes of this definition.

Subdivision 5 [3] - Remuneration under certain contracts

Order by Commission

277. [239.] If [, under section 26 of the Industrial Court Act 1990, the Registrar of the Court issues to the Industrial Registrar a certificate of a finding by the Court] the Commission finds under this Subdivision, or finds on an application made under Subdivision 7, that a contract:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest,

the Commission may make an order prescribing the minimum rate at which a person is (otherwise than as an employee) to be remunerated under the contract concerned.

Notice of possible order

278. [240.] (1) Before making an order under this [section] Subdivision, the Commission is to require the person in whose favour the order would be made to serve notice on such persons and bodies

as the Commission considers have an interest in the matter that such an order might be made.

(2) A person served with a notice under subsection (1) is entitled to appear and be heard in relation to the matter.

Time at which order takes effect

279. [241.] An order under this [section] Subdivision takes effect:

- (a) 28 days after publication in the Industrial Gazette; or
- (b) if the order provides that it is to take effect on a later day after publication in the Industrial Gazette - as provided by the order.

Incorporation of order in other contracts

280. [242.] (1) If an order is in force under this Subdivision in relation to the doing of work under a contract that is the subject of a certificate referred to in [section 239] section 277:

- (a) that contract; and
- (b) any other contract that is a contract for the doing of the same kind of work and is a contract of a kind in respect of which the Court may make a finding under Part 5 of the Industrial Court Act 1990,

are to be taken to incorporate the order in so far as it relates to that kind of work.

(2) If there is an inconsistency between a provision of an order in force under this Subdivision and a contract in which it is incorporated by subsection (1), the provision of the order prevails to the extent of the inconsistency.

Variation or revocation of order

281. [243.] The Commission may vary or revoke an order in force under this Subdivision on its own initiative or on application by the secretary of the industrial union whose members are employed in the industry or calling concerned.

Subdivision 6 [4] - Stand-downs

[Circumstances in which employees may be stood down]

244. (1) *An employer may stand down an employee for whom the employer has had no useful employment:*

- (a) *during the last preceding 5 normal working days; and*
- (b) *during a shorter period approved by the Commission before paragraph (a) applies.*
- (2) *An employee may be stood down under subsection (1):*
 - (a) *for part of a day; or*
 - (b) *for one or more days.*
- (3) *A lack of useful employment is effective for the purposes of this section only if it is caused by*
 - (a) *industrial action; or*
 - (b) *a breakdown of machinery; or*
 - (c) *an act or omission for which the employer cannot reasonably be held responsible.*

Prevention or revocation of standing down of employee

245. (1) *On the application of a State employee organisation, the Commission may*

- (a) *order an employer not to give effect to a proposed standing down of an employee; or*
- (b) *revoke the standing down of an employee,*
unless the Commission is satisfied by the employer that the standing down of the employee would be, or was, justified.

(2) *The Commission may order the payment to an affected employee of a reasonable amount to cover any loss of salary, wages or other remuneration if it finds the stand-down was unjustified.*

Effect of stand-down

246. (1) *The standing down of an employee does not take effect until the employee is given notice of the standing down.*

- (2) *For the purposes of this section, notice is to be taken to have been sufficiently given to an employee if*
 - (a) *notice in writing has been given to the employee personally or by post or telegram; or*
 - (b) *notice has been published on the date of commencement of the period of stand-down in a daily newspaper circulating in the area in which the employer's business is conducted.*

(3) *An employee who is stood down is not entitled to any salary, wages or other remuneration or allowance while stood down.*

(4) *The period during which an employee is stood down by an employer is to be reckoned as a period of employment with the employer for the purposes of annual leave, sick leave, long service leave and any period of service on which superannuation entitlements are based.*

Inconsistency with award or agreement

247. This Subdivision prevails to the extent, if any, to which this Subdivision is inconsistent with an award or agreement in force when an employee is stood down.]

Order providing for stand-down

282. [244.] (1) An employer or a State employer organisation may apply to the Commission for the making of a stand-down order where the employer or an employer who is a member of the organisation has no useful work for employees because of industrial action, breakdown of machinery or any other act or omission for which the employer is not responsible.

(2) The Commission is to give high priority to the hearing and determination of applications under this section.

(3) The Commission must not make a stand-down order if:

- (a) the employer concerned is bound by an award or agreement, whether made or registered before or after the commencement of this section; and
- (b) the stand-down order would be inconsistent with any provisions of the award or agreement,

except with the concurrence of the parties to the award or agreement.

(4) A stand-down order is enforceable as if it were an award.

Effect of stand-down

283. [245.] (1) An employee who is stood down is not entitled to any salary, wages or other remuneration or allowance while stood down.

(2) The period during which an employee is stood down is to be reckoned as a period of employment with the employer for the purposes of any period of service on which leave or superannuation entitlements are based.

Exemption for apprentices and trainees

284. [248.] This Subdivision does not apply to an employee who is an apprentice or trainee within the meaning of the Industrial and Commercial Training Act 1989.

Subdivision 7 [5] - Protection of injured employees

Application of Subdivision

285. [249.] (1) For the purposes of this Subdivision, an injured employee is an employee who:

- (a) receives an injury within the meaning of the Workers Compensation Act 1987; or
- (b) contracts a dust disease for which the employee is entitled to receive compensation under the Workers' Compensation (Dust Diseases) Act 1942.

[(2) For the purposes of this Subdivision, a person is the employer of an injured employee only if the injury arose out of or in the course of employment with that person.]

(2) [(3)] In addition to any other manner of dismissal, an employer is to be taken, for the purposes of this Subdivision, to have dismissed an employee if:

- (a) the employer imposes any unreasonable condition of employment which is designed to make the employee leave the employment; and
- (b) the employee leaves the employment.

Application to employer for reinstatement

286. [250.] (1) If an injured employee is dismissed because he or she is not fit for employment in a position as a result of the injury received, the employee may, **within 2 years after the date of dismissal or such longer period as may be allowed by the Commission on the application of the dismissed employee**, apply to the employer for reinstatement to his or her former position.

(2) An injured employee's former position is:

- (a) the position from which the employee was dismissed; or
- (b) if the employee was transferred to a less advantageous position before dismissal, the position which the employee held when he

or she became unfit for employment in the former position, at the option of the employee.

(3) The employee must produce to the employer a certificate given by a legally qualified medical practitioner to the effect that the employee is fit for employment in the former position.

(4) This section applies to an employee to whom section 154C of the Industrial Arbitration Act 1940 applied before its repeal as well as to an employee dismissed after the commencement of this section.

Order for reinstatement

287. [251.] (1) If an employer refuses or fails to reinstate immediately an employee who applies for reinstatement under [section 250] section 286, the employee may apply to the Commission for a reinstatement order.

(2) The secretary of a State employee organisation of which the employee is a member may make the application on behalf of the employee.

(3) On such an application, the Commission may order the employer to reinstate the employee, in accordance with the terms of the order, if the Commission is satisfied that the employee is fit for employment in the position concerned.

Presumption as to reason for dismissal

288. [252.] (1) In proceedings for a reinstatement order it is to be presumed that the injured employee was dismissed because he or she was not fit for employment in the position as a result of the injury received.

(2) That presumption is rebutted if the employer satisfies the Commission that the employee was dismissed for reasons not solely or principally related to the injury.

Reinstatement

289. [253.] For the purposes of this Subdivision, it is sufficient reinstatement of an employee to a position if the employee is reinstated to another position which is no less advantageous to the employee.

Disputes as to fitness - medical panels and referees

290. [254.] (1) The Commission may refer to a medical referee, or to a medical panel, established under the Workers Compensation Act 1987 any dispute as to the employee's condition and fitness for employment.

(2) The medical referee or medical panel is to submit a report to the Commission in accordance with the terms of the reference.

Continuity of service of reinstated employee

291. [255.] (1) If an employee is reinstated to a position under this Subdivision, the dismissal and subsequent reinstatement of the employee are not, for any purpose, to be regarded as interrupting or otherwise affecting the continuity of the service by the employee with the employer.

(2) The period between dismissal and reinstatement is not to be taken into account in calculating for any purpose the period of service of the employee with the employer.

Duty to inform replacement employee

292. [256.] An employer who, within 2 years after dismissing an injured employee, employs a person in the former position of the dismissed employee is guilty of an offence unless the employer first informs the person that the dismissed employee may be entitled under this Subdivision to be reinstated in the position.

Maximum penalty: 50 penalty units.

Dismissal an offence

293. [257.] (1) An employer who dismisses an injured employee who received the injury during employment with the employer is guilty of an offence if the employee is dismissed solely or principally because the employee is not fit for employment in a position as a result of the injury.

Maximum penalty: 100 penalty units.

(2) It is a defence to a prosecution for an offence under this section if the employer satisfies the court that:

- (a) at least 6 months have elapsed since the employee first became unfit for employment; or

- (b) at the time of dismissal, the employee would not undergo a medical examination reasonably required to determine fitness for employment; or
 - (c) at the time of dismissal, the employer believed on reasonable grounds that the employee was not an injured employee within the meaning of this Subdivision.
- (3) This section applies even if the employee became unfit for employment before the commencement of this section.

Other provisions not affected

294. [258.] (1) This Subdivision does not affect any other rights of a dismissed employee under this or any other Act or under any award, agreement or contract of employment.

(2) No agreement or contract, made or entered into before or after the commencement of this section, shall operate to annul, vary or exclude any of the provisions of this Subdivision.

Subdivision 8 [6] - Secret ballots - industrial action

Application of Subdivision

295. [258.] (1) This Subdivision applies to industrial action concerning an industrial matter:

- (a) for which no provision is made in an award or agreement; or
- (b) for which provision is made in an award or agreement the nominal term of which has expired.

(2) This Subdivision does not operate to make lawful any industrial action:

- (a) that would otherwise be unlawful; or
- (b) that is in contravention of *[an order of the Commission or a dispute order or]* **a dispute order of the Commission or an injunction of the Court**; or
- (c) for which a State *[employee]* **registered** organisation, an employer or a participant in the industrial action could be penalised.

Application for secret ballot

296. [259.] (1) If industrial action is engaged in or contemplated by members of a State employee organisation or by any section or class

of its members, application may be made to the Registrar for a secret ballot to find out whether a majority of the members involved is, or is not, in favour of the industrial action.

(2) Application for a secret ballot may be made by:

(a) the State employee organisation whose members are, or contemplate being, involved in the industrial action; or

[(b) a member of that organisation; or]

(b) 5% of the members in the section or class of employees who are or contemplate being involved in the industrial action; or

(c) an employer whose employees are, or contemplate being, involved in the industrial action or a State employer organisation a member of which is such an employer; or

(d) the Minister.

(3) A secret ballot may be *[directed by the Minister or]* ordered by the Commission if subsection (1) applies but an application has not been made under subsection (2).

(4) An application made by a State *[employee]* registered organisation, by any of its members or by an employer is to be:

(a) in writing stating the reasons for the application and the facts relevant to the actual or contemplated industrial action; and

(b) accompanied by a statutory declaration verifying the matters set out in the application.

Functions of the Registrar

297. [260.] (1) The Registrar is to hold a secret ballot if:

(a) it has been applied for under *[section 259 (2)]* **section 296 (2)** and the Commission is satisfied, after the parties concerned have been given an opportunity of making representations, that it is justified by the circumstances; or

(b) it has been *[directed by the Minister or]* ordered by the Commission.

(2) In deciding whether or not a secret ballot applied for under *[section 259 (2)]* **section 296 (2)** is justified, the Commission may take into account information other than that given in the application.

(3) The Commission is to give the Registrar such directions as it considers necessary concerning the conduct of a secret ballot.

Holding of secret ballot

298. [261.] (1) A secret ballot applied for under [section 259 (2)] section 296 (2) is to be conducted:

- (a) by a nominee of the Registrar; or
 - (b) by the State employee organisation whose members are, or contemplate being, involved in the industrial action; or
 - (c) the Electoral Commissioner,
- as may be directed by the Registrar.

(2) A secret ballot [directed by the Minister or] ordered by the Commission under [section 260 (1) (b)] section 297 (1) (b) is to be conducted:

- (a) by the State employee organisation whose members are, or contemplate being, involved in the industrial action; or
 - (b) the Electoral Commissioner,
- as may be specified in the direction or order.

(3) A direction or order given or made under subsection (1) or (2) may require the ballot to be a postal ballot.

(4) The expense incurred in conducting a secret ballot under this Subdivision is to be met by the State.

- [(a) by the State employee organisation whose members are, or contemplate being, involved in the industrial action; or
- (b) by the State to the extent (if any) determined by the Minister on the application of that organisation.]

Offences connected with secret ballot

299. [262.] A person who:

- (a) obstructs the taking of a ballot under this Subdivision; or
- (b) counsels a person entitled to vote at such a ballot to refrain from voting at the ballot; or
- (c) in any way uses intimidation to prevent a person entitled to vote at such a ballot from voting at the ballot; or
- (d) coerces a person into voting at such a ballot in a particular way; or
- (e) bribes a person in respect of such a ballot; or
- (f) fails to comply with orders or directions of the Registrar or the Commission given in connection with such a ballot,

is guilty of an offence.

Maximum penalty: 20 penalty units.

Subdivision 9 [7] - Secret ballots - other industrial matters

Commission may order secret ballot

300. [263.] (1) The Commission may order that a secret ballot of the members of an industrial union, or of a class or section of the members of the union, be taken in order to find out their opinion in relation to an industrial matter that affects them or may affect them, whether or not the matter is before the Commission.

- (2) By its order the Commission must:
- (a) direct the manner in which the secret ballot is to be taken; and
 - (b) give directions for the conduct of the ballot; and
 - (c) direct whether the ballot is to be taken by the industrial union, or by the Electoral Commissioner, or by the industrial union in co-operation with the Electoral Commissioner; and
 - (d) give such other directions as to the Commission appear to be necessary to ensure that the ballot is effectively taken and conducted.

Expense of ballot

301. [264.] The expense incurred in the conduct of a ballot under this section is to be borne by the State.

Subdivision 10 [8] - Unfair dismissal

Applications relating to dismissal

302. [265.] (1) *If an employer dismisses, or threatens to dismiss, an employee and the employee claims that the dismissal was, or that the threatened dismissal would be, harsh, unreasonable or unjust, the employee, or a State employee organisation on behalf of the employee, may apply*

- (a) *to the Commission for relief if the dismissal or threat of dismissal was central to, incidental to, or an associated element of, industrial action; or*
- (b) *to the Court for relief in any other case.]*

(1) If an employer dismisses, or threatens to dismiss, an employee and the employee claims that the dismissal was, or that the threatened

dismissal would be, harsh, unreasonable or unjust, the employee, or a State employee organisation on behalf of the employee, may apply for relief to the Commission.

(2) For the purposes of this section, termination of employment includes termination with or without notice.

(3) Termination of employment by an employer must not be harsh, unreasonable or unjust.

(4) Without limiting the scope of subsection (1) or (3), except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the grounds of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin constitutes a harsh, unreasonable or unjust termination of employment.

(5) Nothing in subsection (4) derogates from the general powers of the Commission in determining cases on unfair dismissal or reinstatement in employment.

(6) [(2)] If the employee has been dismissed, the application must be made to the Industrial Registrar [*or the Registrar of the Court, as appropriate,*] not later than 21 days after, or may be made before, termination of the employment.

(7) [(3)] The Commission [*or the Court*] may extend the 21 day period for the making of an application to it in a particular case and, in deciding whether to grant an extension, is to have regard to:

- (a) the reason for the delay and the length of the extension sought; and
- (b) any hardship that may be caused to the employee and employer if the extension is refused or granted; and
- (c) the conduct of the employer relating to the dismissal or threat of dismissal; and
- (d) such other matters as it considers appropriate.

(8) [(4)] This section applies only to:

- (a) an employee for whom conditions of employment are fixed by an award or agreement; and
- (b) an employee of a class prescribed by the regulations as a class of employees to whom this section applies,

but does not apply to any such employee who is a trainee or an apprentice or who is excepted from this section by the regulations.

[Settlement procedure to be followed first

266. The Commission or the Court is not to deal with an application to it under this Subdivision unless it is satisfied that any procedures in an award or agreement providing for the settlement of questions, disputes or difficulties concerning the dismissal, or threat of dismissal, have been complied with as far as is reasonably practicable in the circumstances.]

Discretion of Commission

303. [266.] (1) The Commission may, at its discretion, deal with an application made to it under this Subdivision.

(2) In exercising that discretion, the Commission may examine the extent (if any) to which any procedures in an award or agreement providing for the settlement of questions, disputes or difficulties concerning a dismissal or threat of dismissal have been complied with as far as reasonably practicable in the circumstances.

Mediation by Commission

304. [267.] (1) The Commission is to attempt to deal with an application to it by mediation and, for that purpose, may request the employer and employee concerned to attend a conference presided over by a member of the Commission.

(2) The Commission is to ensure that both parties are aware of their rights and obligations under this Act and have an opportunity to make representations to the Commission.

(3) At a conference held under subsection (1), the public is to be excluded, no transcript of the proceedings is to be kept and the rules of evidence do not apply, unless the Commission otherwise directs.

Hearing of application and making of orders

305. [268.] (1) If *[mediation fails]*, in the opinion of the member of the Commission attempting mediation, mediation has failed the Commission is to hear the application made to it and, if it finds that the dismissal was, or that dismissal as threatened would be, harsh, unreasonable or unjust it may make an order under *[section 269]* section 306 in relation to the employee.

(2) If, on hearing the application made to it, the [Court] Commission finds that the dismissal was, or that the dismissal as threatened would be, harsh, unjust or unreasonable, it may make an order under [section 269] section 306 in relation to the employee.

(3) In considering the application made to it, the Commission [or the Court] may, if appropriate, take into account:

- (a) whether a reason was given to the employee for the dismissal or threatened dismissal; and
- (b) if such a reason was given - its nature, whether it had a basis in fact, and whether the employee was given an opportunity to make out a defence; and
- (c) whether a warning of unsatisfactory performance was given before the dismissal or threat of dismissal; and
- (d) the nature of the duties of the employee; and
- (e) such other matters as the Commission [or the Court] considers relevant.

Orders

306. [269.] (1) If the employee has been dismissed and, on hearing the application, the Commission [or the Court] considers that it would not be impracticable to make an order under this subsection, the Commission [or the Court] may order the employer:

- (a) to reinstate the employee in his or her former position on terms not less favourable to the employee than those that would have been applicable if the employee had not been dismissed; and
- (b) to pay to the employee, within a specified time, an amount stated in the order that does not exceed the remuneration the employee would, but for being dismissed, have received before being reinstated in accordance with the order.

(2) If the employee has been dismissed and, on hearing the application, the Commission [or the Court] considers that it would be impracticable to reinstate the employee as provided by subsection (1), it may order the employer:

- (a) to re-employ the employee, on terms and conditions determined by it, in another position that the employer has available and that, in its opinion, is suitable; and
- (b) to pay to the employee, within a specified time, an amount stated in the order that does not exceed the remuneration the

employee would, but for being dismissed, have received before being re-employed in accordance with the order.

(3) If the employee has been dismissed and, on hearing the application, the Commission *[or the Court]* considers that it would be impracticable to make an order under subsection (1) or (2), it may order the employer to pay to the employee, within a specified time, an amount of compensation not exceeding 6 months' remuneration of the employee at the average rate received over the 6 months period immediately before being dismissed.

[(4) When assessing any compensation payable, the Commission or the Court is to take into account whether the employee made a reasonable attempt to find alternative employment and, if so, the remuneration that would have been payable if the employee had succeeded in obtaining the alternative employment sought.]

(4) When assessing any compensation payable, the Commission may take into account any remuneration received by the employee in alternative employment since the employee was dismissed.

(5) If the employee was threatened with dismissal but was not dismissed, the Commission *[or the Court]* may, on hearing the application, order the employer not to dismiss the applicant.

(6) *[The Commission or the Court may make any other order]* Whether or not it makes an order under this section, the Commission may make any order of a different kind that it considers to be necessary to resolve:

- (a) the dispute between the employee and the employer over the dismissal or threatened dismissal to which the application to it relates; and
- (b) any other dispute arising over the dismissal or threatened dismissal.

(7) If:

- (a) under this section, an employer is ordered to make a payment to an employee; and
- (b) the amount is not paid within the time specified in the order, the amount ordered to be paid is recoverable as a debt due by the employer to the employee.

(8) If an employee is re-employed under subsection (2), the period of employment with the employer is to be taken not to have been broken by the dismissal.

(9) Subsection (7) does not affect any other consequences of a failure to make a payment ordered by the Commission *[or the Court]*.

[Objection to member hearing a pplication

270. If mediation by a member of the Commission fails and a party to the attempted mediation objects to the a pplication then being heard by the same member, the President may arrange for the a pplication to be heard by a different member of the Commission.]

Different member to hear application

307. [270.] If a member of the Commission has attempted mediation and, in the opinion of the member, mediation has failed, the application is to be heard and determined by a different member, if a party to the proceedings so requires.

Employees under the Public Sector Management Act 1988

308. [271.] In this Subdivision, a reference to the dismissal, or threatened dismissal, of an employee is, in relation to a person employed under Part 2 of the Public Sector Management Act 1988, a reference to the termination, or proposed termination, of the employment of such a person:

- (a) under section 38 of that Act; or
- (b) as referred to in section 54 of that Act; or
- (c) under section 75 or 76 of that Act (whether by dismissal or in accordance with a direction that the person resign or be allowed to resign).

Costs

309. [272.] On hearing an application under this Subdivision, the Commission *[or the Court]* may award costs:

- (a) against the applicant if it considers that the application was frivolous or vexatious; or
- (b) against a party who, in its opinion, unreasonably failed to settle the matter before the hearing.

Effect of other proceedings relating to dismissal

310. [273.] This Subdivision does not apply in relation to the dismissal, or threatened dismissal, of an employee if:

- (a) another Act provides for redress to the employee, or the holding of an inquiry, in relation to the dismissal or threatened dismissal; and
- (b) the employee has commenced proceedings under the other Act or has failed to lodge with the application under this Act a written undertaking not to proceed under the other Act.

Effect of other Acts or contracts

311. [274.] Except as provided by [section 273] section 310, this Subdivision has effect in relation to an employee despite:

- (a) the provisions of any other Act with respect to conditions of, termination of, or dismissal from, employment; and
- (b) anything in a contract of service, or an award, that relates, or at any time related, to the employee.

Penalty for unlawful dismissal etc.

312. [275.] (1) An employer who, for an unacceptable reason, dismisses an employee, injures an employee in his or her employment or alters an employee's position to the employee's prejudice is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) For the purposes of subsection (1), a reason is unacceptable only if it is that the employee concerned:

- (a) is an officer, delegate or member of a State employee organisation or is a member of a Conciliation Committee; or
- (b) is not a person referred to in paragraph (a), but is an elected representative of employees; or
- (c) has informed any person that a breach or suspected breach of an award or agreement has been committed by the employer; or
- (d) claims a benefit of an award or agreement to which he or she is entitled; or

- (e) has engaged in, or contemplates engaging in, any public or political activity (not being an activity that interferes with the performance of duties as an employee); or
- (f) has appeared as a witness, or has given evidence, in a proceeding relating to an industrial matter; or
- (g) after applying for, and being unreasonably refused, leave without pay for the purpose, is absent from work through being engaged in other duties as a member of a State registered organisation in respect of a matter affecting the industry in which the employee is working or in other duties as a member of a Conciliation Committee; or
- (h) after applying for, and being unreasonably refused, leave without pay for the purpose, is absent from work through being engaged in other duties as a member of an enterprise association in respect of a matter related to the enterprise the subject of an enterprise agreement to which the enterprise association is a party.

(3) Where an employer is convicted of an offence under this section, the Commission may order the employer:

- (a) to reinstate the person to the position that the person occupied immediately before the dismissal or a position no less favourable than the position; and
- (b) to pay the person the whole or part of the wages lost by the person because of the dismissal; and
- (c) if the person has suffered any other loss as a consequence, to pay to the person in such sum as appears to the Commission to be appropriate.

(4) In any proceedings for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, the defendant has the onus of proving that the defendant was not actuated by the reason alleged in the charge.

(5) In any proceedings for an offence in respect of subsection (2) (g), it is not necessary for the prosecution to prove among the facts and circumstances constituting the offence that the employer unreasonably refused leave.

Appeal to Full Commission

313. [276.] An appeal does not lie to the Full Commission from a decision made under this Subdivision, unless the Full Commission grants leave to appeal.

Subdivision 11 [9] - Special criminal jurisdiction

Definitions

314. [277.] In this Subdivision, "criminal proceedings" means a proceeding for any of the following offences:

- (a) an offence against the Occupational Health and Safety Act 1983 or the regulations under that Act;
- (b) an offence against the Workers Compensation Act 1987 or the regulations under that Act;
- (c) any other offence which this or any other Act provides may be prosecuted before the Commission.

Jurisdiction of Commission

315. [278.] (1) The jurisdiction of the Commission includes the power to hear and determine criminal proceedings.

(2) The criminal jurisdiction of the Commission may be exercised only by a judicial member of the Commission.

Powers of Commission in criminal proceedings

316. [279.] For the purposes of hearing and determining a criminal proceeding, the Commission has and may exercise all the functions of an Industrial Magistrate in relation to such proceedings.

Appeal etc.

317. [280.] (1) An appeal lies to the Full Commission from any order of the Commission in a criminal proceeding imposing a penalty, ordering the payment of a penalty or ordering that the proceeding be dismissed for any reason.

(2) The Commission may, on application by any party to a criminal proceeding, state a case for the opinion of the Full Commission, setting forth the facts and the grounds for any conviction made by the Commission.

(3) Section 180 applies to an appeal from an order of, and the stating of a case by, the Commission in a criminal proceeding to the Full Commission in the same way as it applies to an appeal from an order of, and the stating of a case by, an Industrial Magistrate to the Commission.

(4) Only judicial members of the Commission, other than the member against whose decision the appeal is made or who stated the case, may constitute the Full Commission for the purposes of this section.

Rules of evidence

318. [281.] Without limiting the operation of any other provision of this Subdivision, the Commission is bound by the rules of evidence in the exercise of its jurisdiction under this Subdivision.

PART 5 - APPEALS ETC.

Division 1 - Appeals to Full Commission

Appeal from decision of Commission, Conciliation Committee or Tribunal

[275. (1) If the Minister considers that the public interest is, or would be likely to be, affected by a decision of the Commission (other than the Full Commission), the Crown may, as prescribed by the rules, appeal to the Full Commission.]

319. [275.] (1) The Minister may seek leave to appeal to the Full Commission against a decision of the Commission (other than a decision of the Full Commission) and such leave may be granted if the Commission considers that the public interest is affected by the decision.

(2) From a decision of the Commission (other than the Full Commission) an appeal lies, as prescribed by the rules, to the Full Commission at the suit of:

- (a) a party, or a State registered organisation, affected by the decision; or
- (b) without affecting paragraph (a) - an association registered under Division 8 of Part 2, if the decision affects the association.

(3) An appeal does not lie under subsection (2) from a decision of the Commission:

- (a) that was made by consent of the parties; and
- (b) in respect of which the prescribed certificate is given.
- (4) An appeal under this section is to be determined:
 - (a) on the evidence adduced in relation to the decision appealed against; and
 - (b) any other evidence (whether or not fresh or new evidence) or information called for by the Full Commission.
- (5) On an appeal under this section, the Full Commission may:
 - (a) vary an award, order, ruling, contract determination or other decision in any way it thinks fit; or
 - (b) direct a member of the Commission to take further action under this Act to carry its decision of the appeal into effect; or
 - (c) direct that its decision of the appeal take effect as from any specified date after the lodging of the application.

[Division 2 - Appeals and references to the Court]

[Appeal to Court on question of law]

276. (1) *On a question of law, an aggrieved party or the Minister may appeal to the Court against a decision of the Commission on the question.*

(2) *If an award, order or contract determination based on a decision the subject of an appeal under this section is inconsistent with the opinion of the Court given on the appeal, the Commission is to vary the award, order or determination to make it consistent with the opinion of the Court.*

(3) *If an award, order or contract determination is varied under subsection (2), an appeal against the award, order or determination does not lie on the question of law with which it has been made consistent.*

Reference to Court by Commission on question of law

277. (1) *The Commission may, on its own initiative but not on the application of a party, refer a question of law arising in a matter before the Commission for the opinion of the Court.*

(2) *Unless the question referred to the Court is whether the Commission may exercise powers in relation to the matter, the Commission may, despite the reference, make an award, order or contract determination in relation to the matter.*

- (3) *On the determination of the question by the Court:*
- (a) *if the Commission has not made an award, order or contract determination in relation to the matter, it may make an award, order or contract determination not inconsistent with the opinion of the Court; or*
 - (b) *if the Commission has made an award, order or contract determination in relation to the matter, it is to vary the award, order or contract determination in such a way as to make it consistent with the opinion of the Court.*
- (4) *If an award, order or contract determination is varied under subsection (3), an appeal does not lie on the question of law with which it has been made consistent.]*

**Division 2 [3] - References by, and appeals
from, the Registrar**

Reference by the Registrar to the Commission

320. [278.] (1) The Registrar may refer to the President, for decision by the Commission:

- (a) a matter before the Registrar [(other than a matter required to be referred to the Court)]; or
- (b) a question (other than a question of law) arising in a matter before the Registrar.

(2) The Commission may:

- (a) hear and determine the matter or question; or
- (b) refer the matter or question back to the Registrar, with such directions or suggestions as the Commission considers appropriate.

Removal of matter before the Registrar

321. [279.] A matter before the Registrar is to be heard and determined by the Commission if the President refers the matter for hearing and determination by the Commission.

Appeal from the Registrar to the Commission

322. [280.] (1) An appeal lies to the Commission, with the leave of the Commission, against:

- (a) a decision made, or an act done, by the Registrar in a matter arising under this Act [(other than a decision from which an appeal lies to the Court)]; or
- (b) a refusal by the Registrar to make such a decision or do such an act,

other than a decision made or refused to be made, or an act done or refused to be done, in settling minutes of an award, ruling, decision or contract determination.

(2) If an appeal is instituted under this section, the Commission may, on such terms and conditions as it considers to be appropriate, order that the decision or act concerned be wholly or partly stayed pending determination of the appeal or until further order of the Commission.

(3) For the purposes of an appeal under this section, the Commission may take evidence and, on hearing the appeal, may do any one or more of the following:

- (a) confirm, quash or vary the decision or act concerned;
- (b) make a decision dealing with the subject-matter of the decision or act concerned;
- (c) direct the Registrar to take further action to deal with the subject-matter of the decision or act as directed by the Commission.

[(4) *An appeal does not lie to the Full Commission against a decision under this section.*]

Reference to [Court] Full Commission on question of law

323. [281.] (1) The Registrar may refer for the opinion of the [Court] Full Commission a question of law arising in a matter before the Registrar.

(2) On the determination of the question by the [Court] Full Commission, the Registrar must not give a decision, or do anything in the matter, that is inconsistent with the opinion of the [Court] Full Commission.

Exercise of functions by Commission

324. [282.] The functions of the Commission under this Division are exercisable by:

- (a) the President; or
- (b) a Presidential member to whom the President has assigned the exercise of the function; or
- (c) if the President so directs - the Full Commission.

Division 3 [4] - Superannuation appeals

[Court] Full Commission may determine superannuation appeals

325. [283.] (1) The [Court] Full Commission has jurisdiction to hear and determine an appeal (referred to in this Division as a "**superannuation appeal**") made in accordance with a right of appeal conferred by an Act relating to the administration of a scheme, fund or arrangement under which superannuation or retirement benefits are provided.

(2) A superannuation appeal is to be dealt with by way of a new hearing at which fresh evidence may be given, including evidence in addition to, or in substitution for, the evidence given before the person or body whose decision is the subject of the appeal.

(3) In dealing with a superannuation appeal, the [Court] Full Commission may exercise any function that could have been exercised in relation to the subject-matter of the appeal by the person or body whose decision is the subject of the appeal.

(4) In making its determination, the [Court] Full Commission is to have regard to the Act conferring the right of appeal, instruments having an operation under that Act and such other matters as it considers to be relevant.

(5) In dealing with a superannuation appeal, the [Court] Full Commission is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

Effect of decision made on a superannuation appeal

326. [284.] (1) For the purposes of an Act conferring a right to a superannuation appeal, the final decision given by the [Court] Full Commission on such an appeal is to be given effect under that Act as if it were a decision that was not subject to appeal and had been made by the person who, or the body which, made the decision that was the subject of the appeal.

(2) The final decision of the *[Court]* Full Commission on a superannuation appeal may not be:

- (a) vitiated just because of an informality or want of form; or
- (b) appealed against, reviewed, quashed or called in question by any court or tribunal.

(3) A judgment or order that, but for this section, might be given or made in order to grant a relief or remedy in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief may not be given or made in relation to a superannuation appeal.

PART 6 - ADMINISTRATIVE PROCEDURE

Division 1 - The Commission, Conciliation Committees and Tribunals

Conduct of proceedings

327. [285.] (1) The Commission, a Conciliation Committee or a Tribunal may:

- (a) conduct its proceedings publicly or privately; and
- (b) adjourn proceedings to any time and place.

(2) During conciliation or mediation under this Act, a party is not to be represented by:

- (a) a barrister or solicitor; or
- (b) a person qualified for admission as a barrister or solicitor; or
- [(c) an agent who is not a barrister or solicitor or a person so qualified,]*

except with the leave of the Commission but any such party may, without that leave, be represented by an agent who is not a barrister or solicitor or a person so qualified.

(3) The Commission may allow any party appearing before it the services of an interpreter.

(4) Despite anything else contained in this section, a person is entitled to be represented by an employee or officer of a State registered organisation.

Issue of summons

328. [286.] (1) Any summons for the purposes of this Act is to be signed as provided by this section and issued by the Registrar.

(2) A summons must be signed:

- (a) if it is a summons issued by the Commission when the Commission is not constituted by a Conciliation Committee or Tribunal - by a member of the Commission or by the Registrar; or
- (b) if it is a summons issued by a Conciliation Committee or a Tribunal - by the Chairperson of the Conciliation Committee or Tribunal; or
- (c) in any other case (except as provided by paragraph (d)) - by the person who issues it or (if it is not issued by the Registrar) by the Registrar; or
- (d) as required by the regulations.

(3) A summons may require a person to do any one or more of the following:

- (a) attend and confer;
- (b) attend and give evidence;
- (c) attend and produce documents;
- (d) attend and produce any thing other than a document.

(4) A person who:

- (a) fails to comply with the requirements of a summons; or
- (b) if the summons is, or includes, a summons to confer - leaves the conference without the permission of the person presiding at the conference,

is guilty of an offence.

Maximum penalty: 10 penalty units.

Intervention in proceedings

329. [287.] (1) The Crown may appear before the Commission, a Conciliation Committee or a Tribunal in any case in which the public interest or any right or interest of the Crown may be involved.

(2) Without affecting the generality of subsection (1), the Minister may, at any stage of proceedings before the Commission, intervene by

counsel, solicitor or agent, examine witnesses and address the Commission with respect to matters relevant to the proceedings.

(3) The Commissioner for Vocational Training may intervene in any proceedings before the Commission, a Conciliation Committee or a Tribunal that are proceedings:

- (a) to which an apprentice or trainee (as those expressions are defined in the Industrial and Commercial Training Act 1989) is a party; or
- (b) which relate to the employment of apprentices or trainees (as so defined).

Trade secrets etc. tendered as evidence

330. [288.] (1) In a proceeding before the Commission:

- (a) the person entitled to a trade secret may object that information tendered as evidence relates to the trade secret; or
- (b) a witness or party may object that information tendered as evidence relates to the profits or financial position of the witness or party.

(2) If an objection is made under subsection (1) to information tendered as evidence, the information may be given as evidence only under a direction of the Commission.

(3) If information is given as evidence under subsection (2), it must not be published in any newspaper, or otherwise.

(4) If the Commission directs that information relating to a trade secret or to the profits or financial position of a witness or party is to be given in evidence, the evidence must be taken in private if the person entitled to the trade secret, or the witness or party, so requests.

(5) The Commission may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, not be published.

(6) This section applies to a proceeding before a Conciliation Committee or a Tribunal in the same way as it applies to a proceeding before the Commission.

(7) A person who contravenes a direction given under subsection (5) by the Commission, a Conciliation Committee or a Tribunal is guilty of an offence.

Maximum penalty: [50] 100 penalty units.

Compliance with procedural rules may be waived

331. [289.] (1) The Commission may waive strict compliance with the requirements of any rules prescribing the procedure for the initiation or conduct of proceedings before it.

(2) Subsection (1) applies in relation to proceedings before a Conciliation Committee, a Tribunal or the Registrar in the same way as it applies in relation to the Commission.

