

**INDUSTRIAL RELATIONS ACT 1991 No. 34**

NEW SOUTH WALES



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# INDUSTRIAL RELATIONS ACT 1991 No. 34

## NEW SOUTH WALES



### Act No. 34, 1991

An Act to restate and reform the law concerning industrial relations; and to repeal the Industrial Arbitration Act 1940 and the Trade Union Act 1881. [Assented to 11 November 1991]

**The Legislature of New South Wales enacts:****CHAPTER I—PRELIMINARY****Short title**

1. This Act may be cited as the Industrial Relations Act 1991.

**Commencement**

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

**Objects**

3. The objects of this Act are as follows:
  - to promote industrial harmony and co-operation between employers and employees and other parties involved in industrial relations in New South Wales;
  - 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;
  - to provide for the making of awards and enterprise agreements to regulate the terms and conditions of employment;
  - to provide for the enforcement and observance of awards, enterprise agreements and orders made, and other obligations arising, under this Act;
  - to provide a framework for the prevention and settlement of questions, disputes or difficulties relating to a settled award or agreement by conciliation and arbitration;
  - 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;
  - to facilitate the conduct of conciliation and arbitration in a prompt and fair manner and with the minimum of legal form and technicality;
  - to encourage an enterprise, establishment or workplace consideration in the handling of industrial relations;
  - to prevent or minimise the disruptive effects of any industrial action associated with the making of an award or enterprise agreement;
  - to avoid industrial action relating to the settled terms of an award or enterprise agreement through the use of settlement procedures;
  - to minimise the disruptive effects of any industrial action that occurs;

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- to recognise and facilitate the organisation of representative bodies of employers and employees, and to encourage their democratic control and efficient management;
- to promote the conduct of industrial relations in a non-discriminatory manner and to provide for quality of opportunity in employment matters;
- to ensure that employees are free to choose whether or not to join unions by prohibiting preference in employment for union members and by preventing victimisation of persons on the ground that they are or are not union members.

**Definitions**

4. (I) In this Act:

“**agreement**” means an enterprise agreement or a former industrial agreement;

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

“**Conciliation Committee**” means a Conciliation Committee of the Commission established under this Act;

“**contract determination**”, “**contract of bailment**” and “**contract of carriage**” are defined in Chapter 6;

“**Contract Regulation Committee**” means a Contract Regulation Committee of the Commission established under this Act;

“**Department**” means the Department of Industrial Relations, Employment, Training and Further Education;

“**dispute order**” is defined in section 210 (9);

“**employee**” and “**employer**” are defined in section 5;

“**employee of the Crown**” includes an employee of a public authority and a member of the Public Service, the Police Service or the Education Teaching Service;

“**enterprise**” means a business, undertaking or project;

“**enterprise agreement**” means an agreement which is registered and in force under Division 2 of Part 3 of Chapter 2;

“**enterprise employer**” means the employer or employers carrying on an enterprise;

“**former industrial agreement**” means an industrial agreement under the Industrial Arbitration Act 1940 that is continued in force by Division 3 of Part 3 of chapter 2;

“**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 Industrial 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** Industrial 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,

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 Court”** means the Industrial Court established by this Act;

**“Industrial Gazette”** means the publication of that name produced under the authority of the Industrial 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

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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, enterprise agreement or former industrial 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 an industrial organisation of employees 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 organisation”, “industrial organisation of employers”, “industrial organisation of employees” and “non-industrial organisation”** are defined in Chapter 5;

**“Industrial Registrar”** means the Industrial Registrar appointed under this Act;

**“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;

**“State peak' council”** is defined in Chapter 5.



(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) 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.

### **Definitions of “employee” and “employer”**

5. (1) In this Act, “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, under this Act, taken to be an employee for the purposes of this Act. However, “employee” does not include a person employed by his or her spouse or a member of a family employed by a parent.

(2) In this Act, “employer” means a person (whether an individual, a corporate or unincorporated body or the Crown or an agency of the Crown) who employs an employee within the meaning of this Act. It does not matter that the person does so on behalf of some other person.

(3) 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 for the purposes of this Act.

(4) This Act extends (except as provided in Division 2 of Part 2 of Chapter 2—**fixing of hours**) 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, hit 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, draining or otherwise preparing land for any of the purposes referred to in this subsection.

(5) 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, taken to be employees and any person described in that Schedule as

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the employer of such an employee is, for those purposes, taken to be an employer. The provisions of Schedule 1 relating to employers and employees have effect.

**Act binds the Crown**

6. 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.

**CHAPTER 2—CONDITIONS OF EMPLOYMENT****PART 1—GENERAL CONDITIONS OF EMPLOYMENT****Awards, enterprise agreements and former industrial agreements**

7. (1) Conditions of employment may be regulated by:
- (a) awards; or
  - (b) enterprise agreements; or
  - (c) former industrial agreements.
- (2) Part 3 applies to those awards and agreements.

**Power of Commission to make awards on conditions of employment**

8. (1) The Commission may, on any reference or application to it, make an award in accordance with this Act relating to any of the following conditions of employment:

- (a) the rates of wages payable to employees;
- (b) the number of hours and the times to be worked in order to entitle employees to those wages;
- (c) the rates for overtime and holidays and other special work, including allowances as compensation for overtime, holidays or other special work;
- (d) the deductions that may be made from the wages of employees for board, or for any customary privileges or payments in kind granted to those employees;
- (e) the quantity of work to be done or services to be provided in connection with wages payable to employees;
- (f) any other industrial matter, whether or not it relates to a condition of employment referred to in paragraphs (a)–(e).

(2) This Part does not limit the power of the Commission to determine an industrial matter by order in the exercise of its jurisdiction under Chapter 3.

(3) A reference in this section to wages payable to employees includes a reference to the prices for work done by employees.

**Awards relating to Crown employees**

9. (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 fixed by an award for other employees doing substantially the same kind of work.

(2) The Commission is not to award any rates of wages 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.

**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.

**PART 2—PARTICULAR CONDITIONS OF EMPLOYMENT****Division 1—Fixing of wage rates etc.****Definitions**

11. 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.

**Commission’s obligations in fixing wages etc.**

12. The commission is required to fix such rates of wages and prices for work done 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 this Division.

### **Minimum adult basic wage**

13. (1) An award that fixes rates of wages by reference or in relation to an adult basic wage is not to be made for a wage lower than the adult basic wage in force on the day (“the effective day”) from which the award 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 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**

14. (1) As soon as practicable after the making of a Commonwealth decision, the Full Commission must, on application or on its own initiative, 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 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 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 either generally or **with** reference to particular awards as it may consider to be appropriate.

(4) Subject to any orders made by the Full commission, the Industrial Registrar must as soon as practicable after any order has been **made** under subsection (3), vary the terms of awards 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 a variation of an award; 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 to be varied by the Commission without the concurrence of the parties to the making of the award.

(7) In this section:

“award” includes a contract determination under Chapter 6.

#### **Action on variation of basic wage**

15. (1) In this section:

“basic wage variation direction” means a direction under section 14 (2).

(2) On and from the commencement of a basic wage variation direction, the adult basic wage (as so varied) is the adult basic wage in force for the purposes of awards in so far as those awards operate after that commencement.

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

- (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, 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 Industrial Registrar may (subject to appeal to the Commission), on application made as prescribed by the rules of the Commission or on the Industrial Registrar’s own initiative, vary the terms of any award, being terms affecting rates of wages, to the extent necessary to give effect to the provisions of subsection (2).

(7) The Industrial 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 permits conditions of employment fixed by an award to be varied by the Commission without the concurrence of the parties to the making of the award.

### **References to the basic wage in other Acts**

16. 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 15 that is in force at the relevant time.

### **Minimum wage**

17. 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**

18. 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 etc.**

19. (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 enterprise or by other evidence produced or tendered, that significant unemployment or other serious consequences to employees or employers, or both, in an industry or to the employees or employer, or both, in the enterprise will result from the operation of an award or former 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 interests of the employees and employers in the industry, or of the employees and employer concerned, to do so, may, either absolutely or on terms:

- (a) refrain from making any award, or rescind or cancel any award or former industrial agreement, relating to the industry concerned; or
- (b) exempt from the provisions of an award or former industrial agreement the employer concerned or any employees of that employer; or
- (c) exempt from the provisions of an award or former 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 former industrial agreement to be varied by the Commission without the concurrence of the parties to the making of the award or agreement.

**Wages for employees of charitable institutions**

20. 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.

**Permits for aged, infirm or slow employees—under-award wages**

21. (1) Any aged, infirm or slow employee may apply to the Industrial Registrar for a written permit authorising the employee to work for less than the wage fixed for the employee by an award if the employee considers himself or herself unable to earn the minimum wage fixed by the award. Any such permit has effect according to its tenor.

(2) An application may be made by post and may, with the approval of the Industrial Registrar, be made by a person on behalf of an aged, infirm or slow employee.

(3) The Industrial Registrar may grant a permit under this section (with or without conditions) or refuse to grant the permit.

(4) The Industrial Registrar may at any time cancel any such permit.

(5) If the Industrial Registrar grants a permit, the Industrial Registrar must immediately notify (personally or by post) the secretary of the industrial organisation of employees for the industry in which the applicant is employed or 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 Industrial Registrar for cancellation of the permit.

(7) A 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 Industrial Registrar.

(10) An inspector, or another person appointed by the Minister for the purpose, may grant an interim permit under this section having a term of not more than 3 months.

(11) A permit issued under section 89 of the Industrial Arbitration Act 1940 and in force immediately before the repeal of that section is taken to have been granted under this section.

**Division 2—Fixing of hours****General operation of Division**

22. (1) The provisions of this Division are to be observed in the making of new awards and the variation of existing awards.

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

(3) Nothing in this Division applies to employees employed in rural industries, as referred to in section 5 (4).

**Maximum ordinary working hours prescribed by awards**

23. (1) The number of ordinary working hours of an employee fixed by an award must not exceed 40 hours per week, averaged over a 52 week period.

(2) A provision of an award that is inconsistent with this section has no effect.

**Reduction in working hours by Full Commission only**

24. (1) The ordinary working hours of an employee may not be reduced by a new award or the variation of an existing award unless it is made by the Full Commission.

(2) When the Full Commission deals with an application for a reduction in any such ordinary working hours, it must have regard to the public interest, and in particular to the economic consequences of the proposed reduction, 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.

(3) The Crown may intervene in any proceedings before the Full Commission on any such application and make such representations as it thinks fit to safeguard the public interest.

**Division 3—Parental leave****Subdivision 1—General****Entitlement to maternity, paternity and adoption leave**

25. Employees are entitled to maternity, paternity or adoption leave in connection with the birth or adoption of a child, subject to and in accordance with this Division.

**Other entitlements**

26. (1) A contract, agreement or management (whether made or entered into before or after the commencement of this section) does not operate to annul, exclude or vary the provisions of this Division, except as provided by subsection (2).



(2) A provision of this Division does not apply to the extent that it provides an employee with a benefit that is less favourable than the benefit to which the employee is entitled under any other Act or any award, agreement or contract of employment.

(3) The provision by this Division of a penalty for the contravention 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 provided.

### **Employer to inform employee of entitlements and requirements**

27. (1) On becoming aware that an employee (or an employee's spouse or de facto spouse) is pregnant or that an employee is adopting a child, the employee's employer must inform the employee of:

- (a) the employee's entitlements under this Division to maternity, paternity or adoption leave (as the case requires); and
- (b) the employee's 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 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**

28. Maternity leave is unpaid leave.

#### **Definitions**

29. For the purposes of this Subdivision:

**“child”** means a child of the employee under the age of one year;

**“confinement”** of a female employee means her confinement caused by the birth of a child or other termination of a pregnancy;

**“continuous service”** means service under an unbroken contract of employment, and includes:

- (a) any period of leave taken in accordance with this Division; and
- (b) any period of leave or absence authorised by the employer or by an award or agreement; and
- (c) any period of part-time work in accordance with Division 4 (including part-time work as a replacement employee);

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

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**“expected date of confinement”** of a female employee 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;

**“paternity leave”** means leave of the type provided for by Subdivision 3, whether prescribed by an award or agreement or otherwise;

**“spouse”** includes a de facto spouse.

**Eligibility for maternity leave**

30. (1) An employee who becomes pregnant, on production to her employer of the certificate required by section 31, is entitled to a period of up to 52 weeks of maternity leave.

(2) However, any such maternity leave may not extend beyond the child's first birthday.

(3) The entitlement to maternity leave under this section is to be reduced by any period of paternity leave taken by the employee's spouse. Apart from paternity leave of up to one week at the time of confinement, maternity leave is not to be taken concurrently with paternity leave.

(4) Subject to sections 33 and 36, the period of maternity leave is to be unbroken and must, immediately following confinement, include a period of 6 weeks of compulsory leave.