Finality of decisions

332. [290.] (1) Except as determined on the exercise of a right of appeal conferred by this Act [*or the Industrial Court Act 1990*]:

- (a) an award, order, direction, contract determination or other decision of the Commission (including the Full Commission), a Conciliation Committee or a Tribunal is final; and
- (b) an award, order, direction, contract determination or other decision of the Commission (including the Full Commission), a Conciliation Committee or a Tribunal may not be vitiated only because of an informality or want of form; and
- (c) an award, order, direction, contract determination or other decision of the Commission (including the Full Commission), a Conciliation Committee or a Tribunal may not be appealed against, and may not be reviewed, quashed or called in question by any court or tribunal.

(2) A judgment or order that, but for this section, might be given or made in order to grant a relief or remedy in the nature of prohibition or certiorari may not be given or made in relation to an award, order, proceeding, direction or contract determination of the Commission (including the Full Commission) that relates to:

- (a) an industrial matter or a matter in respect of which the Commission has jurisdiction under Division 8 of Part 2; or
- (b) any other matter that, on the face of the proceeding, appears to be, or to relate to, an industrial matter or a matter in respect of which the Commission has jurisdiction under Division 8 of Part 2.

Division 2 - Conciliation Committees and Tribunals

Meetings of Conciliation Committee or Tribunal

333. [291.] (1) The Chairperson of a Conciliation Committee or Tribunal is to convene a meeting of the Conciliation Committee or Tribunal:

- (a) as occasion requires; and
- (b) not later than 3 days after receiving a request for the meeting made by the Minister or by 2 or more members of the Conciliation Committee or Tribunal.

(2) The order and conduct of business at a meeting of a Conciliation Committee or Tribunal are to be:

- (a) as prescribed by the rules; or
- (b) to the extent that they are not so prescribed - in accordance with rules made by the Conciliation Committee or Tribunal.

Proceedings at meetings

334. [292.] (1) The Chairperson of a Conciliation Committee or Tribunal is to preside at a meeting of the Conciliation Committee or Tribunal.

(2) Each member of the Conciliation Committee or Tribunal present at a meeting, except the Chairperson, has one vote and:

- (a) if the votes for and against a motion are unequal, the decision according to the majority of the votes is the decision of the Conciliation Committee or Tribunal; or
- (b) if the votes for and against a motion are equal, the Chairperson is to decide the question and the decision of the Chairperson is the decision of the Conciliation Committee or Tribunal.

(3) The Chairperson may refer to the Commission for determination or directions any question or matter arising at a meeting of the Conciliation Committee or Tribunal.

Duties of Chairperson

335. [293.] If an application or reference is made to a Conciliation Committee or Tribunal, the Chairperson must, in an endeavour to bring the parties to agreement in relation to the matters applied for or referred:

- (a) convene a meeting of the Conciliation Committee or Tribunal and so conduct the meeting as to enable it expeditiously and carefully to inquire into the matters and their merits; and
- (b) in the course of the inquiry, make such suggestions, and do all such things, as the Chairperson considers to be proper for inducing the parties to come to a fair and amicable settlement of the matters.

Conference with Conciliation Committee or Tribunal

336. [294.] A Conciliation Committee or Tribunal may confer with any person as to anything affecting the settlement of an industrial matter or a matter arising under Division 8 of Part 2.

Giving, and admission, of evidence

337. [295.] (1) Evidence before a Conciliation Committee or Tribunal, including evidence by a member of the Conciliation Committee or Tribunal, is to be given on oath.

(2) Any question as to the admissibility of evidence is to be decided by the Chairperson of the Conciliation Committee or Tribunal before which the question arises, and the decision of the Chairperson is final.

Manner of exercise of functions by Conciliation Committee or Tribunal

338. [296.] (1) In the exercise of its functions, a Conciliation Committee or a Tribunal:

- (a) is to act as quickly as practicable; and
- (b) may, subject to this Act, determine its own procedure; and
- (c) is not bound to act in a formal manner; and
- (d) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers just; and
- (e) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(2) A Conciliation Committee or Tribunal may, at any stage, adjourn a matter before it to enable the parties to negotiate an amicable settlement.

Anti-discrimination matters

339. [297.] (1) In the exercise of its functions, a Conciliation Committee or a Tribunal is to take into account the principles contained in the Anti-Discrimination Act 1977 relating to discrimination with respect to employment.

(2) An issue that is the subject of proceedings before the Equal Opportunity Tribunal constituted under the Anti-Discrimination Act 1977 may not be the subject of proceedings before a Conciliation Committee or a Contract Regulation Tribunal without the leave of the Conciliation Committee or Contract Regulation Tribunal.

(3) A Conciliation Committee or a Contract Regulation Tribunal may, at its discretion, admit in proceedings before it evidence given before, or findings made by, the Equal Opportunity Tribunal.

Settlement of awards and determinations

340. [298.] (1) An award made by a Conciliation Committee or a contract determination of a Tribunal:

- (a) is to be settled by the Registrar as prescribed; and
- (b) after settlement, is to be signed by the Chairperson of the Conciliation Committee or Tribunal or by another person authorised by the regulations to do so; and
- (c) after signature, is to be notified to the parties by the Registrar as prescribed.

(2) In settling an award made by a Conciliation Committee or a contract determination of a Tribunal, the Registrar may submit a question of law to the *[Court]* Full Commission for its opinion.

(3) If the question referred by the Registrar to the *[Court]* Full Commission is whether the Registrar may exercise powers in relation to the matter, the Registrar may, in spite of the reference, continue settlement of the matter.

(4) On the *[Court]* Full Commission giving its opinion:

- (a) the Registrar is to settle the matter in accordance with the opinion of the *[Court]* Full Commission if settlement of the matter is incomplete; or
- (b) if settlement of the matter has been completed - the Registrar is to vary, in such a way as to make it consistent with the opinion

of the *[Court]* Full Commission, the manner in which the matter was settled.

(5) If an award or contract determination is varied under subsection (4), an appeal does not lie on the question of law with which it has been made consistent.

Allocation of wrongly filed application

341. *[299.]* (1) As soon as a Conciliation Committee or a Tribunal, or its Chairperson, becomes aware that a matter that is before, or is to come before, the Conciliation Committee or Tribunal is not within its jurisdiction but is within the jurisdiction of another Conciliation Committee or Tribunal, the matter must be referred to the President.

(2) The President is to allocate to the appropriate Conciliation Committee or Tribunal a matter referred under subsection (1).

(3) A Conciliation Committee or Tribunal to which a matter is allocated under this section is to hear and determine the matter as if proceedings on the matter had been duly commenced before it.

PART 7 - ASSOCIATIONS OF EMPLOYERS AND EMPLOYEES

Division 1 - Preliminary

Definitions

342. *[300.]* (1) In this Act:

"committee of management", in relation to an association, State registered organisation or branch of an association or State registered organisation, means the group or body of persons (however described) that manages the affairs of the association, State registered organisation or branch;

"office", in relation to a State registered organisation, means:

- (a) an office of president, vice-president, secretary or assistant secretary of the organisation; or
- (b) the office of a voting member of a collective body of the organisation, being a collective body that has power in relation to any of the following functions:
 - (i) the management of the financial or other affairs of the organisation;

- (ii) the determination of policy for the organisation;
 - (iii) the making, alteration or rescission of rules of the organisation;
 - (iv) the enforcement of rules of the organisation, or the performance of functions in relation to the enforcement of such rules; or
- (c) an office the holder of which is, under the rules of the organisation, entitled to participate directly in any of the functions referred to in paragraph (b) (i) and (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing:
- (i) existing policy of the organisation; or
 - (ii) decisions concerning the organisation;
- (d) an office the holder of which is, under the rules of the organisation, entitled to participate directly in any of the functions referred to in paragraph (b) (ii) and (iii); or
- (e) the office of a person holding (whether as trustee or otherwise) property:
- (i) of the organisation; or
 - (ii) in which the organisation has a beneficial interest;
- "officer"**, in relation to a State registered organisation, means a person who holds an office in the organisation;
- "registered trade union"** means a trade union registered under this Act;
- "trade union"** means any temporary or permanent combination:
- (a) for regulating the relations between:
 - (i) employees and employers; or
 - (ii) employees and employees; or
 - (iii) employers and employers; or
 - (b) for imposing restrictive conditions on the conduct of any trade or business whether or not such a combination would except for this Act be an unlawful combination because one or more of its purposes is in restraint of trade,
- but does not include:
- (c) any agreement between partners as to their own business; or

- (d) any agreement between an employer and his or her employees as to such employment; or
- (e) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or business.

(2) A reference in this Part to affairs of a State registered organisation, unless the contrary intention appears, is to be construed as including a reference to:

- (a) the formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the organisation; and
- (b) the internal management and proceedings of the organisation; and
- (c) the power of persons to exercise, or to control the exercise of, the rights to vote attached to membership of the organisation; and
- (d) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

**Division 2 - Legality of State registered organisations
and unregistered trade unions**

Purposes not to give rise to criminal proceedings

343. [301.] (1) The purposes of a State registered organisation or an unregistered trade union are not unlawful merely because they are in restraint of trade.

(2) A member of a State registered organisation or an unregistered trade union is not liable to criminal prosecution for conspiracy or otherwise merely because any purposes of the organisation or trade union of which the person is a member is in restraint of trade.

Purposes not to give rise to civil disqualification

344. [302.] The purposes of a State registered organisation or an unregistered trade union do not render void any agreement or trust to which it is a party merely because the purposes are in restraint of trade.

Certain agreements not enforceable

345. [303.] (1) No legal proceedings may be taken to enforce or recover damages for a breach of any agreement to pay the funds of a State registered organisation or an unregistered trade union to an employer or employee who is not a member of the organisation or trade union in consideration of the employer or employee acting in conformity with the rules or resolutions of the organisation or trade union.

(2) This section is not to be taken to render unlawful any agreement referred to in subsection (1).

Enforcement of certain agreements

346. [304.] Legal proceedings may be taken in the [Court] Commission to enforce or recover damages for a breach of any of the following:

- (a) an agreement between members of a State registered organisation or an unregistered trade union as such concerning the conditions on which any members for the time being of the organisation or trade union will or will not sell their goods, transact business, employ or be employed;
- (b) an agreement for the regulation of any business or industry as between employers and employees made by a State registered organisation or an unregistered trade union with an employer or employers;
- (c) an agreement made between one State registered organisation or an unregistered trade union and another;
- (d) a bond to secure the performance of any of the agreements referred to in paragraphs (a)-(c).

Division 3 - State registered organisations

Subdivision 1 - Registration

Associations capable of registration as State employer organisations

347. [305.] (1) An association of persons the members of which have, in the aggregate, throughout the 6 months before the application for its registration was lodged with the Registrar, employed (on an average taken per month) not fewer than 50 employees, may be registered as a State employer organisation.

(2) It does not matter if one or a number of the officers of the association is employed by the association, is not an employer and does not have industrial interests represented by the association.

Associations capable of registration as industrial unions

348. [306.] (1) An association of employees that:

- (a) if registered as an industrial union, would be capable of representing those employees in connection with industrial matters; and
- (b) has, in the aggregate, throughout the 6 months before the application for its registration was lodged with the Registrar, (on an average taken per month) not fewer than 50 members who are employees;

(c) is not a registered trade union,
may be registered as an industrial union.

(2) It does not matter if a number of the officers of the association is employed by the association, is not otherwise an employee and does not have industrial interests represented by the association.

[Associations capable of registration as enterprise associations]

307. (1) An association of persons employed in an enterprise may apply to the Commission for permission to hold a secret ballot to determine whether employees in the enterprise should be represented by the association.

(2) In determining whether to grant such permission, the Commission may take submissions from the relevant enterprise employer.

(3) *If the Commission considers that the holding of the ballot is in the best interests of the enterprise and its employees, the Commission must grant permission for the holding of the ballot.*

(4) *If at least 65% of the employees of an enterprise who would be bound by a registered enterprise agreement to which the enterprise association could become a party vote in favour of forming an association of employees for the enterprise, the association of employees may apply to be registered as an enterprise association.*

(5) *Any such vote must be taken by a secret ballot conducted by a person who:*

- (a) *is independent of anyone who would be bound by a registered enterprise agreement to which the enterprise association could become a party; and*
- (b) *meets any requirement that may be imposed for the purposes of this section by the regulations.*

(6) *Despite subsection (5), such a ballot may be conducted by any person on behalf of the employees who are entitled to vote in the ballot.*

(7) *A registered trade union is not to be registered as an enterprise association.]*

Associations capable of registration as trade unions

349. [308.] An association may be registered as a trade union if:

- (a) it is an association of 7 or more members; and
- (b) it is a genuine trade union; and
- (c) there is no State registered organisation to which the members could conveniently belong; and
- (d) it is not an industrial union *[or an enterprise association]*.

Criteria for registration

350. [309.] (1) The Registrar may grant an application for registration made by an association that, under this Subdivision, may be registered as a State employer organisation, industrial union *[, enterprise association]* or trade union, as the case may be, if, and only if:

- (a) the association:
 - (i) is a genuine association of a kind referred to in this Subdivision; and

- (ii) is an association for furthering or protecting the interests of its members; and
- (iii) is an association that is effectively representative of its members; and
- (b) the rules of the association make provision as required by this Act to be made by the rules of State registered organisations; and
- (c) the association does not have the same name as that of a State registered organisation and does not have a name that is so similar to the name of a State registered organisation as to be likely to cause confusion; and
- (d) the name proposed by the association is not, in the opinion of the Registrar, unsuitable to be the name of a State registered organisation; and
- [(e) *in the case of an application by an association to be registered as an enterprise association, the Registrar is satisfied that:*
 - (i) *there was no irregularity concerning the ballot; and*
 - (ii) *at least 7 days have expired since the application for registration was lodged; and*
 - (iii) *the name of the association contains the words "enterprise association" and the name of the enterprise in which its members are employed; and*
- (e) [(f)] *[other than in the case of an application by an association to be registered as an enterprise association,]* a majority of the members present at a general meeting of the association or an absolute majority of the committee of management of the association has passed, under the rules of the association, a resolution in favour of registration of the association as a State employer organisation, industrial union or trade union; and
- (f) [(g)] the registration of the association would further the objects of this Act; and
- (g) [(h)] in the case of an application by an association to be registered as an industrial union, there is no other industrial union to which the members of the association might conveniently belong.

(2) The Registrar must not register an association consisting of the members of a branch of a State registered organisation as a State employer organisation, industrial union or trade union unless the Registrar is satisfied that it is a bona fide association of sufficient importance to be registered separately.

[Further ballot for enterprise association]

310. (1) *If at any time before an association of employees is registered as an enterprise association, the Registrar receives a written complaint from at least 20% of the employees who would be bound by a registered enterprise agreement to which the association could become a party, particularising alleged irregularities in the conduct of the ballot taken in respect of the association and requesting that a further secret ballot be conducted by an independent person, the Registrar (if of the opinion that such action is justified) is to refrain from registering the association and may arrange with the employees concerned:*

- (a) for the conduct of a further secret ballot, as requested by the submission; and*
- (b) for evidence of the result of the further ballot to be supplied to the Registrar.*

(2) The result of any such further ballot is to be disregarded if the Registrar is not satisfied that it has been conducted in accordance with the Registrar's directions.]

Application for registration

351. [311.] An application to be registered as a State registered organisation is to be made in the prescribed manner.

Proof of authority for application

352. [312.] The Registrar may require such proof as the Registrar considers necessary to establish the authority of the persons making an application for the registration of a State registered organisation to act on behalf of the association.

Registrar to deal with application

353. [313.] (1) On receipt of an application by an association to be registered as a State employer organisation or an industrial union, the Registrar must notify any State employer organisation or industrial union which, in the opinion of the Registrar, may be affected by the application.

(2) A State employer organisation or industrial union notified of the making of an application may lodge with the Registrar a notice of objection to that application in the prescribed manner and within the prescribed time.

(3) The objection must set out with reasonable particularity the ground or grounds of the objection and the facts and circumstances relied on as establishing those grounds, and must be verified by statutory declaration.

(4) A copy of the notice of objection must be served on the applicant for registration by the objector within the prescribed time.

(5) Within 7 days after service of the notice of objection, the applicant for registration may file statutory declarations in answer to the notice of objection and must, within that period, serve copies of those declarations on the objector.

(6) If no objections to the application are lodged within the prescribed period, the Registrar must either register the association as a State employer organisation or an industrial union or refuse to register the association.

Determination of objections etc.

354. [314.] (1) If an objection is, or objections are, lodged in relation to an application, the Registrar is required to fix a day for considering the objection or objections and to give notice of the day so fixed to the applicant for registration and to the objector or objectors.

(2) On the day appointed for the consideration of the objection or objections by the Registrar, the Registrar is to proceed to hear and determine the application for registration and all objections to the application, without prejudice to the Registrar's power to adjourn the proceedings from time to time.

(3) The procedure to be followed at the hearing is to be as directed by the Registrar.

Appeal against decision of Registrar on objections

355. [315.] (1) An applicant to be registered as a State employer organisation or an industrial union whose application has been refused by the Registrar or a party to a hearing before the Registrar may appeal to the [Court] Commission against a decision of the Registrar in relation to an application or an objection.

(2) The appeal to the [Court] Commission must be made in the prescribed manner and within the prescribed time.

(3) An appeal under this section is to be dealt with by way of a new hearing at which fresh or new evidence may be given, including evidence in addition to, or in substitution for, the evidence given before the Registrar.

Decision of [Court] Commission on appeal

356. [316.] On the hearing of an appeal, the [Court] Commission may do any one or more of the following:

- (a) dismiss the appeal;
- (b) require the Registrar to register an association as a State employer organisation or an industrial union;
- (c) require the Registrar not to register an association as a State employer organisation or an industrial union or require the Registrar not to register the association unless the association changes its name or alters its rules;
- (d) require the Registrar to cancel the registration of an association as a State employer organisation or an industrial union with the effect that the association is to be taken never to have been registered under this Act;
- (e) make any other order that the [Court] Commission considers appropriate in the circumstances.

Applicant for registration may change its name or alter its rules

357. [317.] (1) The Registrar may, on the application of an association applying to be registered as a State registered organisation, grant leave to the association, on such terms and conditions as the Registrar considers appropriate, to change its name or to alter its rules:

- (a) to enable it to comply with this Act; or
- (b) to remove a ground of objection to registration taken by an objector or by the Registrar.

(2) An association granted leave under subsection (1) may change its name, or alter its rules, even though the application for registration is pending.

(3) Rules of an association as altered in accordance with leave granted under subsection (1) are binding on the members of the association:

- (a) in spite of anything in the other rules of the association; and
- (b) subject to any further alterations lawfully made.

Registration

358. [318.] (1) When the Registrar grants an application by a body to be registered as a State registered organisation, the Registrar must immediately record, in the register kept for the purpose, the name of the State registered organisation and note that the rules of the body are registered and the date of the entry.

(2) A body is to be taken to be registered under this Act when the Registrar records the name and notes that the rules of the body are registered.

(3) On registration, a body becomes a State employer organisation, an industrial union[, *an enterprise association*] or a registered trade union, as specified in the certificate of registration.

(4) The Registrar must issue to each body registered under this Act a certificate of registration in the prescribed form.

(5) A document purporting to be such certificate is evidence of the registration of the body specified in the certificate in the absence of proof to the contrary.

(6) The Registrar may, as prescribed, issue to a State registered organisation a copy of, or a certificate replacing, the certificate of registration issued under subsection (4) or that certificate as amended under Subdivision 12.

(7) The purported registration under this Act of a body otherwise than in accordance with the requirements made by or under this Act and the Industrial Legislation (Repeals, Amendments and Savings) Act 1990 is void.

Incorporation

359. [319.] (1) A body, when registered under this Act as a State employer organisation, an industrial union[, *an enterprise association*] or a trade union:

- (a) is a body corporate; and
 - (b) has perpetual succession; and
 - (c) has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with any real or personal property; and
 - (d) is required to have a common seal; and
 - (e) may sue or be sued in its registered name.
- (2) The custody and manner of affixing of the common seal is to be as prescribed by the regulations.

[Effect of registration on enterprise association]

320. (1) *An enterprise association may be a signatory to an enterprise agreement as agent for all employees who will be bound by the agreement if it is registered, whether or not all of those employees are members of the association.*

(2) *The provisions of this and any other Act, and of statutory instruments made under this or any other Act, that apply to industrial unions, and to their officers and members, apply to enterprise associations, and to their officers and members, except to the extent:*

- (a) *that express provision is made by or under this or any other Act modifying or excluding the application of those provisions; or*
- (b) *that the application of any of those provisions is modified or excluded by the regulations; or*
- (c) *that the regulations provide that, instead of the provisions of this Part concerning a subject-matter, other provisions relating to that subject-matter and prescribed by the regulations apply.*

(3) *The reference in subsection (2) to provisions that apply to industrial unions, and to their officers and members, includes a reference to provisions that confer functions on the Commission, the Court or the Registrar with respect to industrial unions, and their officers and members.*

(4) *Although, subject to subsection (2), an enterprise association is entitled to the benefits of, and has the responsibilities of, an industrial union, it does not have the status of an industrial union and is not entitled to commence or to appear in proceedings under this or any other Act unless the proceedings relate to:*

- (a) *a registered enterprise agreement; or*
- (b) *the registration of the association and matters that might affect that registration; or*
- (c) *the property or business affairs of the association.]*

Certain legislation not to apply to State registered organisations

360. [321.] (1) The Friendly Societies Act 1912, Co-operation Act 1923, Permanent Building Societies Act 1967, Credit Union Act 1969, Companies (New South Wales) Code and Associations Incorporation Act 1984 do not apply to associations incorporated under this Act.

(2) The incorporation of an association registered under this Act under any of the Acts referred to in subsection (1) is void.

Effect of registration on trade union

361. [322.] The provisions of this Part, and of the regulations, that apply to industrial unions, and to their officers and members, apply to registered trade unions, and to their officers and members, except to the extent:

- (a) that express provision is made by or under this or any other Act modifying or excluding the application of those provisions; or
- (b) that the application of any of those provisions is modified or excluded by the regulations; or
- (c) that the regulations provide that, instead of the provisions of this Part concerning a subject-matter, other provisions relating to that subject-matter and prescribed by the regulations apply.

Subdivision 2 - Rules of State registered organisations

State registered organisations to have rules

362. [323.] A State registered organisation must have rules that make provision as required by this Act.

General requirements for rules

363. [324.] (1) The rules of a State registered organisation:

- (a) must be certain; and
- (b) must not be contrary to, or fail to make provision as required by, this Act or an order of the Commission[, the Court or any

other court or] or any court or other tribunal of competent jurisdiction; and

- (c) must not be contrary to law or against the public interest; and
- (d) must not be such as to prevent or hinder members of the organisation from observing any law or the provisions of any award; and
- (e) must not deprive any member, or any section or class of membership, of a reasonable voice in the management of the organisation; and
- (f) must not impose on members of the organisation, or on applicants for membership of the organisation, any conditions, obligations or restrictions that, having regard to the objects of this Act and the purposes of the registration of organisations under this Act, are oppressive, unreasonable or unjust.

(2) The rules must be:

- (a) contained in consecutively numbered paragraphs; and
- (b) printed, typewritten or otherwise produced in legible form in a manner that is permanent, facilitates a reproduction by photographic means and is satisfactory to the Registrar; and
- (c) available in sufficient quantities to supply a copy to each member of the organisation; and
- (d) consolidated by the organisation whenever the number or nature of the alterations to the rules renders it reasonable to do so or whenever the Registrar so directs.

Rules of State registered organisations

364. [325.] (1) The rules of a State registered organisation must specify:

- (a) the name of the organisation; and
- (b) the purposes for which the organisation is formed; and
- (c) the conditions of eligibility for membership,

and may specify the industry [*or enterprise*] in relation to which it is formed.

(2) The rules of a State registered organisation must also make provision for:

- (a) procedural and administrative matters; and
- (b) elections for offices; and
- (c) elections by secret postal ballot; and
- (d) terms of office; and
- (e) filling of casual vacancies; and
- (f) conditions for loans, grants and donations[; and
- (g) *conditions for political donations*],

as required by Schedule 5.

(3) The provisions of Schedule 5 relating to rules of State registered organisations have effect.

Registrar may determine alterations of rules

365. [326.] (1) Where the rules of a State registered organisation do not, in the Registrar's opinion, make provision required by this Act, the Registrar may, by instrument in writing, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Registrar's opinion, necessary to bring them into conformity with this Act.

(2) Alterations determined under subsection (1) take effect on the date of the instrument.

(3) A State registered organisation or a member of such an organisation may appeal to the [Court] Commission against a decision of the Registrar made under this section.

(4) The appeal to the [Court] Commission must be made in the prescribed manner and within the prescribed time.

Change of name of State registered organisation

366. [327.] (1) A change in the name of a State registered organisation does not take effect unless the Registrar consents to the change.

(2) The Registrar must not consent to a change unless the Registrar is satisfied that the change has been made under the rules of the organisation.

(3) The Registrar must not consent to a change in the name of an organisation unless the Registrar is satisfied that the proposed new name of the organisation:

- (a) is not the same as the name of another State registered organisation; and
 - (b) is not so similar to the name of another State registered organisation as to be likely to cause confusion; and
 - (c) is not, in the opinion of the Registrar, unsuitable to be the name of a State registered organisation.
- (4) Where the Registrar consents to a change under subsection (1), the change takes effect on registration of the change by the Registrar.
- (5) The recording of a change of name in the register does not affect any rights and liabilities of the State registered organisation existing immediately before the recording.

Alteration of rules of State registered organisation

367. [328.] (1) An alteration of the rules of a State registered organisation does not take effect unless the Registrar consents to the alteration.

(2) The Registrar may consent to an alteration in whole or part, but must not consent to an alteration unless the Registrar is satisfied that the alteration:

- (a) complies with, and is not contrary to, this Act and relevant awards made under this Act; and
- (b) is not otherwise contrary to law; and
- (c) has been made under the rules of the organisation.

(3) The Registrar must not consent to an alteration of the rules of an industrial union, relating to eligibility for membership of the organisation, if, in relation to persons who would be eligible for membership because of the alteration, there is, in the opinion of the Registrar, another State registered organisation to which those persons might conveniently belong.

(4) Where particulars of an alteration of the rules of an organisation have been lodged with or recorded by the Registrar, the Registrar may, with the consent of the organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.

(5) Where the Registrar consents under this section to an alteration, the alteration takes effect on registration of the change by the Registrar.

(6) This section does not apply in relation to an alteration of the rules of an organisation that is:

- (a) determined by the Registrar under [section 326 or 331] section 365 or 370; or
- (b) proposed to be made for the purpose of an amalgamation under Subdivision 12.

Certain alterations of rules to be recorded

368. [329.] Where there has been a change in the name of a State registered organisation, or an alteration of the rules of a State registered organisation, under this Act, the Registrar must:

- (a) immediately enter, in the register kept for this purpose, particulars of the change or alteration, and the date of registration of the change or alteration; and
- (b) as soon as practicable after the organisation produces its certificate of registration to the Registrar, amend the certificate accordingly and return it to the organisation.

Evidence of rules

369. [330.] (1) In proceedings under this Act, a copy of the rules of a State registered organisation certified by the Registrar to be a true and correct copy is evidence of the rules of the organisation.

(2) In this Subdivision, a reference to the rules of a State registered organisation includes a reference to the rules of a branch of the State registered organisation.

Subdivision 3 - Validity and performance of rules

Rules contravening general requirements for rules etc.

370. [331.] (1) A member of a State registered organisation may apply to the [Court] Commission for an order under this section in relation to the organisation.

(2) An order under this section may declare that the whole or a part of a rule of a State registered organisation contravenes [section 324] section 363 or that the rules of an organisation contravene [section 324] section 363 in a particular respect.

(3) An organisation in relation to which an application is made under this section must be given an opportunity to be heard by the *[Court] Commission*.

(4) The *[Court] Commission* may, without limiting any other power of the *[Court] Commission* to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the organisation an opportunity to alter its rules.

(5) Where an order under this section declares that the whole or a part of a rule contravenes *[section 324] section 363*, the rule or that part of the rule, as the case may be, is to be taken to be void from the date of the order.

(6) Where:

- (a) the *[Court] Commission* makes an order declaring as mentioned in subsection (2) in relation to the rules of an organisation; and
- (b) at the expiration of 3 months from the making of the order, the rules of the organisation have not been altered in a manner that, in the opinion of the Registrar, brings them into conformity with *[section 324] section 363* in relation to the matters that gave rise to the order,

the Registrar must, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine, by instrument in writing, such alterations of the rules as will, in the Registrar's opinion, bring them into conformity with that section in relation to those matters.

(7) The Registrar may, on the application of the organisation made within the period of 3 months referred to in subsection (6) or within any extension of the period, extend, or further extend, the period.

(8) Alterations determined under subsection (6) take effect on the date of the instrument.

(9) At any time after a proceeding under this section has been instituted, the *[Court] Commission* may make such interim orders as it considers appropriate in relation to a matter in relation to which the matters raised in the proceedings are relevant.

(10) An order under subsection (9) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

(11) In this section, a reference to a rule, or the rules, of a State registered organisation includes a reference to a rule, or the rules, of a branch of a State registered organisation.

Directions for performance of rules

371. [332.] (1) A member of a State registered organisation may apply to the *[Court] Commission* for an order under this section in relation to the organisation.

(2) Before making an order under this section, the *[Court] Commission* must give any person against whom the order is sought an opportunity to be heard.

(3) The *[Court] Commission* may refuse to deal with an application for an order under this section unless it is satisfied that the applicant has taken all reasonable steps to try to have the matter the subject of the application resolved within the organisation.

(4) At any time after the making of an application for an order under this section, the *[Court] Commission* may make such interim orders as it considers appropriate and, in particular, orders intended to further the resolution within the organisation concerned of the matter the subject of the application.

(5) An order under subsection (4) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

(6) An order must not be made under this section that would have the effect of treating as invalid an election to an office in a State registered organisation or a step in relation to such an election.

(7) If the *[Court] Commission*, in considering an application under this section, finds that the whole or a part of a rule of the organisation concerned contravenes *[section 324] section 363* or that the rules of the organisation concerned contravene that section in a particular respect, the *[Court] Commission* may, by order, make a declaration to that effect.

(8) *[Section 331] Section 370* (other than subsections (1) to (4) (inclusive)) applies in relation to an order made under subsection (7) of this section as if the order had been made under that section.

(9) If the *[Court] Commission*, in considering an application under this section, finds that a member of the organisation has suffered loss

as the result of a contravention of the kind referred to in subsection (7), the *[Court] Commission* may order the organisation to pay damages, in the amount determined by the *[Court] Commission*, to that member.

(10) In this section:

"election" includes a purported election that is a nullity;

"order under this section" means an order:

- (a) giving directions for the performance or observance of any of the rules of an organisation by any person who is under an obligation to perform or observe those rules; or
- (b) an order awarding damages against the organisation to a member who has suffered loss as the result of a failure by the organisation in relation to the performance or observance of any rules of the organisation.

Subdivision 4 - Conduct of elections for office

Elections for offices compulsory

372. *[333.]* Each office in a State registered organisation and a branch of a State registered organisation is to be filled by compulsory election.

Cost of elections

373. *[334.]* The expenses of an election conducted under this Subdivision must be borne by the State *[registered organisation or the branch of the State registered organisation concerned]*, including:

- (a) the salary or other remuneration of any officer or employee of the State performing any duty in relation to the election, including any person appointed solely for the purposes of the election; and
- (b) the cost of travel of such an officer or employee, including any travelling or similar allowance, incurred in connection with the performance of any such duty; and
- (c) expenses in connection with the provision or use of premises provided by the State for the purposes of the election, including premises obtained solely for such purposes.

Conduct of elections by Registrar

374. [335.] (1) When an election is required to be held, a State registered organisation or a branch of a State registered organisation must apply in writing to the Registrar requesting that the Registrar arrange for the conduct of an election for an office in the organisation or branch, as the case may be, in accordance with the rules of the organisation or branch.

(2) For the purposes of subsection (1), an application by an organisation or a branch may be made:

- (a) by or on behalf of the committee of management of the organisation or of the branch, as the case may require or otherwise as may be provided by the rules of the organisation or branch; or
- (b) by a number of the members of the organisation or of the branch, as the case may be, being not less than 1,000 or 10 per cent, whichever is the lesser, of the members of the organisation or branch making the request.

(3) Where an application is made, or purports to be made, under this section, the Registrar must, after making such inquiries (if any) and such examination of the rules of the organisation or the branch as the Registrar considers necessary, decide whether or not to authorise the holding of the election.

(4) Where the Registrar decides that the application has been duly made, the Registrar must inform the organisation or branch of that fact and state whether the election is to be conducted by:

- (a) the Electoral Commissioner; or
- (b) an independent returning officer approved by the Registrar and named in a panel maintained by the Registrar in accordance with the regulations.

(5) A person conducting an election under this section for an office in an organisation or a branch of an organisation may, in spite of anything contained in the rules of the organisation or of the branch, take such action and give such directions as the person considers necessary in relation to the conduct of the election or in order to ensure that no irregularities occur in relation to the election or to remedy any procedural defects in the rules of the organisation or of the branch which may appear to the person to exist.

(6) An election conducted under this section is not to be invalidated by reason only of:

- (a) a breach of the rules of the organisation or of the branch involved in:
 - (i) an act done under this section; or
 - (ii) an act done in compliance with a direction given under this section; or
- (b) an irregularity in the request in pursuance of which the election is conducted.

(7) A person must not:

- (a) fail to comply with a direction given under subsection (5); or
- (b) obstruct or hinder the person conducting an election under this section or carrying out a direction given under subsection (5).

Maximum penalty: 50 penalty units.

(8) If a person conducting an election under this section:

- (a) dies or becomes unable to complete the conduct of the election; or
- (b) ceases to be a person qualified to conduct the election,

the Registrar must make arrangements or give directions for the completion of the conduct of the election by another person who is so qualified.

Failure to hold elections every 4 years

375. [336.] (1) The Registrar must inform the *[Court] Commission* if a State registered organisation or a branch of an organisation fails to comply with the rules concerning elections and terms of office.

(2) The *[Court] Commission* may suspend the registration of an organisation if the organisation or any branch of it fails to comply with the requirements of this Act in relation to the holding of elections at least once every 4 years after the organisation is registered under this Act.

Registrar may issue exemptions concerning returning officer

376. [337.] (1) A State registered organisation or a branch of a State registered organisation may apply to the Registrar for approval to engage a person or body to conduct an election for an office in the

organisation or branch, as the case may be, other than the persons referred to in [section 335 (4)] section 374 (4).

(2) On being satisfied by the organisation or branch that it is appropriate that a person or body other than a person referred to in [section 335 (4)] section 374 (4) be appointed to conduct the election for the organisation or branch, the Registrar may issue to the organisation or branch a certificate to that effect and naming the person or body who or which is to conduct the election to which the application applies.

(3) The Registrar may have regard, in making a decision under this section, to the size, structure and resources of the organisation or branch and to such other matters as the Registrar considers are relevant.

Procedure for conduct of elections

377. [338.] The procedure for the conduct of elections is to be as prescribed by the regulations.

Ballot-papers etc. to be preserved

378. [339.] In spite of anything in the rules of a State registered organisation or a branch of a State registered organisation, the organisation or branch, and every officer and employee of the organisation or branch who is able to do so, and the person or body conducting an election for an office in the organisation or branch under this Subdivision, must take such steps as are necessary to ensure that all ballot-papers, envelopes, lists and other documents relevant to the election are preserved and kept by the Electoral Commissioner or other returning officer, as the case may be, for one year after the completion of the election.

Offence in relation to preservation of ballot-papers etc.

379. [340.] A person must not contravene [section 339] section 378.
Maximum penalty: 50 penalty units.

Offences in relation to elections

380. [341.] (1) Where a person conducting an election requires an officer or employee of a State registered organisation or branch of a

State registered organisation to provide or make available, for the purposes of the election, a register or list of:

- (a) in the case of an officer or employee of the organisation - the members of:
 - (i) the organisation or a branch of the organisation; or
 - (ii) a section or class of the members of the organisation or a branch of the organisation; and
- (b) in the case of an officer or employee of a branch of the organisation - the members of:
 - (i) the branch; or
 - (ii) a section or class of the members of the branch,

the officer or employee must promptly comply with the requirement so far as he or she is capable.

(2) A person must not, without lawful authority or excuse, in relation to an election for an office:

- (a) impersonate another person to secure a ballot-paper to which the impersonator is not entitled, or impersonate another person for the purpose of voting; or
- (b) destroy, deface, alter, take or otherwise interfere with a nomination paper, ballot-paper or envelope; or
- (c) put or deliver a ballot-paper or other paper:
 - (i) into a ballot-box or other ballot receptacle; or
 - (ii) into the post; or
 - (iii) to a person receiving ballot-papers for the purposes of the election; or
- (d) record a vote which the person is not entitled to record; or
- (e) record more than one vote; or
- (f) forge or utter, knowing the same to be forged, a nomination paper, ballot-paper or envelope; or
- (g) supply a ballot-paper; or
- (h) obtain, or have in the person's possession, a ballot-paper; or
- (i) destroy, take, open or otherwise interfere with a ballot-box

(3) A person must not, in relation to an election for an office:

- (a) threaten, offer or suggest any violence, injury, punishment, damage, loss or disadvantage for or on account of, or to induce:

- (i) any candidature or withdrawal of candidature; or
 - (ii) any vote or omission to vote; or
 - (iii) any support or opposition to any candidate; or
 - (iv) any promise of any vote, omission, support or opposition; or
- (b) use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage for or on account of any such candidature, withdrawal, vote, omission, support or opposition.
- (4) A person must not, without lawful authority or excuse, in relation to an election:
- (a) hinder or obstruct the taking of the votes; or
 - (b) use any form of intimidation to prevent from voting, or to influence the vote of, a person entitled to vote at the election; or
 - (c) threaten, offer or suggest, or use, cause, inflict or procure, any violence, injury, punishment, damage, loss or disadvantage because of, or to induce:
 - (i) any vote or omission to vote; or
 - (ii) any support of, or opposition to, voting in a particular manner; or
 - (iii) any promise of any vote, omission, support or opposition; or
 - (d) counsel or advise a person entitled to vote to refrain from voting.
- (5) A person (in this subsection called the "**relevant person**") must not, without lawful authority or excuse, in relation to an election:
- (a) request, require or induce another person to show a ballot-paper to the relevant person, or permit the relevant person to see a ballot-paper, in such a manner that the relevant person can see the vote, while the ballot-paper is being marked or after it has been marked; or
 - (b) if the relevant person is a person performing duties for the purposes of the ballot, show to another person, or permit another person to have access to, a ballot-paper used in the ballot, otherwise than in the performance of those duties.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Proof of election to office etc.

381. [342.] (1) A certificate issued by the Registrar stating that a specified person is, or was at any specified time, elected to or the holder of a specified office in a State registered organisation is prima facie evidence of such facts without proof of the Registrar's signature.

(2) A certificate may be issued by the Registrar under subsection (1) on proof to the Registrar's satisfaction that the person has been elected to the specified office in the specified organisation and that the requirements of the rules of the specified organisation relating to such election have been duly complied with.

(3) The person to whom any certificate has been issued under this section stating that the person has been elected to or is the holder of a specified office in an organisation must within 14 days:

- (a) of ceasing to hold the specified office; or
- (b) on being requested to do so by the Registrar, return the certificate to the Registrar for cancellation.

Maximum penalty: 20 penalty units.

Right to participate in certain ballots

382. [343.] Subject to reasonable provisions in the rules of a State registered organisation in relation to enrolment, every financial member of the organisation has a right to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the organisation, or of a branch, section or other division of the organisation in which the member is included.

Requests by members for information concerning elections and certain ballots

383. [344.] A financial member of a State registered organisation may request the returning officer:

- (a) in relation to an election for an office in the organisation or a branch of the organisation; or
- (b) in relation to a ballot taken for the purpose of submitting a matter to a vote of the members of an organisation or a branch of the organisation,

to provide to the member specified information for the purpose of determining whether there has been an irregularity in relation to the election or ballot. The returning officer must comply with the request.

Subdivision 5 - Inquiries into elections

Application for inquiry

384. [345.] (1) A person who is, or within the preceding period of 12 months has been, a member of a State registered organisation and who claims that there has been an irregularity in relation to an election for an office in the organisation or a branch of the organisation, may make an application for an inquiry by the *[Court]* **Commission** into the matter.

- (2) An application under this section must:
 - (a) be in writing in a form approved by the Registrar; and
 - (b) be lodged with the Registrar before the completion of the election or within such time after the completion of the election as may be prescribed; and
 - (c) specify the election in respect of which the application is made and the irregularity which is claimed to have occurred, and state the facts relied on in support of the application; and
 - (d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant's knowledge and belief, true.

Action by Registrar

385. [346.] (1) On lodgment of an application for an inquiry under this Subdivision, the Registrar must:

- (a) if the Registrar is satisfied:
 - (i) that there are reasonable grounds for an inquiry into the question of whether there has been an irregularity in relation to the election, which may have affected or may affect the result of the election; and
 - (ii) that the circumstances of the matter justify an inquiry by the *[Court]* **Commission**,
grant the application and refer the matter to the *[Court]* **Commission**; or
- (b) if the Registrar is not so satisfied, refuse the application and inform the applicant accordingly.

- (2) The Registrar may exercise his or her powers under subsection (1) on the basis of the matters stated in the application but he or she

may also take into account any relevant information coming to his or her knowledge.

(3) Any act or decision of the Registrar under this section is not subject to appeal to the *[Court] Commission*.

Hindering or obstruction of Registrar

386. [347.] A person must not hinder or obstruct the Registrar, or a person acting on the Registrar's behalf, in the exercise of the Registrar's functions under *[section 346] section 385*.

Maximum penalty: 50 penalty units.

Inquiry by *[Court] Commission*

387. [348.] On receipt of a reference from the Registrar under this Subdivision, the *[Court] Commission* must as soon as practicable proceed to inquire into the alleged irregularity.

Interim orders

388. [349.] (1) At any time after an inquiry in relation to an election has been instituted, the *[Court] Commission* may make one or more of the following orders:

- (a) an order that no further steps are to be taken in the conduct of the election or in carrying into effect the result of the election;
- (b) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, to which the inquiry relates, must not act in that office;
- (c) an order that a person who holds, or last held before the election, an office to which the inquiry relates may act or continue to act in that office;
- (d) where the *[Court] Commission* considers that an order under paragraph (c) would not be practicable, would be prejudicial to the efficient conduct of the affairs of the organisation or a branch of the organisation or would be inappropriate having regard to the nature of the inquiry, an order that a member of the organisation or branch or another person specified in the order may act in an office to which the inquiry relates;
- (e) an order for the recounting of votes;
- (f) an order incidental or supplementary to an order under this subsection;

(g) an order varying or discharging an order under this subsection.

(2) If the *[Court] Commission* orders that a person may act, or continue to act, in an office, the person must, while the order remains in force, and in spite of anything contained in the rules of the organisation or of a branch of an organisation, be taken, for all purposes, to hold the office.

(3) An order under this section is to continue in force, unless expressed to operate for a shorter period or unless sooner discharged, until the completion of proceedings before the *[Court] Commission* in relation to the election and of all matters ordered (otherwise than under this section) by the *[Court] Commission* in those proceedings.

Procedure at hearing

389. [350.] (1) The *[Court] Commission* is to allow to appear or be represented at an inquiry all persons who apply to the *[Court] Commission* for leave to appear or be represented, being persons who appear to the *[Court] Commission* to be justly entitled to be heard, and the *[Court] Commission* may order any other person so to appear or be represented.

(2) The persons appearing or represented, or ordered to appear or be represented, at an inquiry are to be taken to be parties to the proceedings.

(3) For the purposes of this Subdivision:

- (a) the procedure of the *[Court] Commission* is, subject to this Act and rules of the *[Court] Commission*, within the discretion of the *[Court] Commission*; and
- (b) the *[Court] Commission* is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it considers just.

Functions and powers of *[Court] Commission*

390. [351.] (1) At an inquiry, the *[Court] Commission* is to inquire into and determine the question of whether an irregularity has occurred in relation to the election, and such further questions concerning the conduct and results of the election as the *[Court] Commission* thinks necessary.

(2) In the course of conducting an inquiry, the *[Court] Commission* may make such orders (including an order for the recounting of votes) as the *[Court] Commission* considers necessary.

(3) If the *[Court] Commission* finds that an irregularity has occurred, the *[Court] Commission* may make one or more of the following orders:

- (a) an order declaring the election, or any step taken in relation to the election, to be void;
- (b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected;
- (c) an order directing the Registrar to make arrangements:
 - (i) in the case of an uncompleted election - for a step in relation to the election (including the calling for nominations) to be taken again and for the uncompleted steps in the election to be taken; or
 - (ii) in the case of a completed election - for a step in relation to the election (including the calling for nominations) to be taken again or a new election to be held;
- (d) an order directing, in spite of anything contained in the rules of the State registered organisation or branch of the State registered organisation, the taking of such safeguards as the *[Court] Commission* considers necessary against irregularities in relation to:
 - (i) any such new election; or
 - (ii) any such step so ordered to be taken again; or
 - (iii) any uncompleted steps in the election,and, for the purposes of any such order, an order appointing and authorising a person to act as a returning officer either alone or in conjunction with the returning officer acting under the rules of the organisation or branch in relation to the election, and to exercise such powers as the *[Court] Commission* directs;
- (e) an order (including an order modifying the operation of the rules of the State registered organisation or branch to the extent necessary to enable a new election to be held, a step in relation to an election to be taken again or an uncompleted step in an election to be taken) incidental or supplementary to, or consequential on, any other order under this section.

(4) The *[Court] Commission* is not to declare an election, or any step taken in relation to an election, to be void, or declare that a person was not elected, unless the *[Court] Commission* is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have occurred or may occur, the result of the election may have been affected, or may be affected, by irregularities.

(5) Without limiting the power of the *[Court] Commission* to terminate a proceeding before it, the *[Court] Commission* may, at any time after it begins an inquiry into an election, terminate the inquiry absolutely or to the extent that it relates to specified matters.

Enforcement of orders

391. [352.] The *[Court] Commission* may grant such injunctions as it considers necessary for the effective performance of its functions and the enforcement of its orders under this Subdivision.

Validity of certain acts etc. where election declared void

392. [353.] (1) If the *[Court] Commission* declares void the election of a person who has, since the election, purported to act in the office to which the person purported to have been elected, or declares such a person not to have been elected:

- (a) subject to a declaration under paragraph (b), all acts done by or in relation to the person that could validly have been done by or in relation to the person if the person had been duly elected are valid; and
- (b) the *[Court] Commission* may declare an act referred to in paragraph (a) to have been void, and, if the *[Court] Commission* does so, the act is to be taken not to have been valid.

(2) If an election is held, or a step in relation to an election is taken, under an order of the *[Court] Commission*, the election or step is not invalid merely because of a departure from the rules of the State registered organisation or branch concerned that was required by the order of the *[Court] Commission*.

Costs

393. [354.] (1) The *[Court] Commission* may make such order as to the costs and expenses (including expenses of witnesses) of

proceedings before the *[Court] Commission* in relation to an inquiry under this Subdivision as the *[Court] Commission* considers just, and the *[Court] Commission* may assess the amount of such costs.

(2) If on any such inquiry the *[Court] Commission* finds that an irregularity has occurred, the Attorney General may, if the Attorney General considers the circumstances justify so doing, authorise the grant by the State to the person who applied for the inquiry of financial assistance in relation to the whole or a part of the costs and expenses (including expenses of witnesses) that the applicant has paid, has become liable to pay or may become liable to pay in relation to the inquiry.

(3) If, on any such inquiry the *[Court] Commission* does not find that any irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Attorney General may authorise the grant by the State to that person of financial assistance in relation to the whole or a part of the costs and expenses of the applicant as specified in subsection (2).

(4) If the Attorney General is satisfied that, having regard to the findings of the *[Court] Commission* on any such inquiry, it is not just that a person (not being the person who applied for the inquiry) should be required to bear, or to bear in full, any costs and expenses that the person has paid, has become liable to pay or may become liable to pay in relation to the inquiry (including expenses of witnesses), the Attorney General may authorise the grant by the State to that person of financial assistance in relation to the whole or a part of those costs and expenses.

(5) Where the *[Court] Commission* orders:

- (a) a new election to be held; or
- (b) any step in relation to an election to be taken again; or
- (c) any other step (including modification of the rules of the State registered organisation or branch) incidental or supplementary to, or consequential on, any other order made under *[section 351] section 390*,

the Attorney General may, if the Attorney General is satisfied that the nature of the irregularity found by the *[Court] Commission* to have occurred is such that it would be unreasonable for the State registered organisation to be required to bear, or to bear in full, the expenses involved in compliance with the order of the *[Court] Commission*,

authorise payment by the State of the whole or a part of those expenses.

"Irregularity"

394. [355.] In this Subdivision:

"irregularity", in relation to an election for an office, includes a breach of the rules of a State registered organisation or of a branch of a State registered organisation and any act, omission or other thing which prevents or hinders or attempts to prevent or hinder:

- (a) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
- (b) a correct ascertainment or declaration of the results of the voting; or
- (c) otherwise adversely and unfairly affects the result of the election.

Savings as to [Court's] Commission's powers

395. [356.] Nothing in this Subdivision limits or in any way affects the functions conferred or imposed on the [Court] Commission by any other provision of this Act.

Subdivision 6 - Membership of organisations

Entitlement to membership of organisations

396. [357.] (1) Subject to any award or order of the Commission, an employee who is eligible to become a member of a State employee organisation under the rules of the organisation that relate to the occupations in which, or the industry in relation to which, members are to be employed is, unless of general bad character, entitled, subject to payment of any amount properly payable in relation to membership:

- (a) to be admitted as a member of the organisation; and
- (b) to remain a member so long as the employee complies with the rules of the organisation.

(2) Subsection (1) does not entitle an employee to remain a member of an organisation if the employee ceases to be eligible to become a member and the rules of the organisation do not permit the employee to remain a member.

(3) Subject to subsection (4) and to any award or order of the Commission, an employer who is eligible to become a member of a State employer organisation is entitled, subject to payment of any amount properly payable in relation to membership:

- (a) to be admitted as a member of the organisation; and
- (b) to remain a member so long as the employer complies with the rules of the organisation.

(4) Subsection (3) does not entitle an employer:

- (a) to become a member of an organisation if the employer is:
 - (i) a natural person who is of general bad character; or
 - (ii) a body corporate whose constituent documents make provisions inconsistent with the purposes for which the organisation was formed; or
- (b) to remain a member of an organisation if the employer ceases to be eligible to become a member and the rules of the organisation do not permit the employer to remain a member.

(5) Subsections (1) and (3) have effect in spite of anything in the rules of the organisation concerned, except to the extent that those subsections expressly require compliance with those rules.

(6) A person who is qualified to be employed in a particular occupation and seeks to be employed in that occupation:

- (a) must for the purposes of this section be taken to be an employee; and
- (b) in spite of anything in the rules of the organisation, is not to be treated as not being eligible for membership of an organisation merely because the person has never been employed in the occupation.

(7) If a question arises as to:

- (a) the entitlement under this section of a person:
 - (i) to be admitted as a member of an organisation (whether for the first time or after having resigned, or been removed, as a member of the organisation); or
 - (ii) to remain a member of an organisation; or
- (b) the reasonableness of any admission fee, subscription, fine or levy or other requirements of the rules of an organisation to be imposed on a person under this section,

the person or, where the person is an employee, a person who is or wants to become the employer of the person, or the organisation concerned, may apply to the *[Court] Commission* for a declaration as to the entitlement of the person under this section.

(8) On the hearing of an application under subsection (7), the *[Court] Commission* may, in spite of anything in the rules of the organisation concerned, make such order to give effect to its declaration as it considers appropriate.

(9) The orders which the *[Court] Commission* may make under subsection (8) include:

- (a) an order requiring the organisation concerned to treat a person to whom subsection (1) or (3) applies as being a member of the organisation; and
- (b) in the case of a question as to the entitlement under this section of a person to be admitted as a member of an organisation, where the person has previously been removed (whether before or after the commencement of this section) from membership of the organisation - an order that the person be taken to have been a member of the organisation in the period between the removal of the person from membership and the making of the order; and
- (c) an order directing the alteration or annulment of the rules of an organisation in such a manner as will bring them into conformity with what the *[Court] Commission* declares to be reasonable in the circumstances.

(10) On the making of an order as mentioned in subsection (9) (a), or as otherwise specified in the order, the person specified in the order becomes, by force of this section, a member of the organisation concerned.

(11) If:

- (a) an order is made as mentioned in subsection (9) (b); and
- (b) the person specified in the order pays to the organisation concerned any amount that the person would have been liable to pay to the organisation if the person had been a member of the organisation during the period specified in the order,

the person is to be taken to have been a member of the organisation during the period specified in the order.

(12) On the making of an order mentioned in subsection (9) (c), the rules affected are to be taken to have been altered or annulled in accordance with the order.

(13) If an application is made to the *[Court] Commission* under this section:

- (a) if the application is made otherwise than by the person whose entitlement is in question - the person must be given an opportunity to be heard by the *[Court] Commission*; and
- (b) if the application is made otherwise than by the organisation concerned - the organisation must be given an opportunity to be heard by the *[Court] Commission*.

Rationalising union coverage: voting for change

397. [358.] (1) An application may be made to the Commission:

- (a) by one or more industrial unions representing *[at least 50% of the]* persons employed in the enterprise; or
- (b) by at least the prescribed number of persons employed in the enterprise,

for permission to hold a secret ballot to determine whether all employees in the enterprise should be represented by the one industrial union.

(2) The Commission is not to determine any such application unless satisfied that adequate notice of the application has been given to:

- (a) each industrial union representing persons employed in the enterprise; and
- (b) the persons employed in the enterprise; and
- (c) the enterprise employer.

(3) [(2)] In determining whether to grant such permission, the Commission may take submissions *[from the relevant enterprise employer]* from any person given a notice under subsection (2).

(4) [(3)] If the Commission considers that the holding of the ballot is in the best interests of the enterprise and its employees, the Commission must grant permission for the holding of the ballot.

(5) [(4)] If permission for the holding of a ballot is granted by the Commission, either:

- (a) one or more industrial unions representing *[at least 50% of the]* persons employed in an enterprise; or

(b) at least the prescribed number of persons employed in the enterprise,

may arrange for the holding of a secret ballot to decide whether the union coverage for the enterprise should be rationalised by having all of those persons whose conditions of employment are of a kind capable of being fixed by State awards represented by one industrial union.

(6) [(5)] Any such ballot is to be conducted by a person who:

- (a) is independent of the persons employed in the enterprise; and
- (b) meets any requirement that may be imposed for the purposes of this section by the regulations.

(7) [(6)] Despite [subsection (5)] subsection (6), such a ballot may be conducted by any person on behalf of the employees who are entitled to vote in the ballot.

(8) [(7)] Only persons employed in the enterprise whose conditions of employment are of a kind capable of being fixed by State awards are eligible to vote in such a ballot.

(9) [(8)] In this section, "prescribed number" means:

- (a) if there are fewer than 80 persons employed in the enterprise - 4; or
- (b) if there are not fewer than 80, but not more than 5,000, persons so employed - 5 per cent; or
- (c) if there are more than 5,000 persons so employed - 250.

Rationalising union coverage: effect of vote in favour

398. [359.] (1) If at least 65% of the persons employed in the enterprise vote in favour of being represented by a single industrial union, that union is required:

- (a) to notify the Registrar and the other industrial union or unions concerned in writing of the result of the ballot; and
- (b) to supply the Registrar with such information concerning the ballot and related matters as the Registrar may request.

(2) The Registrar must register particulars of any such vote in favour of being represented by a single industrial union notified to the Registrar, unless the Registrar is satisfied that there was an irregularity concerning the ballot.

(3) Such particulars are not to be registered earlier than 14 days after the Registrar is notified of the result of the ballot.

(4) When the Registrar, under this section, registers particulars of a vote, then, unless satisfied that no alteration of the rules of any industrial union concerned is necessary, the Registrar is required, after giving each such industrial union an opportunity to be heard, to specify such alterations (if any) of the rules of any such industrial union as are, in the Registrar's opinion, necessary to give effect to the vote.

(5) An alteration of the rules of an industrial union specified under this section takes effect on the day on which the Registrar registers particulars of the vote or at a later time specified by the Registrar.

(6) The Registrar may do such other things as are necessary to give effect to the vote, including the alteration of the copy of any industrial union's rules held by the Registrar.

(7) The copy of an industrial union's rules altered under this section by the Registrar is, to the extent of the alteration, to be taken to be the copy of the official rules of the union.

Complaints about irregularities before ballot

399. [360.] At any time before particulars of a vote taken at the ballot are registered under [section 359] **section 398** by the Registrar, an industrial union whose membership may be affected by a ballot proposed to be or that has been conducted under [section 358] **section 397** may lodge a written complaint with the Registrar, particularising alleged irregularities in the procedure followed before the ballot is proposed to be or was conducted.

Complaints about irregularities during ballot

400. [361.] (1) If, at any time before particulars of a vote taken at a ballot are registered under [section 359] **section 398**, the Registrar receives a written complaint from at least 20% of the employees eligible to vote in the ballot particularising alleged irregularities in the conduct of the ballot and requesting that a further secret ballot be conducted by an independent person, the Registrar (if of the opinion that such action is justified) is to refrain from registering the particulars and may arrange with the employees concerned:

- (a) for the conduct of a further secret ballot, as requested by the complaint; and

- (b) for evidence of the result of the further ballot to be supplied to the Registrar.

(2) The result of any such further ballot is to be disregarded if the Registrar is not satisfied that it has been conducted in accordance with the Registrar's directions.

Registrar may require further information

401. [362.] For the purpose of:

- (a) investigating a written complaint authorised by this Subdivision or Subdivision 1 in relation to an enterprise association; or
- (b) ensuring the proper conduct of a secret ballot arranged by the Registrar under this Subdivision or Subdivision 1 in relation to an enterprise association,

the Registrar may require any person concerned to produce records relating to membership of a relevant industrial union or to supply other relevant information to the Registrar.

Disregarding result of ballot

402. [363.] If the Registrar is satisfied the complaint has been made out or that the secret ballot will not be or has not been properly conducted, the Registrar may give notice to the parties concerned that the ballot must be postponed or abandoned or that the results of the ballot will be disregarded.

Frequency of ballots

403. [364.] (1) The Registrar is required to disregard the results of a ballot conducted under a provision of this Subdivision at any time with respect to employees of an enterprise if there has been another ballot conducted under the same provision with respect to employees of the enterprise during the period of 2 years immediately before that time.

(2) In this section, "ballot" does not include a ballot arranged by the Registrar.

Failure to amend rules or admit members

404. [365.] A State registered organisation that:

- (a) fails to amend its rules in accordance with an order made by the [Court] Commission; or

(b) fails to admit to membership a person whom the [Court] Commission declares is entitled to such admission, is guilty of an offence.

Maximum penalty: 50 penalty units.

[Court may order that persons are to cease to be members of State registered organisations]

366. (1) *The Court may, on the application of a State registered organisation, order that a person's membership of that organisation or another State registered organisation is to cease from a day, and for a period, specified in the order.*

(2) *If the Court makes an order under subsection (1), the Court may, on the application of a State registered organisation concerned or of its own initiative, order that the rules of a State registered organisation concerned be suitably amended.]*

Request by member for statement of membership

405. [367.] (1) A State registered organisation must, at the request of a person who is a member, give to the person, within 28 days after the request is made, a statement showing:

- (a) that the person is a member of the organisation;
- (b) if there are categories of membership of the organisation - the category of the person's membership; and
- (c) if the person expressly requests - whether the person is a financial member of the organisation.

(2) An organisation that fails to comply with a request under this section is guilty of an offence.

Maximum penalty: 20 penalty units.

Resignation from membership

406. [368.] (1) A member of a State registered organisation may resign from membership by written notice addressed and delivered to a person designated for the purpose in the rules of the organisation or a branch of the organisation.

(2) A notice of resignation from membership of a State registered organisation takes effect:

- (a) if the member ceases to be eligible to become a member of the organisation:
 - (i) on the day on which the notice is received by the organisation; or
 - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member,whichever is later; or
- (b) in any other case:
 - (i) at the end of 6 months, or such shorter period as is specified in the rules of the organisation, after the notice is received by the organisation; or
 - (ii) on the day specified in the notice,whichever is later.

(3) Any subscriptions or other sums in the nature of fines, levies, penalties or calls payable but not paid by a former member of a State registered organisation, in relation to a period, not exceeding *[6 months]* 3 years, before the member's resignation from the organisation took effect, may be sued for and recovered in the name of the organisation, in a court of competent jurisdiction, as a debt due to the organisation.

(4) A notice delivered to the person mentioned in subsection (1) is to be taken to have been received by the State registered organisation when it was delivered.

(5) A notice of resignation that has been received by the State registered organisation is not invalid because it was not addressed and delivered in accordance with subsection (1).

(6) A resignation from membership of a State registered organisation is valid even if it is not effected in accordance with this section if the member is informed in writing by or on behalf of the organisation that the resignation has been accepted.

Liability of ineligible person for arrears

407. *[369.]* (1) If a person has ceased to be eligible to become a member of a State registered organisation and the person has not actively participated in the affairs of the organisation since that time, those circumstances are to be a defence to an action by the organisation for arrears of subscriptions or other sums in the nature of

finest, levies, penalties or calls payable from the time when the person ceased to be so eligible.

(2) If such a defence is successful, that person is to be taken to have ceased to be a member from the time when the person ceased to be so eligible.

(3) In any event, the person is not to be liable for arrears in relation to a period exceeding *[6 months]* **3 years**.

Liability of member for arrears

408. *[370.]* (1) A State registered organisation is not entitled to sue for and recover arrears of subscriptions or other sums in the nature of fines, levies, penalties or calls that are due and payable by a member in respect of a period in excess of *[6 months]* **3 years** prior to the date of the commencement of the proceedings to recover the arrears.

(2) Proceedings to recover arrears must be commenced within *[6 months]* **3 years** of the arrears becoming due.

Membership of minors

409. *[371.]* (1) A person under the age of 18 years but above the age of 16 years may be a member of a State registered organisation unless the rules of the organisation prohibit such membership.

(2) A minor admitted to membership of a State registered organisation in accordance with subsection (1) may, subject to the rules of the organisation, enjoy all rights of membership and execute all documents and give all releases that are required to be executed or given under the rules of the organisation.

(3) A person admitted to membership of a State registered organisation in accordance with subsection (1):

(a) is not to hold office in the organisation; and

(b) is not to vote at any meeting of the organisation, until the person is 18 years of age.

Rectification of register of members

410. *[372.]* The *[Court]* Commission may at any time, in a proceeding under this Act, order such rectifications of the register of members of a State registered organisation as it considers necessary.

Closed shop arrangements

411. [373.] (1) A closed shop arrangement may be entered into only by an industrial union.

(2) Such an arrangement may be entered into *[only]* if the arrangement:

- (a) is consented to by the employer of the employees to be covered by the arrangement; and
- (b) is supported by 65% of all employees to be covered by the arrangement voting by secret ballot as prescribed by the regulations; and
- (c) is restricted to a single employer or to a particular workplace or particular workplaces.

(3) The arrangement takes effect on the date on which the arrangement is notified, as prescribed, to the Registrar and has no effect until it is so notified.

(4) The term of an arrangement entered into under this section must not exceed 4 years.

(5) An arrangement may be renewed for a further term or terms if the requirements of subsections (2) and (3) are met.

(6) It is not an offence or a breach of this Act for an employer to terminate the employment of an employee, other than a conscientious objector, who does not join the industrial union covering the employee's workplace within 3 months of a closed shop arrangement taking effect in accordance with this section.

(7) In this Act, "closed shop arrangement" means an arrangement which restricts employment in the workplace or workplaces covered by it to persons who are members of *[a State employee organisation]* the appropriate industrial union covering the employer's workplace.

[Preference for members]

374. (1) No provision is to be inserted in an award or agreement conferring a right of preference of employment in favour of a member of an industrial union over a person who is not a member of an industrial union, except in relation to a workplace which is covered by a closed shop arrangement.

(2) A right of preference of employment in favour of a member of a particular industrial union over a member of another industrial union may be inserted in an award or agreement.]

Preference to unionists

412. [374.] (1) Despite any other provision of this Act, the Commission may, on application, insert (by way of variation or otherwise) in an award or agreement (whether made before or after the commencement of this section) a provision providing:

- (a) for absolute preference of employment to the members of the industrial union or unions specified in the award or agreement or to persons who have applied to become members of the industrial union or unions specified in the award or agreement. Such preference to members (and applicants for membership) of such industrial union or unions shall be limited to the point where such a member or applicant and a person who is not such a member or applicant are offering for service or employment at the same time or, in the case of retrenchment, to the point where either such a member (or such an applicant) or a person who is not such a member (or such an applicant) is to be dismissed from service or employment; and
- (b) that the provision inserted in any award or agreement pursuant to paragraph (a) is not to apply to or in respect of the employment in any industry or calling of a person who has been issued by the Registrar with a certificate of exemption pursuant to section 413 covering the industry or calling, if the period specified in the certificate or any renewal of it has not expired.

(2) The following matters are examples of matters in relation to which it may be directed under subsection (1) that preference is to be given:

- (a) engagement in employment;
- (b) promotion;
- (c) regrading;
- (d) transfer;
- (e) retention in employment;

- (f) taking of annual leave;
- (g) overtime;
- (h) vocational training.

(3) Nothing in this section limits or in any way affects any law relating to preference in employment to persons who have served as members of the Naval, Military or Air Forces of the Commonwealth.

[Conscientious objection to membership of State employee organisations

375. (1) A person who:

- (a) objects on the grounds of conscientious beliefs to being a member of any State employee organisation; and*
- (b) applies in the manner prescribed to the Registrar for a certificate of exemption from membership of any such organisation,*

must be issued by the Registrar with a certificate of exemption from membership of the organisation.

(2) An application for a certificate must be verified by statutory declaration and the Registrar is entitled to rely on the truth of any matter so verified.

(3) In this section, "conscientious beliefs" includes any conscientious beliefs, whether the grounds for the beliefs are or are not of a religious character and whether the beliefs are or are not part of the doctrine of any religion.]

Conscientious objectors

413. [375.] (1) For the purposes of this section, "conscientious belief" includes any conscientious belief, whether the grounds for it are or are not of a religious character and whether the belief is or is not part of the doctrine of any religion.

(2) Any person who:

- (a) objects on the grounds of conscientious belief to being a member of an industrial union; and**
- (b) applies in the prescribed manner to the Registrar for a certificate of exemption from membership of any such union; and**
- (c) satisfies the Registrar that his objections on the grounds of conscientious belief are genuine; and**

- (d) pays to the Registrar an amount equivalent to the subscription prescribed by the rules of the industrial union for membership of such union,

is to be issued by the Registrar with a certificate of exemption from membership of the industrial union.

(3) Any such certificate remains in force for the period specified in it and may be renewed from time to time by the Registrar on payment of such amount, not exceeding the amount referred to in subsection (2) (d), as the Registrar may require.

(4) Any amount received by the Registrar pursuant to this subsection shall be paid by him to the credit of the Consolidated Fund.

(5) Any person whose application for a certificate of exemption from membership of an industrial union, or for any renewal of it, under this subsection is refused, may, within the prescribed period after the decision of the Registrar refusing the application, appeal in the prescribed manner to the Commission from such decision.

(6) The Commission may on such an appeal make such order as it thinks fit.

(7) Notwithstanding subsections (1) to (6), no person can be compelled to join an industrial union.

Offences in relation to conscientious objectors etc.

414. [376.] (1) An employer must not:

- (a) dismiss an employee who is a conscientious objector or an employee who, outside of a closed shop arrangement, chooses not to belong to a State employee organisation, or injure such an employee in his or her employment, or alter the position of such an employee to the employee's prejudice, because the employee is not a member of a State employee organisation; or
- (b) threaten to dismiss an employee who is a conscientious objector or an employee who, outside of a closed shop arrangement, chooses not to belong to a State employee organisation, or threaten to injure such an employee in his or her employment, or threaten to alter the position of such an employee to the employee's prejudice, with intent to coerce the employee to join a State employee organisation; or
- (c) refuse to employ a person who is a conscientious objector or an employee who, outside of a closed shop arrangement, chooses

not to belong to a State employee organisation, because the person is not a member of a State employee organisation.

(2) A State employee organisation must not:

- (a) advise, encourage or incite an employer to take action in relation to a person that would, if taken, contravene subsection (1); or
- (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take action in relation to a person that would, if taken, contravene subsection (1); or
- (c) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person who is a conscientious objector in his or her employment or an employee who, outside of a closed shop arrangement, chooses not to belong to a State registered organisation, with intent to coerce the person to join a State employee organisation.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence.

Maximum penalty: 100 penalty units.

(4) In a prosecution for an offence under subsection (3), it is not necessary for the prosecutor to prove the defendant's reason for the action charged nor the intent with which the defendant took the action charged, but it is a defence to the prosecution if the defendant proves that the action was not motivated (whether in whole or part) by the reason, nor taken with the intent (whether alone or with another intent), specified in the charge.

(5) For the purposes of this section, action done by:

- (a) the committee of management of a State employee organisation or branch of a State employee organisation; or
- (b) an officer, employee or agent of a State employee organisation or branch of a State employee organisation acting in that capacity[; or],
- [(c) *a member or group of members of a State employee organisation or branch of a State employee organisation acting under the rules of the organisation or branch; or*
- (d) *a member of a State employee organisation, who performs the function of dealing with an employer on behalf of the member and other members of the State employee organisation, acting in that capacity,*

is to be taken to have been done by the State employee organisation.

(6) Where an employer or a State registered organisation is convicted of an offence under subsection (1) or (2), and a person affected by the offence has suffered any loss as a consequence, the Commission may order the employer or State registered organisation to pay to the person in such sum as appears to the Commission to be appropriate.

(7) [(6)] Where an employer is convicted of an offence under subsection (3) constituted by dismissing an employee, the [Court] Commission may order the employer:

- (a) to reinstate the person to the position that the person occupied immediately before the dismissal or a position no less favourable than the position; and
- (b) to pay the person the whole or part of the wages lost by the person because of the dismissal; and
- (c) if the person has suffered any other loss as a consequence, to pay to the person in such sum as appears to the Commission to be appropriate.

(8) [(7)] In this Subdivision:

"conscientious objector" means:

- (a) a person in relation to whom there is in force a certificate under [section 375 (1)] section 413 (1); or
- (b) a person who has applied for a certificate under [section 375 (1)] section 413 (1) and whose application has not been determined.

Victimisation

415. [377.] (1) A person may apply to the [Court] Commission for an order under this section in relation to a State registered organisation.

(2) An organisation in relation to which an application is made under this section must be given an opportunity of being heard by the [Court] Commission.

(3) If the [Court] Commission, in considering an application under this section, finds that a person has been victimised by the organisation, or by officers or employees of the organisation, because:

- (a) the person is a conscientious objector; or
 - (b) **the person, outside of a closed shop arrangement, has chosen not to belong to a State employee organisation; or**
 - (c) [(b)] the person has refused to engage in industrial action; or
 - (d) [(c)] the provisions of this Subdivision concerning closed shops and preference of employment have not been followed,
- and that the person has suffered loss as a consequence, the [Court] **Commission** may, in addition to any order that may be or has been made under [section 376 (6)] **section 414 (7)**, order the organisation to pay damages to the person in such sum as appears to the [Court] **Commission** to be appropriate.

Subdivision 7 - Duties of officers

Duty to act honestly

416. [378.] An officer of a State registered organisation must at all times act honestly in the exercise of the powers and the discharge of the duties of his or her office.

Maximum penalty: [50 penalty units, or if] **Where an officer has acted in breach of this section and the offence was committed with intent to deceive or defraud the organisation or the members of the organisation or for any other fraudulent purpose, 200 penalty units [or imprisonment for 5 years, or both].**

Duty to act with reasonable care and diligence

417. [379.] An officer of a State registered organisation must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the duties of his or her office.

Maximum penalty: 50 penalty units.

Improper use of information

418. [380.] An officer or former officer of a State registered organisation must not make improper use of information acquired by virtue of the officer's position as such an officer to gain, directly or indirectly, an advantage for the officer or for any other person or to cause detriment to the organisation.

Maximum penalty: 200 penalty units [or imprisonment for 5 years, or both].

Use of position for profit

419. [381.] An officer of a State registered organisation must not make improper use of the officer's position as such an officer to gain, directly or indirectly, an advantage for the officer or for any other person or to cause detriment, loss or damage to the organisation.

Maximum penalty: 200 penalty units *[or imprisonment for 5 years, or both]*.

Compensation to organisation

420. [382.] (1) A court which has convicted a person of an offence under this Subdivision, may, if the court is satisfied that the State registered organisation has suffered loss or damage as a result of the act or omission that constituted the offence, in addition to imposing a penalty, order the convicted person to pay compensation to the organisation for the amount that the court specifies. Any such order may be enforced as if it were a judgment of the court.

(2) In determining the amount of compensation to award under this Subdivision, the court must have regard to any amount which has been paid to the organisation or which the organisation is entitled to be paid by way of damages awarded in civil proceedings.

Recovery of compensation

421. [383.] Where an officer of a State registered organisation contravenes a provision of this Subdivision in relation to an organisation, the organisation and, whether or not the organisation has instituted proceedings, any member of the organisation may, whether or not the person has been convicted of an offence under this Subdivision in relation to that contravention, recover from the officer as a debt due to the organisation by action in a court:

- (a) if that officer, or any other person made a profit as a result of the contravention or failure - an amount equal to that profit; and
- (b) if the organisation has suffered loss or damage as a result of the contravention or failure - an amount equal to that loss or damage.

Officer to disclose interest

422. [384.] (1) An officer of a State registered organisation who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the organisation must, subject to this section and as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of his or her interest at a meeting of the governing body of the organisation.

Maximum penalty: 50 penalty units.

(2) The requirements of subsection (1) do not apply in any case where the interest of an officer of an organisation consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the organisation if the interest of the officer may properly be regarded as not being a material interest.