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

**Certification**

31. (1) When applying for maternity leave, an employee must produce to her employer a certificate from a 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.

(3) An employee must, if required by her employer to do so, enter into an arrangement with the employer whereby the employee agrees that for the period of her maternity leave she will not engage in any conduct inconsistent with her contract of employment.

**Notice requirements**

32. (1) An employee must, not less than 10 weeks before the expected date of confinement, give notice in writing to her employer stating the expected 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 before her expected date of confinement, but such a notice may be given only if:

- (a) the employee has given to her employer a notice under subsection (2) at stating that she intends to commence maternity leave on a date that is within 6 weeks of her expected date of confinement; or
- (b) the employee has not given her employer a notice under subsection (2) least 8 weeks before her expected 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 the failure is caused by the confinement occurring earlier than the expected date so long as, in the case of confinement that results in the birth of a living child, the notice is given not later than 2 weeks after her confinement.

### **Transfer to a safe job**

33. (1) If, in the opinion of a 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 medical practitioner. Such leave is to be treated as maternity leave for the purposes of this Subdivision.

(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**

34. (1) Provided the maximum period of maternity leave does not exceed the period to which an employee is entitled under section 30:

- (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**

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

(2) If the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it is the right of the employee to resume work at a time nominated by the employer which must be no later than 4 weeks after the date of notice in writing by the employee to the employer that she desires to resume work.

(3) If the period of maternity leave is shortened under subsection (2), the employee 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 certifying that the pregnancy of the employee terminated otherwise than by the birth of a living child.

**Special maternity leave and sick leave**

36. (1) If the pregnancy of an employee not then on maternity leave terminates within 28 weeks before her expected date of confinement 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 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 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 medical practitioner certifies to be necessary before her return to work.

(3) For the purposes of this Subdivision, 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 33, 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**

37. (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 30, 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**

38. Subject to this Subdivision, despite any award, agreement 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**

39. (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**

40. (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 end 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 33, 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 position available which the employee is qualified for and is capable of performing, she is **entitled**

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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**

41. (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**

42. Paternity leave is unpaid leave.

#### **Definitions**

43. For the purposes of this Subdivision:

“**child**” means a child of the employee’s spouse under the age of one year;

“**confinement**” of an employee’s spouse means the spouse’s confinement caused by the birth of a child or other termination of a pregnancy;

“**continuous service**” means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Division; and
- (b) any period of leave or absence authorised by the employer or by an award or agreement; and
- (c) any period of part-time work in accordance with Division 4 (including part-time work as a replacement employee);

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

**“expected date of confinement”** of an employee’s spouse means a date certified by a medical practitioner to be the date on which the medical practitioner expects the spouse to be confined in respect of her pregnancy;

**“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**

44. (1) A male employee, upon production to his employer of the certificate required by section 45, 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 (referred to in this Subdivision as “short paternity leave”);
- (b) subject to subsection (2), 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 (referred to in this Subdivision as “extended paternity leave”). 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 is not entitled to a period of extended paternity leave unless the employer consents to the leave.

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

### **Certification**

45. (1) When applying for paternity leave, the employee must produce to his employer a certificate from a 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 as extended paternity leave, 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.

(3) An employee must, if required by his employer to do so, enter into an arrangement with the employer whereby the employee agrees that for the period of his paternity leave he will not engage in any conduct inconsistent with his contract of employment.

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**Notice requirements**

46. (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 certificate required by section 45.

(2) An employee is not in breach of this section as a consequence of failure to give the notice required by 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 notify his employer of any change in the information provided pursuant to section 45 within 2 weeks after the change takes place.

**Variation of period of paternity leave**

47. (1) Provided that the maximum period of paternity leave does not exceed the period to which the employee is entitled under section 44:

- (a) the period of extended paternity 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 extended paternity leave 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**

48. Extended paternity leave, applied for 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**

49. (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 44, 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 absence authorised by an award of 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**

50. 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**

51. (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**

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

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

- (a) to the position which he held immediately before commencing paternity leave; or
- (b) in the case of an employee who has worked part-time in connection with the birth of the child, 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**

53. (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.

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(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**

54. Adoption leave is unpaid leave.

**Definitions**

55. 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 stepchild 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 Division; and
- (b) any period of leave or absence authorised by the employer or by any relevant award or agreement; and
- (c) any period of part-time work in accordance with Division 4 (including part-time work as a replacement employee);

“**employee**” includes a part-time employee, but does not include an employee engaged in 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 and a former spouse.

**Eligibility**

56. (1) An employee, upon production to the employer of the documentation required by section 57, 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 (referred to in this Subdivision as “short adoption leave”);

(b) subject to subsection (2), 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 (referred to in this Subdivision as “extended adoption leave”). This entitlement is to be reduced by:

- (i) any period of short adoption leave taken; 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) A male employee is not entitled to a period of extended adoption leave unless the employer consents to the leave.

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

### **Certification**

57. (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 expected 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 of extended adoption leave to be taken, the employee must also produce 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.

(3) An employee must, if requested by his or her employer to do so, enter into an arrangement with the employer whereby the employee agrees that for the period of his or her adoption leave he or she will not engage in any conduct inconsistent with his or her contract of employment.

### **Notice requirements**

58. (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.

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(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 of 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 expected date of placement of a child for adoption purposes but no later than 14 days before the expected date of placement, give notice in writing to the employer of that date, and of the date of commencement of any period of short adoption leave to **taken**.

(4) An employee must, at least 10 weeks before the proposed date of commencing any extended adoption leave to be taken 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**

59. (1) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under section 56:

- (a) the period of extended adoption leave taken 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 extended adoption leave taken 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**

60. (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 of the employee's resumption of work

**Special leave**

61. (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**

62. (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 56, 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 absence authorised by an award or agreement (excluding annual leave or long service leave) is not available to an employee during the employee's absence on adoption leave.

### **Effect of adoption leave on employment**

63. 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**

64. (1) An employee on adoption leave may terminate the 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 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**

65. (1) An employee must confirm the intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of the period of extended adoption leave.

(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 in connection with the adoption of the child, the position held immediately before commencing such part-time work

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(3) If the 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 section is guilty of an offence.

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

**Replacement employees**

66. (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—Transitional arrangements****Things done under previous maternity leave provisions**

67. (1) Anything done by an employee or employer for the purposes of a provision of Part 14A (Maternity leave) of the Industrial Arbitration Act 1940 is to be considered to have been done for the purposes of the corresponding provision of this Act.

(2) Any entitlement (to leave or otherwise) in accordance with the provisions of Part 14A of that Act subsisting immediately before the repeal of that Part becomes an entitlement in accordance with the corresponding provisions of Subdivision 2 and this Act then applies to and in respect of the entitlement.

(3) Leave taken under Part 14A of that Act is to be considered to have been taken under Subdivision 2.

(4) In respect of an entitlement to leave under Part 14A of that Act subsisting at the commencement of Subdivision 2, section 31 (2) does not apply to the employee unless and until the employer requests the employee to comply with that section.

**Paternity leave—pregnancy/birth before commencement**

68. (1) Subdivision 3 (Paternity leave) applies to and in respect of a pregnancy that began before, and a birth that occurred before, the commencement of that Subdivision.

(2) The employer may waive the application of section 46 (Notice requirements), or reduce the period of notice required under that section, in the case of such a pregnancy or birth.

#### **Adoption leave—adoption before commencement**

69. (1) Subdivision 4 (Adoption leave) applies to and in respect of an adoption in which placement occurred before the commencement of that Subdivision but only if the employer concerned consents.

(2) The employer may waive the application of section 58 (Notice requirements), or reduce any period of notice required under that section, in the case of such an adoption.

### **Division 4—Part-time work**

#### **Other entitlements**

70. Nothing in this Division affects any entitlement that an employee has to part-time work under any other Act or any award, agreement or contract of employment.

#### **Definitions**

71. For the purposes of this Division:

**“former position”** means the position held by an employee immediately before commencing part-time employment under this Division, 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;

**“part-time work”** means work of a lesser number of hours than constitutes full-time work under the relevant award or agreement, but does not include casual or temporary work.

#### **Entitlement**

72. With the agreement of the employer, an employee may work part-time in one or more periods in accordance with this Division.

#### **Return to former position**

73. If the employee is currently employed by the employer on a full-time basis, the part-time work agreement may provide that the employee has a right to return to that full-time position.

#### **Effect of part-time work on employment**

74. Despite any award, agreement or other provision to the contrary, part-time work does not break the continuity of service of an employee.

**Pro rata entitlements**

75. Subject to the provisions of this Division and the matters agreed in the part-time work agreement, part-time work is to be in accordance with the provisions of any award or agreement applicable to the work concerned, which are to apply pro rata.

**Annual leave—transitional arrangements**

76. (1) An employee working part-time under this Division is to be paid for and take any annual leave accrued in respect of a period of full-time employment, in such periods and manner as is specified in the annual leave provisions of the award or agreement applicable to the work concerned, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time employment under this, Division.

(2) A full-time employee is to be paid for and take any annual leave accrued in respect of a period of part-time employment under this Division, in such periods and manner as is specified in the annual leave provisions of the award or agreement applicable to the work concerned, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work

(3) By agreement between the employer and the employee, the period over which leave is taken under subsection (2) may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

**Sick leave—transitional arrangements**

77. (1) An employee working part-time under this Division is to have sick leave entitlements which have accrued under the award or agreement applicable to the work concerned (including any entitlement accrued in respect of previous full-time employment) converted into hours.

(2) When this entitlement is used, whether as a part-time employee or as a full-time employee, it is to be debited for the ordinary hours that the employee would have worked during the period of absence.

**Part-time work agreement**

78. (1) An employee may make an agreement with an employer to work part-time in accordance with the provisions of this Division.

(2) Such an agreement can be made prior to the employee commencing employment with the employer.

(3) Before commencing part-time work under this Division the employer and employee must agree:

(a) that the employee may work part-time; and



- (b) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work; and
  - (c) upon the classification applying to the work to be performed.
- (4) The agreement may also stipulate the period of part-time employment.
- (5) The terms of the agreement may be varied by consent.
- (6) The terms of the agreement or any variation to it must 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.

**Termination of employment**

79. The employment of a part-time employee under this Division may be terminated in accordance with the provisions of this Division 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**

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

**Nature of part-time work**

81. 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**

82. An employee may work part-time under this Division despite any other provision of any relevant award or agreement which limits or restricts the circumstances in which part-time work 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 Division.

**Replacement employees**

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

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(2) A replacement employee may be employed part-time. Subject to this section, sections 75, 78, 79 and 82 apply to the part-time employment of a replacement employee.

(3) Before an employer engages a replacement employee under this Division, 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.

**Division 5—Employment protection****Employment protection provisions to be inserted on application**

84. (1) On application, the Commission is required to insert employment protection provisions in an award, as provided by this Division.

(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 by way of variation or otherwise.

(4) This section applies to an award whether made before or after the commencement of this section.

**Matters to be considered**

85. (1) In exercising its functions under this Division, 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 its functions under this Division.

**Division 6—Protection of accrued entitlements of employees on transfer of business****Definitions**

86. (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 Division.

In that case, the termination of employment of such a transferred employee is to be disregarded for the purposes of this Division.

### **Application of Division**

87. This Division applies to a transferred employee only if the transfer of business occurs or occurred on or after 1 April 1987.

### **Continuity of service for determining entitlements**

88. (1) This section applies for the purpose of determining a transferred employee's entitlements under an award or agreement (or under this Act) 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 taken 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 section) is taken to be a period of service with the new employer.

(3) Service with the former employer includes service which because of this section is taken to be service with that employer as a result of a previous transfer of the business.

### **Entitlements when award or agreement breached**

89. (1) This section applies only to an entitlement ("the avoided entitlement") that a former employer has, in breach of an award or agreement (or this Act), failed to provide to a transferred employee.

(2) If the avoided entitlement relates to the payment of money for work done, this Division 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 relates to anything else and the new employer is required because of this Division 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**

90. This Division does not entitle a transferred employee to claim a benefit from more than one employer in respect of the same period of service.

**Division 7—Automation****Provisions relevant to automation to be inserted on application**

91. (1) On application, the Commission is required to insert in an award provisions relevant to automation, as provided by this Division.

(2) The provisions may be inserted in an award by way of variation or otherwise.

(3) This section applies to an award whether made before or after the commencement of this section.

**Obligations etc. of employer**

92. Provisions relevant to automation may include provisions as to the obligations, duties and responsibilities of an employer on the introduction or proposed introduction of technological changes in the industry concerned.

**Notice of termination of employment**

93. (1) Provisions relevant to automation may include provisions as to:

- (a) the employees to whom notices of termination of services are to be given on account of the introduction or proposed introduction of technological changes; and
- (b) the minimum period of notice (being not less than 3 months' notice); and
- (c) 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**

94. Provisions relevant to automation may include provisions as to the notifications to be given by the employer to the Industrial Registrar or the Director-General of the Department concerning notices of termination of services given to employees.

**Other relevant and consequential matters**

95. The Commission may also insert in a relevant award provisions concerning such other matters as it considers relevant to or consequential on the matters referred to in this Division.

**Division 8—Sick leave****Sick leave provisions to be inserted on application**

96. (1) On application, the Commission is required to insert in an award sick leave provisions, as provided by this Division.

(2) The provisions may be inserted in an award by way of variation or otherwise.

(3) This section applies to an award whether made before or after the commencement of this section.

**Minimum sick leave entitlements**

97. The sick leave provisions must include provisions under which:

- (a) each employee is entitled to not less than one week's sick leave on full pay for each year of service with an employer; and
- (b) sick leave accumulates 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.

**Commission's powers with respect to sick leave provisions**

98. (1) Nothing in this Division prevents the Commission from inserting provisions in an award relating to the 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.

(2) The Commission is not to insert in an award provisions relating to sick leave applicable for the time being that are less favourable than those that can be applied for under this Division.

**Exemption of employers from sick leave provisions in awards**

99. (1) Nothing in this Division prevents the Commission from exempting (in accordance with this Act) an employer from the provisions of an award relating to sick leave.

(2) An employee may, on giving notice to the employer concerned in accordance with this section, exclude himself or herself from any such exemption relating to sick leave.

(3) Any such notice must be in writing and be given to the employer within 3 months after:

- (a) the date on which the exemption takes effect; or
- (b) the date on which the employee commences his or her employment, whichever is the later.

**Division 9—Equal pay****Equal pay provisions to be inserted on application**

100. (1) On application, the Commission is required to insert in an award provisions for equal pay for employees of either sex.

(2) The Commission is required to insert the provisions only if the award relates to wage rates for male and female employees performing work of the same or a like nature and of equal value.

(3) The provisions may be inserted in an award by way of variation or otherwise.

(4) This section applies to an award whether made before or after the commencement of this section.

**Division 10—Australian Traineeship System****Provisions in awards**

101. (1) On application, the Commission may make an award containing Australian Traineeship System provisions or insert those provisions in an existing award.

(2) Australian Traineeship System provisions are provisions relating to the conditions of employment of trainees trained by employers under the Australian Traineeship System.

(3) This section applies to an award whether made before or after the commencement of this section.

**Matters to be considered**

102. In exercising its functions under this Division, the Commission is to comply with such guidelines as are 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.

**PART 3—AWARDS AND AGREEMENTS GENERALLY****Division 1—Awards****Purpose of an award**

103. 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**

104. (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 an industrial organisation representing them was a party to the making of the award; and

- (b) is binding on each industrial organisation representing employers or employees in the industry or enterprise to which the award relates; 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 specifies when making the award.

### **Exemptions**

103. (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 in total.

### **Review of exemptions**

106. (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 an industrial organisation whose members, or of an employer whose employees, are affected by the exemption; or
- (c) at the request of the Minister or following a report by the Industrial Registrar.

(2) After reviewing an exemption, the Commission may confirm, vary or revoke the exemption.

### **Content of an award**

107. (1) An award must include provisions:

- (a) in accordance with this Act, fixing (wholly or partly) conditions of employment for employees; and
- (b) in accordance with Chapter 3, setting out or adopting procedures for dealing with grievances of individuals and disputes between employers and employees.

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(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 the Commission or any other person. This subsection does not affect any power conferred on the Commission by this Act to vary an award.

**Formal considerations**

108. (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) an industrial organisation of employers whose members are employers in an industry; or
- (c) an industrial organisation of employees whose members are employees' in an industry.

(2) However, 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.

(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) An award is to comply with such other requirements as to form and procedure for its settling as may be made by the regulations or (subject to any such regulations) by the rules of the Commission.

(5) An award is to be published by the Industrial Registrar in the Industrial Gazette as soon as practicable after it is handed down.

**Commencement of award and stay of operation pending appeal**

109. (1) An award comes into force when it is handed down but legal proceedings relating to enforcement of an award cannot be commenced until 7 days have expired after the day on which it is published in the Industrial Gazette.

(2) The Commission or the Industrial 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 Industrial Court.

**Term of award**

110. (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 award varying an award is to have a nominal term equivalent to the residue of the nominal term of the award it varies, 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 Industrial Registrar or from any later 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 with consent**

111. (1) The Commission may, on application, vary an award by a further award, but only with the mutual consent of all the parties to the making of the initial award.

(2) An award as varied from time to time must comply with the requirements of this Act.

#### **Variation of an award without consent**

112. The Commission may, without the consent of the parties to the making of an award, vary the award by a further award, but only if the variation is made in the course of an arbitration under Part 2 of Chapter 3.

#### **Variation of an award after end of nominal term**

113. (1) An award may not be varied after the end of its nominal term unless the Commission is satisfied that:

- (a) the variation is associated with special and isolated circumstances; and
- (b) it would be contrary to the public interest to delay the variation until a new award is made.

(2) If a variation is not permitted by subsection (1), a new award is required to give effect to the proposed variation.

#### **Rescission of an award**

114. (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.

(2) The Commission may, without that consent, rescind an award after the period specified in it as its nominal term.

### **Division 2—Enterprise agreements**

#### **Subdivision 1—Enterprise agreements generally**

##### **Purpose of an enterprise agreement**

115. 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 tracks or occupations.

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**Single or separate enterprises**

116. (1) Enterprises carried on by corporations that are related to each other for the purposes of the Corporations Law may, for the purposes of this Act, be regarded as either one enterprise or separate enterprises.

(2) Enterprises carried on by different government departments or administrative offices under the Public Sector Management Act 1988 may, for the purposes of this Act, be regarded as either one enterprise or separate enterprises.

**Enterprise agreements required to be registered**

117. An enterprise agreement does not have any effect unless it is registered under this Division.

**Effect of an enterprise agreement**

118. (1) An enterprise agreement is enforceable as if it were an award.

(2) The provisions of an enterprise agreement prevail over the provisions of any award, former 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.

(3) Where an 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.

(4) In this section, “award” includes:

- (a) a determination under section 63 of the Public Sector Management Act 1988 or an agreement under section 64 of that Act, or any similar determination or agreement relating to employment in the public sector; and
- (b) any other instrument made under an Act relating to conditions of employment that is declared by the regulations to be an award for the purposes of this section.

**Parties to an enterprise agreement**

119. (1) An enterprise agreement may be made between an enterprise employer and any one of the following:

- (a) one or more industrial organisations of employees that represent persons employed, or intending to be employed, in the enterprise;
- (b) each of not less than 65% of the individuals employed in one or more trades or occupations in the enterprise;
- (c) a works committee formed under this Division to represent persons employed in the enterprise.

(2) Before an employee or a works committee can become a party to an enterprise agreement, the proposed agreement must be approved in a secret ballot by not less than 65% of the persons who are employed in the enterprise in the one or more trades or occupations to which the agreement is to apply.

**Persons bound by an enterprise agreement**

120. An enterprise agreement is binding on:

- (a) the parties to the agreement; and
- (b) each person from time to time employed in the enterprise for which the agreement was made who, whether or not a member of an industrial organisation or a works committee that is a party to the agreement or otherwise a named party to the agreement, is employed in a trade or occupation to which the agreement relates; and
- (c) each successor to an enterprise employer who was a party to the agreement.

**Content of an enterprise agreement**

121. (1) An enterprise agreement must include provisions:

- (a) identifying the parties to the agreement, the enterprise for which it is made and the trades or occupations to which it relates; and
- (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
- (c) setting out or adopting procedures required by Chapter 3 to be followed by individual employees and parties subject to the enterprise agreement to avoid grievances or disputes and to settle them, if they should arise; and
- (d) declaring that the enterprise agreement was not entered into under duress by any party to it.

(2) 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.

(3) An enterprise agreement may provide that it applies only to conditions of employment at a place or places specified in the agreement, despite subsection (2).

**Minimum conditions of employment**

122. (1) The minimum conditions of employment for enterprise agreements are as follows:

1. Sick leave—minimum of 1 week on full pay for each year of **service**.
2. Ordinary hours of employment—maximum of 40 hours per week averaged over a 52 week period.
3. Rates of wage—an hourly rate for ordinary hours of employment that is not less than the rate which would have otherwise been applicable from time to time for the employee under an award, former industrial agreement or other instrument if the enterprise agreement had not been made.

(2) A minimum condition of employment is taken to be fixed by an enterprise agreement in place of a condition of the same kind included in the agreement, but which is less favourable to the employee concerned than the minimum condition.

(3) Nothing in this Division limits the application to an employee bound by an enterprise agreement of any conditions of employment that apply under this Act or any other Act irrespective of the provisions of the enterprise agreement, such as parental leave under Part 2, annual leave under the Annual Holidays Act 1944 and long service leave under the Long Service Leave Act 1955.

### **Formal considerations**

123. 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 an enterprise agreement**

124. (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 enterprise agreement that varies an earlier agreement is to have a nominal term equivalent to the residue of the nominal term of the agreement it varies, even though the residue may be less than 12 months.

(3) Unless each of the parties enters into an agreement to terminate the enterprise agreement during its nominal term or after its nominal term has expired, the enterprise agreement can be terminated only at or after the expiration of its nominal term by one of the parties giving at least 3 months' notice of intention to terminate to each other party.

(4) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, an agreement to terminate the enterprise agreement during its nominal term may be entered into by those individuals or that works committee only after a decision to do so is supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(5) Termination of the agreement is not effective unless the Industrial Registrar has been given written notice of an agreement to terminate or of service of the notice of intention to terminate.

### **Variation of an enterprise agreement**

125. (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 of this Division.

(3) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, such a further agreement to vary may be entered into by those individuals or that works committee only after a decision to do so is supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

**Registration of enterprise agreement**

126. (1) An enterprise agreement may (in accordance with the regulations) be lodged with the Industrial Registrar for registration.

(2) The Industrial Registrar is to register each enterprise agreement so lodged, but only if:

- (a) the Industrial Registrar is satisfied that the agreement complies with the requirements made by this Division; and
- (b) the Industrial Registrar has received a certificate from the Commissioner for Enterprise Agreements under section 127; and
- (c) the Industrial Registrar has not received notice of withdrawal by a party from the agreement within the time specified by section 128.

**Advice from Commissioner for Enterprise Agreements**

127. (1) The Industrial Registrar is to forward a copy of an enterprise agreement lodged for registration to the Commissioner for Enterprise Agreements within 7 days after it is so lodged.

(2) The Commissioner is to arrange a meeting, as soon as practicable, of the parties to the enterprise agreement for the purpose of establishing that the parties demonstrate an understanding of:

- (a) their rights and obligations under the agreement and this Division; and
- (b) conditions of employment under any award, former industrial agreement or other enterprise agreement applying to the parties.

(3) Such a meeting may be held with the parties together or separately, or with such representatives of the parties, as the Commissioner thinks fit.

(4) As soon as practicable after the meeting, the Commissioner is to forward to the Industrial Registrar a certificate that states that the parties demonstrate the necessary understanding referred to in this section, being a certificate in such form as is prescribed by the regulations.

(5) The functions of the Commissioner under this section may be exercised by an officer of the Department authorised by the Commissioner.

**Withdrawal from enterprise agreement before registration**

128. (1) A party to an enterprise agreement that has been lodged for registration may, within 14 days after the meeting arranged with the Commissioner for Enterprise Agreements under section 127, give written notice to the other party or parties to the agreement that the party wishes to withdraw from the agreement.

(2) Written notice of withdrawal must also be given within that time to the Industrial Registrar.

(3) The application for registration of the enterprise agreement is taken to be withdrawn on receipt of the notice by the Industrial Registrar.

(4) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, notice of withdrawal from the agreement under this section by those parties may only be given if the

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notice is supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the agreement is to apply.

**Register of enterprise agreements**

129. (1) The Industrial Registrar is to keep a register of all enterprise agreements that have been registered, notices of termination of such agreements and such other particulars as the Industrial Registrar considers appropriate.

(2) The Industrial 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**

130. (1) An employer of employees whose conditions of employment are affected by an enterprise agreement must cause a copy of the agreement 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) If any of the employees concerned cannot understand the language in which the agreement is written, the employer must cause sufficient accurate (but simply expressed) summaries of the agreement to be so fixed and maintained for each of the employees to be able to read such a summary in a language he or she understands.

(3) Before an employer bound by an enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment fixed by an enterprise agreement, the employer must give the person notice of the existence of the agreement and access to a copy or to an accurate (but simply expressed) summary of the agreement, for perusal by the person, in a language the person understands.

Maximum penalty: 10 penalty units.

**Restriction on duplication of special conditions**

131. In the making of awards or orders, and in the giving of directions under this Act, the Commission is not to have regard to provisions of enterprise agreements.