(3) An officer of an organisation is not to be taken to be interested or to have been at any time interested in any contract or proposed contract only because, the contract or proposed contract relates to any loan to the organisation, if he or she has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan. This subsection has effect not only for the purposes of this Act but also for the purposes of any rule of law, but does not affect the operation of any provision in the rules of the organisation.

(4) For the purposes of subsection (1), a general notice given to the members of the governing body of an organisation by an officer of that organisation, to the effect that he or she is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that corporation or firm, is to be taken to be a sufficient declaration of interest in relation to any contract made or proposed to be made if:

- (a) the notice states the nature and extent of the interest of the officer in the corporation or firm; and
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his or her interest in the corporation or firm is not greater than is stated in the notice; and
- (c) the notice is given at a meeting of the governing body or the officer takes reasonable steps to ensure that it is read at the next meeting of the governing body after it is given.

(5) An officer of an organisation who holds an office or possesses any property as a consequence of which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as an officer of the organisation must, in accordance with subsection (6), declare at a meeting of the governing body of the organisation the fact and the nature, character and extent of the conflict.

Maximum penalty: 20 penalty units or, if the offence was committed with intent to deceive or defraud the organisation or the members of the organisation or for any other fraudulent purpose, 20 penalty units or imprisonment for 3 months, or both.

(6) A declaration required by subsection (5) in relation to the holding of an office or the possession of any property must be made by a person:

- (a) if the person holds the office or possesses the property as mentioned in subsection (5) when he or she becomes an officer of the organisation - at the first meeting of the governing body held after:
 - (i) he or she becomes an officer of the organisation; or
 - (ii) the relevant facts as to the holding of the office or the possession of the property come to his or her knowledge, whichever is later; or
- (b) if the person commences to hold the office or comes into possession of the property as mentioned in subsection (5) after he or she becomes an officer of the organisation - at the first meeting of the governing body held after the relevant facts as to the holding of the office or the possession of the property come to his or her knowledge.

(7) An officer of an organisation must record every declaration under this section in the minutes of the meeting at which it was made.

(8) Except as provided by subsection (3), this section is in addition to, and not in derogation of, the operation of any rule of law or any provision in the rules of the organisation restricting an officer of the organisation from having any interest in contracts with the organisation or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as an officer of the organisation.

Operation of Subdivision

423. [385.] (1) This Subdivision has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of an officer of a State registered organisation and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

(2) In this Subdivision, a reference to a State registered organisation includes a reference to a branch of a State registered organisation.

(3) In this Subdivision, "officer", in relation to a State registered organisation, means:

- (a) any person who holds an office; and
- (b) any person, by whatever name called and whether or not he or she holds an office in the organisation, who is concerned, or takes part, in the management of the organisation.

Subdivision 8 - Disqualification from office

Interpretation

424. [386.] (1) In this Subdivision:

"prescribed offence" means:

- (a) an offence under a law of the Commonwealth, a State or Territory, or another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more; or
- (b) an offence against [section 335, 340, 341, 347 or 429] section 374, 379, 380, 386 or 467; or
- (c) any other offence in relation to the formation, registration or management of an association or State registered organisation; or
- (d) any other offence under a law of the Commonwealth, a State or Territory, or another country, involving the intentional use of violence towards another person, the intentional causing of death or injury to another person or the intentional damaging or destruction of property.

(2) A reference in this Subdivision to a person having been convicted of a prescribed offence includes a reference to a person having been so convicted before the commencement of this section.

(3) A reference in this Subdivision to a person being convicted of a prescribed offence does not include a reference to a person being convicted, otherwise than on indictment, of an offence referred to in subsection (1) (c).

(4) A reference in this Subdivision to a person being convicted of a prescribed offence does not include a reference to a person being convicted of an offence referred to in subsection (1) (d) unless the person has served, or is serving, a term of imprisonment in relation to the offence.

(5) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was convicted by the court of a specified offence on a specified day is, for the purpose of an application made under this Subdivision, evidence that the person was convicted of the offence on that day.

(6) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was acquitted by the court of a specified offence, or that a specified charge against the person was dismissed by the court, is, for the purpose of an application made under this Subdivision, evidence of the facts stated in the certificate.

(7) A certificate purporting to be signed by the officer in charge of a prison stating that a person was released from the prison on a specified day is, for the purpose of an application made under this Subdivision, evidence that the person was released from the prison on that day.

Certain persons disqualified from holding office in organisations

425. [387.] (1) A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an office in a State registered organisation unless:

- (a) on an application made under [section 388 or 389] **section 426 or 427** in relation to the conviction of the person for the prescribed offence:
 - (i) the person was granted leave to hold office in State registered organisations; or
 - (ii) the person was refused leave to hold office in State registered organisations but, under [section 388 (2) (b)]

or 389 (2) (b)] **section 426 (2) (b) or 427 (2) (b)**, the [Court] **Commission** specified a period for the purposes of this subsection, and the period has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison; or

- (b) in any other case - a period of 5 years has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison.

(2) If a person who holds an office in a State registered organisation is convicted of a prescribed offence, the person ceases to hold the office at the end of the period of 28 days after the conviction unless, within the period, the person makes an application to the [Court] **Commission** under [section 388 or 389] **section 426 or 427**.

(3) If a person who holds an office in a State registered organisation makes an application to the [Court] **Commission** under [section 388 or 389] **section 426 or 427** and the application is not determined:

- (a) except in a case to which paragraph (b) applies - within the period of 3 months after the date of the application; or
- (b) if the [Court] **Commission**, on application by the person, has extended that period - within that period as extended,

the person ceases to hold the office at the end of the period of 3 months or the period as extended, as the case may be.

(4) The [Court] **Commission** must not, under subsection (3) (b), extend a period for the purposes of subsection (3) unless:

- (a) the application for the extension is made before the end of the period of 3 months referred to in subsection (3) (a); or
- (b) if the [Court] **Commission** has previously extended the period under subsection (3) (b) - the application for the further extension is made before the end of that period as extended.

(5) A State registered organisation, a member of a State registered organisation or the Registrar may apply to the [Court] **Commission** for a declaration whether, because of the operation of this section or [section 388 or 389] **section 426 or 427**:

- (a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the organisation; or
- (b) a person has ceased to hold an office in the organisation.

(6) The granting to a person, on an application made under [section 388 or 389] section 426 or 427 in relation to a conviction of the person for a prescribed offence, of leave to hold offices in State registered organisations does not affect the operation of this section or [section 388 or 389] section 426 or 427 in relation to another conviction of the person for a prescribed offence.

Application for leave to hold office in State registered organisations by prospective candidate for office

426. [388.] (1) A person who:

- (a) wants to be a candidate for election to an office in a State registered organisation; and
- (b) has been, within the immediately preceding period of 5 years, convicted of a prescribed offence or released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence,

may, subject to subsection (4), apply to the Court for leave to hold office in State registered organisations.

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

- (a) grant the person leave to hold office in State registered organisations; or
- (b) refuse the person leave to hold office in State registered organisations and specify, for the purposes of [section 387 (1)] section 425 (1), a period of less than 5 years; or
- (c) refuse a person leave to hold office in State registered organisations.

(3) A person who:

- (a) holds an office in a State registered organisation; and
- (b) is convicted of a prescribed offence; and
- (c) on an application made under subsection (1) in relation to the conviction for the prescribed offence, is, under subsection (2)

(b) or (c), refused leave to hold office in State registered organisations,

ceases to hold the office in the organisation.

(4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or under [section 389] section 427 in relation to the conviction.

Application for leave to hold office in State registered organisations by office holder

427. [389.] (1) If a person who holds an office in a State registered organisation is convicted of a prescribed offence, the person may, within 28 days after the conviction, apply to the [Court] Commission for leave to hold office in State registered organisations.

(2) If a person makes an application under subsection (1) for leave to hold office in State registered organisations, the [Court] Commission may:

- (a) grant the person leave to hold office in State registered organisations; or
- (b) refuse the person leave to hold office in State registered organisations and specify, for the purposes of [section 387 (1)] section 425 (1), a period of less than 5 years; or
- (c) refuse the person leave to hold office in State registered organisations.

(3) A person who, on an application made under subsection (1), is, under subsection (2), refused leave to hold office in State registered organisations ceases to hold the office concerned.

(4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or [section 388] section 426 in relation to the conviction.

[Court] Commission to have regard to certain matters

428. [390.] For the purposes of exercising the power under [section 388 or 389] section 426 or 427 to grant or refuse leave to a person who has been convicted of a prescribed offence to hold office in State registered organisations, the [Court] Commission must have regard to:

- (a) the nature of the prescribed offence; and
- (b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence; and
- (c) the general character of the person; and
- (d) the fitness of the person to be involved in the management of State registered organisations, having regard to the conviction for the prescribed offence; and
- (e) any other matter that, in the *[Court's]* Commission's opinion, is relevant.

Action by *[Court]* Commission

429. [391.] (1) The *[Court]* Commission may, in spite of anything in the rules of any State registered organisation concerned, make such order to give effect to a declaration referred to in *[section 387 (5)]* **section 425 (5)** as it considers appropriate.

(2) If an application is made to the *[Court]* Commission under *[section 387 (5)]* **section 425 (5)**:

- (a) the person whose eligibility, or whose holding of office, is in question must be given an opportunity to be heard by the *[Court]* Commission; and
- (b) if the application is made otherwise than by the State registered organisation concerned - the organisation must be given an opportunity to be heard by the *[Court]* Commission.

(3) If an application is made to the *[Court]* Commission under *[section 388 or 389]* **section 426 or 427**, the State registered organisation concerned must be given an opportunity to be heard by the *[Court]* Commission.

Subdivision 9 - Oppression

Application to *[Court]* Commission

430. [392.] An application to the *[Court]* Commission for an order under this Subdivision in relation to a State registered organisation may be made by the Registrar or by a member of the organisation who believes that:

- (a) the affairs of the organisation are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the

organisation as a whole or in a manner that is contrary to the interests of the organisation as a whole; or

- (b) an act or omission, or a proposed act or omission, by or on behalf of the organisation, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the organisation or was or would be contrary to the interests of the members of the organisation as a whole; or
- (c) a rule of the organisation has been breached.

Action by [Court] Commission

431. [393.] (1) If the [Court] Commission is of the opinion that:

- (a) the affairs of a State registered organisation are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the organisation as a whole, or in a manner that is contrary to the interests of the members of the organisation as a whole; or
- (b) an act or omission, or a proposed act or omission, by or on behalf of the organisation, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the organisation or was or would be contrary to the interests of the members of the organisation as a whole; or
- (c) a rule of the organisation has been breached,

the [Court] Commission may make such orders as the [Court] Commission considers appropriate.

(2) The orders that the [Court] Commission may make under subsection (1) include, without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order that the registration of the organisation be suspended or cancelled under Division 4;
- (b) an order regulating the conduct of the affairs of the organisation in the future;
- (c) an order disqualifying any member or members from membership of the organisation;
- (d) an order dismissing any officer of the organisation;
- (e) an order directing the organisation to institute, prosecute, defend or discontinue specified proceedings, or authorising a

- member or members of the organisation to institute, prosecute, defend or discontinue specified proceedings;
- (f) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;
 - (g) an order requiring a person to do a specified act or thing;
 - (h) an order cancelling, amending or adding to rules of the organisation;
 - (i) an order directing any person who is under an obligation to observe a rule of the organisation to observe the rule.

Failure to comply with [Court] Commission order

432. [394.] A State registered organisation or person who contravenes an order of the [Court] Commission under this Subdivision is guilty of an offence.

Maximum penalty: [200 penalty units] 50 penalty units.

Alterations of rules to be recorded

433. [395.] Any alteration of the rules of a State registered organisation that results from an order of the [Court] Commission under this Subdivision must be recorded in accordance with Subdivision 2.

**Subdivision 10 - Records to be kept and
lodged by State registered organisations**

Records to be kept and lodged by State registered organisations

434. [396.] (1) A State registered organisation must keep, under this section, the following records:

- (a) a register of its members, showing the name, residential address and financial status of each member and such other particulars as may be prescribed by the regulations;
- (b) a list of the offices in the organisation and each branch of the organisation;
- (c) a list of the names, residential addresses and occupations of the persons holding the offices;

- (d) such other records as are prescribed by the regulations.
- (2) A State registered organisation must:
 - (a) enter in the register the name and residential or postal address of each person who becomes a member, within 28 days after the person becomes a member; and
 - (b) remove from the register the name and residential or postal address of each person who ceases to be a member, within 28 days after the person ceases to be a member; and
 - (c) enter in the register any change in the particulars shown on the register, within 28 days after the matters necessitating the change become known to the organisation.
- (3) A State registered organisation must lodge with the Registrar once in each year, at such time as is prescribed by the regulations:
 - (a) a statutory declaration by the secretary or other prescribed officer of the organisation certifying that the register of members has, during the immediately preceding calendar year, been kept and maintained as required by subsections (1) and (2); and
 - (b) a copy of the records required to be kept under subsection (1) (b), (c) and (d), certified by statutory declaration by the secretary or other prescribed officer of the organisation to be a correct statement of the information contained in those records.
- (4) A State registered organisation must, within the prescribed period, lodge with the Registrar notification of any change made to the records required to be kept under subsection (1) (b), (c) and (d), certified by statutory declaration by the secretary or other prescribed officer of the organisation to be a correct statement of the changes made.
- (5) The records kept by a State registered organisation under subsection (1) must be kept at the registered office of the State registered organisation.
- (6) A member of a State registered organisation or person authorised by the Registrar may inspect and make copies of, or take extracts from, the register of members of an organisation, or a part of the register, but only if the member or person so authorised satisfies the Registrar that he or she is seeking information about those

members for the purpose of standing as a candidate for election to an office in the organisation to which they belong.

(7) A State registered organisation must cause its register of members, or each part of the register, to be available, during office hours, for the purposes of subsection (6), at the registered office of the organisation, to a member of the organisation or a person authorised by the Registrar under that subsection.

(8) If:

- (a) a member of a State registered organisation requests the Registrar to give a direction under this subsection; and
- (b) the Registrar is satisfied:
 - (i) that the member has been refused access to the register of members, or a part of the register of members, of the organisation at the registered office of the organisation; or
 - (ii) that there are other grounds for giving a direction under this subsection,

the Registrar may direct the organisation to deliver to the Registrar, before a specified day, a copy of the register certified by statutory declaration by the secretary or other prescribed officer of the organisation to be, as at a day specified in the certificate that is not more than 28 days before the first-mentioned day, a correct statement of the information contained in the register, for the member to inspect at a specified registry.

(9) If default is made in complying with a provision of this section, the organisation and any officer of the organisation who failed to take all reasonable steps to secure compliance by the organisation with the provision are each guilty of an offence.

Maximum penalty: 50 penalty units.

Concealment, falsification etc. of books

435. [397.] (1) An officer, former officer, member or former member of a State registered organisation who conceals, destroys, mutilates or falsifies any securities of or belonging to the organisation or any books affecting or relating to affairs of the organisation is guilty of an offence.

Maximum penalty: 100 penalty units [or imprisonment for 2 years, or both].

(2) It is a defence to a charge arising under subsection (1) if the defendant proves that he or she acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Misuse of mechanical, electronic or other devices

436. [398.] If matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a State registered organisation is recorded or stored by means of a mechanical device, an electronic device or any other device, a person who:

- (a) records or stores by means of that device matter that he or she knows to be false or misleading in a material particular; or
- (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored, by means of that device; or
- (c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:
 - (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
 - (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular, other matter so recorded or stored,

is guilty of an offence.

Maximum penalty: 100 penalty units *[or imprisonment for 2 years, or both]*.

Directions by Registrar concerning maintenance of register of members

437. [399.] (1) The Registrar may give directions to a State registered organisation in relation to the maintenance of the register of its members if the Registrar is not satisfied that the organisation is maintaining the register in accordance with this Subdivision.

(2) Without affecting the generality of subsection (1), the Registrar may direct a State registered organisation to make:

- (a) such rectifications of the register; or
- (b) such changes in the form of or manner in which the register is being maintained,

as the Registrar considers necessary to ensure that the register provides, for the purpose of the conduct of a ballot or election under this Act, in a convenient form, accurate and current particulars of the membership of the organisation.

(3) A State registered organisation that fails to comply with a direction given by the Registrar under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

Registered organisations to notify particulars of loans, grants and donations

438. [400.] (1) A State registered organisation must, as soon as practicable after the end of each financial year, lodge with the Registrar a statement showing the relevant particulars in relation to each loan, grant or donation *[(other than a political donation) of a relevant amount, and of all political donations,]* **of a relevant amount** made by the State registered organisation during the financial year.

(2) A statement lodged with the Registrar under subsection (1) must be signed by an officer of the State registered organisation.

(3) A statement lodged with the Registrar under subsection (1) may be inspected at any registry, during office hours, by a member of the State registered organisation concerned.

(4) The relevant particulars, in relation to a loan made by a State registered organisation, are:

- (a) the amount of the loan; and
- (b) the purpose for which the loan was required; and
- (c) the security given in relation to the loan; and
- (d) the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.

(5) The relevant particulars, in relation to a grant or donation made by a State registered organisation, are:

- (a) the amount of the grant or donation; and
- (b) the purpose for which the grant or donation was made; and
- (c) the name and address of the person to whom the grant or donation was made.

(6) The relevant amount, in relation to a loan, grant or donation[, other than a political donation,] is an amount exceeding \$2,500.

(7) If default is made in complying with a provision of this section, the organisation and any officer of the organisation who failed to take all reasonable steps to ensure the compliance by the organisation with the provision are each guilty of an offence.

Maximum penalty: 50 penalty units.

Registered organisation to keep register of loans, grants and donations

439. [401. (1) *A State registered organisation must, in accordance with this Subdivision:*

- (a) *keep and maintain at its registered office:*
 - (i) *a register of loans, grants and donations, other than political donations; and*
 - (ii) *a register of political donations, made by the organisation; and*
- (b) *ensure that contributions by members to the fund maintained for the purpose of making political donations are voluntary; and*
- (c) *ensure:*
 - (i) *that the making of each political donation is in accordance with the rules of the organisation; and*
 - (ii) *that the committee of management of the organisation or branch of the organisation has approved the making of the donation.*

Maximum penalty: 50 penalty units.]

(1) A State registered organisation must, in accordance with this Subdivision:

- (a) keep and maintain at its registered office a register of loans, grants and donations made by the organisation; and**
- (b) ensure that the committee of management of the organisation or branch of the organisation has approved the making of the loan, grant or donation.**

Maximum penalty: 50 penalty units.

(2) The relevant particulars in relation to each loan, grant or donation are to be entered in the register within 14 days of the making of the loan, grant or donation.

(3) The register maintained by a State registered organisation under this section may be inspected at the registered office of the State registered organisation, during office hours, by a member of the State registered organisation concerned.

(4) The provisions of [section 400 (4)-(6)] section 438 (4)-(6) apply to this section.

Subdivision 11 - Accounts and audit

Interpretation

440. [402.] (1) Where the rules of a State registered organisation change the period constituting the financial year of the organisation, the period between the commencement of the first financial year after the change and the end of the preceding financial year is, for the purposes of this Subdivision, to be taken to be a financial year.

(2) This Subdivision does not apply, in relation to an association that becomes registered as an organisation under this Act, in relation to any financial year before the first financial year of the organisation that begins after the date of registration.

Organisation to keep proper accounting records

441. [403.] (1) A State registered organisation must keep:

- (a) accounting records which correctly record and explain the transactions and financial position of the organisation, including such records as are required by the regulations; and
- (b) its accounting records in a manner which will enable accounts and statements to be prepared from them under [section 405] section 443; and
- (c) its accounting records in a manner which will enable the accounts of the organisation to be conveniently and properly audited under this Subdivision.

(2) Accounting records of a State registered organisation, so far as they relate to the income and expenditure of the organisation, must be kept on an accrual basis or cash basis.

[(3) A State registered organisation may apply to the Registrar for total or partial exemption from compliance with subsection (2) and, on being satisfied by the organisation that the use of a cash basis of accounting is appropriate, either fully or partially, the Registrar may issue to the organisation a certificate to that effect and, until the certificate is revoked under subsection (5), subsection (2) applies to the organisation only to the extent, if any, that an accrual basis of accounting is to be adopted by the organisation.]

(4) The Registrar, in considering an application under subsection (3), may have regard to the size, structure and resources of the organisation and to such other matters as the Registrar considers to be relevant.

(5) The Registrar may at anytime, by written notice, revoke a certificate issued to an organisation under subsection (3) if the Registrar is no longer satisfied, in relation to the organisation, of the matters referred to in that subsection.]

(3) [(6)] A State registered organisation must retain the accounting records kept under subsection (1) for a period of 7 years after the completion of the transactions to which they relate.

(4) [(7)] An organisation must not fail to comply with this section.
Maximum penalty: 100 penalty units.

Financial year

442. [404.] The financial year of a State registered organisation is:

- (a) except as provided by paragraph (b), the period of 12 months specified in the rules of the organisation as its financial year or, if no period is so specified, the period of 12 months commencing on 1 July in any year and ending on 30 June in the following year; or
- (b) any other period the Registrar may direct in respect of the organisation.

Organisation to prepare accounts etc.

443. [405.] (1) As soon as practicable after the end of each financial year, a State registered organisation:

- (a) must cause to be prepared, from the accounting records kept by the organisation under *[section 403 (1)]* **section 441 (1)** in relation to the financial year, those accounts and other statements, in relation to the financial year, which are prescribed; and

- (b) must include in the accounts (other than accounts prepared in relation to the first financial year of the organisation to which this Subdivision applies) the relevant figures from the accounts prepared by the organisation, under this subsection, in relation to the preceding financial year.

(2) The regulations may provide for the giving of certificates in, or in relation to, accounts or other statements prepared under this section.

False entries etc. in accounts etc.

444. [406.] A person who wilfully makes or causes to be made any false entry in or any omission from accounting records kept under [section 403] section 441 or accounts and other statements prepared under [section 405] section 443 is guilty of an offence.

Maximum penalty: [100 penalty units or imprisonment for 2 years, or both] 50 penalty units.

Information to be provided to members or Registrar

445. [407.] (1) A member of a State registered organisation, or the Registrar, may apply to the organisation for specified prescribed information in relation to the organisation.

(2) An organisation must, on application made under subsection (1) by a member of the organisation or the Registrar, make the specified information available to the member or the Registrar in the manner, and within the time, prescribed.

(3) Accounts prepared under [section 405] section 443 must include a notice drawing attention to subsections (1) and (2) and setting out those subsections.

(4) An organisation must not fail to comply with this section.

Maximum penalty: 50 penalty units.

Auditors of State registered organisations

446. [408.] (1) A State registered organisation must ensure that there is an auditor of the organisation at any time when an auditor is required for the purposes of the operation of this Subdivision in relation to the organisation.

- (2) The position of auditor of an organisation must be held by:
 - (a) a person who is a registered company auditor; or
 - (b) a firm at least one of whose members is a registered company auditor.
- (3) A person must not accept appointment as auditor of a State registered organisation unless the person is a registered company auditor.
- (4) A member of a firm must not accept appointment of the firm as auditor of a State registered organisation unless at least one member of the firm is a registered company auditor.
- (5) A person who holds the position of auditor of a State registered organisation must resign the appointment if the person ceases to be a registered company auditor.
- (6) A member of a firm that holds the position of auditor of a State registered organisation must take whatever steps are open to the member to ensure that the firm resigns the appointment if the member ceases to be a registered company auditor and is or becomes aware that no other member of the firm is a registered company auditor.
- (7) The auditor of a State registered organisation must use his or her best endeavours to comply with each requirement of this Act that is applicable to the auditor in that capacity.
- (8) Subsection (7) does not apply in relation to a requirement if a penalty is provided for a contravention of the provision setting out the requirement.
- (9) An organisation must not fail to comply with this section.
Maximum penalty: 100 penalty units.

Powers and duties of auditors

447. [409.] (1) An auditor of a State registered organisation must inspect and audit the accounting records kept by the organisation in relation to each financial year and must, within the prescribed period after the end of the year, make a report in relation to the year to the organisation.

(2) An auditor, or a person authorised by an auditor for the purposes of this subsection, is:

- (a) entitled at all reasonable times to full and free access to all records and other documents of the organisation relating

directly or indirectly to the receipt or payment of money, or to the acquisition, receipt, custody or disposal of assets, by the organisation; and

- (b) entitled to seek from any officer or employee of the organisation the information and explanations that the auditor or authorised person wants for the purposes of the audit.

(3) The auditor must serve on the organisation a notification that sets out the name and address of a person authorised by the auditor for the purposes of subsection (2).

(4) An auditor must, in a report under this section in relation to a financial year, state:

- (a) whether in the auditor's opinion:
 - (i) there were kept by the organisation in relation to the year satisfactory accounting records, including:
 - (A) records of the sources and nature of the income of the organisation (including income from members); and
 - (B) records of the nature and purposes of the expenditure of the organisation; and
 - (ii) the accounts and statements prepared under [section 405] section 443 in relation to the year were properly drawn up so as to give a true and fair view of:
 - (A) the financial affairs of the organisation as at the end of the year; and
 - (B) the income and expenditure, and any surplus or deficit, of the organisation for the year; and
- (b) whether all the information and explanations that, under subsection (2), officers or employees of the organisation were required to provide were provided,

and, in addition, the auditor must state in the report particulars of any deficiency, failure or shortcoming in relation to a matter referred to in paragraph (a) or (b).

(5) If

- (a) an auditor, in the course of performing duties as auditor of an organisation, becomes aware that there has been a breach of this Act; and
- (b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report,

the auditor must immediately report the matter, in writing, to the Registrar.

- (6) An officer, employee or member of an organisation must not:
- (a) hinder or obstruct the auditor of the organisation from taking action under subsection (2) (a); or
 - (b) refuse or fail, without reasonable excuse, to produce to the auditor of the organisation a record or other document in the custody or under the control of the officer, employee or member that is sought from the officer, employee or member by the auditor under subsection (2) (a).

Maximum penalty: 100 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant proves that he or she did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

(8) In subsection (6), "auditor" includes a person authorised by the auditor for the purposes of subsection (2).

(9) An auditor must not fail to comply with subsection (5).

Maximum penalty: 50 penalty units.

Fees and expenses of auditors

448. [410.] A State registered organisation must pay the reasonable fees and expenses of an auditor of the organisation.

Removal of auditor from office

449. [411.] An auditor of a State registered organisation may only be removed during the term of appointment of the auditor:

- (a) if the auditor was appointed by the committee of management of the organisation - by resolution passed at a meeting of the committee by an absolute majority of the members of the committee; or
- (b) if the auditor was appointed by a general meeting of the members of the organisation - by resolution passed at a general meeting by a majority of the members of the organisation voting at the meeting.

Copies of report and audited accounts to be provided to members and presented to meetings

450. [412.] (1) A State registered organisation must provide free of charge to its members:

- (a) a copy of the report of the auditor in relation to the inspection and audit of the accounting records kept by the organisation in relation to a financial year; and
- (b) a copy of the accounts and statements prepared under [section 405] section 443 to which the report relates.

(2) If, under the rules of the organisation, the committee of management of the organisation resolves to provide to the members of the organisation a summary of the report, accounts and statements, the organisation may comply with subsection (1) by providing free of charge to its members a copy of the summary if:

- (a) the organisation lodges a copy of the summary with the Registrar; and
- (b) the auditor certifies that the summary is, in the auditor's opinion, a fair and accurate summary of the report, accounts and statements; and
- (c) the summary contains a statement to the effect that the organisation will provide a copy of the report, accounts and statements free of charge to any member who requests it; and
- (d) where particulars of a deficiency, failure or shortcoming in relation to a matter referred to in [section 409 (4)] section 447 (4) are set out in the report - the summary contains the particulars.

(3) The copies referred to in subsection (1), or the summary referred to in subsection (2), must be provided within the prescribed period after the making by the organisation of the report concerned.

(4) A State registered organisation that publishes a journal of the organisation that is available to the members of the organisation free of charge, may comply with subsection (1):

- (a) by publishing in the journal the report, accounts and statements referred to in that subsection; or
- (b) by preparing a summary as described in subsection (2), complying with subsection (2) in relation to the summary and publishing the summary in the journal,

and by posting a copy of the journal to each member of the organisation.

(5) Subject to subsection (6), a State registered organisation must cause the report, accounts and statements referred to in subsection (1) to be presented:

- (a) within the prescribed period - to a general meeting of the members of the organisation or a meeting of the committee of management of the organisation; or
- (b) if such a meeting is not due to be held within the prescribed period - to the first meeting of the committee of management held after the prescribed period.

(6) If:

- (a) the report sets out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in [section 409 (4)] section 447 (4); and
- (b) neither a general meeting of the members of the organisation nor a meeting of the committee of management of the organisation is due to be held within the prescribed period,

the organisation must, within the prescribed period, cause the report, accounts and statements referred to in subsection (1) to be presented to a meeting of the committee of management convened for the purpose.

(7) In addition to other rights conferred on a member of a State registered organisation by this Subdivision, a member is entitled to inspect the accounting records of the organisation at its registered office during business hours.

(8) An organisation must not fail to comply with this section.
Maximum penalty: 50 penalty units.

(9) A member of the committee of management of an organisation who:

- (a) provides to members of the organisation; or
- (b) publishes in a journal of the organisation; or
- (c) presents to a general meeting of the members of the organisation or a meeting of the committee of management of the organisation,

comments on a matter dealt with in a report, accounts or statements of the kind referred to in subsection (1), or in a summary of the kind

referred to in subsection (2), must not, in the comments, make a statement that is to the member's knowledge false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Reports etc. to be lodged with Registrar

451. [413.] (1) A State registered organisation must, within the prescribed period after the meeting referred to in *[section 412 (5) or (6)]* **section 450 (5) or (6)** (whichever is applicable) lodge with the Registrar:

- (a) copies of the report, accounts and statements presented to the meeting; and
- (b) a certificate by the secretary, or other prescribed officer, of the organisation that the documents lodged are copies of the documents presented to the meeting.

(2) Subject to subsection (3), the Registrar must:

- (a) if the documents lodged with the Registrar under subsection (1) include a report of an auditor setting out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in *[section 409 (4)]* **section 447 (4)** - investigate the deficiency, failure or shortcoming; and
- (b) if for any other reason the Registrar considers that a matter revealed in the documents should be investigated - investigate the matter.

(3) The Registrar is not required to investigate the deficiency, failure or shortcoming if, after consultation with the organisation concerned and the auditor, the Registrar is satisfied that the deficiency, failure or shortcoming is trivial or will be remedied in the following financial year.

(4) If, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (2), the Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the organisation concerned, the Registrar may make the further investigation.

(5) At least the relevant number of members of the organisation concerned may request the Registrar to investigate the finances and the financial administration of the organisation where documents have been lodged with the Registrar under subsection (1).

(6) On receipt of a request under subsection (5), the Registrar must investigate the finances and the financial administration of the organisation concerned.

(7) For the purpose of making an investigation under subsection (2), (4) or (6), the Registrar may, by written notice, require an officer or employee of the organisation concerned:

- (a) to provide the Registrar with specified information relevant to the investigation; or
- (b) to attend before the Registrar, so that the Registrar may put to the officer or employee questions relating to matters relevant to the investigation and to produce to the Registrar all records and other documents in the custody, or under the control, of the officer or employee relating to the matters.

(8) If, at the conclusion of an investigation under subsection (2), (4) or (6), the Registrar is satisfied that the organisation concerned has contravened:

- (a) subsection (1) or any other provision of this Act or a provision of the regulations; or
- (b) a rule of the organisation relating to the finances or financial administration of the organisation,

the Registrar must notify the organisation accordingly, and must include in the notification a request that the organisation take specified action, within a specified period, to rectify the matter.

(9) If the contravention by the organisation is incapable of rectification or if the organisation refuses or fails to comply with the request made in the notification by the Registrar, the Registrar must refer the matter to the Court which may suspend and, if appropriate, cancel the registration of the organisation under Division 4.

(10) In this section:

"relevant number", in relation to an organisation, means:

- (a) if the organisation has more than 5,000 members - 250; or
- (b) in any other case - 5 per cent of the number of members of the organisation.

(11) An organisation must not fail to comply with this section.

Maximum penalty: [100] 50 penalty units.

(12) A person must not:

(a) refuse or fail, without reasonable excuse:

- (i) to attend before the Registrar in accordance with a requirement under subsection (7); or
- (ii) to provide information, or produce a document, that the person is required to provide or produce under subsection (7); or

(b) in purported compliance with a requirement under subsection (7), provide information, or produce a document, that is to the person's knowledge false or misleading in a material particular; or

(c) when attending before the Registrar in accordance with a requirement under subsection (7), make a statement, whether orally or in writing, that is to the person's knowledge false or misleading in a material particular,

but a person is not guilty of an offence against this subsection merely because of refusing or failing to answer a question.

Maximum penalty: [100] 50 penalty units.

Waiver of requirement to lodge reports etc.

452. [414.] (1) A State registered organisation may apply to the Registrar for exemption from the requirement under [section 413] section 451 that the organisation must lodge specific documents with the Registrar where the organisation has lodged documents which comply with the requirements of section 280 of the Industrial Relations Act 1988 of the Commonwealth and which are also substantially in accordance with the requirements of this Act.

(2) On being satisfied by the organisation that it is not appropriate that the organisation should be required to lodge specific documents with the Registrar under [section 413] section 451, the Registrar may issue to the organisation a certificate to that effect specifying the document or documents that need or need not be lodged by the organisation with the Registrar for the financial year specified in the certificate and, on issue of the certificate, [section 413] section 451 applies to the organisation as modified by the certificate.

Failure to lodge reports etc. with Registrar

453. [415.] (1) The Registrar must inform the *[Court]* Commission if a State registered organisation fails to comply with *[sections 412 and 413]* sections 450 and 451.

(2) The *[Court]* Commission may suspend the registration of an organisation that fails to comply with this Subdivision.

State registered organisations to lodge accounts etc. of all branches

454. [416.] (1) A State registered organisation that is divided into branches must consolidate the report, accounts and statements prepared by each of its branches into the one set of financial statements for the purpose of compliance with *[section 413]* section 451.

(2) An organisation may apply to the Registrar for exemption from compliance with subsection (1).

(3) On being satisfied by the organisation that it is not appropriate that the organisation should be required to lodge consolidated financial statements, the Registrar may issue to the organisation a certificate to that effect and, until the certificate is revoked, subsection (1) does not apply to the organisation and each branch of the organisation is required to comply with this Subdivision as if it were a separate State registered organisation.

(4) The Registrar may at any time, by written notice, revoke a certificate issued to an organisation under subsection (3) if the Registrar is no longer satisfied that the organisation should be exempt from compliance with subsection (1).

Organisation to forward notices etc. to auditor

455. [417.] (1) A State registered organisation must forward to the auditor of the organisation any notice of, and any other communication relating to, a meeting of the organisation, or the committee of management of the organisation, at which the report of the auditor, or any accounts or statements to which the report relates, are to be presented, being a notice or other communication that a member of the organisation, or the committee of management of the organisation, as the case may be, would be entitled to receive.

- (2) An organisation must not fail to comply with subsection (1).
Maximum penalty: 50 penalty units.

Auditor entitled to attend meetings at which report presented

456. [418.] (1) An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of a registered organisation, or the committee of management of the organisation, at which:

- (a) the report of the auditor, or any accounts or statements to which the report relates, are to be presented or considered; or
 - (b) there is to be conducted any business of the meeting that relates to:
 - (i) the auditor in that capacity, or
 - (ii) a person authorised by the auditor, in the capacity of a person so authorised,
- as the case may be.

(2) The auditor must serve on the organisation a notification that sets out the name and address of a person authorised by the auditor for the purposes of this section.

(3) An officer, employee or member of an organisation must not hinder or obstruct the auditor of the organisation from attending a part of the meeting that the auditor is, under this section, entitled to attend.

Maximum penalty: 50 penalty units.

(4) If an auditor of an organisation:

- (a) attends a part of a meeting that the auditor is, under this section, entitled to attend; and
- (b) in the course of the part of the meeting, indicates to the chairperson of the meeting that the auditor wishes to be heard under the right conferred by this section,

the chairperson must, as soon as practicable after having received the indication, afford to the auditor an opportunity to be heard.

Maximum penalty: 50 penalty units.

(5) It is a defence to a prosecution for an offence against a subsection of this section if the defendant proves that he or she did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

(6) In subsections (3) and (4), "auditor" includes a person authorised by the auditor for the purposes of this section.

Auditors and other persons to enjoy qualified privilege in certain circumstances

457. [419.] (1) An auditor of a State registered organisation has qualified privilege in proceedings for defamation in respect of a statement that the auditor makes in the course of duties as auditor, whether the statement is made orally or in writing.

(2) A person has qualified privilege in proceedings for defamation in respect of the publishing of a document prepared by an auditor of an organisation in the course of duties as auditor and required by or under this Act to be lodged with the Registrar.

(3) This section does not limit or affect any right, privilege or immunity that a defendant has in proceedings for defamation.