**Secret ballots under this Subdivision**

132. (1) Except as provided by subsection (2), a secret ballot under this Subdivision must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees entitled to vote in the ballot, being a person who meets any other requirement that may be imposed by the regulations.

(2) If, within 14 days next following the purported holding of such a ballot, the Industrial Registrar receives a written complaint from at least 20% of the persons entitled to vote in the ballot alleging specified irregularities in the conduct of the ballot and requesting that a further secret ballot be conducted by an independent person, the Industrial Registrar may (if of the opinion that such action is justified) arrange with the persons concerned:

- (a) for the conduct of such a further secret ballot; and
- (b) for evidence of the result of the further ballot to be supplied to the Industrial Registrar.

(3) The result of such a further ballot is to be disregarded if the Industrial Registrar is not satisfied that it has been conducted in accordance with the Industrial Registrar's directions.

(4) Before the Industrial Registrar arranges for the conduct of a further secret ballot, the Industrial Registrar must forward a copy of the complaint to the Commissioner for Enterprise Agreements and must take into account any written submission concerning the alleged irregularities made by the Commissioner within the time specified by the Industrial Registrar.

(5) The Industrial Registrar must not register an enterprise agreement within 14 days after the holding of a secret ballot (or a further secret ballot) under this Subdivision or, if a written complaint has been received under this section, within such further period as the Industrial Registrar considers necessary to resolve the matter.

**Subdivision 2—Industrial Court's powers****Powers of Industrial Court to declare agreement void etc.**

133. (1) The Industrial Court may, on application by a person bound by an enterprise agreement, declare the agreement wholly or partly void, either from its commencement or from some other time, if the Industrial Court finds that the agreement:

- (a) is unfair, or
- (b) is harsh or unconscionable; or
- (c) was entered into under duress.

(2) When making an order under this section, the Industrial Court may make such further order as to the payment of money in connection with the enterprise agreement as the Industrial Court thinks just in the circumstances of the case.

(3) An 'enterprise agreement is not unfair, harsh or unconscionable merely because it provides conditions of employment which are less favourable to the employees concerned than those otherwise applicable under an award or former industrial agreement.

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**Powers of Industrial Court to vary agreement**

134. (1) The Industrial Court may vary the provisions of an enterprise agreement for the purpose of:

- (a) removing ambiguity or uncertainty; or
  - (b) making an amendment the Industrial Court considers necessary to avoid a substantial risk of death or personal injury.
- (2) A variation under this section may be made only on the application of:
- (a) the enterprise employer; or
  - (b) an industrial organisation that is a party to the agreement; or
  - (c) with the leave of the Industrial Court, an individual employee who is a party to the agreement; or
  - (d) a works committee that is a party to the agreement, without the necessity for a secret ballot decision on whether the application should be made; or
  - (e) the Minister, if the variation is for the purpose referred to in subsection (1) (b).
- (3) This section has effect despite anything to the contrary in this Division.

**Subdivision 3—Works committees****Nature of works committee**

135. A works committee is a committee formed in accordance with this Subdivision by persons employed in an enterprise in any one or more trades or occupations to represent persons so employed in the negotiating, making, varying and terminating of enterprise agreements.

**Decision to form works committee**

136. (1) Persons employed in a single enterprise in any one or more trades or occupations and who intend to become bound by an enterprise agreement may, at a meeting held for the purpose, decide:

- (a) whether to form a works committee to represent persons employed in the enterprise in those trades or occupations; and
- (b) if a works committee is to be formed, which of those persons will be the members of the committee.

(2) Any such decision must be supported in a secret ballot by at least 65% of the persons for the time being employed in the enterprise in those trades or occupations.

**Composition of works committee**

137. (1) A works committee must consist of not more than 8 persons who would become bound by any enterprise agreement to which the committee was a party.

(2) If the enterprise employer consents, the committee may consist of more persons.



**Term**

138. (1) If an enterprise agreement has not been entered into by a works committee within 6 months after its formation, the committee is taken to be dissolved.

(2) If a works committee enters into an enterprise agreement within 6 months after its formation, the committee is taken to be dissolved when the agreement is terminated.

**Decisions and procedure**

139. (1) A decision supported by the majority of the members for the time being of a works committee is the decision of the committee.

(2) A works committee must elect a chairperson from among its members who is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(3) Except as provided by this section, a works committee may determine its own procedure.

**Casual vacancy**

140. If a vacancy occurs in the office of a member of a works committee:

(a) the employees for the time being represented by the committee may at a meeting elect in such manner as they think fit one of their number to fill the vacancy; and

(b) pending such an election, the chairperson may appoint such an employee to fill the vacant position.

**Dissolution**

141. (1) A works committee may be dissolved at any time by a decision to dissolve the committee supported in a secret ballot by at least 65% of the persons for the time being employed in the enterprise who are or would be bound by an enterprise agreement entered into by the committee.

(2) If a works committee is dissolved while an enterprise agreement is in force, any works committee formed in accordance with this Subdivision within 30 days after the dissolution to represent the employees represented by the former committee is taken to be a party to the agreement instead of the former committee.

(3) If a works committee is dissolved while an enterprise agreement is in force and a further works committee is not so elected, the former works committee ceases to be a party to the agreement but persons from time to time employed in the enterprise who would have been bound by the agreement if the works committee had not been dissolved continue to be bound by the agreement as if each such person were a party to the agreement.

**Secret ballots under this Subdivision**

142. A secret ballot under this Subdivision must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees entitled to vote in the ballot, being a person who meets any other requirement imposed by the regulations.

**Subdivision 4—Commissioner for Enterprise Agreements****Appointment**

143. For the purposes of this Division, the Commissioner for Enterprise Agreements is the person holding office as such under Part 2 of the Public Sector Management Act 1988.

**Functions**

144. (1) The Commissioner for Enterprise Agreements is required:

- (a) to keep under review the operation of the provisions of this Act relating to enterprise agreements; and
- (b) when asked for assistance in that regard, to advise any person bound or considering whether to become bound by an enterprise agreement about their rights and obligations under this Division or under the agreement or proposed agreement; and
- (c) when asked for assistance in that regard, to advise any such person about conditions of employment under any award or former industrial agreement that currently apply to the person; and
- (d) to promote the use of enterprise agreements; and
- (e) to provide a report annually to the Minister on the commissioner's activities during the year to which the report relates; and
- (f) at such times as the Minister directs, to report to the Minister on such matters as the Minister nominates; and
- (g) to exercise such other functions as may be conferred or imposed on the Commissioner by or under this or any other Act.

(2) The Commissioner may confer with any person or body, whether in New South Wales or elsewhere, about anything the Commissioner is authorised or required to do.

**Protection from personal liability**

145. A matter or thing done by the Commissioner for Enterprise Agreements (or any officer of the Department exercising the Commissioner's functions) does not, if the matter or thing was done in good faith for the purposes of executing this Division, subject the commissioner or officer personally to any action, liability, claim or demand.

**Division 3—Former industrial agreements****Continuation in force of existing agreements**

146. (1) An industrial agreement (including a variation of such an agreement) that was filed under section 11 of the Industrial Arbitration Act 1940 and was in force immediately before the repeal of section 11 of that Act continues in force under this Act as a former industrial agreement.

(2) An agreement that was lodged for filing under section 11 of that Act, but had not been accepted by the Industrial Registrar for filing before the repeal of that section, may be accepted for filing. On being filed, the agreement continues in force under this Act as a former industrial agreement.

**Variation of former industrial agreements**

147. (1) The parties to a former industrial agreement may by mutual consent vary that agreement by a further agreement in writing filed in the office of the Industrial Registrar.

(2) The former industrial agreement may not be varied if its term has expired.

(3) The term of a former industrial agreement may be extended by such a further agreement (whether or not the term has expired), but only if:

(a) the agreement relates to the conditions of employment on a particular construction project; and

(b) the term does not extend beyond the date of completion of the project.

(4) A former industrial agreement whose term has not expired may also be varied under sections 14 and 15. Accordingly, those sections apply to any such former industrial agreement in the same way they apply to an award.

**Termination of industrial agreement**

148. (1) Unless each of the parties agrees to terminate the agreement during its term or after its term has expired, a former industrial 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' written notice of intention to terminate.

(2) Termination of the agreement is not effective unless the Industrial Registrar has been given written notice of an agreement to terminate or of service of the notice of intention to terminate.

**Effect of former industrial agreement**

149. (1) A former industrial agreement is enforceable as if it were an award.

(2) The provisions of a former industrial agreement prevail over the provisions of any award of 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 (but those provisions do not prevail over an enterprise agreement).

**Persons bound by former industrial agreement**

150. A former industrial agreement is binding on:

- (a) the parties to the agreement; and
- (b) every member for the time being of an industrial organisation of employees that is a party to the agreement, being a member to whom the agreement applies; and
- (c) every member for the time being of an industrial organisation of employers that 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 an industrial organisation of employees, is employed in a trade or occupation to which the agreement relates; and
- (e) each successor to any such employer.

**PART 4—ENFORCEMENT OF CONDITIONS OF EMPLOYMENT****Division 1—Recovery of wages and similar amounts****Recovery of wages due under awards, agreements or permits**

151. (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 enterprise agreement; or
- (c) by a former industrial agreement or
- (d) by the conditions of a permit issued under this Act to an aged, infirm or slow employee,

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 to a Local Court or to the Industrial Court 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, enterprise agreement or f—— industrial 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 before the date of the application.

(5) The Local Court or Industrial Court 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.

### **Recovery of cost of work not fixed by award or agreement**

152. (1) If:

- (a) work is done by an employee for an employer; and
- (b) a price or rate is not fixed by an award, enterprise agreement or former industrial agreement, or by the conditions of a permit issued under this Act to an aged, infirm or slow employee, 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 to a Local Court or to the Industrial Court for leave to recover remuneration for the work.

(2) Leave is not to be granted unless the Local Court or Industrial Court 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 must specify the work to which the leave relates.

(3) If leave is granted, the Local Court or Industrial Court 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 151 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 under section 151, 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**

153. (1) A person who is employed as referred to in section 151 (1) 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 151 (1)) may apply to a Local Court or to the Industrial Court 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.

(3) In any proceedings under this section, a Local Court or the Industrial Court may make such order as it 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 151 or in separate proceedings.

### **Wages payable to employees of contractors**

154. (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.

(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**

155. (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, enterprise agreement or former industrial 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 unpaid superannuation**

156. (1) Where an employer employs any person to do any work for which the employer is required under an award or agreement to make a contribution to a superannuation fund on behalf of the person, the person may apply to a Local Court or to the Industrial Court for an order directing the employer to make a payment to or in respect of that person for the purpose of restoring the person, as far as practicable, to the position that the person would have been in had the employer not failed to make the contribution.

(2) Without limiting the generality of subsection (1), an order under this section may direct the employer to pay to the relevant superannuation fund:

- (a) the amount of the contribution that is unpaid; and
- (b) the amount that, in the opinion of the Local Court or Industrial Court, would have accrued in respect of the contribution in the fund had it been paid to the fund when due.

(3) An application for an order under this section may only be made if the contribution was required to be made during the period of 6 years immediately before the application was made.

(4) The Local Court or Industrial Court may, on an application for an order under this section, make such order as it considers just, award costs to either party and assess the amount of those costs.

(5) An order under this section may be made despite any smaller payment by the employer or any express or implied agreement to the contrary.

(6) If, at the time an order is made, the employee no longer works for the employer, the Local Court or Industrial Court may order the employer to pay the relevant amounts to a superannuation fund nominated by the employee.

(7) A certificate signed, or purporting to be signed, by a trustee of a superannuation fund as to:

- (a) the amount of contribution that has been, or should have been, paid in respect of an employee for a particular period of time; or
- (b) the eligibility of an employee for membership of the fund; or
- (c) the amount that would have accrued in respect of a contribution or a series of contributions had it been in the fund over a particular period,

is evidence of the matters stated in the certificate.

### **Order for interest**

157. (1) If an order to which this section applies is made for the payment of an amount of money, the Local Court or Industrial Court may order that there is to be included (in the amount ordered to be paid) interest at the prescribed rate

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on the whole or any part of that amount for the whole or any part of the period from when the amount became due to the date of the order.

(2) If, in relation to proceedings for an order to which this section applies, the whole of the amount of money due (or any part of it) is paid before or without the order being made, the Local Court or Industrial Court may order that interest is to be paid at the prescribed rate on the amount so paid for the **whole** or any part of the period from when the amount became due to the date of the payment. Any such order for interest may be enforced as if it were an **order** to which this section applies.

(3) This section does not:

- (a) authorise the charging of interest on interest; or
- (b) authorise the charging of interest otherwise than by consent on any amount for the payment of which an order is made by consent.