Subdivision 12 - Amalgamation of organisations

Amalgamation

458. [420.] Any 2 or more State registered organisations, other than enterprise associations, may amalgamate together in accordance with the procedure set out in this Subdivision.

Resolution approving amalgamation

459. [421.] Each of the State registered organisations concerned in the proposed amalgamation must pass a resolution approving the amalgamation in accordance with its rules.

Application for approval to be lodged

460. [422.] (1) The State registered organisations concerned in a proposed amalgamation, and any association proposed to be registered as an organisation under the amalgamation, must lodge with the Registrar an application for the approval of the Registrar for the submission of the amalgamation proposal to a ballot.

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

(3) A copy of:

- (a) the rules of any association proposed to be registered as an organisation; and
- (b) any proposed alterations of the rules of the existing organisations,

must be lodged with the application.

(4) If 3 or more State registered organisations are concerned in the proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if:

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

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

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

(6) The application must demonstrate:

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

Consideration of application

461. [423.] On lodgment of an application, the Registrar may either:

- (a) proceed to consideration of the application; or
- (b) direct that such consideration take place at an open hearing.

Consideration of application by Registrar

462. [424.] (1) If the Registrar decides that an open hearing in relation to the proposed amalgamation is unnecessary, the Registrar must proceed with a consideration of the application.

(2) If the Registrar is satisfied:

- (a) that the form of the application lodged in relation to the proposed amalgamation complies with this Act; and
- (b) that the documents that are required to be lodged with the application have been lodged, and comply with this Act; and
- (c) that the committee of management of each of the State registered organisations concerned in the proposed amalgamation has passed a resolution approving the proposed amalgamation; and
- (d) that any proposed alterations of the rules of a State registered organisation concerned in the proposed amalgamation have been made under the rules of the organisation; and
- (e) that the proposed amalgamation would further the objects of this Act; and
- (f) that there is a community of interest between the organisations concerned in the proposed amalgamation in relation to their industrial interests; and
- (g) that a person who is not eligible for membership of a State registered organisation concerned in the proposed amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the proposed amalgamation takes effect; and
- (h) that any proposed alteration of the name of a State registered organisation concerned in the proposed amalgamation will not result in the organisation having a name that is, in the opinion of the Registrar, unsuitable, is the same as the name of another organisation or is so similar to the name of another organisation as to be likely to cause confusion; and

- (i) that any proposed alterations of the rules of a State registered organisation concerned in the proposed amalgamation comply with, and are not contrary to, this Act and awards and are not otherwise contrary to law; and
- (j) that any proposed de-registration of a State registered organisation complies with this Act and is not otherwise contrary to law,

the Registrar must accept the application and approve of the submission of the amalgamation proposal to a ballot.

(3) The Registrar is to be satisfied, for the purposes of subsection (2) (f), that there is a community of interest between organisations of employees in relation to their industrial interests if, and only if, the Registrar is satisfied that a substantial number of members of each of the organisations are:

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

(4) The Registrar is to be satisfied, for the purposes of subsection (2) (f), that there is a community of interest between organisations of employers in relation to their industrial interests if, and only if, the Registrar is satisfied that a substantial number of members of each of the organisations are:

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

(5) If the Registrar is not so satisfied, the Registrar must, subject to subsection (6), dismiss the application.

(6) If, apart from this subsection, the Registrar would be required to dismiss the application, the Registrar may defer consideration of the application:

- (a) to permit the applicants to amend the application and any documents lodged with the application; or
- (b) to permit the applicants to lodge documents in relation to the application; or
- (c) to permit the applicants to amend any proposed alterations of the rules of the organisations concerned in the proposed amalgamation,

and, if the Registrar is then satisfied as to the matters referred to in subsection (2), the Registrar must accept the application and approve of the submission of the amalgamation proposal to a ballot.

Notification of hearing in relation to proposed amalgamation

463. [425.] (1) If the Registrar decides that an open hearing in relation to the proposed amalgamation is necessary, the Registrar:

- (a) must immediately fix a time and place for the hearing of submissions in relation to:
 - (i) the making of a declaration as to whether or not a community of interest exists; and
 - (ii) the accepting of the application and the granting of approval to submit the amalgamation proposal to a ballot; and
- (b) must ensure that all affected organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

(2) Submissions may be made only with the leave of the Registrar and in relation to a prescribed matter.

Hearing before Registrar

464. [426.] (1) If, at the hearing before the Registrar, the Registrar is satisfied as to the matters referred to in [section 424 (2) and (3) or (2) and (4)] section 462 (2) and (3) or (2) and (4), the Registrar must accept the application and approve of the submission of the amalgamation proposal to a ballot.

(2) If the Registrar is not so satisfied, the Registrar must dismiss the application.

Appeal to Commission

465. [427.] (1) The applicants under *[section 422]* **section 460** may appeal to the Full Commission against a dismissal of their application by the Registrar under *[section 424 or 426]* **section 462 or 464.**

(2) An appeal under this section is to be dealt with by way of a new hearing at which fresh evidence may be given, including evidence in addition to, or in substitution for, the evidence given before the Registrar.

(3) If, at the conclusion of the hearing, the Commission is satisfied as to the matters referred to in *[section 424 (2) and (3) or (2) and (4)]* **section 462 (2) and (3) or (2) and (4)**, the Commission must accept the application and approve of the submission of the amalgamation proposal to a ballot.

(4) If the Commission is not so satisfied, the Commission must, subject to subsection (5), dismiss the application.

(5) If, apart from this subsection, the Commission would be required to dismiss the application, the Commission may defer consideration of the application:

- (a) to permit the applicants to amend the application and any documents lodged with the application; or
- (b) to permit the applicants to lodge documents in relation to the application; or
- (c) to permit the applicants to amend any proposed alterations of the rules of the organisations concerned in the proposed amalgamation,

and, if the Commission is then satisfied as to the matters referred to in *[section 424 (2) and (3) or (2) and (4)]* **section 462 (2) and (3) or (2) and (4)**, the Commission must accept the application and approve of the submission of the amalgamation proposal to a ballot.

Ballot of members

466. [428.] (1) If approval has been given for the submission of the amalgamation to a ballot, the Registrar must arrange for the conduct by the Electoral Commissioner, in relation to each of the State registered organisations concerned in the amalgamation, of a secret

ballot of the members of the organisation on the question whether they approve the proposed principal amalgamation.

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

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

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

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

(6) The roll of voters for a ballot must be a roll of the persons who, one month before the day prescribed as the commencing day of the ballot:

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

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

(8) If the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 5% of the number of members of the organisation on the day on which the application was

lodged under *[section 422]* **section 460** in relation to the amalgamation, the organisation may apply to the Registrar for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

(9) The Registrar must grant the exemption unless the Registrar considers that, in the special circumstances of the case, the exemption should be refused.

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

Officer of State registered organisation to provide information for ballot etc.

467. [429.] (1) A person conducting a ballot under *[section 428]* **section 466** in relation to the proposed amalgamation may, for the purposes of the ballot, require an officer or employee of a State registered organisation concerned or of a branch of such a State registered organisation:

- (a) to provide to the person information within the knowledge or in the possession of the officer or employee; or
- (b) to make available to the person a document in the possession of the officer or employee or to which the officer or employee has access.

(2) An officer or employee of an organisation or a branch of an organisation must comply with a requirement made under this section.

Maximum penalty: 20 penalty units.

Determination of approval of amalgamation by members of State registered organisations

468. [430.] (1) Where, under *[section 428 (1) or (2)]* **section 466** (1) or (2), the question of an amalgamation is submitted to a ballot of the members of a State registered organisation concerned in the proposed amalgamation, the members of the organisation are to be taken to have approved the amalgamation if, and only if:

- (a) when a community of interest declaration has been made in relation to the proposed amalgamation - more than one half of the formal votes cast in the ballot are in favour of the relevant amalgamation; or

(b) in any other case:

- (i) at least one quarter of the members on the roll of voters cast a vote in the ballot; and
- (ii) more than one half of the formal votes cast are in favour of the relevant amalgamation.

(2) If the scheme for the proposed amalgamation contains an alternative provision, a member is not to be taken to record a formal vote in a ballot on the question of a proposed alternative amalgamation if the member does not record a formal vote in favour of the proposed principal amalgamation.

Inquiries into irregularities

469. [431.] (1) Not later than 30 days after the declaration of the result of a ballot under *[section 428]* **section 466**, application may be made to the *[Court, as prescribed by rules made under the Industrial Court Act 1990, for an inquiry by the Court]* **Commission for an inquiry by the Commission** into alleged irregularities in relation to the ballot.

(2) If the *[Court]* **Commission** finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the *[Court]* **Commission** may:

- (a) if the ballot is uncompleted - order that a step in relation to the ballot be taken again; or
- (b) in any other case - order that a fresh ballot be conducted by the Electoral Commissioner in place of the ballot in which the irregularity happened,

and may make such further orders as it considers necessary.

(3) The regulations may make provision with respect to the procedure for inquiries by the *[Court]* **Commission** into alleged irregularities in relation to ballots under *[section 428]* **section 466**, and for matters relating to, or arising out of, inquiries.

Approval of amalgamation

470. [432.] (1) If the members of each of the State registered organisations concerned in the proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is to be taken to be approved for the purposes of this Subdivision.

- (2) If:
- (a) the scheme for the proposed amalgamation contains an alternative provision; and
 - (b) the members of one or more of the organisations concerned in the proposed amalgamation do not approve the proposed principal amalgamation; and
 - (c) the members of 2 or more of the organisations (including, where one of the organisations is a party to the amalgamation otherwise than as a de-registering organisation, that organisation) approve both the proposed principal amalgamation and a proposed alternative amalgamation,
- the proposed alternative amalgamation is to be taken to be approved for the purposes of this Subdivision.

Action to be taken after ballot

471. [433.] (1) A proposed amalgamation that is taken to be approved for the purposes of this Subdivision takes effect in accordance with this section.

(2) If the Registrar is satisfied:

- (a) that any period allowed for applications to the *[Court] Commission* in respect of the proposed amalgamation has expired; and
- (b) that any application to the *[Court] Commission* has been disposed of, and the result of any fresh ballot ordered by the *[Court] Commission* has been declared; and
- (c) that there are no proceedings pending against any of the State registered organisations concerned in the proposed amalgamation in relation to:
 - (i) contraventions of this Act, the Industrial Arbitration Act 1940 or other laws of the State; or
 - (ii) breaches of:
 - (A) awards; or
 - (B) orders made under this Act, the Industrial Arbitration Act 1940 or other laws of the State; and
- (d) that all penalties imposed on any of the organisations under this Act or the Industrial Arbitration Act 1940, or in relation to any such breaches, have been paid; and

- (e) that proper arrangements have been made for property of the de-registering organisation or organisations to become the property of, and for liabilities of the de-registering organisation or organisations to be satisfied by, the proposed amalgamated organisation,

the Registrar must, after consultation with the organisations, by notice published in the Industrial Gazette fix a day as the day on which the amalgamation is to take effect.

(3) On the day fixed:

- (a) if the proposed amalgamated organisation is not already registered - the Registrar must immediately record, in the register kept for the purpose, the name of the amalgamated organisation and note that the rules of the organisation are registered and the date of the entry; and
- (b) any proposed alteration of the rules of a State registered organisation concerned in the amalgamation takes effect; and
- (c) the Registrar must de-register the proposed de-registering organisation or organisations; and
- (d) the persons who, immediately before that day, were members of a proposed de-registering organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

Resignation from membership

472. [434.] Where the day on which the proposed amalgamation is to take effect is fixed, [section 368] section 406 has effect in relation to resignation from membership of a proposed de-registering organisation as if the reference in subsection (2) of that section to 6 months were a reference to one month.

Effect of amalgamation on awards, orders and agreements

473. [435.] On and from the day on which the proposed amalgamation takes effect:

- (a) an award or order of the Commission or an agreement that was, immediately before that day, binding on a proposed de-registering organisation and its members becomes, by force of this section, binding on the amalgamated organisation and its members; and

- (b) the award, order or agreement has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the award, order or agreement to the de-registering organisation included references to the amalgamated organisation.

Holding of offices after amalgamation

474. [436.] The rules of:

- (a) an association proposed to be registered as an organisation under a proposed amalgamation; and
- (b) an organisation that is a proposed amalgamated organisation in relation to proposed amalgamation,

may, in spite of clause 2 of Schedule 5, make provision in relation to the holding of offices in an organisation by persons holding offices in any of the State registered organisations concerned in the amalgamation immediately before the amalgamation takes effect. But such rules must not permit an office in the organisation to be so held for more than 4 years after the amalgamation takes effect without an election being held in relation to the office.

Expenses of ballot

475. [437.] The expenses of a ballot under [section 428] section 466 are to be borne by the State.

Subdivision 13 - Validating provisions for organisations

Definitions

476. [438.] In this Subdivision, unless the contrary intention appears:

"collective body" means:

- (a) in relation to a State registered organisation - the committee of management or a conference, council, committee, panel or other body of or within the organisation; and
- (b) in relation to a branch of such an organisation - the committee of management or a conference, council, committee, panel or other body of or within the branch;

"invalidity" means nullity and includes any invalidity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that:

- (a) a member, or each of 2 or more of the members, of a collective body or branch of a State registered organisation, or one of the persons, or each of 2 or more of the persons, purporting to act as the members of such a collective body, or a person, or each of 2 or more persons, holding or purporting to hold an office or position in an organisation or branch:
 - (i) has not been elected or appointed or duly elected or appointed;
 - (ii) has purported to be elected or appointed by an election or appointment that was a nullity;
 - (iii) was not entitled to be elected or appointed or to hold office;
 - (iv) was not a member of the organisation; or
 - (v) was elected or appointed or purported to be elected or appointed, in a case where one or more of the persons who took part in the election or appointment or the purported election or appointment was or were not entitled to do so or was or were not members of the organisation; or
- (b) persons who were not entitled to do so, or were not members of the organisation, took part in the making or purported making or the alteration or purported alteration of the rules of an organisation or branch, as officers or voters or otherwise.

Validation of certain acts done in good faith

477. [439.] (1) Subject to this section and [section 441] section 479, all acts done in good faith by a collective body of a State registered organisation or branch of a State registered organisation, or by persons purporting to act as such a collective body, are valid in spite of any invalidity that may later be discovered in:

- (a) the election or appointment of the collective body, any member of the collective body or the persons or any of the persons purporting to act as the collective body; or
- (b) the making, alteration or rescission of a rule of the organisation or branch.

(2) Subject to this section and [section 441] section 479, all acts done in good faith by a person holding or purporting to hold an office or

position in a State registered organisation or branch are valid in spite of any invalidity that may later be discovered in:

- (a) the election or appointment of the person; or
- (b) the making, alteration or rescission of a rule of the organisation or branch.

(3) For the purposes of this section:

- (a) a person is not to be treated as purporting to act as a member of a collective body of an organisation or as the holder of an office or position in an organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the organisation as being, such a member or the holder of the office or position; and
- (b) a person is not to be treated as purporting to act as a member of a collective body of a branch of an organisation or as the holder of an office or position in the branch unless the person has, in good faith, purported to be, and has been treated by officers or members of the branch as being, such a member or the holder of the office or position.

(4) For the purposes of this section:

- (a) an act is to be treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of a collective body of an organisation or branch is to be treated as having done so in good faith until the contrary is proved; and
- (c) knowledge of facts from which an invalidity arises is not of itself to be treated as knowledge that the invalidity exists; and
- (d) an invalidity in:
 - (i) the election or appointment of a collective body of a branch of an organisation or any member of such a collective body; or
 - (ii) the election or appointment of the persons or any of the persons purporting to act as a collective body of a branch; or
 - (iii) the election or appointment of a person holding or purporting to hold an office or position in a branch; or
 - (iv) the making, alteration or rescission of a rule of a branch, is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was

known to a majority of the members of the committee of management of the branch or to a majority of the persons purporting to act as the committee of management; and

- (e) an invalidity in any other election or appointment or in the making or alteration of a rule to which this section applies is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the organisation or to a majority of the persons purporting to act as that committee of management.

(5) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done in relation to an association before it became an organisation.

(6) Nothing in this section validates the expulsion or suspension of, or the imposition of a fine or any other penalty on, a member of an organisation that would not have been valid if this section had not been enacted.

(7) Nothing in this section affects the operation of Subdivision 5.

Validation of certain acts after 4 years

478. [440.] (1) Subject to this section and [section 441] section 479, after the end of 4 years from:

- (a) the doing of an act:
 - (i) by, or by persons purporting to act as, a collective body of a State registered organisation or branch of a State registered organisation and purporting to exercise power conferred by or under the rules of the organisation or branch; or
 - (ii) by a person holding or purporting to hold an office or position in a State registered organisation or branch and purporting to exercise power conferred by or under the rules of the organisation or branch; or
- (b) the election or purported election, or the appointment or purported appointment, of a person, to an office or position in a State registered organisation or branch; or

(c) the making or purported making, or the alteration or purported alteration, of a rule of a State registered organisation or branch, the act, election, purported election, appointment or purported appointment, or the making or purported making or alteration or purported alteration of the rule, is to be taken to have been done in compliance with the rules of the organisation or branch.

(2) The operation of this section does not affect:

- (a) any proceedings pending under this Act; or
- (b) the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the *[Court or any other court]* **Commission or any court**,

made before the end of the 4 years referred to in subsection (1).

(3) This section extends to an act, election, purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule:

- (a) done or occurring before the commencement of this section; or
- (b) done or occurring in relation to an association before it became an organisation.

Order affecting application of *[section 439 or 440]* section 477 or 478

479. [441.] (1) Where, on an application for an order under this section, the *[Court]* **Commission** is satisfied that the application of *[section 439 or 440]* **section 477 or 478** in relation to an act would do substantial injustice, having regard to the interests of:

- (a) the State registered organisation; or
- (b) members or creditors of the organisation; or
- (c) persons having dealings with the organisation,

the *[Court]* **Commission** must, by order, declare accordingly.

(2) Where a declaration is made under subsection (1), *[section 439 or 440]* **section 477 or 478**, as the case requires, does not apply, and is to be taken never to have applied, in relation to the act specified in the declaration.

(3) The *[Court]* **Commission** may make an order under subsection (1) on the application of the organisation, a member of the organisation or any other person having a sufficient interest in relation to the organisation.

(4) The *[Court]* Commission may determine:

- (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
- (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.

(5) A reference in this section to an act includes a reference to an election, purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule.

***[Court]* Commission may make orders in relation to consequences of invalidity**

480. [442.] (1) A State registered organisation, a member of a State registered organisation or any other person having a sufficient interest in relation to a State registered organisation may apply to the *[Court]* Commission for the determination of the question whether an invalidity has occurred in:

- (a) the management or administration of the organisation or a branch of the organisation; or
- (b) an election or appointment in the organisation or a branch of the organisation; or
- (c) the making or alteration of the rules of the organisation or a branch of the organisation.

(2) On an application under subsection (1), the *[Court]* Commission may make such determination as it considers proper.

(3) If, in a proceeding under subsection (1), the *[Court]* Commission determines that an invalidity of a kind referred to in that subsection has occurred, the *[Court]* Commission may make such order as it considers appropriate:

- (a) to rectify the invalidity or cause it to be rectified; or
- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
- (c) to validate any act, matter or thing rendered invalid by or because of the invalidity.

(4) Where an order is made under subsection (3), the *[Court] Commission* may give such ancillary or consequential directions as it considers appropriate.

(5) The *[Court] Commission* must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:

- (a) the organisation; or
- (b) any member or creditor of the organisation; or
- (c) any person having dealings with the organisation.

(6) The *[Court] Commission* may determine:

- (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
- (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.

(7) This section applies:

- (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
- (b) to an invalidity occurring in relation to an association before it became an organisation.

Application for membership of State registered organisation by person treated as having been a member

481. [443.] (1) If

- (a) a person who is eligible for membership of a State registered organisation (other than a member of the organisation or a person who has been expelled from the organisation) applies to be admitted as a member of the organisation; and
- (b) the person has, up to a time within one month before the application, acted in good faith as, and been treated by the organisation as, a member,

the person is entitled to be admitted to membership and treated by the organisation and its members as though the person had been a member during the whole of the time when the person acted as, and was treated by the organisation as, a member and during the whole of the time from the time of the person's application to the time of the person's admission.

(2) If a question arises as to the entitlement under this section of a person to be admitted as a member and to be treated as though the person had been a member during the times referred to in subsection (1):

- (a) the person; or
- (b) a person who is or desires to become the employer of the person; or
- (c) the organisation,

may apply to the *[Court] Commission* to determine the entitlement of the person under this section.

(3) Subject to subsection (5), the *[Court] Commission* may, in spite of anything in the rules of the organisation concerned, make such orders (including mandatory injunctions) to give effect to its determination as it considers appropriate.

(4) The orders that the *[Court] Commission* may make under subsection (3) include an order requiring the organisation concerned to treat a person to whom subsection (1) applies as being a member of the organisation and as having been a member during the times referred to in subsection (1).

(5) If an application is made to the *[Court] Commission* under this section:

- (a) if the application is made otherwise than by the person whose entitlement is in question - the person must be given an opportunity to be heard by the *[Court] Commission*; and
- (b) if the application is made otherwise than by the organisation concerned - the organisation must be given an opportunity to be heard by the *[Court] Commission*.

(6) A reference in this section to a person having acted as, or been treated by the organisation as, a member of an organisation includes a reference to a person having so acted or been so treated during a period before the commencement of this section.

Registration of State branch of Federal organisation

482. [444.] No proceedings may be taken to challenge:

- (a) the existence of a State registered organisation; or

- (b) the registration of an organisation; or
 - (c) the election of officers of a State registered organisation; or
 - (d) any decision made by a State registered organisation,
- only because members of the State registered organisation are also members of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

Subdivision 14 - Miscellaneous

Deduction of subscription etc.

483. [445.] (1) A fine, levy, penalty, call or subscription that is due and payable by a member to a State registered organisation must not be deducted from a member's salary or wages without the member's prior written authorisation.

- (2) A person who contravenes subsection (1) is guilty of an offence.
Maximum penalty: 20 penalty units.

Providing copy of rules on request by member

484. [446.] (1) If a member of a State registered organisation:

- (a) requests the secretary, or a person performing (in whole or part) the duties of secretary, of the organisation or a branch of the organisation, to provide to the member a copy of the rules of the organisation or branch; and
- (b) pays or tenders to the secretary or other person such amount (not exceeding the prescribed amount) as the secretary or other person requires,

the secretary or other person must, within [7] 28 days after the payment or tender of the amount, provide to the member a copy of the rules of the organisation or branch as in force at the time of the request or a copy of those rules as in force at an earlier time, together with a copy of each amendment of the rules made since that time and before the time of the request.

(2) The secretary, or a person performing (in whole or part) the duties of secretary, of a State registered organisation or branch of a State registered organisation who wilfully contravenes this section is guilty of an offence.

Maximum penalty: 50 penalty units.

Certificate as to membership of State registered organisation

485. [447.] A certificate issued by the Registrar stating that a specified person was at a specified time a member or officer of a specified organisation or a specified branch of a specified organisation is, in all courts and proceedings, evidence that the facts are as stated.

False representation as to membership of State registered organisation

486. [448.] A person must not knowingly make, in an application made under this Act, a false representation that he or she is a member of a State registered organisation.

Maximum penalty: 50 penalty units.

List of officers to be evidence

487. [449.] A list of the officers of a State registered organisation or a branch of a State registered organisation lodged with the Registrar on behalf of the organisation, or a copy of any such list certified by the Registrar, is evidence that the persons named in the list were, on the day when the list was lodged, officers of the organisation or branch.

Registered office of State registered organisation

488. [450.] (1) A State registered organisation must have a registered office in New South Wales to which all communications and notices may be addressed.

(2) A State registered organisation and each of the officers of such organisation is guilty of an offence if the organisation operates for more than 7 days without a registered office.

(3) A State registered organisation must give notice of the address of its registered office and of any change in that address to the Registrar.

(4) Until a State registered organisation has given that notice, it is to be taken not to have a registered office.

Maximum penalty: 20 penalty units.

Mortality fund

489. [451.] (1) A member of a State registered organisation who is aged above 16 years may, by written notice, delivered at or sent to the registered office of the organisation, nominate any person to whom money due to the member from the organisation is to be paid at the member's death.

(2) A notice under subsection (1) must not nominate an officer or employee of the organisation unless the officer or employee is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator.

(3) A member of an organisation may from time to time revoke or vary a nomination under subsection (1) by written notice delivered at or sent to the organisation in accordance with subsection (1).

(4) The organisation, on receiving satisfactory proof of the death of the nominator, must pay to the nominee the amount due to the deceased member.

Failure to give notice or send document

490. [452.] A State registered organisation, an officer of a State registered organisation or a member of a committee of management of a State registered organisation that or who is bound by the rules of the registered organisation to give any notice or to send any document that is required to be given or sent under this Act must not wilfully fail to give that notice or send that document.

Maximum penalty: 50 penalty units *[or imprisonment for 3 months, or both]*.

Circulating false copies of rules etc.

491. [453.] A person must not, with intent to mislead or defraud, give to any member of a State registered organisation, or any person intending to apply or applying to become a member of such organisation, a copy of any rules or of any alterations or amendments of rules other than the rules of the organisation as they exist for the time being, pretending that:

- (a) the rules are the existing rules of the organisation; or
- (b) there are no other rules of the organisation; or
- (c) the rules are the rules of an organisation registered under this Act when the organisation is not so registered.

Maximum penalty: 100 penalty units *[or imprisonment for 2 years, or both]*.

Annual reports etc. by Registrar

492. [454.] As soon as possible after 30 June each year, the Registrar must prepare for tabling in Parliament by 31 October each year an annual report in respect of matters transacted by the Registrar under this Act.

Injunction restraining person

493. [455.] (1) If a person has engaged or is engaging in any conduct that constituted or constitutes a contravention of this Part, the *[Court] Commission* may, on the application of:

- (a) the Registrar; or
- (b) any person whose interests have been or are affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the *[Court] Commission* it is desirable to do so, require that person to do any act or thing.

(2) If a person has refused or failed or is refusing or failing to do an act or thing that he or she is required by this Part to do, the *[Court] Commission* may, on the application of:

- (a) the Registrar; or
- (b) any person whose interests have been or are affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) If an application is made to the *[Court] Commission* for an injunction under subsection (1), the *[Court] Commission* may, if in the opinion of the *[Court] Commission* it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The *[Court] Commission* may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) If an application is made to the *[Court] Commission* for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the *[Court] Commission* to grant the injunction may be exercised:

- (a) if the *[Court] Commission* is satisfied that the person has engaged in conduct of that kind - whether or not it appears to the *[Court] Commission* that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the *[Court] Commission* that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind - whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage or injury to any person if the first-mentioned person engages in conduct of that kind.

(6) If an application is made to the *[Court] Commission* for the grant of an injunction requiring a person to do a particular act or thing, the power of the *[Court] Commission* to grant the injunction may be exercised:

- (a) if the *[Court] Commission* is satisfied that the person has refused or failed to do that act or thing - whether or not it appears to the *[Court] Commission* that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the *[Court] Commission* that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing - whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage or injury to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) If the Registrar makes an application to the *[Court] Commission* for the grant of an injunction under this section, the *[Court] Commission* must not require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) If the *[Court]* Commission has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the *[Court]* Commission may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to any other person.

Organisations and officials not vicariously liable

494. [456.] (1) Neither a State registered organisation nor a person who is a member of the committee or other executive body of such an organisation is liable to be convicted of an offence against this Act (or for any pecuniary penalty) because of an act or omission of a person in contravention of the express resolutions or directions of the organisation or its committee or other executive body.

(2) Subsection (1) does not apply:

- (a) to a State registered organisation, if the organisation or a member of the committee or other executive body of the organisation encouraged, assisted in or approved of the act or omission; or
- (b) to a member of the committee or other executive body of a State registered organisation, if the member encouraged, assisted in or approved of the act or omission.

Certain actions under other laws do not lie in respect of industrial action etc.

495. [457.] (1) A relevant action does not lie against a State registered organisation, or an officer, member or employee of a State registered organisation in that capacity, in respect of:

- (a) industrial action that is occurring, or is about to occur in connection with an industrial dispute; or
- (b) conduct that is being, or is about to be, engaged in that hinders, prevents or discourages:
 - (i) the observance of an award or agreement; or
 - (ii) the performance of work in accordance with an award or agreement; or
 - (iii) the acceptance of, or offering for, work in accordance with an award or agreement; or

- (c) industrial action by persons engaged in public sector employment, being industrial action that is occurring, or is about to occur.
- (2) A relevant action does not lie against an officer, member or employee of a State registered organisation in respect of conduct of that officer, member or employee in that capacity constituted by:
 - (a) engaging, or proposing to engage, in industrial action in connection with an industrial dispute; or
 - (b) engaging, or proposing to engage, in conduct that hinders, prevents or discourages:
 - (i) the observance of an award or agreement; or
 - (ii) the performance of work in accordance with an award or agreement; or
 - (iii) the acceptance of, or offering for, work in accordance with an award or agreement; or
 - (c) in the case of an officer, member or employee of an organisation of employees engaged in public sector employment - engaging, or proposing to engage, in industrial action.
- (3) In this section, "relevant action" means an action in tort or any other action in a court or tribunal, not being:
 - (a) an action for damages (other than exemplary or punitive damages) in respect of loss or damage incurred as a result of the industrial action or conduct concerned; or
 - (b) an action for an injunction or order to prevent personal injury or damage to or destruction of property; or
 - (c) an action in respect of conversion, detinue or defamation; or
 - (d) proceedings for a contravention of an award or agreement, or an order or direction of the Commission; or
 - (e) a prosecution for an offence.

Division 4 - Suspension and cancellation of registration

Application of Division

496. [456.] This Division does not apply to an organisation that is de-registered as the result of an amalgamation of organisations under Subdivision 12 of Division 3.

Suspension and cancellation of registration of organisations

497. [457.] (1) An interested State registered organisation, an interested person or the Minister may apply to the *[Court] Commission* for suspension and cancellation of the registration of another such organisation on any one or more of the following grounds:

- (a) that the conduct of the organisation (in relation to its continued breach of *[an order of the Court,]* an award or order of the Commission or an agreement, or its continued failure to ensure that its members comply with and observe any such order or agreement, or in any other respect) has prevented or hindered the achievement of an object of this Act;
- (b) that the conduct of a substantial number of the members of the organisation (in relation to their continued breach of any such order, award or agreement) has prevented or hindered the achievement of an object of this Act;
- (c) that the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has engaged in industrial action that has prevented, hindered or interfered with the provision of any public service by the State or an authority of the State;
- (d) that the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have been, or is or are, engaged in industrial action that has had, is having or is likely to have, a substantial adverse effect on the safety, health or welfare of the community or a part of the community.

(2) A State registered organisation in relation to which an application is made under subsection (1) must be given an opportunity to be heard by the *[Court] Commission*.

(3) If the *[Court] Commission*:

- (a) finds that a ground of the application has been established; and
- (b) does not consider that it would be unjust to do so having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the organisation in relation to the matters,

the *[Court] Commission [must] may, at its discretion*, suspend the registration of the organisation for the prescribed period.

(4) The *[Court] Commission* may suspend on its own initiative the registration of an organisation if the *[Court] Commission* is satisfied as to the matters referred to in subsections (1) and (3) provided the organisation has been given an opportunity to be heard by the *[Court] Commission*.

(5) The *[Court] Commission* may lift the suspension of the registration of an organisation under this section at any time on grounds that appear to the *[Court] Commission* to be appropriate, with or without the imposition of conditions on the organisation.

(6) While the registration of an organisation is suspended under this or any other Act, the organisation is not entitled to represent its members or to appear on their behalf before *[the Court,] the Commission, a Conciliation Committee or a Tribunal* under this Act.

(7) Except where the suspension of the registration of an organisation under this Act is effected under the Essential Services Act 1988, the registration of an organisation is not to be cancelled unless the registration is first suspended under this Act.

(8) Except where the suspension of the registration of an organisation under this Act is effected under the Essential Services Act 1988, the registration of an organisation is not to be cancelled unless the organisation has the opportunity to show cause to the *[Court] Commission*, within the prescribed period, why its registration as an organisation under this Act should not be cancelled.

(9) On the expiry of the prescribed period of suspension, the *[Court] Commission* *[must cancel the registration of the organisation under this Act unless]* may, at its discretion, cancel the registration of the organisation under this Act, but may not do so if

- (a) the *[Court] Commission* has already lifted the suspension under subsection (5); or
- (b) the organisation has satisfied the *[Court] Commission* that its registration should not be cancelled and that the suspension of its registration should be lifted, with or without the imposition of conditions on the organisation; or
- (c) the *[Court] Commission* has decided that it is appropriate to proceed under subsection (10) or *[section 458] section 498*.

(10) If

- (a) the *[Court] Commission* finds that a ground of the application under subsection (1) has been established; and

(b) that finding is made, wholly or mainly, because of the conduct of a particular section or class of members of the organisation, the *[Court] Commission* may, if it considers it just to do so, instead of suspending or cancelling the registration of the organisation under this section, by order determine alterations of the rules of the organisation so as to exclude from eligibility for membership of the organisation persons belonging to the section or class.

(11) The *[Court] Commission* may make such other orders as are necessary to give effect to, or in consequence of, an order made under this section, including an order altering the rules of any State registered organisation.

(12) An alteration of rules determined by order under subsection (10) or (11) takes effect on the date of the order or on such other day as is specified in the order.

Orders where cancellation of registration deferred

498. [458.] (1) The *[Court] Commission* may, instead of making an order under *[section 457]* **section 497** suspending or cancelling registration, or altering rules, of a State registered organisation, make one or more of the following orders:

- (a) an order suspending, to the extent specified in the order, any of the rights, privileges or capacities of the organisation, or of all or any of its members as such, under this or any other Act or under awards or orders made under this or any other Act;
- (b) an order giving directions as to the exercise of any rights, privileges or capacities that have been suspended;
- (c) an order restricting the use of the funds or property of the organisation or a branch of the organisation, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.

(2) If the *[Court] Commission* makes an order under subsection (1), it must defer the determination of the question whether to suspend or cancel the registration of the organisation concerned until:

- (a) any order made under subsection (1) ceases to be in force; or
- (b) on application by a party to the proceeding, the *[Court] Commission* considers that it is just to determine the question, having regard to any evidence given relating to the observance

or non-observance of any order and to any other relevant circumstance,
whichever happens first.

(3) An order made under subsection (1) has effect in spite of anything in the rules of the organisation concerned or a branch of the organisation.

(4) An order made under subsection (1):

- (a) may be revoked by the [Court] Commission, by order, on application by a party to the proceeding concerned; and
- (b) unless sooner revoked, ceases to be in force:
 - (i) 6 months after it came into force; or
 - (ii) at the expiration of such longer period after it came into force as is ordered by the [Court] Commission on application by a party to the proceeding made while the order remains in force.

[Cancellation of registration of enterprise association

459. (1) *An enterprise association is not entitled to continue to be registered if*

- (a) *an enterprise agreement that is binding on members of the association is not made and registered by the Registrar within 6 months following the date of the enterprise association's registration; or*
- (b) *when an enterprise agreement that is binding on members of the enterprise association has been terminated, a fresh enterprise agreement that is binding on members of the enterprise association is not made and registered by the Registrar within 6 months of the date of the termination.*

(2) *The Registrar may cancel the registration of an enterprise association that is not entitled to continue to be registered.]*

Voluntary etc. cancellation of registration

499. [460.] (1) The [Court] Commission may cancel the registration of a State registered organisation:

- (a) on application by the organisation; or
- (b) on application by another interested State registered organisation or an interested person, or by the Minister, if the

[Court] Commission is satisfied that any ground referred to in subsection (2) has been made out; or

- (c) of its own initiative if the *[Court]* Commission is satisfied that the organisation is defunct.

(2) The grounds on which registration may be cancelled under subsection (1) (b) are:

- (a) that the organisation was registered by mistake; or
- (b) that the organisation is a State employer organisation that is no longer representative of its members; or
- (c) that the organisation is a State employee organisation that is no longer representative of its members.

(3) The Registrar may also of his or her own initiative cancel the registration of a State registered organisation if the Registrar is satisfied that the organisation is defunct.

(4) An organisation may appeal to the *[Court]* Commission against the cancellation of its registration under this section.

Cancellation to be recorded

500. [461.] Where the registration of a State registered organisation under this Act is cancelled, the Registrar must enter the cancellation, and the date of cancellation, in the register kept for the purpose.

Consequences of cancellation of registration

501. [462.] (1) The cancellation of the registration of an organisation under this Act has the following consequences:

- (a) the organisation ceases to be a State registered organisation and a body corporate under this Act, but does not because of the cancellation cease to be an association; and
- (b) the cancellation does not relieve the association or any of its members from any penalty or liability incurred by the organisation or its members before the cancellation; and
- (c) the organisation will be wound up by a receiver appointed by the Court; and
- (d) subject to subsection (2), the assets of the organisation will be distributed to its members after payment of all debts of the organisation including any penalty or liability referred to in

paragraph (b) in accordance with the order of priorities set out in section 441 of the Companies (New South Wales) Code; and

- (e) the Court may, on application by an organisation or person interested, make such order as the Court considers appropriate in relation to the winding up of the affairs of the organisation].*

[(2) For the purposes of a winding up under subsection (1) (c), the provisions of the Companies (New South Wales) Code apply in accordance with Division 6 of Part XII of that Code.