(4) This section applies to the following orders:

- (a) an order under section 151 or 166 (2) for the payment of money due;
- (b) an order under section 12 (2) or 13 of the Annual Holidays Act 1944 with respect to any remuneration or payment due to a worker under that Act;
- (c) an order under section 11 (2) or 12 of the Long Service Leave Act 1955 with respect to any payment due to a worker under that Act;
- (d) an order under section 11 (2) or 12 of the Long Service Leave (Metalliferous Mining Industry) Act 1963 with respect to any payment due to a worker under that Act.

**Recovery of amount in a Local Court**

158. Any amount ordered to be paid by a Local Court under this Division may, to the extent that it does not exceed \$40,000 or such greater amount as may be prescribed by the regulations, be recovered as if it were a judgment of the Local Court for the payment of a debt of the same amount.

**Alternative proceedings in other Courts**

159. A person entitled to apply for an order for the payment of money under this Division may, instead of applying for such an order, recover the money as a debt in any court of competent jurisdiction.

**Age of claimant not a bar**

160. A person may take proceedings under this Division, 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 industrial organisation**

161. (1) Proceedings under this Division 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 an industrial organisation concerned in the industry or enterprise to which the proceedings relate.

(2) Any amount ordered to be paid in the proceedings (not being payments under section 156) may be paid to the secretary or other officer and the receipt of the secretary or other officer is a sufficient discharge to 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.

**Payment of unclaimed wages**

162. (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 of the Department 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 of the Department 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.

**Small claims in Local Courts**

163. (1) In this section:

“order” means an order:

- (a) under this Division or Division 1 of Part 5 of Chapter 6; 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;

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“**special application**” means an application for an order made **in** accordance with subsection (2).

(2) A person who makes an application to a Local Court for an order may do so by requesting, in a form approved by the Industrial Registrar, that the application be dealt with under this section.

(3) A Local Court is not to make an order in respect of a special 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 is not to make an order in respect of a special application until the Local Court 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 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 may, at any stage of proceedings in respect of a special application, make such amendment of the application as the Local Court thinks fit either at the request or with the approval of the applicant but, if it appears to the Local Court that any other party to the proceedings has not had sufficient notice of the amendment, the Local Court is required to adjourn the proceedings to such time and place as the Local Court thinks fit.

(6) A Local Court is not, in respect of a special application, bound by the rules and practice as to evidence but may inform itself of any matter in such manner as the Local Court thinks fit.

(7) Despite anything to the contrary in this or any other Act, an appeal to the Industrial Court from an order made by a Local Court in respect of a special application may not be instituted without the leave of the Industrial Court.

### **Representation of parties to small claims**

164. (1) A party to proceedings authorised by section 163 to be brought in a Local Court may be represented by an agent.

(2) However, a party is not entitled to be represented by an agent who is a legal practitioner unless the Local Court so approves.

(3) The approval of the Local Court is not required if the legal practitioner

- (a) represents a corporation and is an officer of the corporation within the meaning of the Corporations Law; or
- (b) represents a body corporate constituted under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986 and is one of the proprietors or lessees constituting the body corporate; or
- (c) represents a member of an industrial organisation and is an officer or employee of the organisation.

(4) If the approval of a Local Court is required for a legal practitioner to represent a party to any proceedings, the approval may not be granted unless:

- (a) all parties to the proceedings agree; and

(b) the Local Court is satisfied that the parties (other than the party who applies for approval) or any of them will not be disadvantaged.

(5) The approval of a Local Court for a legal practitioner to represent a party to any proceedings may be granted subject to such conditions as the Local Court considers reasonable to ensure that any other party to the proceedings is not disadvantaged by the legal practitioner appearing in the proceedings.

(6) A contravention of this section does not invalidate the proceedings before the Local Court or any order made in those proceedings.

(7) In this section:

“agent” includes a person who takes proceedings in the name and on behalf of another person;

“legal practitioner” means a practising barrister or practising solicitor.

#### **Advertisements relating to wages**

165. (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, enterprise agreement or former industrial 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 industrial organisation of employees 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.

#### **Division 2—Breach of awards or agreements**

##### **Penalty for breach of award etc.**

166. (1) A person who contravenes the provisions of an award, enterprise agreement or former industrial agreement is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) If, in proceedings for an offence under subsection (1), it appears that the contravention complained of relates to the failure of the defendant to pay any money that may be recovered under Division 1, the Local Court or Industrial Court may also make such an order with respect to that money as might have been made in proceedings under Division 1.

(3) An order under this section may be made without motion and is a bar to proceedings under Division 1 in respect of the money concerned.

##### **Injunctions**

167. (1) If a penalty is imposed under section 166 and the Industrial Court is of the opinion that the breach was committed because of the wilful act or default of a person, the Industrial Court 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, enterprise agreement or former industrial agreement, 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: 100 penalty units in the case of a corporation; 10 penalty units in any other case.

(3) Proceedings for an offence under this section are to be disposed of summarily by the Industrial Court.

### **Proceedings for offences**

168. (1) Proceedings for a breach of an award, enterprise agreement or former industrial agreement may be instituted by an employer (in addition to any other person authorised by this Act to institute proceedings), or by the secretary or, with the written consent of the secretary, another officer of an industrial organisation, concerned in the industry or enterprise covered by the award or agreement.

(2) The Local Court or Industrial Court may, in any such proceedings, award costs to either party and assess the amount of costs.

(3) Evidence given in proceedings under Division 1 is not admissible against an employee or employer in proceedings for an offence under this Division.

### **Secretary of union etc. receiving money for breach of award etc.**

169. A secretary of an industrial organisation, or any person acting or purporting to act on behalf of any industrial organisation, who receives any money paid in respect of any act constituting a breach of an award, enterprise agreement or former industrial agreement, otherwise than in pursuance of the order or with the previous approval of the Industrial Registrar or a Local Court, is guilty of an offence.

Maximum penalty: 50 penalty units.

### **Power to amend**

170. (1) Where in any proceedings under this Division or Division 1 it appears that the award, enterprise agreement or former industrial agreement 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 or agreement is appropriate to the proceedings, the Local Court or Industrial Court may amend the application, information or complaint 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 Industrial Court to be of such a kind as to provide reasonable grounds to suspect that the employer may have been deceived or misled with respect to the nature of the proceedings, the Court 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.

### **Orders of Commission**

171. In this Division, a reference to an award includes any order of the Commission which is prescribed by the regulations for the purposes of this Division.

### **Division 3—Manner of paying wages etc.**

#### **Employees to be paid in money**

172. (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.

(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, enterprise agreement or former industrial agreement.

(4) Payment into an account can be made by a transfer of funds (which may be an electronic transfer) or by other means.

#### **Employee can authorise deductions**

173. (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) If at any time an employee gives the employer written notice of withdrawal of such an authority, the employer must give effect to the notice as soon as practicable.

#### **Employees not to be paid in goods, board or lodging**

174. (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 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**

175. (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 premises of the employer (except where any such residence is essential to the duties the employee is required to perform).

**Recovery of remuneration—no set-off for goods supplied etc.**

176. In any proceedings by an employee against his or her employer to recover any amount due as remuneration, the employer 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 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 employer or the employer's agent.

**No action against employee for goods supplied etc.**

177. An employer is not entitled to maintain any action in any court against an employee for or in respect of any goods sold or supplied to the employee by the employer while in the employer's employment as or on account of the employee's remuneration.

**Entitlement to payment in advance**

178. 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.

**Effect of unlawful payments etc.**

179. (1) Payment of remuneration to an employee in a manner that is not lawful under this Division is not to be considered to be payment or part

payment of that remuneration, except to the extent (if any) permitted by the Industrial Court.

(2) Any contract that provides for payment of remuneration to an employee in a manner that is not lawful under this Division is void and of no effect to the extent that it so provides.

### **Superannuation fund contributions by employers—right of employee to nominate fund**

180. (1) If an award or agreement requires an employer to pay contributions to a specified superannuation fund for the purpose of providing superannuation benefits to or in respect of an employee of the employer, the required contributions may, despite the award or agreement, be paid to a complying superannuation fund nominated for the time being by the employee and approved by the employer.

(2) However, subsection (1.) applies only if:

- (a) the nomination of the complying superannuation fund by the employee is in writing and signed by the employee; and
- (b) the employer has given the employee a copy of the nomination and written notice of the employer's approval of the nomination; and
- (c) the employer retains a copy of the nomination.

(3) In this section:

“complying superannuation fund” means a superannuation fund that, for the relevant year of income, satisfies the superannuation fund conditions prescribed by the Occupational Superannuation Standards Act 1987 of the Commonwealth and regulations in force under that Act;

“superannuation fund” has the same meaning as it has in the Occupational Superannuation Standards Act 1987 of the Commonwealth.

### **Deductions from wages for union subscriptions**

181. (1) The Commission may not make an award or order requiring an employer to make deductions from the wages of an employee for subscriptions payable by the employee to an industrial or non-industrial organisation of employees.

(2) An enterprise agreement may make provision for an employer to make those deductions.

(3) Any provision of an award or order made before the commencement of this section that requires an employer to make those deductions ceases to have effect on that commencement.

## **Division 4—Details of wages and hours**

### **Particulars of wages to be supplied to employees**

182. (1) On the payment by an employer of any wages to an employee covered by an award, enterprise agreement or foamer industrial agreement,

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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 by the regulations regarding the payment. The regulations may prescribe particulars of the following:

- (a) the date of payment;
- (b) the classification of the employee under the award or agreement;
- (c) the period in respect of which the payment is made;
- (d) times worked or work done by the employee;
- (e) matters in respect of which the payment is made;
- (f) deductions made;
- (g) superannuation contributions made on behalf of the employee under an award or agreement;
- (h) the amount paid;
- (i) how the amount, paid is made up.

(2) If the Industrial 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 industrial organisation of employees representing the majority of those employees, or of that class of employees, as the case may be,

the Industrial Registrar may, if the Industrial 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.

(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 Industrial 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 penalty units.

(5) In any proceedings for that offence, a certificate purporting to be signed by the Industrial 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**

183. (1) Every employer:

- (a) carrying on an industry or enterprise to which an award, enterprise agreement or former industrial 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 Industrial Registrar, at some other place, in the medium and form prescribed by the regulations, time-sheets and pay-sheets relating to the employees of the employer.

Maximum penalty: 20 penalty units.

(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 Industrial Registrar.

Maximum penalty: 20 penalty units.

(3) Any person who is in any way directly or indirectly knowingly concerned in the commission of any offence under subsection (1) or (2) is taken to have committed that offence.

### **CHAPTER 3—DISPUTES, INDUSTRIAL ACTION AND OTHER MATTERS**

#### **PART 1—DISPUTES AND INDUSTRIAL ACTION CONCERNING SETTLED RIGHTS UNDER AWARDS AND AGREEMENTS**

##### **Division 1—Grievances and dispute resolution procedures in awards and agreements**

##### **Mandatory procedures for dealing with grievances of individuals and disputes between employers and employees**

184. (1) An award relating to conditions of employment is not to be made, and an enterprise agreement is not to be registered, unless the award or agreement contains or adopts procedures required to be followed by:

- (a) an individual employee bound by the award or enterprise agreement in connection with grievances of the employee; and
- (b) the employers and employees bound by the award or enterprise agreement in connection with questions, disputes or difficulties arising under the award or enterprise agreement.

(2) The procedures for individual employees must provide for the avoidance of grievances over an employer's action that disadvantages any such employee and that relates:

- (a) to a question, dispute or difficulty concerning the interpretation, application or operation of the award or enterprise agreement; or
- (b) to alleged 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 employers and employees must provide for:
  - (a) the avoidance of questions, disputes or difficulties concerning the interpretation, application or operation of the award or enterprise agreement; and
  - (b) the settlement of any such question, dispute or difficulty, should it arise.

#### **Minimum procedures for awards**

185. The procedures for awards must be such as, in the opinion of the Commission, are not less likely to lead to the avoidance of the grievances, questions, disputes or difficulties concerned (or the settlement of them, should they arise) than the following procedures:

1. Procedures relating to grievances of individual employees
  - (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.
  - (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.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, ~~normal~~ work must continue.
  - (f) The employee may be represented by an industrial organisation of employees.
2. Procedures relating to disputes etc. between employers and their employees
  - (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.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (c) While a procedure is being followed, normal work must continue.
  - (d) The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purposes of each procedure.

#### **Grievance and dispute settlement procedures for existing awards and former industrial agreements**

186. (1) The regulations may provide that awards or industrial agreements under the Industrial Arbitration Act 1940 (and continued in force under this Act) are taken to have inserted in them procedures of the kind referred to in this

Division for the avoidance and settlement of grievances of individual employees and questions, disputes and difficulties concerning the interpretation, application or operation of those awards or agreements.

(2) Any such procedures are to be subject to the express provisions of the awards and agreements concerned, as varied in accordance with this Act from time to time.