(3) For the purposes of a distribution under subsection (1) (d), the Court may determine that the members of the organisation are those persons who were members:

- (a) at the time of suspension of the organisation under this Part; or*
 - (b) at such other time nominated by the Court,*
- as appears to the Court to be just and equitable.]*

(2) An organisation may be wound up in accordance with the rules of the organisation.

Disqualification of certain officials

502. (1) A person who is an official of an organisation whose registration has been cancelled under section 457 must not, without the leave of the Court:

- (a)** be involved in the formation of another State registered organisation; or
 - (b)** hold office in another State registered organisation,
- for a period of 5 years after the cancellation of the registration of the organisation in which the person is an official.

(2) The Court may grant leave under subsection (1) on the application of the person or of its own initiative where the Court is of the opinion that the person did not participate, directly or indirectly, in the acts or omissions which resulted in cancellation of the registration of the organisation.

Division 5 - State peak organisations

Approval of State peak organisations

503. [464.] (1) An association for employers *[or employees]* that:

- (a) operates primarily throughout New South Wales; and
- (b) is representative of a significant number of member associations of employers *[or employees]*,

may be approved by the Commission as a State peak organisation.

(2) The Labor Council of New South Wales is to be taken to be the State peak organisation for employees.

(3) [(2)] The Commission may from time to time review approvals in force under this section and may revoke an approval for such reason as appears sufficient to the Commission.

(4) [(3)] An application for the purposes of this section may be required by the regulations to be made in the prescribed manner.

(5) [(4)] The provisions (other than provisions relating to registration or incorporation) of this Part, and of statutory instruments made under this Act, that apply to industrial unions, and to their officers, apply to State peak organisations, and to their officers, except to the extent:

- (a) that express provision is made by or under this or any other Act modifying or excluding the application of those provisions; or
- (b) that the application of any of those provisions is modified or excluded by the regulations; or
- (c) that the regulations provide that instead of the provisions of this Part concerning a subject-matter, other provisions relating to that subject-matter and prescribed by the regulations apply.

Functions of State peak organisations

504. [465.] A State peak organisation may:

- (a) subject to establishing a sufficient interest in the proceedings, intervene in proceedings before *[the Court,]* the Commission, a Conciliation Committee or a Tribunal and make such representations as it considers necessary to safeguard the interests of any one or more of its members; and

- (b) sign agreements under this Act on behalf of its members.

Division 6 - Unregistered trade unions

Application of Part

505. [466.] Such of the provisions of this Part as may be prescribed by the regulations apply to unregistered trade unions and to their officers and members in the same way as they apply to industrial unions and to their officers and members.

Application for registration by trade union established over 12 months

506. [467.] A trade union applying for registration that has been in operation for more than 12 months prior to the date of lodgment of the application for registration is not to be registered until it has lodged with the Registrar such financial statements as are prescribed.

[PART 8 - SECONDARY BOYCOTTS]

Division 1 - Definitions

Definitions

468. In this Part:

"acquire" includes:

- (a) *in relation to goods - acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and*
- (b) *in relation to services - accept;*

"business" includes:

- (a) *the practice of any profession; and*
- (b) *any activity or enterprise carried on otherwise than for profit;*

"conduct" includes a refusal to do any act or thing or refraining (otherwise than inadvertently) from doing any act or thing;

"research and development" means work undertaken with a view to:

- (a) *acquiring or increasing knowledge of matters relevant to methods of carrying on any business; or*
- (b) *using knowledge to devise new methods of carrying on any business; or*

- (c) applying knowledge in the carrying on of any business; or
- (d) introducing or changing mechanisation or technology in any business; or
- (e) providing or disseminating information or knowledge acquired by such work,

and includes any work incidental or conducive to the efficient performance of such work;

"services" includes any rights (including rights in relation to and interests in real or personal property), benefits, privileges and facilities that are to be provided, granted or conferred in trade or commerce and, without limiting the generality of the foregoing, includes rights, benefits, privileges and facilities that are or are to be provided, granted or conferred under:

- (a) a contract for or in relation to performing work (including work of a professional nature), whether with or without the supply of goods; or
- (b) a contract for or in relation to providing, granting or conferring rights, benefits or privileges for which a price, consideration or remuneration is payable in any form,

whether the contract is one of service or one for services;

"State authority" means:

- (a) a body corporate established for a purpose of the State by or under an Act; or
- (b) an incorporated company in which the Crown in right of the State or a body corporate referred to in paragraph (a) has a controlling interest;

"trade or commerce" means trade or commerce within New South Wales or between places in New South Wales and places outside New South Wales.

Trade or commerce includes research and development

469. In this Part, a reference to trade or commerce is to be taken to include a reference to research and development.

Division subject to legislative power of State

470. This Part is to be read so as not to exceed the legislative power of the State, to the intent that, where any of its provisions would (but for this provision) be construed as being in excess of that power or as being invalid

by reason of inconsistency with a law of the Commonwealth, it is nevertheless to be a valid enactment to the extent to which it is not in excess of that power or to which it can operate without inconsistency with a law of the Commonwealth.

Application of Division to Crown etc.

471. (1) The provisions of this Part apply in relation to the Crown as if the Crown were conducting a business and were engaged in trade or commerce when exercising functions required of it or permitted to it by law or lawfully assumed by it.

(2) A reference in this Part to the business of any person or to engaging in trade or commerce includes a reference to the exercise by the Crown or the authority of those functions.

Division 2 - Interference with trade or commerce

Prohibition against secondary boycott conduct

472. A person must not (either alone or in concert with another) engage in secondary boycott conduct towards another person (referred to in this Division as "the affected person").

Meaning of "secondary boycott conduct"

473. Conduct is secondary boycott conduct towards an affected person if it is either of the following types of conduct:

Hindering or preventing supply or acquisition of goods or services

- * Conduct that hinders or prevents the supply of goods or services to or the acquisition of goods or services by the affected person if the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing:
 - (a) substantial loss or damage to the business of the affected person or any other person; or
 - (b) a substantial lessening of competition in any market in which the affected person acquires goods or services.

Hindering or preventing trade or commerce

- * Conduct engaged in for the purpose, and having or likely to have the effect, of hindering or preventing the affected person in or from engaging in trade or commerce.

Exception - when affected person is the employer

474. Conduct engaged in by a person is not secondary boycott conduct if the affected person is the person's employer.

Exception - conduct concerning remuneration, employment conditions etc.

475. (1) A person is not to be regarded as contravening or as being involved in a contravention of section 472 (Prohibition against secondary boycott conduct) by engaging in conduct if the dominant purpose for which the conduct is engaged in is substantially related to:

- (a) the remuneration, conditions of employment, hours of work or working conditions of the person; or
- (b) an employer of the person having terminated or taken action to terminate the employment of that person.

(2) If conduct is engaged in by the following persons in concert with each other (and not in concert with any other person):

- (a) a State employee organisation or State employee organisations or any officer or officers of such an organisation; and
- (b) an employee or employees who are employed by the one employer, the conduct is not secondary boycott conduct if the dominant purpose for which the conduct is engaged in is substantially related to:

- (c) the remuneration, conditions of employment, hours of work or working conditions of that employee or those employees; or
- (d) the employer of that employee or those employees having terminated or taken action to terminate the employment of any of the employer's employees.

(3) This section does not apply to any conduct the purpose of which is to induce:

- (a) any person or persons to become a member or members of a State employee organisation; or
- (b) any person or persons to become a member or members of one State employee organisation rather than another such organisation; or
- (c) an employer to vary, ignore or fail to comply with the conditions prescribed by or under an Act as conditions of any contract of employment.

(4) A person can be regarded as engaging in secondary boycott conduct in concert with another person even though that other person is not,

because of this section, to be regarded as having contravened or as having been involved in a contravention of section 472.

Exceptions not applicable in certain cases

476. Sections 474 and 475 do not apply to any of the following conduct:

- (a) conduct that is in connection with a dispute concerning the right of an employee or class of employees to perform work to the exclusion (whether total or partial) of any other person or class of persons;*
- (b) conduct that consists of industrial action;*
- (c) conduct that consists of an attempt by employees or a State employee organisation to induce an employer:*
 - (i) to give preference in employment to a person who is a member of a State employee organisation or to a person who has undertaken to become a member of such an organisation; or*
 - (ii) to refrain from employing or continuing to employ a person who is not a member of a particular State employee organisation or a person who has not undertaken to become a member of a particular State employee organisation;*
- (d) conduct where the business or the trade or commerce that is relevant to the conduct is business or trade or commerce between any place in New South Wales and any place outside New South Wales;*
- (e) conduct where the business or the trade or commerce that is relevant to the conduct is research and development in New South Wales;*
- (f) conduct that consists of an attempt by an industrial union to induce an employer or an employee not to enter into an enterprise agreement.*

State employee organisations to be regarded as involved in conduct by members and officers

477. (1) When 2 or more persons ("the participants") who are members or officers of the same State employee organisation are engaged in conduct with each other, the organisation is to be regarded as having engaged in that conduct with the participants and to have done so for the purpose or purposes for which the participants engaged in it.

(2) This section does not apply if it is shown that the State employee organisation took all reasonable steps to prevent the participants from engaging in the conduct.

(3) The operation of this section is not affected by the fact that the participants engaged in the conduct in concert with any person who is not a member or officer of the State employee organisation.

Liability of State employee organisation for secondary boycott conduct

478. If a State employee organisation engages in conduct in concert with its members or officers in contravention of section 472 (Prohibition against secondary boycott conduct):

- (a) any loss or damage suffered by a person as a result of the conduct is to be considered to have been caused by the conduct of the organisation; and
- (b) proceedings to recover the amount of loss or damage suffered are not to be brought against any of the members or officers of the organisation.

Establishment of purpose

479. (1) For the purposes of this Division, a person is to be regarded as having engaged or engaging in conduct for a particular purpose if the person engaged or engages in the conduct for purposes that included or include that purpose.

(2) For the purposes of this Division, the purpose for which a person engages in conduct is to be taken to be the probable consequence or consequences of the conduct engaged in by the person unless he or she establishes the contrary.

*Division 3 - Interference with supply or
acquisition of goods or services*

Prohibition against certain arrangements

480. (1) A person who has been accustomed or is under an obligation to supply goods or services to or to acquire goods or services from a second person must not make a contract or arrangement, or arrive at an understanding, with a third person (being a State employee organisation, an officer of such an organisation or another person acting for and on behalf of such an organisation) if the proposed contract, arrangement or understanding contains a provision that:

- (a) *has the purpose of preventing or hindering the first-mentioned person from supplying or continuing to supply any such goods or services to the second person or from acquiring or continuing to acquire any such goods or services from the second person; or*
 - (b) *has the purpose of preventing or hindering the first-mentioned person from supplying or continuing to supply any such goods or services to the second person except subject to a condition as to the persons to whom, the manner in which or the terms on which the second person may supply any goods or services; or*
 - (c) *has the purpose of preventing or hindering the first-mentioned person from acquiring or continuing to acquire any such goods or services from the second person except subject to a condition as to the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.*
- (2) *This section does not apply in relation to a contract, arrangement or understanding that is in writing if the second person is a party to the contract, arrangement or understanding or has consented in writing to its being made or arrived at.*

Certain persons to be regarded as accustomed suppliers

481. *A reference in section 480 to a person who has been accustomed to supply goods or services to a second person includes a reference to each of the following*

- (a) *a regular supplier of any such goods or services to the second person;*
- (b) *the latest supplier of any such goods or services to the second person;*
- (c) *a person who at any time during the preceding 3 months supplied any such goods or services to the second person.*

Certain persons not to be regarded as accustomed suppliers

482. (1) *A person ("the original supplier") is not to be regarded as a person who has been accustomed to supply goods or services to a person ("the recipient") if*

- (a) *those goods or services were supplied pursuant to a contract between those persons under which the original supplier was required over a particular period to supply the goods or services and that period has expired; and*

- (b) *after that expiration the recipient has been supplied with those goods or services by another person or other persons and has not been supplied with those goods or services by the original supplier.*

(2) *This section operates only in relation to anything done after the recipient has been supplied with goods or services as described in subsection (1) (b).*

Certain persons to be regarded as accustomed acquirers

483. *A reference in section 480 to a person who has been accustomed to acquire goods or services from a second person includes a reference to each of the following*

- (a) *a regular acquirer of any such goods or services from the second person;*
- (b) *a person who, when he or she last acquired such goods or services, acquired them from the second person;*
- (c) *a person who at any time during the preceding 3 months acquired any such goods or services from the second person.*

Certain persons not to be regarded as accustomed acquirers

484. (1) *This section applies to cases where:*

- (a) *goods or services have been acquired by a person from a second person pursuant to a contract between those persons under which the first-mentioned person was required over a particular period to acquire those goods or services; and*
- (b) *that period has expired; and*
- (c) *after that period expires the second person has refused to supply those goods or services to the first-mentioned person.*

(2) *In such a case, the first-mentioned person is not, in relation to anything done after the second person has refused to supply those goods or services, to be regarded as a person who has been accustomed to acquire those goods or services from the second person.*

Certain arrangements not to be executed

485. (1) *A person must not give effect to a provision of a contract, arrangement or understanding if, as a result of the provision, the making of the contract or arrangement or the arriving at of the understanding contravened section 480 (Prohibition against certain arrangements).*

(2) *This section applies to a contract or arrangement made or an understanding arrived at before this section commenced:*

- (a) as if this section had then been in force; and*
- (b) as if the references in section 480 (2) to a contract, arrangement or undertaking, or consent, being in writing were omitted.*

Establishment of purpose

486. For the purposes of this Division, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding is to be considered to have had or to have a particular purpose if the provision was included in the contract, arrangement or understanding or is to be included in the proposed contract, arrangement or understanding for that purpose or for purposes that include that purpose.

Division 4 - Enforcement and remedies

Interpretation

487. For the purposes of this Division, a person is to be considered to be involved in a contravention of a provision of Division 2 or 3 if

- (a) the person has done or attempted to do the act or thing that constitutes the contravention; or*
- (b) the person has aided, abetted, counselled or procured the contravention; or*
- (c) the person has induced or attempted to induce, whether by threats, promises or otherwise, the contravention; or*
- (d) the person has been in any way, directly or indirectly, knowingly concerned in or party to the contravention; or*
- (e) the person has conspired with another or others to effect the contravention.*

Jurisdiction to grant injunction

488. (1) If, on the application of any person, the Court is satisfied that a person has engaged or is proposing to engage in conduct by which he or she is involved in a contravention of any provision of Division 2 or 3, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) If in the Court's opinion it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2) on the application of any party to the proceeding in which the injunction was granted or of any person duly substituted for such a party.

Restrictive injunction

489. The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again or to continue to engage in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

Mandatory injunction

490. The power of the Court to grant an injunction requiring a person to do any act or thing may be exercised:

- (a) whether or not it appears to the Court that the person intends to refuse or fail again or to continue to refuse or fail to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

Ministerial undertakings as to damages

491. (1) If the Minister makes an application to the Court for the grant of an injunction pursuant to this Division, the Court is not to require the Minister or any other person, as a condition of granting an interim injunction, to give an undertaking as to payment of damages and any interlocutory order made is not to contain an undertaking of that kind.

- (2) *If in a case to which subsection (1) does not apply:*
- (a) *the Court would, but for this subsection, require a person to give an undertaking as to payment of damages or costs; and*
 - (b) *the Minister gives the undertaking,*
- the Court is to accept the undertaking by the Minister and is not to require a further undertaking from any other person and it is not necessary for any interlocutory order for an injunction made to contain an undertaking by the party at whose instance the injunction is granted.*

Pecuniary penalties

492. (1) *If the Court is satisfied that a contravention of any provision of Division 2 or 3 has occurred and that a person is involved in that contravention, the Court may order the person to pay to the Minister, for payment into the Consolidated Fund, a pecuniary penalty in respect of each act or omission constituting the conduct in question that the Court determines to be appropriate having regard to all relevant matters, including:*

- (a) *the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and*
- (b) *the circumstances in which the act or omission took place; and*
- (c) *whether the person has previously been found by the Court in proceedings under this Part to have engaged in similar conduct.*

(2) *The pecuniary penalty is not to exceed 100 penalty units in the case of an individual or 1,000 penalty units in the case of a State employee organisation.*

(3) *If a person's conduct constitutes a contravention of two or more provisions of this Part, a proceeding may be instituted under this section against the person in respect of a contravention of any one or more of the provisions but the person is not liable to more than one pecuniary penalty in respect of the same conduct.*

Civil action for recovery of pecuniary penalties

493. (1) *Recovery on behalf of the State of a pecuniary penalty referred to in section 492 is to be by way of a civil proceeding instituted in the Court by an inspector or a person authorised by the Minister.*

(2) *A proceeding to recover a pecuniary penalty referred to in section 492 must be commenced:*

- (a) *in the case of a contravention that consists of continuing conduct, within 6 years after the contravention has terminated; or*
- (b) *in any other case, within 6 years after the contravention has occurred.*

Criminal proceedings not available

494. Proceedings for an offence against this Part do not lie against a person in respect of a contravention of any provision of Division 2 or 3.

Recovery of damages

495. (1) A person who suffers loss or damage by reason of conduct in contravention of Division 2 or 3 may recover the amount of the loss or damage by action against:

- (a) *the person or persons who engaged in that conduct; and*
- (b) *any person or persons who is or are to be regarded as being involved by reason of that conduct in a contravention of Division 2 or 3.*

(2) This section is subject to section 478.

Evidentiary provisions

496. In an action against a person to recover damages, a finding of fact by the Court made in a proceeding under this Part in which the person has been found to be involved in a contravention of Division 2 or 3 is evidence of that fact and the finding may be proved by production of a document under the seal of the Court in which the finding appears.

Exercise of jurisdiction and right of appeal

497. (1) The jurisdiction of the Court conferred by this Part is to be exercised by the Full Court.

(2) An appeal lies to the Supreme Court against a decision of the Full Court under this Part.

Saving of rights and remedies

498. This Part does not exclude, limit or affect any right or remedy to which any person is entitled apart from this Part.]

PART 8 [9] - PRIVATE EMPLOYMENT AGENTS

Definitions

507. [499.] In this Part:

"**licence**" means a licence in force under this Part;

"**licensee**" includes a person who holds a licence jointly with another person or other persons.

Business of private employment agent

508. [500.] (1) A person carries on the business of a private employment agent if the person acts as an agent:

- (a) for procuring or assisting to procure a person to carry out work for a person seeking to have work carried out; or
- (b) for procuring or assisting to procure employment for a person seeking to be employed.

(2) It is immaterial whether the employment or work is to be undertaken or carried out pursuant to a contract of employment or otherwise.

(3) A person who prints or publishes in a newspaper or document, within the meaning of the Printing and Newspapers Act 1973, an advertisement placed by or on behalf of a person seeking to have work carried out or by or on behalf of a person seeking to be employed does not, merely because of the printing and publishing of that advertisement, carry on the business of a private employment agent.

(4) A person who carries out any of the functions referred to in subsection (1) in the course of his or her employment by some other person does not, merely because of carrying out those functions, carry on the business of a private employment agent.

(5) Where the person for whom the work is procured by a private employment agent is not:

- (a) an employee of the private employment agent; or
- (b) an employee of the person for whom the work is being carried out,

such person is to be taken to be an employee of the person for whom the work is being carried out for the purposes of this Act, the regulations made under this Act and any other employment-related Act and the regulations made under it.

Exemptions

509. [501.] (1) The *[regulations]* Commission may exempt (unconditionally or subject to conditions) any person or any class of persons from the operation of all or any of the provisions of this Part.

(2) An exemption does not have effect during any period in which any conditions to which it is subject are not complied with.

(3) It is a sufficient defence to a prosecution arising under this Part if the defendant establishes that at the relevant time he or she was a person, or a member of a class of persons, exempted from the operation of this Part by the *[regulations]* Commission and, if that exemption was subject to any condition, that he or she was, at that time, complying with the condition.

(4) The State registered organisation or organisations of employees having constitutional coverage for the relevant industry, occupation or calling must be served with a copy of the application for exemption not less than 14 days before the application is heard. The State registered organisation or organisations have the right to intervene and be heard in such proceedings before the Commission.

Private employment agents to be licensed

510. [502.] If a person carries on the business of a private employment agent:

- (a) the person must not demand or receive any fee, charge or remuneration in respect of that business unless the person is the holder of a licence; and
- (b) the person must not, if he or she is the holder of a licence, carry on that business at a place other than the place to which that or another licence held by the person relates.

Maximum penalty: 50 penalty units.

Persons to be in charge at each place of business

511. [503.] (1) A person must not act as the person in charge at the place of business to which a licence relates unless:

- (a) he or she is the licensee (or one of a number of joint licensees) and the place of business is the place of business nominated under subsection (3) in respect of that licensee or he or she is a person appointed under subsection (4) in respect of that place of business; or

- (b) he or she is not a person referred to in paragraph (a) and is so acting:
 - (i) for a period not exceeding one month in the place of an absent person so referred to; or
 - (ii) for a period not exceeding 7 days pending an appointment under subsection (4).

(2) A licensee or (if there are joint licensees) a joint licensee must not, in respect of a place of business to which the licence relates, permit a contravention of subsection (1).

(3) If a person is a licensee, or one of a number of joint licensees, in respect of more than one place of business, he or she must not:

- (a) act as the person in charge at more than one of those places of business; or
- (b) act as the person in charge at any of those places of business unless he or she has, by instrument in writing signed by him or her or, if he or she is a joint licensee, by all of the joint licensees, and lodged with the Director-General, nominated that place as the place of business at which he or she will be the person in charge.

(4) A licensee may appoint a person as the person in charge at the place of business to which the licence relates by lodging with the Director-General a notice in the prescribed form signed by the licensee or, if there are joint licensees, by all of the joint licensees.

(5) An appointment under subsection (4) takes effect on the day on which the prescribed notice relating to the appointment is lodged with the Director-General or, if a later day is specified in the notice, on that later day.

(6) A licensee must not appoint a person as the person in charge at the place of business to which the licence relates if the licensee knows, or ought reasonably to know, that within the preceding period of 12 months:

- (a) an application by that person for a licence has been refused; or
- (b) a licence held by that person has been cancelled,

unless *[a Local Court]* **the Commission**, on an appeal under this Part against the refusal or cancellation, has found that person to be a fit and proper person to hold, or continue to hold, a licence.

(7) A nomination under subsection (3) or an appointment under subsection (4) ceases to have effect on the day on which a notice in or to the effect of the prescribed form, signed by or on behalf of the licensee of that place of business, is lodged with the Director-General or on a later day specified in the notice.

(8) A person who fails to comply with a provision of this section is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

Application for licence as private employment agent

512. [504.] (1) An application for the grant of a licence:

- (a) is to be in the prescribed form; and
- (b) is to be accompanied by a page of a newspaper circulating generally throughout the State, being a page in which was published, at least 7, but not more than 14, days before the making of the application, a notice in the prescribed form with respect to the application; and
- (c) is to be accompanied by the prescribed fee; and
- (d) is to be lodged with the Director-General.

(2) When a business for which a licence is required is to be carried on at more than one place of business, a separate application for the grant of a licence in respect of each such place is to be made.

Inquiries and objections

513. [505.] (1) The Director-General may request the Commissioner of Police to report to the Director-General whether or not:

- (a) an applicant for a licence; or
- (b) a proposed partner of an applicant for a licence in the business in respect of which the licence is applied for; or
- (c) a director of a corporation that is an applicant for a licence; or
- (d) a director of a corporation that is a proposed partner of an applicant for a licence in the business in respect of which the licence is applied for; or
- (e) a person in respect of whom notice of an appointment is lodged under [section 503 (4)] **section 511 (4)**,

is, or if he or she were the applicant for a licence would be, a fit and proper person to be the holder of a licence.

(2) On receipt of such a request the Commissioner of Police is to cause to be made such inquiries as the Commissioner considers necessary in order to comply with the request and is to furnish a report of the result of those inquiries to the Director-General.

(3) A person may, within 21 days after the publication of a notice under *[section 504 (1) (c)] section 512 (1) (b)*, lodge with the Director-General a notice of objection in respect of the application to which the notice relates.

(4) The notice of objection must be in the form of a statutory declaration in the prescribed form, must contain the prescribed particulars and must be lodged in the prescribed manner.

(5) The Director-General may, by instrument in writing served on the applicant for a licence or on a licensee who makes an appointment under *[section 503 (4)] section 511 (4)*, require that applicant or licensee or (if there is more than one) any one or more of them, to furnish within the period specified in the instrument such further information and documents as the Director-General may reasonably require in connection with the application or appointment and specify in the instrument.

(6) Any such instrument may be served by sending it by post to the applicant or licensee at his or her address last known to the Director-General or by causing it to be delivered to the applicant or licensee personally.

Referral of application to Industrial Magistrate

514. [506.] (1) The Director-General may refer an application for a licence to an Industrial Magistrate for inquiry as to whether or not:

- (a) an applicant for the licence; or**
- (b) a proposed partner of the applicant for the licence in the business in respect of which the licence is applied for; or**
- (c) a director of a corporation that is an applicant for the licence; or**
- (d) a director of a corporation that is a proposed partner of an applicant for the licence in the business in respect of which the licence is applied for; or**

(e) a person whose appointment as a person in charge has been notified under section 511,
is a fit and proper person to hold a licence.

(2) The Industrial Magistrate to whom an application is referred must consider whether the applicant or other person concerned is, from his or her character and previous conduct, a fit and proper person to hold a licence and must give the Director-General a recommendation on the application.

(3) In conducting an inquiry under this section, an Industrial Magistrate has the same functions as if the Magistrate were sitting in a Local Court and the inquiry were a matter for hearing and determination in the Local Court.

(4) The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of a licence are to be given notice of the inquiry and are entitled to be heard personally or by counsel, attorney or agent.

Disposal of applications for licences

515. [506.] (1) An application for the grant of a licence is not to be dealt with before the expiration of 14 days after the application is lodged with the Director-General.

(2) The Director-General is to grant to an applicant a licence in respect of a place of business if the Director-General is satisfied:

- (a) that the notice referred to in [section 504 (1) (c)] section 512 (1) (b) relating to the application has been duly published; and
- (b) that each of the following who is a natural person is a fit and proper person to hold a licence:
 - (i) the applicant;
 - (ii) if the applicant is a corporation - each director of the corporation;
 - (iii) each proposed partner (if any) of the applicant in carrying on the business of a private employment agent;
 - (iv) if any such proposed partner is a corporation - each director of that corporation; and

- (c) that each of the following persons is at least 18 years of age;
 - (i) if the applicant is not a corporation - the applicant;
 - (ii) if the applicant is a corporation - each director of the applicant;
 - (iii) if a proposed partner (if any) of the applicant in carrying on the business of a private employment agent is not a corporation - that proposed partner; and
 - (iv) if any such proposed partner is a corporation - each director of that corporation; and
 - (d) that the premises specified in the application as being the place of business in respect of which the application is made are reasonably suitable for carrying on the business of a private employment agent.
- (3) In considering whether a person is a fit and proper person to hold a licence, the Director-General:
- (a) is (in the case of a person other than a corporation) to have regard to his or her character; and
 - (b) is to have regard to any report relating to that person furnished under this Part by the Commissioner of Police **and any recommendation relating to the person furnished under section 514;** and
 - (c) is to have regard to such other matters, including any matter specified in any notice of objection lodged under this Part, as the Director-General considers relevant for the purpose of determining the fitness of the applicant to hold a licence.
- (4) If the Director-General is not satisfied as to any of the matters specified in subsection (2), the Director-General is to refuse the application and send to the applicant by post at the address last known to the Director-General, or deliver to the applicant personally, notice in writing of the refusal.
- (5) In the case of an application made by more than one person, it is a sufficient compliance with subsection (4) if the notice is served on any one of the applicants.
- (6) The notice is to state the reasons for the refusal.

Persons from whom licensees may seek remuneration

516. [507.] (1) A licensee must not, in respect of the carrying on of the business of a private employment agent, demand or receive any

fee, charge or other remuneration except from a person for whom the licensee procures or assists in procuring a person to undertake employment or otherwise to carry out work.

Maximum penalty: 50 penalty units.

(2) It is immaterial whether the employment or work is to be carried out pursuant to a contract of employment or otherwise.

Form of licence

517. [508.] A licence is to be in the prescribed form and, without preventing the inclusion in the licence of any other particulars, is to specify the following:

- (a) the name of the person to whom the licence is granted or, if the licence is granted to more than one person, the names of all the persons to whom the licence is granted;
- (b) the place of business in respect of which the licence is issued;
- (c) the day of grant of the licence.

Duration of licence

518. [509.] (1) A licence has effect from and including the day specified in the licence as the day of grant of the licence.

(2) A licence continues in force until it is cancelled under this Part.

(3) If, before the expiration of the year commencing on the day on which a licence takes effect, or the expiration of any year commencing on the anniversary of that day, the licensee:

- (a) fails to lodge with the Director-General a statement in writing signed by the licensee that contains the prescribed information, compiled as at a day not earlier than one month before the expiration of that year; or
- (b) fails to pay the Director-General the prescribed fee for continuation of the licence,

the Director-General may, at the expiration of the year so commencing during which the failure occurs, cancel the licence.

Notice of changed particulars

519. [510.] (1) A licensee must notify the Director-General if any of the following events occurs:

- (a) if the licensee ceases to carry on the business of a private employment agent;
- (b) if the business of the licensee is carried on at a place other than the place specified in the licence;
- (c) if the name under which the licensee carries on business is changed;
- (d) if the name of a corporation that is the licensee is changed;
- (e) if the licence is held by a corporation and the directors of the corporation are changed;
- (f) if the nomination of a place of business at which the licensee is the person in charge ceases to have effect or the licensee is, or is likely to be, absent for a period exceeding one month from that place of business;
- (g) if an appointment by the licensee of a person as the person in charge at a place of business ceases to have effect or the appointee is, or is likely to be, absent from that place of business for a period exceeding one month;
- (h) if any other prescribed event relating to the licence or licensee occurs.

Maximum penalty: [5] 20 penalty units.

(2) The notification is to be given within the prescribed time and in the prescribed manner and is to notify the occurrence of the event and such particulars as may be prescribed in respect of the event.

(3) When giving notice of an event specified in subsection (1) (a), (b), (c) or (d), the licensee must surrender the licence to the Director-General, for cancellation in the case of the event specified in subsection (1) (a) or for amendment in the case of an event specified in subsection (1) (b), (c) or (d).

Maximum penalty: [5] 20 penalty units.

(4) A regulation prescribing other events in respect of which notice must be given to the Director-General may require the licensee to surrender the licence for cancellation or amendment when giving notice of the event.

(5) The Director-General is to cancel a licence surrendered for cancellation and may amend a licence surrendered for amendment.

Cancellation of licence - grounds

520. [511.] The Director-General may cancel a licence for such reason as the Director-General thinks fit including (but without being limited to) any of the following reasons:

- (a) that the licensee or a director of a corporation that is the licensee made a statement, in or in connection with the application for the grant of the licence or a statement referred to in *[section 509]* **section 518**, that was false or misleading in a material particular;
- (b) that the licensee is not a fit and proper person to continue to be the holder of the licence;
- (c) that a director of a corporation that is the licensee would not, if he or she were the holder of a licence, be a fit and proper person to continue to be the holder of the licence;
- (d) that a corporation (being the licensee) is not a fit and proper person to continue to be the holder of the licence;
- (e) that a person appointed by a licensee to be the person in charge at the place of business in respect of which the licence is granted would not, if he or she were the holder of a licence, be or continue to be a fit and proper person to be the holder of a licence;
- (f) that the licensee has failed to comply with the provisions of *[section 510]* **section 519**;
- (g) that the business of the licensee as a private employment agent has not been or is not being properly conducted;
- (h) that the premises in which the business of the licensee is being carried on are not, or have ceased to be, reasonably suitable for carrying on the business of a private employment agent;
- (i) that the licensee has been convicted of an offence against this Part.

Procedure for cancellation

521. [512.] (1) If the Director-General proposes to cancel a licence, the Director-General must give the licensee a notice in writing setting out the reasons for the proposed cancellation and requiring the licensee, within such period as is specified in the notice, to show cause why the licence should not be cancelled, unless the cancellation is on either of the following bases:

- (a) a request has been made by the licensee or all of the joint licensees for the cancellation;
 - (b) the Director-General is satisfied that the licensee (not being a corporation) has died, that a partnership being carried on by joint licensees has been dissolved or that the licensee (being a corporation) has been wound up.
- (2) If the Director-General cancels a licence, the Director-General is to cause a notice of cancellation to be served on the licensee by sending the notice by post to the licensee at the place of business in respect of which the licence was granted or by causing it to be delivered to the licensee personally.
- (3) In the case of a licence issued to joint licensees it is sufficient if the notice of cancellation is served on any one of the joint licensees.
- (4) A notice of cancellation is to state the reasons for the cancellation of the licence.
- (5) The cancellation of a licence takes effect on the expiration of 21 days after the day on which the notice of cancellation is served.
- (6) If a licensee appeals under this Part against the cancellation of the licence, the cancellation has effect:
- (a) only if the *[Local Court] Commission* hearing the appeal confirms the cancellation or if the appeal is withdrawn; and
 - (b) on the day on which the *[Local Court] Commission* confirms the cancellation, or such later day as the *[Local Court] Commission* orders or, if the appeal is withdrawn, on the day on which it is withdrawn.

Surrender of cancelled licence

522. [513.] (1) A person who was the holder of a licence cancelled under this Part must, on the cancellation of the licence taking effect, forthwith deliver the licence to the Director-General.

Maximum penalty: [5] 20 penalty units.

(2) A person who was a joint licensee is not guilty of an offence under this section if another of the persons who were joint licensees delivers the licence to the Director-General.

Right of appeal

523. [514.] (1) An applicant for the grant of a licence may appeal to *[a Local Court]* **the Commission** against the refusal of the Director-General to grant the licence.

(2) A licensee may appeal to *[a Local Court]* **the Commission** against the cancellation by the Director-General of the licence.

(3) If an application for the grant of a licence made by more than one person is refused or a licence held by more than one person is cancelled, an appeal under this section against the refusal or cancellation may be made by any of the applicants or licensees on behalf of all of the applicants or licensees, or by all of the applicants or licensees jointly, but not otherwise.

(4) Notice of an appeal under this section, specifying the grounds of appeal, must be lodged with the Registrar not later than 21 days after the day of service of the notice of refusal or cancellation.

Appeal procedure

524. [515.] (1) The Registrar is to give notice of the time and place of the hearing of an appeal to the Director-General and to the person or persons appealing and is to state in the notice to the Director-General the grounds of the appeal.

(2) The hearing of an appeal may proceed despite any omission or error in that notice or the failure to give that notice if the *[Local Court]* **Commission** is satisfied that any person appealing and the Director-General had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by failure to give the notice.

(3) If relevant, a report furnished under this Part to the Director-General by the Commissioner of Police and certified by the Director-General to have been so furnished is to be received in proceedings before the *[Local Court]* **Commission** on an appeal as evidence of the contents of the report.

(4) The *[Local Court]* **Commission** is to hear and determine the appeal and may confirm or disallow the refusal or cancellation appealed against.

(5) If an application for a licence is refused or a licence is cancelled on the ground that a person named in the application or the licensee

is not a fit and proper person to be, or continue to be, the holder of a licence, the *[Local Court] Commission* hearing and determining the appeal is to determine whether or not that person or licensee is a fit and proper person to be or continue to be the holder of a licence.

(6) The decision of *[a Local Court] the Commission* in respect of an appeal is final and binding on the person or persons appealing and on the Director-General, who is to take such steps as may be necessary to give effect to the decision.

(7) If regulations are made relating to the institution, hearing and determination of an appeal, an appeal is to be instituted, heard and determined in accordance with those regulations.

Registers to be kept

525. [516.] (1) The Director-General is to keep a register, in such form as the Director-General determines, of licences granted under this Part and is to record in the register in respect of each licence:

- (a) the matters which are required to be specified in the licence; and
- (b) particulars of any fees paid, or due but not paid, in respect of the licence; and
- (c) particulars of any amendment of the licence; and
- (d) particulars of any cancellation of the licence; and
- (e) such other matters as may be prescribed.

(2) The Director-General is also to keep a register, in such form as the Director-General determines, containing:

- (a) particulars of the name of each licensee nominated and each person appointed as the person in charge at a place of business to which a licence relates; and
- (b) particulars of each such place of business; and
- (c) particulars of the date on which such a nomination or appointment takes effect or ceases to have effect; and
- (d) if the Director-General causes a notice of cancellation to be served on a licensee on the ground that the licensee or a person so appointed is not a fit and proper person to be or continue to be the holder of a licence, a note to that effect; and
- (e) particulars of the result of any appeal against the cancellation of a licence on the ground that the licensee or a person so

appointed is not a fit and proper person to be or continue to be the holder of a licence.

(3) The Director-General may make such alterations in the registers kept under this section as are necessary to ensure that the matters recorded therein in respect of any licence or person are accurate.

(4) A certificate purporting to be signed by the Director-General and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters specified in subsection (1) or (2) did or did not appear in the registers referred to in those subsections is, without proof of the signature of the Director-General and without the production of any record or document upon which the certificate is founded, evidence of the particulars certified.

Performance of Director-General's functions

526. [517.] Anything authorised or required under this Part to be done by, lodged with or paid to the Director-General may be done by, lodged with or paid to any officer of the Department who is authorised generally or specially in that behalf in writing by the Director-General, and anything purporting to have been done by, lodged with or paid to an officer so authorised is to be considered to have been done by, lodged with or paid to the Director-General.

Duties of licensees

527. [518.] A licensee must:

- (a) keep a register or registers, in such form as is approved by the Director-General, containing particulars of the name and address of every person who applies to him or her for employment and of every person who applies to him or her for labour and the nature of the employment or labour required, and must retain a register so kept for a period of 12 months after the making of the last entry in it; and
- (b) keep a register, in such form as is approved by the Director-General, containing particulars of all engagements made by or through the licensee, of any fee, charge or remuneration received in respect of any such engagement and of the name of the person from whom any such fee, charge or remuneration was received and must retain any such register

for a period of 12 months after the making of the last entry in it; and

- (c) retain the originals of all letters received by the licensee in connection with his or her business as a private employment agent for the period of 12 months after their receipt; and
- (d) permit the Director-General or an officer authorised by the Director-General, at any reasonable hour, to inspect the registers referred to in paragraphs (a) and (b) and the letters referred to in paragraph (c); and
- (e) furnish to the Director-General, within such time as is, or at such times as are, specified in a notice in writing served on the licensee by the Director-General, specified information in writing relating to all or any of the particulars contained in the register referred to in paragraph (b); and
- (f) except when the licence issued to the licensee has been surrendered to the Director-General in accordance with this Part, display the licence in a conspicuous position in the premises to which it relates; and
- (g) not make any false entry in a register referred to in paragraph (a) or (b); and
- (h) not advertise or cause to be advertised, or publish or cause to be published, any matter that, by its tenor, suggests or implies that the matter is not advertised or published by or on behalf of a private employment agent; and
- (i) not advertise or cause to be advertised a position as being available when no such position exists.

Maximum penalty: 50 penalty units.

If licence cancelled holder not qualified to obtain licence

528. [519.] A person whose licence under this Part has been cancelled (except at the person's own request) is not entitled to hold such a licence until the expiration of one year from the date of cancellation.

Production of licence

529. [520.] A licensee under this Part is not entitled to recover fees, charges or other remuneration in any court unless the licensee produces his or her licence to the court.

Loss or destruction of licence

530. [521.] On satisfactory proof of loss or destruction of a licence under this Part, the Director-General may, at the request of the licensee, issue a duplicate licence bearing all endorsements, and the duplicate is for all purposes to be treated as if it were the original licence.

Offences by corporations

531. [522.] (1) If a corporation contravenes any provision of this Part or a regulation made under it, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under the provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or the regulations.

Who may take proceedings

532. [522.] (1) Proceedings for an offence against this Part or the regulations under this Part may be taken only by an inspector or by a person authorised by the Minister.

(2) Except as provided by subsection (3), proceedings for an offence against this Part or the regulations made under it are to be disposed of summarily before an Industrial Magistrate.

(3) Proceedings for an offence against section 510 are to be prosecuted before the Commission.

Copy of entries in registers to be in evidence

533. [523.] A copy of any entry in any of the registers prescribed for the purposes of this Part, being a copy purporting to be signed by the Minister or any officer of the Department making it, is prima facie evidence of the matters stated in the copy.

Orders for refunds

534. [524.] (1) If, during the course of proceedings before the Commission for an offence against section 510, it appears to the Commission that a person who has carried on the business of a private employment agent without a licence under this Part has demanded and received any fee, charge or other remuneration from a person seeking to be employed, the Commission may make an order requiring the unlicensed person concerned to refund the fee, charge or other remuneration received.

(2) An appeal lies to the Full Commission from any order of the Commission under this section.

(3) Section 180 applies to an appeal from an order of the Commission under this section to the Full Commission in the same way as it applies to an appeal from an order of an Industrial Magistrate to the Commission.

Injunctions

535. [525.] (1) If a penalty is imposed under this Part and the Commission is of the opinion that the breach was committed because of a wilful act or default of a person, the Commission may, on its own initiative or on application, and in addition to any penalty imposed, grant an injunction to restrain the person from committing further or other breaches of this Part.

(2) If any person disobeys such an injunction, the person is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A person who is charged with such an offence may be committed for trial for the offence by any Justice or Justices acting under the Justices Act 1902 or by the Commission. For the purposes of any such committal, the Commission has the powers of a Justice or Justices under that Act.

Application of Division

536. [524.] The provisions of this Part do not apply:

- (a) to any model or model agency; or
- (b) to a licensee under the Entertainment Industry Act 1989.

Regulations

537. [525.] (1) Regulations may be made for the purposes of this Part:

- (a) regulating the exhibition of licences and other documents required to be exhibited; and
- (b) prescribing the scale of fees chargeable by and payable to licensees; and
- (c) restricting or regulating contracts for the employment abroad in any capacity of any persons; and
- (d) prescribing any matter or thing which by this Part is required or permitted to be prescribed; and
- (e) generally giving effect to the purposes of this Part.

(2) Any such regulation may create an offence punishable by a penalty not exceeding [5] 20 penalty units.

(3) Without affecting the generality of subsection (1), regulations may be made restricting or regulating the manner in which a person may carry on the business of a private employment agent in respect of that person's acting as an agent:

- (a) for procuring or assisting to procure a person to carry out baby-sitting services for a person seeking to have those services carried out; or
- (b) for procuring or assisting to procure employment for a person seeking to be employed to carry out baby-sitting services.

PART 9 [10] - MISCELLANEOUS

Division 1 - Rules - practice and procedure

Establishment of the Rule Committee

538. [526.] (1) Rules for the purposes of this Act are to be made by a Rule Committee comprising:

- (a) the President; and
 - (b) 3 other members of the Commission appointed by the President, at least one of them being a Conciliation Commissioner; and
 - (c) the Registrar; and
 - (d) a person nominated by the Advisory Council as the representative of employers; and
 - (e) a person nominated by the Advisory Council as the representative of employees.
- (2) The secretary of the Rule Committee is:
- (a) the Registrar; or
 - (b) in the absence of the Registrar - an officer employed under Part 2 of the Public Sector Management Act 1988 who acts as the secretary with the approval of the President.

Subject-matter of rules

539. [527.] (1) The Rule Committee may make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by rules or that is necessary or convenient to be prescribed in relation to the practice and procedure of the Commission, a Conciliation Committee, a Tribunal or the Registrar.

(2) Without affecting the generality of subsection (1), rules may be made for or with respect to:

- (a) the form of references and applications to the Commission, a Conciliation Committee, a Tribunal or the Registrar under this or any other Act; or
- (b) the procedure to be followed in, or for the purposes of, proceedings before the Commission, a Conciliation Committee, a Tribunal or the Registrar under this or any other Act; or
- (c) the form and mode of service of notice of a meeting of a Conciliation Committee or a Tribunal; or
- (d) the giving of notice of an inspection required or authorised by this Act to be carried out by the Commission, a Conciliation Committee or a Tribunal, or its members; or
- (e) the functions of the Registrar in relation to proceedings instituted before the Commission, a Conciliation Committee or a Tribunal.

Provisions applicable pending making of rules

540. [528.] (1) Until rules are in force with respect to the practice and procedure of the Commission, a Conciliation Committee or a Tribunal, the regulations may make such provision with respect to those matters as may be necessary or convenient.

(2) If a matter of practice or procedure is not the subject of a rule or regulation, the regulations in force under the Industrial Arbitration Act 1940 immediately before its repeal apply to the matter as far as practicable and with such modifications as may be necessary.

Meetings of the Rule Committee

541. [529.] (1) At a meeting of the Rule Committee:

- (a) the President is to preside; or
- (b) if the President is absent, the senior member of the Commission present is to preside,

and, in the event of an equality of votes, has a casting vote.

(2) At a meeting of the Rule Committee, 4 members constitute a quorum.

(3) The procedure at a meeting of the Rule Committee is to be as determined by the Committee.

Division 2 - President's Advisory Council

Establishment of the Advisory Council

542. [530.] (1) There is established by this Act a President's Advisory Council consisting of:

- (a) the President of the Commission; and
- (b) the Director-General; and
- (c) the members of the Advisory Council appointed by the Minister under subsection (2).

(2) The Minister is to appoint as members of the Advisory Council:

- (a) *[a person]* **two persons** nominated by the Labor Council of New South Wales; and
- (b) a person nominated by the Employers' Federation of NSW; and
- (c) a person nominated by the Chamber of Manufactures of New South Wales; and

- (d) not more than 2 other persons nominated by such other bodies as the Minister considers to be appropriate.

Meetings of the Advisory Council

543. [531.] (1) Meetings of the Advisory Council convened, and presided over, by the President are to be held at least once during each of the periods of 3 months that commence on the first days of January, April, July and October.

- (2) The business of a meeting of the Advisory Council is:
 - (a) to discuss matters relating to the efficiency and effectiveness of the Commission; and
 - (b) to advise the President in relation to those matters.

[(3) As soon as practicable after a meeting of the Advisory Council, the President is to cause the Minister to be provided with:

- (a) a copy of the minutes of the meeting; and*
- (b) a report in relation to matters discussed at the meeting.]*

Subcommittees of the Advisory Council

544. [532.] (1) The Advisory Council may, with the approval of the Minister, establish subcommittees in respect of different industries or enterprises, or otherwise, for the purpose of assisting it in the exercise of its functions.

- (2) It does not matter if all, or any, of the members of a subcommittee are not members of the Advisory Council.

Procedure - Advisory Council

545. [533.] Subject to any directions of the Minister, the procedure for:

- (a) the calling of a meeting of the Advisory Council or a subcommittee; and
 - (b) the conduct of business at the meeting,
- is to be as determined by the Advisory Council or the subcommittee.

Remuneration - Advisory Council

546. [534.] (1) An ex officio member of the Advisory Council is entitled to be paid such travelling and subsistence allowances in

connection with the business of the Advisory Council as are determined by the Minister in respect of the member.

(2) A person who:

(a) is appointed by the Minister as a member of the Advisory Council; or

(b) is a member of a subcommittee of the Advisory Council, is entitled to be paid such remuneration (including travelling and subsistence allowances) in connection with the business of the Advisory Council or subcommittee as is determined by the Minister in respect of the member.

Division 3 - Co-operation with the Commonwealth

Subdivision 1 - General

Definitions

547. [535.] (1) In this Division:

"**Commonwealth Act**" means the Industrial Relations Act 1988 of the Commonwealth;

"**Commonwealth Commission**" means the Australian Industrial Relations Commission;

"**Commonwealth President**" means the President of the Commonwealth Commission;

"**Commonwealth Registrar**" means the Industrial Registrar holding office under the Commonwealth Act;

"**State Commission**" means the Industrial Relations Commission established by this Act;

"**State President**" means the President holding office under this Act;

"**State Registrar**" means the Industrial Registrar holding office under this Act.

Co-operation between the State and the Commonwealth

548. [536.] (1) The State President may accept any invitation from the Commonwealth President to meet regularly with the Commonwealth President and the heads of the industrial authorities of other States to exchange information and discuss matters of mutual concern with a view to:

- (a) encouraging co-operation between the members of the Commonwealth Commission, the State Commission and the industrial authorities of the other States; and
- (b) co-ordinating the several industrial relations systems in Australia.

(2) The State Registrar may accept any invitation from the Commonwealth Registrar to meet regularly with the Commonwealth Registrar and the Registrars of the industrial authorities of the other States to exchange information and discuss matters of mutual concern with a view to:

- (a) encouraging co-operation between the Commonwealth Registrar, the State Registrar and those holding similar office in the other States; and
- (b) co-ordinating the several industrial relations systems in Australia.

Member of Commission may exercise functions under Commonwealth Act

549. [537.] (1) If, under the Commonwealth Act, the Commonwealth President requests the State President to nominate a member of the State Commission to deal with:

- (a) a particular dispute or claim with which the Commonwealth Commission is empowered to deal; or
- (b) a particular threatened dispute or claim with which the Commonwealth Commission would be empowered to deal,

the State President may nominate a member of the State Commission to deal with the dispute or claim.

(2) If, in accordance with a request made under the Commonwealth Act, a member of the State Commission is nominated by the State President to deal with a particular dispute or claim, the member may exercise such functions, for the purpose of dealing with the dispute or claim, as are by the Commonwealth Act conferred on a member of the State Commission who is so nominated.

(3) A determination made by a member of the State Commission in exercise of functions referred to in subsection (2) is, for the purposes of this Act, to be taken not to have been made by a member of the State Commission under this Act.

Reference of industrial matter to Commonwealth Commission

550. [538.] (1) The State President may if, in the opinion of the State President it is appropriate to do so, request the Commonwealth President to nominate a member of the Commonwealth Commission to deal with the whole or any part of an industrial matter which has arisen.

(2) If, in accordance with a request under subsection (1), the Commonwealth President nominates a member of the Commonwealth Commission, the State President may refer the whole or part of the industrial matter in respect of which the request was made to the member to be investigated and to be dealt with under this Act by conciliation, by arbitration or by conciliation and, if necessary, arbitration.

(3) The State President may revoke the nomination at any time before a determination is made by the Commonwealth Commission in relation to the industrial matter.

(4) For the purpose of investigating and dealing with the whole or any part of an industrial matter which has arisen and has been referred to the Commonwealth Commission, the member of the Commonwealth Commission may exercise any powers of the State Commission (other than the Full Commission) under this Act.

(5) The provisions of this Act relating to the practice and procedure of, and the conduct of business before, the State Commission apply in respect of the exercise of powers under this section by a member of the Commonwealth Commission.

(6) A determination made by the Commonwealth Commission in settlement of the industrial matter is to be taken to be, and has effect as, an award or order of the State Commission.

(7) The State President may direct a member of the State Commission to provide a report on a specified matter related to the exercise of powers under this section by a member of the Commonwealth Commission and the member is to provide the report after making any necessary investigation.

Joint proceedings

551. [539.] (1) If the State President considers it to be appropriate, the State Commission (other than the Full Commission) may exercise, in the presence of:

- (a) the Commonwealth Commission; and
- (b) the parties to an industrial dispute in relation to which the Commonwealth Commission is exercising a function; and
- (c) any witness summoned by the Commonwealth Commission, any of the functions that are exercisable by the State Commission (other than the Full Commission) in relation to an industrial matter.

(2) When exercising functions under subsection (1), the State Commission may have regard to any evidence that is relevant to the exercise of those functions and is given to the Commonwealth Commission:

- (a) in the presence of the State Commission; and
- (b) in the presence of the parties to the industrial matter.

(3) This section does not prevent the State Commission from exercising functions in relation to an industrial matter in the presence of a person other than the Commonwealth Commission or a person referred to in subsection (1) (b) or (c).

(4) The State President may, in relation to the exercise of functions under subsection (1), direct a member of the State Commission to provide a report in relation to a specified matter and the member is to make the report after making any necessary investigation.

Conference with Commonwealth Commission

552. [540.] (1) If it appears to the State President to be desirable, in relation to a matter within the jurisdiction of the State Commission, that a conference should be held with any other industrial authority, the State President may, if the other industrial authority is willing, confer with that authority, or arrange for another member of the State Commission so to confer, with a view to securing co-ordination between:

- (a) any decision made or to be made under this Act or any matter arising under this Act; and
- (b) any decision made or to be made by that authority or any matter arising under an Act conferring or imposing functions on that authority.

(2) The State President may confer with the Commonwealth Commission in relation to the exercise, or the proposed exercise, under [section 539] section 551 of functions by a member of the State Commission.

(3) In this section:

"industrial authority" means a commission, court, board, tribunal or committee having authority under any other law of the State, or under a law of the Commonwealth or of another State or a Territory, to hear and determine industrial disputes or industrial matters.

Subdivision 2 - Oil Industry

Definitions

553. [541.] In this Subdivision:

"common negotiations" means negotiations that take place between the parties to a Federal award for the oil industry in anticipation of the expiration of the award or in consequence of the service on the employer respondents to the award of a log of claims by the employee respondents to the award;

"Federal award", in relation to the oil industry, means any of the following awards made under the Commonwealth Act or any award made under that Act that extends or replaces such an award:

The Australian Workers' Union (Oil Companies) Award 1986
Clerks (Oil Companies) Award 1984
Engineering (Oil Companies) Award 1988
Storemen and Packers' (Oil Companies) Award 1984
Storemen and Packers' (Oil Refineries) Award 1984
Transport Workers (Oil Companies) Award 1982

"industry standard" means any part of the subject-matter of a Federal award for the oil industry as in force on 1 June 1980;

"joint sitting" means the State Commission and a Presidential Member sitting together pursuant to an agreement under [section 545] section 557;

"oil industry industrial matter" means an industrial matter that pertains to the relations of Australian Lubricating Oil Refinery Limited or Caltex Refining Co. Pty. Limited with employees of the company who are, or are eligible to become, members of the oil industry branch of the industrial union registered as the Australian Workers' Union;

"Presidential Member" means a presidential member of the Commonwealth Commission.

Exclusive jurisdiction and powers of State Commission

554. [542.] (1) The functions of the State Commission in relation to an oil industry industrial matter may be exercised only by the State Commission constituted by one member or the Full Commission.

(2) Where, for the purposes of a joint sitting or of determining a question under [section 544] section 556, the State Commission is constituted by one member, an order, award, ruling or other decision of the State Commission made at, or as a result of a hearing at, the joint sitting is, for the purposes of this Act, an order, award, ruling or other decision of a member of the State Commission sitting alone.

Arrangements for execution of Subdivision

555. [543.] The State President may make such arrangements with the Commonwealth President as are necessary or convenient for the execution of this Subdivision.

Certain powers suspended during common negotiations

556. [544.] (1) The functions conferred by this Act on the State Commission are not, except to the extent provided by this section, to be exercised in relation to an oil industry industrial matter that is the subject of common negotiations and has not been determined by agreement between the parties to the negotiations or by an order or award under the Commonwealth Act.

(2) If a question arises in relation to an industrial matter before the State Commission as to whether the industrial matter is such an oil industry industrial matter, the State Commission is required to determine the question but is not, unless the question arises as a result of a submission made to the State Commission, to make its determination until it has conferred with a Presidential Member to ascertain the Member's opinion on the matter.

(3) The State Commission may, in relation to such an oil industry industrial matter, convene and conduct a compulsory conference under this Act.

Joint sittings

557. [545.] (1) Where an oil industry industrial matter before the State Commission:

- (a) has been the subject of common negotiations and has been determined by agreement between the parties to the negotiations or by an order or award under the Commonwealth Act; or
- (b) is not an oil industry industrial matter to which *[section 544]* **section 556** applies and affects, or is likely to affect, industry standards,

the State Commission is required, pursuant to arrangements made under *[section 543]* **section 555**, to consult a Presidential Member so that the State Commission and the Presidential Member may, between them, and without a hearing, decide whether the industrial matter should be heard and determined as a joint sitting.

(2) If the State Commission and a Presidential Member:

- (a) agree to hear and determine an oil industry industrial matter at a joint sitting, the State Commission is required, in accordance with an arrangement under *[section 543]* **section 555**, to take part in the joint sitting; or
- (b) do not so agree - the State Commission is required to hear and determine the matter in accordance with the provisions of this Act (other than this Subdivision) but, before making an order or award in relation to the matter, must confer with the Presidential Member to ascertain the Member's opinion on the matter.

(3) At, or after a hearing at, a joint sitting, the State Commission may make such order or award in relation to an industrial matter referred to in subsection (1) as it could make otherwise than at a joint sitting but, before making such an order or award, the State Commission is required to confer with the Presidential Member taking part in the joint sitting to ascertain the Member's opinion on the matter.

Appearances

558. [546.] (1) An organisation specified in Schedule 6 is entitled to intervene, be represented and be heard before the State Commission for the purposes of *[section 544]* **section 556** or at a joint sitting under *[section 545]* **section 557**.

(2) The Governor may, by order published in the Gazette, amend Schedule 6 by omitting a name from it or by adding to it the name of an employee or employer respondent to a Federal award for the oil industry.

Procedure

559. [547.] Subject to any arrangements under [section 543] section 555, the procedure at a joint sitting under this Subdivision is to be such procedure under this Act as is determined by the State Commission and Presidential Member taking part in the joint sitting.

PART 10 [11] - SUPPLEMENTARY

Permits for aged, infirm or slow workers

560. [548.] (1) Any aged, infirm or slow worker may apply to the Registrar for a written permit authorising the worker to work for less than the wage fixed for the worker by an award if the worker considers himself or herself unable to earn the minimum wage fixed by the award.

(2) An application may be made by post and may be made, if the Registrar is satisfied that this is appropriate, by a person on behalf of an aged, infirm or slow worker without the necessity for the worker to appear personally before the Registrar.

(3) The Registrar may grant such a permit on such conditions as to the Registrar seem appropriate, and may cancel any such permit.

(4) An inspector, or another person appointed by the Minister for the purpose, may grant a permit under this section having a term of not more than 3 months.

(5) If the Registrar grants a permit, the Registrar is required to immediately notify the secretary of the State employee organisation for the industry in which the applicant intends to be employed of the grant of the permit and its conditions.

(6) The organisation may at any time after being given such notice apply to the Registrar for cancellation of the permit.

(7) An aggrieved person may appeal to the Commission against the granting of or the refusal or failure to grant or the cancellation of a permit.

(8) An appeal against the grant of a permit may be made only on the ground that the trade or occupation concerned is one in which no permit should be granted.

(9) The decision of the Commission on an appeal under this section is to be carried into effect by the Registrar.

Appointment of Industrial Magistrates

561. [549.] (1) The Governor may appoint as Industrial Magistrates persons who have the qualifications required for a Magistrate.

(2) Persons so appointed have, throughout the State, the functions conferred or imposed by this or any other Act on an Industrial Magistrate.

(3) In the exercise of those functions, an Industrial Magistrate may do whatever might be done by a Magistrate constituting a Local Court.

Chief Industrial Magistrate

562. [550.] (1) The Governor may, by the same instrument as that by which the person is appointed as an Industrial Magistrate or by a different instrument, appoint a person as Chief Industrial Magistrate.

(2) The Governor may, from time to time, appoint an Industrial Magistrate to act as Chief Industrial Magistrate during the illness or absence of the Chief Industrial Magistrate.

(3) An Industrial Magistrate, while so acting, has and may exercise the functions of the Chief Industrial Magistrate and is to be taken to be the Chief Industrial Magistrate.

(4) The Chief Industrial Magistrate is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.

Appointment of inspectors

563. [549.] (1) Persons may be appointed under Part 2 of the Public Sector Management Act 1988 as inspectors for the purposes of this Act.

(2) An inspector has such functions as are conferred by or under this or any other Act on inspectors appointed for the purposes of this Act.

(3) The regulations may provide for the certification of the authority of an inspector and require the production of a certificate of authority in circumstances prescribed by the regulations.

Functions of inspectors

564. [550.] (1) In addition to any function conferred or imposed on an inspector by or under this Act or prescribed by the regulations, an inspector may, in relation to an industry covered by an award or agreement, at any reasonable time:

- (a) inspect any premises of any employer on which the inspector knows or has reasonable grounds to suspect any such industry is carried on, and any work being done there; and
- (b) require the employer in such industry to produce, at such time and place as the inspector may specify, for the inspector's examination any time-sheets and pay-sheets of the employees in such industry; and
- (c) examine any employee in such industry as to the prices for piecework and the rate of wages paid to the employee, and as to his or her hours of work as such employee; and
- (d) at any reasonable time inspect the premises where any obligation of a bailor under a contract of bailment of a public vehicle or of a principal contractor under a contract of carriage is incurred or performed; and
- (e) at any reasonable time require such a bailor or principal contractor to produce for the inspector's examination at such time and place as the inspector may specify, the records that the bailor or principal contractor is required to keep under this Act; and
- (f) at any reasonable time examine any bailee or carrier under such a contract with respect to payments made under the contract to the bailee or carrier by, or by the bailee or carrier to, the bailor or principal contractor and the hours of work of the bailee or carrier as a bailee or carrier under the contract.

(2) Where an employee claims that an employer has not paid the full amount of any payment due to the employee (being an amount in respect of which an application may be made under this Act), an inspector may, by notice in writing served personally or by post, require the employer to deliver or to send by post to the inspector, within such time and to such place as are specified in the notice:

- (a) a copy of such specified part of the time-sheets and pay-sheets required to be kept under this Act; and
- (b) such other information of a specified kind relating to the payment so due to the employee,

as the inspector considers necessary in order to investigate the claim.

(3) Where a bailee under a contract of bailment of a public vehicle or a carrier under a contract of carriage claims that the bailor under the contract of bailment or principal contractor under the contract of carriage has not paid the full amount due to the bailee or carrier under the contract, an inspector may, by notice in writing served personally or by post, require the bailor or principal contractor to deliver or to send by post to the inspector, within such time and to such place as are specified in the notice:

- (a) a copy of such specified part of the records of the bailor or principal contractor that are required to be kept under this Act; and
- (b) such other information of a specified kind relating to the amount so due to the bailee or carrier,

as the inspector considers necessary in order to investigate the claim.

(4) A public servant authorised for the purpose by the Director-General may exercise the powers conferred on an inspector by subsections (2) and (3).

(5) An inspector does not have authority under this Act to enter a dwelling, or the land used in connection with a dwelling, except:

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant.

Obstruction of inspector in exercise of functions

565. [551.] (1) Any person who:

- (a) intimidates, obstructs or attempts to obstruct in any manner any inspector in the exercise of his or her functions under this Act or the regulations; or
- (b) on demand by an inspector to state his or her name and place of residence, refuses to do so or states a false name or place of residence; or
- (c) gives, procures, offers or promises any bribe, recompense or reward to influence any inspector in the exercise of his or her functions under this Act or the regulations; or

- (d) on demand made by an inspector, fails to produce any record which the inspector is authorised under this Act or the regulations to examine or inspect; or
 - (e) prevents or attempts to prevent an inspector from taking copies of or extracts from any such record or from taking and retaining any such record for such period as may be necessary in order to take copies of or extracts from it; or
 - (f) on demand by an inspector, fails to deliver or send to the inspector any information which the inspector is authorised under this Act or regulations to have delivered or sent to the inspector; or
 - (g) fails to comply with any order or demand which an inspector is authorised by or under this Act or the regulations to give or make,
- is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) In this section, a reference to an inspector includes a reference to a public servant who is authorised under [section 550 (4)] section 564 (4).

Disclosure of information

566. [552.] (1) A person who is, or was at any time, an inspector appointed under this Act or a public servant authorised under [section 550 (4)] section 564 (4) must not, subject to subsection (2), disclose any information relating to any manufacturing or commercial secrets or working processes obtained by him or her in connection with the administration or execution of this Act or the regulations made under the Act.

Maximum penalty: 20 penalty units.

(2) Subsection (1) does not operate to prevent the disclosure of information if that disclosure is:

- (a) made in connection with the administration or execution of this Act or the regulations; or
- (b) made with the prior permission of the Minister; or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

(3) The Minister may grant the permission referred to in subsection (2) (b) only if the Minister is satisfied that to do so would be in the public interest.

Power of entry and inspection by Committee, Tribunal etc.

567. [553.] (1) A Conciliation Committee or Tribunal, or any 2 or more members authorised by the Committee or Tribunal as evidenced by the authority of the Chairperson, may enter and inspect any premises the Committee, Tribunal or members know or have reasonable grounds to suspect are used in any industry, belong to a bailor or principal contractor or to which a reference or application to the Committee or Tribunal relates, and any work being carried on there.

(2) Any person who hinders or obstructs a Conciliation Committee or Tribunal or any member of a Conciliation Committee or Tribunal in the exercise of the powers conferred by this section, or hinders or obstructs the Commission or any member of the Commission in the exercise of similar powers, is guilty of an offence.

Maximum penalty: 20 penalty units.

Power of entry of Commission etc.

568. [554.] (1) The Commission, a member of the Commission, every person authorised in writing by the Commission, the Registrar, a Conciliation Committee or a Tribunal may at any time during working hours enter any building, mine, mine working, ship, vessel, place or premises of any kind, in or in respect of which the Commission, member, person, Registrar, Committee or Tribunal knows or has reasonable grounds to suspect that:

- (a) any industry is carried on; or
- (b) any work is being or has been done or commenced; or
- (c) any matter or thing is taking or has taken place in relation to which any industrial action is pending; or
- (d) any award, agreement or contract determination has been made; or
- (e) any offence against this Act or the regulations is being committed,

and may, to the extent and for the purposes set out in the authority, inspect and view any work, material, machinery, appliance, articles, book, document or other record there.

(2) A person authorised under subsection (1) does not have authority to enter a dwelling, or the land used in connection with a dwelling, except:

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant.

(3) A person who hinders or obstructs the Commission, a member of the Commission or any person authorised under this section in the exercise of any power conferred by this section is guilty of an offence.

Maximum penalty: 20 penalty units.

Right of entry of officer of State employee organisation

569. [555.] (1) An officer of a State employee organisation authorised for the purpose by the Registrar may:

- (a) enter any place, premises, ship or vessel of any kind which members of the State employee organisation or persons in the same calling as such members are engaged, for the purpose of talking with or interviewing the employees in such place, premises, ship or vessel; and
- (b) enter any place, premises, ship or vessel of any kind of any employer engaged in the industry or enterprise in which members of the State employee organisation or persons in the same trade or occupation as such members are engaged during working hours for the purpose of investigating any suspected breach of this Act or of any award or agreement in force in relation to such industry or enterprise; and
- (c) for the purpose of investigating any suspected breach of this Act or of any award or agreement in force in relation to any industry or enterprise, require any employer engaged in such industry or enterprise to produce for the officer's inspection during the usual office hours at the employer's office any time-sheets and pay-sheets and other documents kept by the employer in regard to employees in such industry or enterprise; and
- (d) make copies of the entries in such time-sheets and pay-sheets and other documents relating to any such suspected breach; and
- (e) enter any place to which a licence relates for the purpose of investigating any suspected breach of Part 8 (Private Employment Agencies) or the regulations made under Part 8, and require a person to produce for examination any books,

papers, records or remittance advice required to be kept, made or given under that Part by the person; and

- (f) during working hours, for the purpose of investigating any breach of the Occupational Health and Safety Act 1983 or of any associated occupational health and safety legislation within the meaning of that Act, enter any place, premises, ship or vessel of any kind of any employer engaged in an industry or enterprise in which members of the State employee organisation or persons in the same trade or occupation as those members are engaged.

(2) An officer who is authorised under this section must not wilfully hinder or obstruct the employees during their working time and may interview any employees or talk to them in any lunch time or non-working time wherever such employees would normally partake of a meal on the employer's premises or in such other place on the employer's premises as may be agreed between the employer and the State employee organisation.

Maximum penalty: 20 penalty units.

(3) An authority issued by the Registrar under this section:

- (a) remains in force until it expires in accordance with paragraph (b) or it is revoked under the provisions of this section; and
- (b) expires when the person to whom it was issued ceases to be an officer of the State employee organisation; and
- (c) may, on an application made to the Registrar in the prescribed manner, be revoked by the Registrar if the Registrar is satisfied that the person to whom it was issued has wilfully hampered or hindered employees during their working time or has otherwise acted in an improper manner in the exercise or the purported exercise of any power conferred on the person by this section.

(4) A person who hinders or obstructs an officer in the exercise of the powers conferred by this section or who refuses entry to the officer or unduly delays the officer in entering at any time during business hours any such place, premises, ship or vessel is guilty of an offence.

Maximum penalty: 20 penalty units.

(5) An officer authorised under this section does not have authority to enter a dwelling, or the land used in connection with a dwelling, except:

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant.

(6) A person to whom an authority has been issued under this section must, within 14 days after the expiry or revocation of the authority, return the authority to the Registrar for cancellation.

Maximum penalty: 20 penalty units.

(7) This section applies to and in respect of an officer of an association of contract drivers, and an officer of an association of contract carriers, in the same way as it applies to and in respect of an officer of a State employee organisation, and it applies as if in this section:

- (a) a reference to members of the State employee organisation or persons in the same calling were a reference to members of the association or persons who are bailees or carriers under contracts of the same class as those members; and
- (b) a reference to employees were a reference to those members, bailees and carriers.

Evidence of an award, industrial agreement or enterprise agreement

570. [556.] (1) Evidence of an award may be given by the production of:

- (a) a copy of the Industrial Gazette in which the award appears; or
- (b) a document purporting to be a copy of the award printed under the authority of the Registrar; or
- (c) a document certified by the Registrar to be a true copy of the award.

(2) Evidence of an industrial agreement or an enterprise agreement may be given by the production of:

- (a) a document purporting to be a copy of the agreement printed under the authority of the Registrar; or
- (b) a document certified by the Registrar to be a true copy of the agreement.

(3) A document certified by the Registrar as being a true copy of an award, industrial agreement or enterprise agreement as in force at a specified date or during a specified period is evidence of the award or agreement as so in force.

(4) A document purporting to have been certified by the Registrar is to be taken to have been so certified in the absence of proof to the contrary.

Reprinting of awards and contract determinations

571. [557.] (1) If an award or contract determination has been varied, the Registrar may reprint the award or determination incorporating the variation in a form certified by the Registrar to be correct at a specified date.

(2) Before reprinting the award or contract determination, the Registrar may alter the wording or form of the award or contract determination if, in the opinion of the Registrar, the alteration will result in the award or determination:

- (a) being expressed in clearer terms or so as to avoid unnecessary technicalities; or
- (b) complying with such requirements relating to form as may be made by the regulations.

(3) This section applies to awards and contract determinations, and to variations of them, whether made before or after the commencement of this section.

(4) Before making any alteration under subsection (2), the parties to the award or contract determination must be advised of the proposed alteration and be given the opportunity to be heard by the Registrar.

Obsolete awards etc.

572. [557.] (1) The Registrar, after such inquiry as the Registrar considers sufficient, may notify in the Industrial Gazette the intention to declare that an award, agreement, exemption, order or contract determination made, entered into or granted under this Act and specified or described in the notification, is obsolete.

(2) Any person or State employee organisation or, in the case of a contract determination, any person or any association registered under Division 8 of Part 2, may, in the prescribed manner and within the prescribed time, lodge with the Commission notice of objection to any such award, agreement, exemption, order or contract determination being declared obsolete.

(3) The Commission is to hear and determine the objection.

(4) If no such objection is so lodged, or the Commission dismisses any such objection, the Registrar may notify in the Industrial Gazette that the award, agreement, exemption, order or contract determination is obsolete.

(5) On the publication of any such notice, the award, agreement, exemption, order or contract determination described in it ceases to have any effect.

(6) A reference in this section to an award, agreement, exemption, order or contract determination includes a reference to any part of it.

Penalty for wilfully false statement

573. [558.] A person who, before a Conciliation Committee, a Tribunal[, *the Commission or the Court*] or **the Commission**, wilfully makes on oath any false statement knowing the same to be false is guilty of perjury.

Penalty for obstructing Commission etc.

574. [559.] Any person who hinders or obstructs the Commission or any member or officer of the Commission in the exercise of any of its functions is guilty of an offence.

Maximum penalty: 20 penalty units.

[Contempt or disturbance of the Commission]

560. (1) *A person in contempt of the Commission is guilty of an offence.*

(2) *It is a contempt of the Commission if a person:*

- (a) *wilfully insults or disturbs a member of the Commission in the exercise of functions as a member; or*
- (b) *interrupts the proceedings of the Commission; or*
- (c) *uses insulting language towards a member of the Commission exercising functions as a member; or*
- (d) *by writing or speech uses words calculated to influence improperly a member of the Commission or a witness before the Commission; or*
- (e) *by writing or speech uses words calculated to bring the Commission or a member of the Commission into disrepute; or*

(f) *does any other thing that, if the Commission were the Supreme Court, would be a contempt in the face of the Court.*

(3) *A person must not create or continue a disturbance, or take part in creating or continuing a disturbance, in or near a place at which the Commission, a Conciliation Committee or a Tribunal is sitting.*

Maximum penalty: 1,000 penalty units in the case of a corporation or, in any other case, 100 penalty units or imprisonment for 6 months, or both.]