### **Exemption for small businesses from mandatory procedures**

187. (1) Nothing in this Act requires:

- (a) the inserting in an award or agreement of procedures for the avoidance or settlement of grievances or of questions, disputes or difficulties relating to small business employers and their employees; 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 or employee would be required to comply because of the provisions of an award.

(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 employer or the chief executive of the employer.

### **Division 2—Commission may settle disputes etc. in respect of awards and agreements**

#### **Reference of matters to the Commission**

188. (1) A question, dispute or difficulty in respect of an award or agreement may be referred to the Commission by:

- (a) a party to the making of the award or agreement; or
- (b) an employer bound by the award or agreement; or
- (c) an industrial organisation, if any of the members of the organisation are bound by the award or agreement.

(2) A grievance of an individual employee over an employer’s action that disadvantages the employee and relates to:

- (a) a question, dispute or difficulty in respect of an award or agreement; or
- (b) alleged discrimination in employment within the meaning of the Anti-Discrimination Act 1977,

may, with the leave of the Commission, be referred to the Commission by the employee.

(3) A matter may be referred to the commission under this section even though the nominal term of the award or agreement Concerned has expired.

**Settlement procedure to be followed first**

189. The Commission is not to deal with the grievance or the question, dispute or difficulty unless it is satisfied that any procedures in the award or agreement for its settlement have been complied with as far as is reasonably practicable in the circumstances.

**Commission to attempt settlement by agreement**

190. (1) The Commission is to attempt to clarify the issues involved and settle the grievance or the question, dispute or difficulty by agreement and, for that purpose, may request the persons concerned to attend a conference presided over by a member of the Commission.

(2) If a grievance was referred by or on behalf of an individual employee and any such conference is held, the public is to be excluded and no transcript of the proceedings is to be kept (unless the Commission otherwise directs).

**Determination by Commission**

191. (1) The Commission is to determine by its order the grievance or the question, dispute or difficulty if agreement is not reached.

(2) The Commission is to determine the matter by giving effect, as far as is reasonably practicable, to the original intention of the Commission when making the award or of the parties when making the agreement.

(3) The Commission is not to determine the matter 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.

(4) The determination of the matter binds only the parties to the proceedings before the Commission.

(5) If a party to the proceedings so requires, a member of the Commission who attempted to settle the matter by agreement is not to determine the matter under this section if agreement cannot be reached.

**Questions involving new matters may be subject to arbitration**

192. The Commission may deal with a question, dispute or difficulty referred to it under this Division by conciliation or arbitration under Part 2 if it is a matter that may be so dealt with.

**Division 3—Injunctions in respect of industrial action over settled rights****Application of Division**

193. (1) This Division applies to industrial action concerning an industrial matter which is not a matter that may be dealt with by the Commission by conciliation or arbitration under Part 2.

(2) Even if industrial action concerns a matter that may be so dealt with, this Division applies to that action if it can reasonably be attributed to the alleged or actual unfair dismissal of an employee.

(3) This Division also applies to threatened industrial action that, if engaged in, would be industrial action to which this Division applies.

### **Injunction relating do certain industrial action**

194. (1) If industrial action to which this Division applies is taking place, or is threatened, the Industrial Court may grant an injunction in order to prevent the industrial action or to bring the industrial action to an end.

(2) An injunction may require any one or more of the following persons to act, or to refrain from acting, in a specified manner:

- (a) a party to the industrial action or a likely party to the threatened industrial action;
- (b) a member, officer or employee of an industrial organisation that is such a party or likely party.
- (3) Application for an injunction may be made only by:
  - (a) the Minister; or
  - (b) an industrial organisation which (M a member of which) is, or is likely to be, adversely affected by actual or threatened industrial action of the party against whom the injunction is sought; or
  - (c) any other person who is or is likely to be adversely affected by actual or threatened industrial action of the party against whom the injunction is sought.

(4) An injunction may be granted in interlocutory proceedings and the Industrial Court may require the applicant to give undertakings satisfactory to the Industrial Court as to the payment of costs.

### **Breach of injunction**

195. (1) If the person who obtained an injunction under this Division (in this section called “the aggrieved party”) lodges with the Registrar of the Industrial Court an application that:

- (a) is to the effect of the form, and includes the information, required by the rules of the Industrial Court; and
- (b) alleges a breach of the injunction,

the Registrar 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 Industrial Court should not take action under subsection (3).

(2) The Industrial Court 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) The Industrial Court 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:

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- (a) dismiss the summons after finding that, although the defendant was in breach of the injunction, the circumstances were such that the Industrial Court should take no action on the breach;
  - (b) require the defendant to enter into a recognisance with or without sureties;
  - (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) suspend the contract of employment of the person in breach of the injunction;
  - (f) alter the coverage of an industrial organisation of employees to exclude certain persons from membership;
  - (g) suspend for a specified time, or suspend and later cancel, or cancel the registration of an industrial organisation (in which case Chapter 5 applies as if the registration had been suspended or cancelled under that Chapter);
  - (h) make any other determination that the Industrial Court considers would help prevent industrial action or help in bringing industrial action to an end.
- (4) The maximum penalty that may be imposed under this section for a breach of an injunction is:
- (a) in the case of an industrial organisation or any other corporation—1,000 penalty units and an additional penalty of 100 penalty units for each succeeding day during which the breach continues; or
  - (b) in any other case—100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the breach continues.

**Defences**

196. It is a defence to a summons issued to answer for a breach of an injunction granted under this Division in relation to actual or threatened 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 or employee of an industrial organisation and was not knowingly concerned in, or a party to, any act or omission of the organisation that is in breach of the injunction.

**Consequential amendment of rules**

197. (1) If, under this Division, the Industrial Court:

- (a) alters the coverage of an industrial organisation of employees to exclude certain persons from membership; or
- (b) suspends or cancels the registration of such an organisation,

the Industrial Court 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 this Division, including an order altering the rules of any other industrial organisation of employees 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 industrial organisation. of employees are 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 an industrial organisation of employees amended under this section.

**Division 4—Interpretation of awards or agreements by  
Industrial Court**

**Referral to Industrial Court—question of interpretation etc. of awards or agreements**

198. (1) A question concerning the interpretation, application or operation of an award or agreement may be referred to the Industrial Court for determination.

(2) The question may be referred to the Industrial Court by:

- (a) a party to the making of the award or agreement; or
- (b) an employee bound by the award or agreement or an industrial organisation of employees, if members of the organisation are bound by the award or agreement; or
- (c) an employer bound by the award or agreement or an industrial organisation of employers representing such an employer.

(3) The question may be referred even though the nominal term of the award or agreement concerned has expired.

(4) The Industrial Court is not to determine a question referred to it by an individual employee unless it was referred with leave of the Industrial Court.

**Determination of question by Industrial Court**

199. (1) The Industrial Court is, by its order, to determine the question concerning the interpretation, application or operation of the award or

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agreement, but not so as to have the effect of changing any conditions of employment fixed by the award or agreement.

(2) The decision of the Industrial Court on the question binds all the persons who are bound by the award or agreement concerned.

**Division 5—Miscellaneous****Part to apply to public sector industrial agreements**

200. For the purposes of this Part, an “agreement” includes an agreement under section 64 of the Public Sector Management Act 1988 or any similar kind of agreement relating to Crown employees.

**PART 2—CONCILIATION AND ARBITRATION BY COMMISSION  
ON DISPUTES NOT CONCERNING SETTLED RIGHTS****Application of Part**

201. (1) This Part applies to a question, dispute or difficulty concerning an industrial matter:

- (a) which arises at a time when the rights of the parties concerned are not settled by a current award or agreement; or
- (b) which arises at a time when those rights are settled by a current award or agreement, but:
  - (i) the matter is certified by the Industrial Court under this Division as a new matter in respect of that award or agreement; or
  - (ii) the matter involves a substantial risk of death or personal injury; or
  - (iii) the matter concerns only a particular employer or industrial organisation which was not a party to the award or agreement because of a failure to give notice to the employer or organisation

(2) For the purposes of this Part, a matter arises at a time when the rights of the parties concerned are settled by a current award or agreement **if**:

- (a) that current award or agreement specifically deals with the matter; or
- (b) that current award or agreement is the only award or agreement that deals generally with conditions of employment or is the main such award or agreement.

(3) In this Part:

“**agreement**” includes an agreement under section 64 of the Public Sector Management Act 1988 or any similar kind of agreement relating to Crown employees;

“**current award or agreement**” is an award or agreement the nominal term of which has not expired.



**“New matters” for purposes of Part**

202. (1) For the purposes of this Part, an industrial matter is a “**new matter**” if the Industrial Court certifies that it is a new matter.

(2) An industrial matter may be certified as a new matter in respect of a current award or agreement if (and only if):

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

**Forum preference**

203. A party giving notice of a question, dispute or difficulty to which this Part 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,

but such a preference is not in any way binding on the Commission or the President.

**Compulsory conference—the Commission**

204. (1) If subsection (2) applies or the Commission has reasonable cause to believe that it 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 organisation, or an employer, becomes aware that, in connection with a question, dispute or difficulty concerning an industrial matter:

- (a) there is threatened, probable or contemplated industrial action; or
- (b) industrial action has commenced.

(3) Notice that subsection (2) applies must be given to the Industrial Registrar by the industrial organisation or the employer, immediately on becoming aware that the subsection applies.

(4) 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.

### **Conciliation**

205. (1) A question, dispute or difficulty to which this Part 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) The Commission, when 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 arranging for conferences of the parties or their representatives (whether or not presided over by a member of the Commission).

### **Completion of conciliation**

206. (1) If, during the process of attempting conciliation under this Part:

- (a) the Commission 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 Commission that they have come to that conclusion,

the conciliation procedure is to be regarded as completed unless the Commission refuses, for substantial reason, to regard it as completed.

(2) The conciliation procedure is to be regarded as completed if the Commission 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**

207. If the conciliation procedure does not settle a question, dispute or difficulty under this Part, the Commission is to deal with it by arbitration.

### **Arbitration procedure**

208. (1) Arbitration by the Commission is not to proceed until the member of the Commission who was responsible for the conciliation attempt

- (a) has 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.

(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.

### **Exercise of arbitration powers after attempted conciliation**

209. (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 taken to have attempted conciliation merely because:

- (a) the member attempted conciliation after having begun to exercise arbitration powers; 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**

210. (1) If industrial action concerning a question, dispute or difficulty to which this Part applies is taking place, or is threatened, the Commission may, on its own initiative or on application, 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) an industrial organisation which (or a member of which) is or is likely to be adversely affected by actual or threatened industrial action of the party against whom the order is sought; or
  - (c) any other person who is or is likely to be adversely affected by actual or threatened industrial action of the party against whom 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 this Part if arbitration of the question, dispute or difficulty were to proceed; or
  - (b) a compulsory conference has been held under this Part in respect of the question, dispute or difficulty concerned.

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(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) The order may be made against:

- (a) a party to industrial action or a likely party to threatened industrial action; or
- (b) a member, officer or employee of an industrial organisation that is such a party or likely party.

(6) The order:

- (a) takes effect when it is made or, if a later time is stated in the order, at the later time; and
- (b) must specify any conditions imposed; and
- (c) 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) may be varied or revoked at any time.

(7) 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 concerned and any other relevant conduct of the parties.

(8) An order under this section is not to be taken as operating to prevent or delay conciliation or arbitration.

(9) An order under this section is referred to in this Act as a dispute order.

**Contravention of dispute order**

211. (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) The Registrar of the Industrial Court must, as soon as possible after being notified by the Industrial Registrar in accordance with the rules of the Industrial Court that this section applies to a person, summon the person to appear before the Industrial Court and show cause why the Industrial Court should not take action under section 212.

(3) On the return of the summons, the Industrial Court:

- (a) is to dismiss the summons if the defendant appears and proves that there was no basis for the summons; or

- (b) is to take action under section 212 if:
  - (i) the defendant fails to answer the summons; or
  - (ii) after hearing any evidence given by or on behalf of the defendant, the Industrial Court decides that the summons was properly issued.

### **Action by the Industrial Court**

212. (1) If the Industrial Court 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 Industrial Court should take no action on the contravention;
  - (b) require a person or an industrial organisation to enter into a recognisance 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 an industrial organisation of employees 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, or cancel the registration of an industrial organisation (in which case Chapter 5 applies as if the registration had been suspended or cancelled under Chapter 5);
  - (h) make any other determination that the Industrial Court considers would help 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 an industrial organisation or any other corporation—1,000 penalty units and an additional penalty of 100 penalty units for each succeeding day during which the dispute order is contravened; or
  - (b) in any other case—100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the dispute order is contravened.

### **Defences**

213. It is a defence to a summons issued to answer for a breach of a dispute order in relation to actual or threatened 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 or employee of an industrial organisation and was not knowingly concerned in, or a party to, any act or omission of the organisation that is in breach of the dispute order.