Interference with the Commission or members

575. [560.] (1) A person must not:

- (a) **wilfully insult or disturb a member of the Commission in the exercise of his or her functions as a member; or**
- (b) **interrupt the proceedings of the Commission; or**
- (c) **use insulting language towards a member of the Commission exercising his or her functions as a member; or**
- (d) **by writing or speech, use words calculated:**
 - (i) **to influence improperly a member of the Commission or a witness before the Commission; or**
 - (ii) **to bring a member of the Commission or the Commission into disrepute.**

Maximum penalty:

- (i) **in the case of a natural person - 50 penalty units; and**
- (ii) **in the case of a body corporate - 100 penalty units.**

(2) A reference in this section to the Commission or a member of the Commission includes a reference to an Industrial Magistrate and to a person authorised to take evidence on behalf of the Commission.

Summary procedure for offences

576. [561.] (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily:

- (a) **before [a Local Court constituted by a Magistrate sitting alone] an Industrial Magistrate; or**
- (b) **before the [Industrial Court] Commission.**

(2) The maximum penalty that may be imposed in those proceedings by [a Local Court] an Industrial Magistrate is a monetary penalty of

100 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is the lesser.

(3) The maximum penalty that may be imposed in those proceedings by the *[Industrial Court] Commission* is the maximum penalty provided in respect of the offence.

(4) Any such proceedings may be commenced not later than 12 months after the offence was alleged to have been committed.

[Appeals etc. from Local Court]

562. (1) *An appeal lies to the Industrial Court against:*

- (a) *any order made under this Act by the Local Court for the payment of money; or*
- (b) *any conviction or penalty imposed by the Local Court for an offence against this Act or the regulations; or*
- (c) *the dismissal by the Local Court of any proceedings brought under this Act.*

(2) *On the application of a party to any proceedings authorised by this Act to be brought before it, a Local Court may state a case for the opinion of the Industrial Court.*

(3) *The provisions of the Justices Act 1902 that relate to appeals to the District Court and to the stating of cases by justices for the opinion of the Supreme Court, the decisions of those Courts on those matters and the carrying out of any such decision apply, subject to the regulations under this Act, to appeals to, and cases stated for the opinion of, the Industrial Court.*

(4) *No other proceedings in the nature of an appeal or for prohibition may be taken.]*

Appeals etc. from Industrial Magistrate to Commission

577. [562.] (1) **An appeal lies to the Commission against:**

- (a) **any order made under this Act by an Industrial Magistrate for the payment of money; or**
- (b) **any conviction or penalty imposed by an Industrial Magistrate for an offence against this Act, the Occupational Health and Safety Act 1983, the Workers Compensation Act 1987 or any regulation made under any of those Acts or for any other**

offence that has been dealt with before an Industrial Magistrate; or

- (c) the dismissal by an Industrial Magistrate of any proceedings brought under this Act.

(2) On the application of a party to any proceedings authorised by this Act to be brought before an Industrial Magistrate, an Industrial Magistrate may state a case for the opinion of the Commission.

(3) The provisions of the Justices Act 1902 that relate to appeals to the District Court and to the stating of cases by Justices for the opinion of the Supreme Court, the decisions of those Courts on those matters and the carrying out of any such decision apply, subject to the regulations under this Act, to appeals to the Commission, and cases stated for the opinion of the Commission, under this section.

(4) No other proceedings in the nature of an appeal or for prohibition may be taken.

Authority to prosecute

578. [563.] (1) Proceedings for an offence against this Act or the regulations may be instituted only:

- (a) by a person with the written consent of the Minister; or
- (b) by an inspector; or
- (c) by a person, or a person of a class, prescribed by the regulations.

(2) In proceedings for an offence against this Act or the regulations, a consent to institute the proceedings, purporting to have been signed by a person authorised to give a consent under this section is evidence of that consent without proof of the signature or authority of the person.

Recovery of penalty by appointment of receiver

579. [564.] (1) If

- (a) a State registered organisation fails to pay a penalty imposed under this Act *[or the Industrial Court Act 1990]* on the organisation; or
- (b) a person who is a member of the committee or other executive body of a State registered organisation fails to pay a penalty imposed under this Act *[or the Industrial Court Act 1990]* on the person,

the amount of the penalty becomes a charge on the assets of the organisation in favour of the Crown, unless subsection (2) applies.

(2) The amount of such a penalty does not become a charge on the assets of a State registered organisation if the person who incurred the penalty did so because of an act done in contravention of the express resolutions or directions of the organisation or its committee or other executive body.

(3) Despite the Justices Act 1902, a person referred to in subsection (1) (b) is not liable to imprisonment for default in payment of a penalty so referred to but the amount of the penalty is recoverable as a debt due by the person to the Crown at the time of failure to pay the penalty.

(4) The *[Court] Commission* may, on the application of the Minister and on terms determined by the *[Court] Commission*, appoint a receiver for the purpose of entering into possession, or assuming control, of the property of the State registered organisation in order to enforce the charge.

(5) A receiver appointed under this section:

- (a) has the functions conferred on the receiver by order of the *[Court] Commission*; and
- (b) is entitled to recover the costs and expenses of the receivership from the assets of the State registered organisation to which the appointment relates.

(6) In this section, a reference to a penalty includes a reference to any costs and expenses imposed in relation to the penalty.

Penalties to be paid to Consolidated Fund

580. [565.] (1) The amount of any penalty recovered under this Act must be paid into the Consolidated Fund.

(2) Despite subsection (1), where any such penalty has been imposed on the complaint or information of the secretary or other officer of a State registered organisation the *[Court concerned]* **Industrial Magistrate concerned or the Commission** may order that the penalty, or part of the penalty, be paid to the Registrar for payment to the State registered organisation concerned.

Regulations

581. [566.] (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the Act.

(2) In particular, regulations may be made for or with respect to any of the following:

- (a) prescribing the forms required or permitted to be used for the purposes of this Act or the regulations or providing for any such forms to be as approved by the Minister;
- (b) prescribing the form of oath to be taken by members of a Conciliation Committee or Tribunal;
- (c) regulating the exhibition by an employer of an award or by a principal contractor of a contract determination;
- (d) providing for the payment of expenses of witnesses and persons summoned by the Registrar;
- (e) regulating the procedure to be followed in enforcing judgments, convictions and orders given and made under this Act;
- (f) the enforcement of orders for penalties and orders for attachments made under this Act;
- (g) prescribing the powers and duties of the Registrar;
- (h) regulating the registration under this Act of State registered organisations, associations of employing contractors, associations of contract drivers and associations of contract carriers;
- (i) fees payable under this Act or the regulations, including fees to be taken in respect of the business of the Commission, a Conciliation Committee or a Tribunal.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

Penalty notices

582. [567.] (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person

may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section, "authorised officer" means an officer of the Department authorised by the Director-General for the purposes of this section or a member of the Police Force.

Service of documents

583. [568.] Service of any summons, notice, or other document, whether of the same or a different nature, issued or given under this Act or the regulations or under any rule made by the Commission may be effected within or outside New South Wales.

Search warrant

584. [568.] (1) An inspector may apply to an authorised justice for the issue of a search warrant in respect of the exercise of any powers

conferred on an inspector by or under this Act or the regulations if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in any dwelling or other place.

(2) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant, when accompanied by a member of the Police Force:

- (a) to enter any premises or place; and
- (b) to search the premises or place for evidence of *[a contravention of this Act or the regulations]* **the contravention of this Act or the regulations in relation to which the search warrant was issued.**

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section, "authorised justice" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Annual report

585. [569.] The President is required to provide for the Minister, for presentation to Parliament, an annual report with regard to the functioning of the Commission.

Initial determination of minimum conditions

586. [570.] (1) The Full Commission is required, as soon as practicable after the commencement of this section, to determine the initial level of the minimum conditions applicable to enterprise agreements.

(2) The minimum conditions must include conditions of each of the kinds specified in Schedule 3.

(3) The Registrar must ensure that each initial determination made under this section is published in the Industrial Gazette as soon as practicable after it has been made.

SCHEDULE 1 - CERTAIN PERSONS TO BE EMPLOYEES

(Sec. 5)

Persons to be treated as employees

1. The following persons are to be taken to be employees:

- (a) any person (not being registered as a milk vendor to sell milk or cream from a vehicle or any other conveyance) who sells or delivers for the purpose of sale milk or cream from any vehicle. (In such a case, the employer is to be taken to be any person whose milk or cream is so delivered or who supplies the milk or cream so delivered.);
- (b) any person (other than the owner or occupier of the premises or a bona fide cleaning contractor employing labour for the purpose) who performs any work of cleaning premises or a part of premises for which work, if performed by an employee, a price or rate is for the time being fixed by an award or agreement. (In such a case, the owner or, where there is an occupier other than the owner, the occupier of the premises is to be taken to be the employer.);
- (c) any person (other than the owner or, where the owner is not occupying the building or premises, the occupier of any building or premises or a bona fide contractor employing labour for that purpose) who performs carpentry or joinery or bricklaying work upon any building or premises the erection, construction, repair, alteration or maintenance of which is being carried out under a contract between the owner or occupier and a contractor. (In such a case, the lastmentioned contractor is to be taken to be the employer. This provision does not apply to work of repair, alteration or addition to existing premises used as residences.);
- (d) any person (other than the owner or, where the owner is not the occupier, the occupier of any building or premises or a bona fide contractor employing labour for that purpose who has entered into a contract with such owner or occupier or with a bona fide contractor who has contracted to erect, renovate, repair or maintain such building or premises) who performs the work of house or general painting. (In such a case, the owner or occupier is to be taken to be the employer. This provision does not apply to work of repair, alteration or addition to existing premises used as residences.);

SCHEDULE 1 - CERTAIN PERSONS TO BE
EMPLOYEES - *continued*

- (e) any person (not being a bread manufacturer) who performs the work of delivery of bread or bread rolls on any bread round from a vehicle, conveyance or receptacle, unless the work is performed outside the Counties of Cumberland and Northumberland and the City of Greater Wollongong. (In such a case, the employer is to be taken to be the bread manufacturer who manufactured, prepared or baked the bread or bread rolls.);
- (f) any person (not being the occupier of a factory) who performs, outside a factory, for the occupier of a factory or a trader who sells clothing by wholesale or retail, any work in the clothing trades for which a price or rate is fixed by an award or agreement. (In such a case, the occupier or trader is to be taken to be the employer.);
- (g) any person (in this paragraph referred to as "**the contractor**") who, in response to an advertisement or other notification placed by a person (in this paragraph referred to as "**the principal**") requiring the delivery or supply of timber to the principal or as directed by the principal, notifies the principal in writing that the contractor will deliver or supply the whole or part of the timber and who engages in the work of cutting, delivering and supplying timber to the principal or at the principal's direction until the principal by written notice withdraws the offer to accept timber so delivered or supplied. (In such a case, the principal is taken to be the employer.);
- (h) any person who is one of a prescribed class of persons.

Definitions

2. For the purposes of:

(a) clause 1 (f):

"factory" has the same meaning as in section 4 (1) of the Factories, Shops and Industries Act 1962, but does not include an office, building or place (whether or not required to be registered as a factory under that Act) in which mechanical power of less than 0.75 kilowatt is used; and

SCHEDULE 1 - CERTAIN PERSONS TO BE
EMPLOYEES - *continued*

"occupier" has the same meaning as in section 4 (1) of the
Factories, Shops and Industries Act 1962;

(b) clause 1 (g):

- (i) the notice of intention by the contractor to deliver or supply timber must be in the prescribed form and must indicate the nature of the work to be undertaken and the locality where and time within which the work is to be carried out;
- (ii) the notice may be given personally or by letter posted to the principal at his or her place of business or usual address;
- (iii) "timber" includes sleepers, piles, poles, girders, logs and pit timber; and
"cutting" includes felling, sawing, obtaining, preparing and doing any related work in connection with timber.

Regulations

3. (1) The regulations may, for the purposes of clause 1 (h), prescribe any class of persons by reference to any description of that class specified in the regulations, whether or not by reference to any one or more matters similar to any one or more of the matters by reference to which any of the classes of persons referred to in clause 1 (a) - (g) is described.

(2) Any such regulation must specify in relation to any class of persons so prescribed the person who for the purposes of this Act is to be taken to be the employer and the work which for the purposes of this Act is to result in the person's being taken to be the employer.

Exceptions

4. This Schedule does not operate so as to require a person to be taken to be the employer because of this section:

- (a) of his or her spouse or a member of the family of whom he or she is the parent; or

**SCHEDULE 1 - CERTAIN PERSONS TO BE
EMPLOYEES - *continued***

- (b) of any person who performs any work as an act of charity.

Substitution of employer

5. (1) In any proceedings for a breach of this Act or for the recovery of money under this Act brought against any person taken because of this Schedule to be an employer, it is a defence if the person required to be taken to be an employer joins in the manner prescribed as a party to the proceedings some other person whom he or she alleges to be the employer and proves that, apart from the operation of this Schedule, that other person was at the relevant time the employer.

(2) The other person is to have the right to appear and defend the allegation made by the person taken to be an employer and, if the other person is held to be the employer, the same orders may be made against the other person and the other person is to be in the same position as if the proceedings had been originally instituted against the other person at the time they were instituted against the person required to be taken to be the employer.

**SCHEDULE 2 - REQUIREMENTS FOR THE AVOIDANCE AND
SETTLEMENT OF INDIVIDUAL GRIEVANCES AND
QUESTIONS, DISPUTES OR DIFFICULTIES**

(*[Sec. 74] Sec. 108*)

Procedures relating to individuals

1. The procedures for the avoidance and settlement of grievances of individual employees must provide that:

- (a) the employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions, and state the remedy sought; and
- (b) a grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority; and

SCHEDULE 2 - REQUIREMENTS FOR THE AVOIDANCE
AND SETTLEMENT OF INDIVIDUAL GRIEVANCES AND
QUESTIONS, DISPUTES OR DIFFICULTIES - *continued*

- (c) reasonable time limits must be allowed for discussion at each level of authority; and
- (d) at the conclusion of the discussion, the employer must provide a written response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy; and
- [(e) while a procedure is being followed, normal work must continue; and]*
- (e) while a procedure is being followed, normal work should continue unless it is unreasonable or impracticable for it to do so; and**
- (f) the employee may be represented by an industrial union; and
- (g) the employer must advise the employee of his or her right to be represented, or accompanied and advised, by an officer of any industrial union.**

Procedures relating to employers and their employees

2. The procedures for the avoidance and settlement of questions, disputes and difficulties of employers and their employees concerning the interpretation, application and operation of an award or industrial agreement must provide that:

- (a) a question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority; and
- (b) reasonable time limits must be allowed for discussion at each level of authority; and
- [(c) while a procedure is being followed, normal work must continue; and]*
- (c) while a procedure is being followed, normal work should continue unless it is unreasonable or impracticable for it to do so; and**
- (d) the employer may be represented by a State employer organisation and the employees must be represented by an industrial union for the purposes of each procedure.

SCHEDULE 2 - REQUIREMENTS FOR THE AVOIDANCE
AND SETTLEMENT OF INDIVIDUAL GRIEVANCES AND
QUESTIONS, DISPUTES OR DIFFICULTIES - *continued*

General right to apply to or notify the Commission

3. Nothing in this Schedule detracts from the right of a State registered organisation to apply to or notify the Commission in relation to individual grievances, disputes or difficulties.

[SCHEDULE 3 - MINIMUM CONDITIONS OF EMPLOYMENT
FOR ENTERPRISE AGREEMENTS

(Sec. 96)

(1) *Wages:*

- (a) *for a full-time adult employee: a guaranteed weekly wage of \$294.10 (or such other amount as may be prescribed for the time being by a regulation the making of which was recommended by the Minister in accordance with section 108); and*
- (b) *for a full-time junior employee of the specified age: a guaranteed weekly wage of the following proportions (or such other proportions as may be prescribed for the time being by a regulation the making of which was so recommended) of the current guaranteed weekly wage for a full-time adult employee:*

<i>Under 16 years</i>	<i>50%</i>
<i>16 years</i>	<i>55%</i>
<i>17 years</i>	<i>65%</i>
<i>18 years</i>	<i>75%</i>
<i>19 years</i>	<i>80%</i>
<i>20 years</i>	<i>90%</i>

(2) *Ordinary hours of employment: a maximum of 40 hours per week averaged over a 52 week period.*

(3) *Hourly rates of pay for a part-time employee (being an employee entitled to annual leave and sick leave): a guaranteed average hourly rate of pay calculated by dividing the guaranteed adult or junior weekly wage (according to the age of the employee) for the time being by the maximum weekly ordinary hours of employment for the time being*

(4) *Hourly rates of pay for a casual employee (being an employee not entitled to annual leave or sick leave): a guaranteed average hourly rate of pay at the rate of 105.8% (or such other proportion as may be*

**SCHEDULE 3 - MINIMUM CONDITIONS OF EMPLOYMENT
FOR ENTERPRISE AGREEMENTS - continued**

prescribed for the time being by a regulation the making of which was recommended by the Minister in accordance with section 108) of the guaranteed average hourly rate of pay for a part-time employee for the time being.

- (5) Sick leave: a minimum of 1 week on full pay for each year of service.
- (6) Minimum redundancy payments for employees (other than:
 - (a) casual employees; and
 - (b) employees who, at the time of the termination, have not been employed for at least 12 months by the enterprise employer concerned; and
 - (c) employees who, at the time of the termination, are in an enterprise workforce of less than 15 employees):

Length of continuous service by employee	Rate for calculation of amount of severance payment	
	If employee under 45 years of age	If employee 45 or more years of age
Less than 1 year	Nil	Nil
1 year and more but less than 2 years	4 weeks' pay	5 weeks' pay
2 years and more but less than 3 years	6 weeks' pay	7.5 weeks' pay
3 years and more but less than 4 years	7 weeks' pay	8.75 weeks' pay
4 years and more	8 weeks' pay	10 weeks' pay

**SCHEDULE 3 - MINIMUM CONDITIONS OF EMPLOYMENT
FOR ENTERPRISE AGREEMENTS**

(Secs. 131, 586)

The minimum conditions of employment applicable to enterprise agreements must include conditions of the following kinds:

- (1) Minimum rates of wages:
 - (a) for full-time adult employees; and
 - (b) for full-time junior employees;
- (2) Maximum ordinary hours of employment;
- (3) Minimum hourly rates of pay for casual employees;
- (4) Minimum sick leave;
- (5) Minimum redundancy payment for employees.

**SCHEDULE 4 - PROVISIONS RELATING TO MEMBERS
OF THE COMMISSION**

([Sec. 186] Sec. 221)

[Age of members]

1. *A person of or above the age of 65 years is not eligible to be appointed as a member of the Commission.*

Duties to be performed full-time

1. [2.] A member is to devote the whole of his or her time to the duties of the office held by the member, except to the extent permitted by this Act or the Minister.

Status etc. of members

2. [3.] (1) A Presidential Member of the Commission has the same rank, title, status and precedence and the same remuneration and other rights as a Judge of the Supreme Court (other than the Chief Justice or the President of the Court of Appeal), except as provided by subclause (2) and clause 3.

(2) The Judges' Pensions Act 1953 does not apply to a non-judicial member of the Commission.

**SCHEDULE 4 - PROVISIONS RELATING TO MEMBERS OF
THE COMMISSION - *continued***

Remuneration

3. A member is entitled to be paid:
- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

4. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) is appointed for a limited period and the period expires without the member being re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed or retired from office by the Governor under this clause; or
 - [(e) reaches the age of 65 years; or]*
 - (e) *[(f)]* is absent from duty, except on leave of absence granted by the President, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (f) *[(g)]* becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) *[(h)]* becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) *[(i)]* is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted in New South Wales or elsewhere of an offence that, if committed in New South Wales, would be an offence so punishable; or

SCHEDULE 4 - PROVISIONS RELATING TO MEMBERS OF
THE COMMISSION - *continued*

- (i) [(j)] engages in any paid employment outside the duties of the office held as a member, except with the consent of the Minister.
- (2) The Governor may suspend a member from office for incapacity, incompetence or misbehaviour but such a suspension expires unless the member is removed from office as provided by subclause (3).
- (3) If a member is suspended under subclause (2):
 - (a) the Minister is to cause a full statement of the grounds of suspension to be laid before Parliament within 7 sitting days after the suspension if Parliament is in session or if Parliament is not in session, within 7 days after the commencement of the next session; and
 - (b) the member is to be removed from office by the Governor if each House of Parliament so resolves within 21 sitting days after the statement is laid before it under paragraph (a).
- (4) Without affecting the operation of subclauses (2) and (3), the Governor may remove from office a member who contravenes clause 5.
- [(5) *A member (other than a former member of the Industrial Commission of New South Wales) may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor.*]

Disclosure of pecuniary and other interests

5. (1) If, as constituted for a proceeding, the Commission comprises, or includes, a member who has or acquires any interest, pecuniary or other, that could conflict with the proper performance of the member's functions in relation to the proceeding:
- (a) the member must disclose the interest to the parties to the proceeding; and
 - (b) unless the parties consent - the member must not take part in the proceeding or exercise any function in relation to the proceeding.
- (2) If the President becomes aware that subclause (1) applies to a proceeding, the President must:

**SCHEDULE 4 - PROVISIONS RELATING TO MEMBERS OF
THE COMMISSION - *continued***

- (a) direct the member not to take part, or any further part, in the proceeding; or
- (b) cause the interest of the member to be disclosed to the parties to the proceeding.
- (3) If, in relation to a proceeding:
 - (a) a direction is given to a member under subclause (2) (a) - the member must comply with the direction; or
 - (b) a disclosure is made in accordance with subclause (2) (b) - the member must not take part in the proceeding, or exercise any function in relation to the proceeding, unless all the parties to the proceeding consent.
- (4) A contravention of this clause does not invalidate a decision of the Commission or the exercise of a function under this Act.

Leave for member of Commission

6. (1) The entitlement of a member of the Commission to annual and other leave is to be as stated in the instrument of appointment as a member.

- (2) A member of the Commission may be granted leave:
 - (a) in the case of the President - by the Minister; and
 - (b) in any other case - by the President.

Superannuation and leave

- 7. (1) In this clause:

"Department" includes an Administrative Office;

"eligible member" means a member of the Commission who immediately before becoming such a member, was a non-judicial member of the Industrial Commission of New South Wales, a public servant or an officer or employee of a public authority declared by an Act to be an authority to which this clause applies;

"superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**SCHEDULE 4 - PROVISIONS RELATING TO MEMBERS OF
THE COMMISSION - *continued***

(2) An eligible member:

- (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member; and
- (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service as a member of the Commission.

(3) Service by the eligible member as a member of the Commission is to be taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.

(4) The eligible member is to be regarded as an officer or employee, and the Crown to be regarded as the employer, for the purposes of the scheme.

(5) This clause ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.

(6) An eligible member retains any rights to annual leave, extended service leave and sick leave accrued or accruing in his or her previous employment.

(7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

**SCHEDULE 5 - PROVISIONS RELATING TO RULES
OF STATE REGISTERED ORGANISATIONS**

(Sec. 364)

Rules to provide for procedural and administrative matters

1. (1) The rules of a State registered organisation and a branch of a State registered organisation must provide for:

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

- (a) the entrance fees, subscription and other amounts (if any) to be paid by members of the organisation; and
- (b) the procedure (if any) for the disciplining of members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them; and
- (c) the name, constitution, membership, powers and duties of the committees of, and holders of offices in, the organisation and its branches and, in particular:
 - (i) the election or appointment of members of the committees; and
 - (ii) the terms of office of members of the committees; and
 - (iii) the grounds on which, or the reasons for which, the office of a member of a committee becomes vacant; and
 - (iv) the filling of casual vacancies occurring on the committees; and
 - (v) the quorum and procedure at meetings of the committees; and
- (d) the manner of summoning meetings of members of the organisation and its branches, and meetings of the committees of the organisation and its branches; and
- (e) the quorum and procedure at general meetings of members of the organisation and whether members are entitled to vote by proxy at general meetings; and
- (f) the intervals between general meetings of members of the organisation and the manner of calling general meetings; and
- (g) the time within which, and the manner in which, notices of general meetings and notices of motion are to be given, published or circulated; and
- (h) the removal of holders of offices in the organisation and its branches; and
- (i) the control of committees of the organisation and its branches respectively by the members of the registered organisation and branches; and
- (j) the sources from which the funds of the organisation are to be, or may be, derived; and

SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued*

- (k) the manner in which the funds of the organisation are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the organisation; and
 - (l) the manner in which documents may be executed by or on behalf of the organisation; and
 - (m) the manner in which the property of the organisation is to be controlled and its funds invested; and
 - (n) the conditions under which funds may be spent; and
 - (o) the custody of books, documents and securities of the organisation; and
 - (p) the inspection by members of the organisation of books and documents of the organisation; and
 - (q) the manner of dissolving or winding up the organisation, and the liability (if any) of members of the organisation to contribute to the payment of the debts and liabilities of the organisation or the costs, charges and expenses of the dissolution or winding up of the organisation; and
 - (r) the registered office of the organisation (which must be within New South Wales); and
 - (s) the annual or periodic auditing of the accounts of the organisation, including the appointment of an auditor and the grounds on which, or the reasons for which, the position of auditor becomes vacant; and
 - (t) the keeping of accounting records by the organisation; and
 - (u) the manner of notifying a question, dispute or difficulty relating to an industrial matter; and
 - (v) the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members; and
 - (w) the resignation of members; and
 - (x) the keeping of a register of the members, arranged, where there are branches of the organisation, according to branches; and
 - (y) the manner in which their rules may be altered or rescinded.
- (2) The rules of a State registered organisation and a branch of a State registered organisation may provide for the removal from office of a person elected to an office in the registered organisation only

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

where the person has been found guilty, under the rules of the organisation, of:

- (a) misappropriation of the funds of the organisation; or
- (b) a substantial breach of the rules of the organisation; or
- (c) gross misbehaviour or gross neglect of duty, or has ceased, under the rules of the organisation, to be eligible to hold office.

(3) The rules of a State registered organisation and a branch of a State registered organisation must require the registered organisation to inform applicants for membership, in writing of:

- (a) the financial obligations arising from membership; and
- (b) the circumstances, and the manner, in which a member may resign from the registered organisation.

(4) The rules of a State employer organisation must also provide that, within 14 days after:

- (a) the business, or part of the business, of a member of the organisation is assigned or transferred to a person who is not a member of the registered organisation; or
- (b) such a person succeeds to the business, or part of the business, of a member of the registered organisation;

the member is required to notify the registered organisation of the assignment, transfer or succession.

(5) The rules of a State registered organisation may also provide for any other matter.

(6) In this clause:

"committee", in relation to a State registered organisation or branch of a State registered organisation, means a collective body of the State registered organisation or branch that has powers of the kind mentioned in the definition of "office" in section 300.

Rules to provide for elections for offices

2. (1) The rules of a State registered organisation must provide for the election of the holder of each office in the organisation by:

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

- (a) a particular direct voting system; or
- (b) a particular collegiate electoral system that, in the case of a full-time office, is a one-tier collegiate electoral system.

(2) When the rules of the organisation are lodged with the Registrar for recording, the Registrar, having regard to such factors as the size, structure and resources of the organisation concerned, to **any representations made to the Registrar by the organisation** and to such other matters as the Registrar considers to be relevant, must specify the particular system of voting to be employed by the organisation.

(3) A reference in this clause to the rules of an organisation includes a reference to the rules of a branch of the organisation.

(4) **Despite anything else in this Act, the rules of a State registered organisation may provide that persons validly elected under the provisions of the Industrial Relations Act 1988 of the Commonwealth to positions in the New South Wales State Branch of a Federally-registered organisation are to be taken to be validly elected to positions in the State registered organisation.**

(5) **A State registered organisation may apply to the Commission for a declaration that it is substantially related to a branch of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth. Where such a declaration is granted, then, in the event of any conflict between that Act and this Act as to the rules of a registered body, that Act applies to the extent of the inconsistency.**

Rules to provide for elections by secret postal ballot

3. (1) The rules of a State registered organisation must provide that, if a ballot is required for an election, it must be a secret postal ballot.

(2) An organisation may lodge with the Registrar an application for an exemption from subclause (1), accompanied by particulars of proposed alterations of the rules of the organisation, to provide for the conduct of elections of the kind referred to in subclause (1) by a secret ballot other than a postal ballot.

SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued*

(3) If the Registrar is satisfied, on application, that:

(a) the proposed alterations of the rules:

- (i) comply with and are not contrary to this Act (other than subclause (1)) and awards; and
- (ii) are not otherwise contrary to law; and
- (iii) have been decided in accordance with the rules of the organisation; and

(b) the conduct of a ballot under the rules of the organisation as proposed to be altered:

- (i) is likely to result in a fuller participation by members of the organisation in the ballot than would result from a postal ballot; and
- (ii) will afford to members entitled to vote an adequate opportunity of voting without intimidation,

the Registrar may grant to the organisation an exemption from subclause (1).

(4) Proposed alterations of the rules of an organisation referred to in subclause (2) take effect if and when the Registrar grants to the organisation an exemption from subclause (1).

(5) An exemption under subclause (3) remains in force until revoked under subclause (6).

(6) The Registrar may revoke an exemption granted to an organisation under subclause (3):

(a) on application by the organisation, if the Registrar is satisfied that the rules of the organisation comply with subclause (1); or

(b) if the Registrar is no longer satisfied:

- (i) that the rules of the organisation provide for the conduct of elections of the kind referred to in subclause (1) by a secret ballot other than a postal ballot; or

- (ii) of a matter referred to in subclause (3) (b),

and the Registrar has given the organisation an opportunity, as prescribed, to show cause why the exemption should not be revoked.

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

(7) If the Registrar revokes an exemption granted to an organisation on a ground specified in subclause (6) (b), the Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the organisation as are, in the Registrar's opinion, necessary to bring them into conformity with subclause (1).

(8) An alteration of the rules of an organisation determined under subclause (7) takes effect on the date of the instrument.

(9) This clause applies in relation to elections for offices in branches of organisations as if references to an organisation were references to a branch of an organisation.

Rules to provide for terms of office

4. (1) The rules of a State registered organisation:

- (a) must, subject to paragraph (b) and subclause (3), provide terms of office for officers in the organisation of no longer than 4 years without re-election; and
- (b) may provide that, where a person elected to a full-time office will attain retirement age within 12 months after the end of the term for which the person is elected, the person may hold the office, without being re-elected, until attaining retirement age.

(2) If the rules of an organisation provide as mentioned in subclause (1) (b), the rules must provide that where a candidate duly nominated for election to a full-time office is a person who, if elected, will hold that office in the circumstances mentioned in that paragraph, the ballot-papers for the election must indicate the maximum term for which, if elected, the person may hold office.

(3) The rules of an organisation, or a branch of an organisation, may provide that a particular term of office is extended for a specified period, where the extension is for the purpose of synchronising elections for offices in the organisation or branch, as the case may be.

(4) Rules made under subclause (3) may apply in relation to a term of office that started before the commencement of this clause.

(5) The term of an office must not be extended under subclause (3) so that the term exceeds 4 years.

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

(6) A reference in this clause (other than subclause (3)) to the rules of an organisation includes a reference to the rules of a branch of the organisation.

(7) In this clause:

"retirement age", in relation to an office, means the retirement age applicable to the office under the rules of the organisation concerned or, where the rules provide for a minimum retirement age and a maximum retirement age in relation to the office, the maximum retirement age.

Rules may provide for filling of casual vacancies

5. (1) The rules of a State registered organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this clause, in any other manner provided in the rules.

(2) Rules made under subclause (1) must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds:

(a) 12 months; or

(b) three-quarters of the term of the office;

whichever is the greater.

(3) If, under rules made under subclause (1), a vacancy in an office in an organisation is filled otherwise than by an ordinary election, the person filling the vacancy must be taken, for the purposes of the relevant provisions, to have been elected to the office under the relevant provisions.

(4) A reference in this clause to the rules of an organisation includes a reference to the rules of a branch of the organisation.

SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued*

(5) In this clause:

"ordinary election" means an election held under rules that comply with clause 2;

"relevant provisions", in relation to an organisation, means:

- (a) the provisions of this Act (other than this clause); and
- (b) the rules of the organisation (other than rules made under subclause (1)) providing for the filling of a casual vacancy in an office otherwise than by an ordinary election;

"term", in relation to an office, means the total period for which the last person elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (disregarding any rule made under clause 4 (1) (b) but having regard to any rule made under clause 4 (3)) to hold the office without being re-elected.

Rules to provide conditions for loans, grants and donations by State registered organisations

6. (1) The rules of a State registered organisation, and the rules of a branch of a registered organisation, must provide that a loan, grant or donation[, *other than a political donation,*] of an amount exceeding \$2,500 must not be made by the organisation or the branch, as the case may be, unless the relevant committee of management:

- (a) has satisfied itself:
 - (i) that the making of the loan, grant or donation would be in accordance with the other rules of the organisation or branch; and
 - (ii) in the case of a loan - that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
- (b) has approved the making of the loan, grant or donation.

(2) In spite of subclause (1), the rules of an organisation or branch may provide for a person authorised by the rules to make a loan, grant or donation[, *other than a political donation,*] of an amount not exceeding \$2,500 to a member of the organisation or branch, if the loan, grant or donation:

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

- (a) is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and
 - (b) is subject to a condition to the effect that, if the relevant committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it must be repaid as determined by the committee.
- (3) In considering whether to approve a loan, grant or donation made under subclause (2), the relevant committee of management must have regard to:
- (a) whether the loan, grant or donation was made under the rules of the organisation or branch; and
 - (b) in the case of a loan:
 - (i) whether the security (if any) given for the repayment of the loan is adequate; and
 - (ii) whether the arrangements for the repayment of the loan are satisfactory.
- (4) Nothing in subclause (1) requires the rules of an organisation, or a branch of an organisation, to make provision of the kind referred to in that subclause in relation to payments made by the organisation or branch by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the organisation or branch.
- (5) In this clause:
- "relevant committee of management"**, in relation to a registered organisation or branch of a registered organisation, means the committee of management of the organisation or branch, as the case may be.

[Rules to provide conditions for political donations by State registered organisations]

7. (1) The rules of a State registered organisation, and the rules of a branch of a registered organisation, must provide that no political donation is to be made by the organisation or the branch, as the case may be, unless:

SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued*

- (a) *a separate fund has been established for the purpose of making political donations; and*
- (b) *contributions to that fund by members of the organisation are voluntary; and*
- (c) *the relevant committee of management has satisfied itself that the making of the donation would be in accordance with the other rules of the organisation or branch and has approved the making of the donation.*

(2) *Any separate fund established for political purposes and any property in which that fund may be invested is not to be liable to attachment in the enforcement of any order for payment of any penalty made against the organisation or branch.*

(3) *In this clause:*

"candidate" means a person nominated as a candidate for election to Parliament or to any public office;

"group" means a group of candidates, or part of a group of candidates, for election to Parliament or to any public office;

"party" means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or to any public office of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part;

"Parliament" includes the Parliament of any other State and of a Territory and of the Commonwealth;

"political donation" includes a payment to a candidate, group or party and a payment towards or the payment of any expenses incurred, either directly or indirectly, by a party, group or candidate, in relation to the election of a group or candidate to Parliament or to some other public office;

"public office" means the office of member of any shire, municipal or city council, or of any public body that has power to raise money, either directly or indirectly, by means of a rate.

**SCHEDULE 5 - PROVISIONS RELATING TO RULES OF
STATE REGISTERED ORGANISATIONS - *continued***

*"relevant committee of management" has the meaning set out in
clause 6.]*

**SCHEDULE 6 - RESPONDENTS TO OIL INDUSTRY AWARDS
(Sec. 558)**

**PART 1 - EMPLOYEE RESPONDENTS TO FEDERAL
OIL INDUSTRY AWARDS**

The Amalgamated Metal Workers' Union.
Australasian Society of Engineers.
The Australian Workers' Union.
Electrical Trades Union of Australia.
Federated Clerks Union of Australia.
The Federated Ironworkers' Association of Australia.
The Federated Storemen and Packers Union of Australia.
Transport Workers' Union of Australia.

**PART 2 - EMPLOYER RESPONDENTS TO FEDERAL
OIL INDUSTRY AWARDS**

Altona Petrochemical Company Ltd.
Ampol Petroleum Limited.
Ampol Petroleum (Queensland) Pty. Ltd.
Ampol Petroleum (Victoria) Pty. Ltd.
Ampol Refineries Limited.
Australian Lubricating Oil Refinery Ltd.

BP Australia Limited.
BP (Fremantle) Ltd.
BP Petroleum Development Australia Pty. Ltd.
BP Refinery (Kwinana) Pty. Ltd.
BP Refinery (Bulwer Island) Pty. Ltd.

Caltex Oil (Aust.) Pty. Ltd.
Caltex Refining Co. Pty. Limited.
Castrol Australia Pty. Ltd.

Esso Australia Ltd.
Essochem Aust. Ltd.

SCHEDULE 6 - RESPONDENTS TO OIL INDUSTRY
AWARDS - *continued*

Liquefied Petroleum Gas Limited.

Mobil Oil Australia Limited.

Petroleum Refineries (Australia) Pty. Ltd.

Shell Chemical (Aust.) Pty. Ltd.

Shell Company of Australia Ltd.

Shell Refining (Australia) Pty. Ltd.

South Coast Gas Co. Pty. Ltd.

The Shell Co. of Aust. Ltd.