**Consequential amendment of rules**

214. (1) If, under section 212, the Industrial Court:

- (a) alters the coverage of an industrial organisation of employees to exclude certain persons from membership; or
- (b) suspends or cancels the registration of such an organisation,

the Industrial Court 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 212, including an order altering the rules of any other industrial organisation of employees 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 industrial organisation of employees are 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 an industrial organisation of employees amended under this section.

**PART 3—UNLAWFUL INDUSTRIAL ACTION ETC.****Definition of “unlawful industrial action”**

215. For the purposes of this Part, 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 Part 4; or
- (b) where the person engaging in the industrial action is an industrial organisation, if its purpose is to support another industrial organisation involved in industrial action; or

- (c) in any case, if it is based on a claim for wages or benefits, or both, in respect of time spent in engaging in that or any other industrial action unless payment of the wages or provision of the benefit is authorised by the Commission under this Part.

### **Offence to engage in unlawful industrial action**

216. (1) A person who engages in unlawful industrial action is guilty of an offence.

Maximum penalty:

- (a) in the case of an industrial organisation or any other corporation—1,000 penalty units and an additional penalty of 100 penalty units for each succeeding day during which the offence continues; or
- (b) in any other case—100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the offence continues.

(2) Proceedings for an offence against this section may only be dealt with before the Industrial Court.

### **Defences**

217. It is a defence to a prosecution of a person for engaging in 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 or employee of an industrial Organisation and was not knowingly concerned in, or a party to, any act or omission of the organisation that constitutes unlawful industrial action,

### **Payments of wages etc. in connection with industrial action prohibited**

218. A person who 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 this Part.

Maximum penalty: 100 penalty units.

### **Commission may authorise wages or benefits**

219. (1) The Commission may, on the application of an industrial organisation of employees, authorise the payment of wages or the provision of a benefit that would otherwise constitute an offence under this Part.

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(2) The Commission may authorise an employer to pay wages or provide a benefit:

- (a) only if the 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.

**PART 4—DEMARCATIION DISPUTES****Demarcation questions**

220. (1) The Commission may, by its order, determine any question as to the demarcation of the industrial interests of industrial organisations of employees.

(2) Application for an order under this section may be made by the Minister, an industrial organisation or an employer.

**Demarcation—orders of the Commission relating to coverage of industrial organisations of employees**

221. (1) The orders that the Commission may make when determining any such question include (but are not limited to) any one or more of the following orders:

- (a) an order that an industrial organisation of employees is to have the right, to the exclusion of another such organisation or other such organisations, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;



- (b) an order that an industrial organisation of employees that does not have the right to represent under this Act the industrial interests of a particular class or group of employees is to have that right;
  - (c) an order that an industrial organisation of employees is not to have the right to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.
- (2) The power to make any such order is to be used for the purposes of
- (a) rationalising coverage by industrial organisations of employees for employees of enterprise employers; and
  - (b) allowing representation of employees by a single industrial organisation of employees at new places of employment or places where the nature of work has been, or is intended to be, substantially changed,
- and may be used for such other purposes as the Commission considers appropriate.
- (3) In considering whether to make such an order, the Commission:
- (a) must have regard to any agreement of which the Commission becomes aware and to any order of the Commission or the Industrial Court that deals with the right of an industrial organisation of employees to represent under this Act the industrial interests of a particular class or group of employees; and
  - (b) may seek advice on any relevant matter from any State peak council.
- (4) When the Commission makes such an order, the Commission may by that order, after giving each industrial organisation concerned an opportunity to be heard, make such alterations to the rules of the organisation as are, in the Commission's opinion, necessary to give effect to the order.
- (5) An alteration of the rules of an industrial organisation under this section takes effect on the day on which the order is made or at a later time specified by the Commission.
- (6) Nothing in this section prevents the Commission from imposing conditions on such an order.

### **Demarcation of callings**

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 or an employer affected by the question, by its order, determine the question.

(2) The determination of the Commission has effect as an award.

(3) This section does not prevent the Commission from making an order of 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.

**Codification of awards**

223. (1) 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 organisation of employees employed by the same employer or by a class or section of employers.

(2) Application for an order under this section may be made by the Minister, an industrial organisation or an employer.

**PART 5—SECRET BALLOTS****Division 1—Secret ballots—industrial action****Application of Division**

224. (1) This Division applies to industrial action concerning an industrial matter in respect of which the Commission may exercise its powers of conciliation and arbitration under Part 2.

(2) This Division does not operate to make lawful any industrial action:

- (a) that would otherwise be unlawful; or
- (b) that is in contravention of a dispute order of the Commission or an injunction of the Industrial Court; or
- (c) for which an industrial organisation, an employer or a participant in the industrial action could be penalised.

**Application for secret ballot**

225. (1) If industrial action is engaged in or contemplated by members of an industrial organisation of employees or by any section or class of its members, application may be made to the Industrial 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 industrial organisation of employees whose members are, or contemplate being, involved in the industrial action; or
- (b) a member of that organisation; or
- (c) an employer whose employees are, or contemplate being, involved in the industrial action or an industrial organisation of employers a member of which is such an employer.

(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 an industrial 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 Industrial Registrar**

226. (1) The Industrial Registrar is to hold a secret ballot if:

- (a) it has been applied for under this Division 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 under this Division.

(2) In deciding whether or not a secret ballot applied for under this Division is justified, the Commission may take into account information other than that given in the application.

(3) The Commission is to give the Industrial Registrar such directions as it considers necessary concerning the conduct of a secret ballot.

### **Holding of secret ballot**

227. (1) A secret ballot applied for under this Division is to be conducted:

- (a) by a nominee of the Industrial Registrar; or
- (b) by the industrial organisation of employees whose members are, or contemplate being, involved in the industrial action; or
- (c) the Electoral Commissioner,

as may be directed by the Industrial Registrar.

(2) A secret ballot directed by the Minister or ordered by the Commission under this Division is to be conducted:

- (a) by the industrial organisation of employees 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) Any such direction or order may require the ballot to be a postal ballot.

(4) The expense incurred in conducting a secret ballot under this Division is to be met:

- (a) by the industrial organisation of employees 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.

**Division 2—Secret ballots—other industrial matters****Application of Division**

228. This Division does not apply to a ballot to which Division 1 applies.

**Commission may order secret ballot**

229. (1) The Commission may order that a secret ballot of the members of an industrial organisation of employees, or of a class or section of the members of the organisation, 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 organisation of employees, or by the Electoral Commissioner, or by the organisation 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**

230. The expense incurred in the conduct of a ballot under this Division is to be borne by the State.

**PART 6—STAND-DOWNS****Circumstances in which employees may be stood down**

231. (1) An employer or an industrial organisation of employers may apply to the Commission for the making of a stand-down order if 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 standdown order if:

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

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

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

**Effect of stand-down**

232. (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 or other entitlements are based.

**Exemption for apprentices and trainees**

233. This Part does not apply to an employee who is an apprentice or trainee within the meaning of the Industrial and Commercial Training Act 1989.

**Part to apply to public sector industrial agreements**

234. For the purposes of this Part, an agreement includes an agreement under section 64 of the Public Sector Management Act 1988 or any similar kind of agreement relating to Crown employees.

**PART 7—PROTECTION OF INJURED EMPLOYEES****Definitions and application**

235. (1) For the purposes of this Part, an “injured employee” is an employee who:

- (a) receives an injury within the meaning of the Workers Compensation Act 1987; or
- (b) receives an injury (being a dust disease) for which the employee is entitled to receive compensation under the Workers Compensation (Dust Diseases) Act 1942.

(2) The provisions of this Part relating to the reinstatement of an injured employee apply to an employer who dismisses the employee because of the injury only if the injury arose (either wholly or partly) out of or in the course of employment with that former employer.

(3) In addition to any other manner of dismissal, an employer is taken, for the purposes of this Part, 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**

236. (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 apply to the employer for reinstatement to his or her former position.

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- (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 medical practitioner to the effect that the employee is fit for employment in the former position.

(4) This section applies to a dismissal that occurs after 30 June 1987 (being the date of commencement of section 154C of the Industrial Arbitration Act 1940 which was replaced by this section).

**Order for reinstatement**

237. (1) If an employer refuses or fails to reinstate immediately an employee who applies for reinstatement under section 236, the employee may apply to the Commission for a reinstatement order.

(2) An industrial organisation of employees 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.

(4) The application to the employer for reinstatement is to be made within 2 years after the dismissal, but the Commission may order the employer to reinstate the employee even though the application was made after that date if the Commission is satisfied that it is appropriate to do so in the special circumstances of the case.

**Presumption as to reason for dismissal**

238. (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**

239. For the purposes of this Part, 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**

240. (1) The Commission may refer to a medical referee or medical panel 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.

(3) In this section, “medical referee” and “medical panel” have the same meanings as in the Workers Compensation Act 1987.

#### **Continuity of service of reinstated employee**

241. (1) If an employee is reinstated to a position under this Part, 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**

242. 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 Part to be reinstated to the position.

Maximum penalty: 50 penalty units.

#### **Dismissal an offence in certain cases**

243. (1) An employer who dismisses an injured employee is guilty of an offence if:

- (a) the employee is dismissed solely or principally because the employee is not fit for employment in a position as a result of the injury; and
- (b) the period that has elapsed since the employee first became unfit for employment is less than 6 months.

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) the injury did not (either wholly or partly) arise out of or in the course of employment with the employer; 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 Part.

(3) This section applies even if the employee became unfit for employment before the commencement of this section.

**Other provisions not affected**

244. (1) This Part 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 contract or agreement (whether made or entered into before or after the commencement of this section) operates to annul, vary or exclude any of the provisions of this Part.

**PART 8—UNFAIR DISMISSALS****Application of Part**

245. (1) This Part applies only to the dismissal or threatened dismissal of:

- (a) an employee for whom any conditions of employment are fixed by an award or agreement; or
- (b) an employee of the Crown; or
- (c) any other employee of a class prescribed by the regulations as a class of persons to whom this Part applies.

(2) This Part does not apply to the dismissal or a threat of dismissal of any such employee who is a trainee or an apprentice or who is declared by the regulations not to have the benefit of this Part, despite subsection (1).

(3) This Part does not apply to a person to whom Part 2A of the Public Sector Management Act 1988 or Part 5 of the Police Service Act 1990 applies.

(4) This Part applies to any dismissal, or threat of dismissal, of an employee that occurs on or after 5 July 1991 (being the date of commencement of the Industrial Arbitration (Unfair Dismissals) Amendment Act 1991).

(5) In this Part, a reference to the dismissal, or threatened dismissal, of an employee includes, in relation to a person employed in the public sector, a reference:

- (a) to the Crown's dispensing with, or proposing to dispense with, the services of the person; and
- (b) to the dismissal, or the proposed dismissal, of a person as a consequence of disciplinary proceedings against, or the commission of an offence by, the person.

**Applications**

246. (1) If an employer dismisses, or threatens to dismiss, a person who is an employee of the employer and the person claims that the dismissal was, or that the threatened dismissal would be, harsh, unreasonable or unjust, the person (or an industrial organisation of employees on behalf of the person) may apply to the Commission for the claim to be dealt with under this Part.

(2) Any such application should be lodged with the Industrial Registrar not later than 21 days after, or (in the case of a threat of dismissal) may be lodged with the Industrial Registrar before, termination of the employment.



(3) The Commission may accept an application that is lodged out of time if the Commission considers there is a sufficient reason to do so.

(4) In deciding whether there is a sufficient reason, the Commission is to have regard to:

- (a) the reason for, and the length of, the delay in lodging the application; and
- (b) any hardship that may be caused to the applicant or the employer if the application is or is not rejected; and
- (c) the conduct of the employer relating to the dismissal or threat of dismissal; and
- (d) such other matters as the Commission considers appropriate.

### **Conciliation**

247. The Commission must endeavour, by all means it considers proper and necessary, to settle the applicant's claim by conciliation.

### **Arbitration**

248. (1) When, in the opinion of the Commission, **all** reasonable attempts to settle the claim by conciliation have been made but have been unsuccessful, the Commission is to determine the claim by making an order under this Part.

(2) Nothing in this section prevents further conciliation from being attempted, or the parties from settling the claim, at any time before an order is made determining the claim.

### **Matters to be considered**

249. In determining a claim, the commission may, if appropriate, take into account:

- (a) whether a reason for the dismissal or threatened dismissal was given to the applicant and, if the applicant sought but was refused reinstatement or re-employment with the employer, whether a reason was given for the refusal to re-employ; and
- (b) if any such reason was given—its nature, whether it had a basis in fact, and whether the applicant was given an opportunity to make out a defence or give an explanation for his or her behaviour or to justify his or her reinstatement or re-employment; 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 applicant immediately before the dismissal or when the threat was made and, if the applicant sought but was refused reinstatement or re-employment, the likely nature of those duties if the applicant were to be reinstated or re-employed; and
- (e) whether or not the applicant requested reinstatement of re-employment with the employer; and
- (f) such other matters as the Commission considers relevant.

**Orders for reinstatement, re-employment or lost wages**

250. (1) The Commission may determine a claim relating to dismissal by ordering the employer:

- (a) to reinstate the applicant in his or her former position on terms not less favourable to the applicant than those that would have been applicable if the applicant had not been dismissed; and
- (b) if the Commission thinks fit, to pay to the applicant, within a specified time, an amount stated in the order that does not exceed the remuneration the applicant would, but for being dismissed, have received before being reinstated in accordance with the order.

(2) If the applicant has been dismissed and, when determining the claim, the Commission considers that it would be impracticable to reinstate the applicant, the Commission may order the employer:

- (a) to re-employ the applicant, on terms and conditions determined by the Commission, in another position that the employer has available and that, in the Commission's opinion, is suitable; and
- (b) if the Commission thinks fit, to pay to the applicant, within a specified time, an amount stated in the order that does not exceed the remuneration the applicant would, but for being dismissed, have received before being re-employed in accordance with the order.

(3) If the applicant has been dismissed and, in determining the claim, the Commission considers that it would be impracticable to make an order for reinstatement or re-employment, the Commission may order the employer to pay to the applicant, within a specified time, an amount of compensation not exceeding 6 months' remuneration of the applicant at the average rate received over the period of 6 months immediately before being dismissed.

(4) In determining a claim relating to a threat of dismissal, the Commission may order the employer not to dismiss the employee in accordance with that threat.

(5) When assessing any compensation payable, the Commission is to take into account whether the applicant made a reasonable attempt to find alternative employment and the remuneration that would have been payable if the applicant had succeeded in obtaining alternative employment.

**Effect of reinstatement or re-employment**

251. (1) If the Commission makes an order requiring the reinstatement or re-employment of an applicant, the Commission may also order that the period of employment of the applicant with the employer is taken not to have been broken by the dismissal.

(2) Any such order has effect according to its tenor.

costs

252. The Commission may make an order for the payment of costs if it appears to the Commission to be just to do so, but only if:

- (a) the Commission dismisses the application on the ground that it is frivolous or vexatious and makes the order against the applicant; or
- (b) the Commission makes the order against a party the Commission considers to have unreasonably failed to agree to a settlement of the claim.

#### **Enforcement of orders**

253. An order under this Part requiring reinstatement or re-employment of a person, or requiring an employer not to dismiss an employee, is enforceable as if it were an award.

#### **Effect of availability of other remedies**

254. The Commission is required to reject an application relating to the dismissal, or threatened dismissal, of a person who is an employee if:

- (a) another Act or a statutory instrument provides ~~for~~ redress to the person, or for the holding of an inquiry, in relation to the dismissal or threatened dismissal; and
- (b) the person has commenced proceedings under the other Act or instrument or has not lodged with the application under this Act a written undertaking not to proceed under the other Act or instrument.

#### **Effect of other Acts, contracts, awards and agreements**

255. (1) Subject to section 254, this Part has effect in relation to the dismissal, or threatened dismissal, of a person who is 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 or agreement, that relates, or at any time related, to the employment of the person.

(2) The concurrence of each party to an enterprise agreement is not required for the exercise of any function of the Commission under this Part.

### **PART 9—SECONDARY AND OTHER BOYCOTTS**

#### **Division 1—Purpose of Part**

##### **Purpose of Part**

256. (1) The purpose of this Part is to provide remedies (being by way of injunction, the imposition of pecuniary penalties and the award of damages by the Industrial Court) ~~for~~ conduct relating to any industrial matter that

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constitutes a secondary or other boycott (as presently defined in sections 45D and 45E of the Trade Practices Act 1974 of the Commonwealth but without their constitutional limitations).

(2) This Part is to apply to the full extent of the legislative competence of the Parliament of the State.

**Division 2—Definitions****Definitions of “boycott” and “boycott conduct”**

257. (1) For the purposes of this Part, a “boycott” is a contravention of the secondary and other boycott provisions.

(2) For the purposes of this Part, a person engages in “boycott conduct” if the person:

- (a) has done or attempted to do any act or thing that constitutes or would constitute a boycott; or
- (b) has aided, abetted, counselled or procured a boycott; or
- (c) has induced or attempted to induce, whether by threats, promises or otherwise, a boycott; or
- (d) has been in any way, directly or indirectly, knowingly concerned in or party to a boycott; or
- (e) has conspired with another or others to effect a boycott.

**Definition of “secondary and other boycott provisions”**

258. (1) For the purposes of this Part, the secondary and other boycott provisions are the provisions of sections 45D and 45E of the Trade Practices Act 1974 of the Commonwealth, as in force on 27 August 1991 and as modified by this section.

(2) The provisions of sections 45D and 45E are modified as follows:

- (a) it is not necessary that a person mentioned in those provisions be a corporation;
- (b) it is not necessary that trade or commerce mentioned in those provisions be interstate or overseas trade or commerce.

(3) The provisions of sections 45D and 45E may also be modified by regulations made under this Act, including regulations that apply (with or without modification) any amendments made to those provisions by a Commonwealth Act taking effect after 27 August 1991.

(4) All the provisions of sections 45D and 45E that were enacted by the Parliament of the Commonwealth before 27 August 1991 are taken to be validly enacted for the purposes of this section even though any such provision has been or may be declared invalid.

(5) The secondary and other boycott provisions continue to have effect for the purposes of this section despite any repeal of all or any of those provisions by such a Commonwealth Act.

(6) The Trade Practices Act 1974 of the Commonwealth and other relevant laws of the Commonwealth apply to the interpretation of the secondary and other boycott provisions.

[NOTE: The text of sections 45D and 45E is set out in the note at the end of this Act.]

### **Division 3—Application of Part**

#### **Part limited to boycotts relating to industrial matters**

259. (1) This Part applies to a boycott if (and only if) a purpose of the boycott relates:

- (a) to a dispute about an industrial matter involving an award or agreement or a proposed award or agreement; or
- (b) to a dispute involving an organisation of employees or employers or any member or officer of such an organisation.

(2) For the purposes of this section, an award or agreement includes any instrument regulating conditions of employment that is similar to an award or agreement as defined in this Act.

(3) For the purposes of this section, an organisation of employees or employers is an organisation that exists or is carried on for the purpose of furthering the interests of its members in relation to their employment or business.

#### **Part subject to legislative power of State**

260. Nothing in this Part limits the application to this Part of section 31 of the Interpretation Act 1987.

#### **Application of Part to the State or authorities of State**

261. (1) For the avoidance of doubt it is declared that this Part applies to any business carried on by the State or any authority of the State and so applies whether the State or authority is the target of a boycott or engages in boycott conduct.

(2) This Part does not apply to any conduct that is, or is of a kind, specifically authorised or approved by, or by an instrument made under, an Act.

(3) Nothing in this Part renders the State or an authority of the State liable to pay a pecuniary penalty.

### **Division 4—Remedies**

#### **Jurisdiction to grant injunction**

262. (1) If, on the application of any person, the Industrial Court is satisfied that a person has engaged or is proposing to engage in boycott conduct, the Industrial Court may grant an injunction in such terms as the Industrial Court determines to be appropriate.

(2) If in the Industrial Court's opinion it is desirable to do so, the Industrial Court may grant an injunction that is expressed to have been made pending the further consideration of an application under this section.

(3) The Industrial Court may rescind or vary any injunction granted under this Part 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**

263. The power of the Industrial Court to grant an injunction restraining a person from engaging in boycott conduct may be exercised:

- (a) whether or not it appears to the Industrial Court that the person proposes to engage again or to continue to engage in boycott conduct; and
- (b) whether or not the person has previously engaged in boycott conduct; and
- (c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in boycott conduct.

### **Mandatory injunction**

264. The power of the Industrial 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 Industrial Court that the person proposes 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.

### **Undertakings as to damages**

265. (1) If the Minister makes an application to the Industrial Court for the grant of an injunction under this Part, the Industrial 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 any other case:

- (a) the Industrial 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 Industrial 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**

266. (1) If the Industrial Court is satisfied that a person has engaged in boycott conduct or has contravened an injunction granted under this Part, the Industrial 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 boycott conduct or contravention the Industrial 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 Industrial Court in proceedings under this Part to have engaged in similar boycott conduct.

(2) The pecuniary penalty is not to exceed 1,000 penalty units in the case of an industrial organisation or any other corporation, or 106 penalty units in the case of any other person.

(3) If a person's conduct constitutes two or more contraventions of this Part, a proceeding may be instituted under this section against the person in respect of any one or more of those contraventions but the person is not liable to more than one pecuniary penalty in respect of the same conduct.

(4) A proceeding to recover a pecuniary penalty alleging that a person has engaged in boycott conduct may be commenced only with the consent of the Minister.

**Time for recovery of pecuniary penalties**

267. A proceeding to recover a pecuniary penalty under this Part 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**

268. Proceedings for an offence against this Act do not lie against a person in respect of boycott conduct if an injunction is granted under this Part in respect of the conduct.

**Order for damages**

269. (1) On application made to the Industrial Court by a person who claims to have suffered loss or damage because of boycott conduct or of a contravention of an injunction granted under this Part, the Industrial Court may hear and determine the claim and may make an order for payment of the whole or any specified proportion of the amount of the loss or damage by the person or persons who engaged in the conduct or contravened the injunction.

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(2) If an organisation of employees or employers (referred to in section 259) engages in boycott conduct in concert with its members or officers:

- (a) any loss or damage suffered by a person as a result of the conduct is taken to have been caused by the conduct of the organisation; and
- (b) a proceeding to recover the amount of the loss or damage suffered is not to be brought under this section against any members or officers of the organisation.

**Division 5—Miscellaneous****Evidentiary provisions**

270. In an action against a person to recover damages, a finding of fact by the Industrial Court made in a proceeding under this Part in which the person has been found to be engaged in boycott conduct or to have contravened an injunction is evidence of that fact.

**Appeals**

271. An appeal lies to the Full Industrial Court from any decision of the Industrial Court under this Part.

**Recovery of penalties**

272. (1) Any pecuniary penalty imposed under this Part by order of the Industrial Court may be recovered in any court of competent jurisdiction from the person against whom the order was made as a debt due to the Crown.

(2) For the purposes of this section, the order of the Industrial Court imposing the penalty is taken to be a judgment of the court in which proceedings for recovery are taken.

**Saving of rights and remedies**

273. This Part does not exclude, limit or affect any right or remedy to which any person is entitled apart from this Part.

**Transitional provision**

274. This Part does not apply so as to prohibit anything done or omitted to be done before the commencement of this Part.

**PART 10—VOID CONTRACTS AND REGULATED CONTRACTS****Division 1—Declaration that unfair etc. contracts are void****Power of the Industrial Court to declare certain contracts void**

275. (1) The Industrial Court may make an order declaring wholly or partly void, or varying, either from its commencement or from some other time, any contract or arrangement or any related condition or collated arrangement under



which a person performs work in any industry if the Industrial Court finds that the contract or arrangement or any related condition or collateral arrangement:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest; or
- (d) provides or has provided a total remuneration less than a person performing the work would have received as an employee performing the work or
- (e) was designed to, or does, avoid the provisions of an award or former industrial agreement; or
- (f) was designed to, or does, avoid the provisions of an agreement registered, or contract determination made, under Chapter 6.

(2) In considering the question of public interest for the purposes of subsection (1) (c) (but without limiting the generality of the expression “public interest\*”) regard is to be had to the effect that a contract or arrangement, or a series of contracts or arrangements, referred to in subsection (1) has had, or may have, on any system of apprenticeship and other methods of providing a sufficient and trained labour force.

(3) In making an order under this section, the Industrial Court may make such order as to the payment of money in connection with any contract, arrangement, condition or collateral arrangement declared wholly or partly void, or varied, as the Industrial Court considers just in the circumstances of the case.

#### **Further order by the Industrial Court**

276. (1) The Industrial Court, when making an order under section 275 or at a later time, may make such further order as may appear to the Industrial Court 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 collated arrangement; or
- (b) any other person who is (in any way considered relevant by the Industrial Court) associated with any such party,

from:

- (c) entering into any specified kind of contract, arrangement or collateral arrangement under which 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.

(2) An order under this section must identify the person or persons bound by the order and takes effect in respect of each such person:

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

whichever first occurs.

**Application for order**

277. (1) An order may be made under this Division on the application of:

- (a) any party to the contract, arrangement or collateral arrangement; or
- (b) any person who, but for the making of such an order, would be a party to the contract, arrangement or collateral arrangement; or
- (c) an industrial organisation of employers whose members employ persons working in the industry to which the contract, arrangement or collateral arrangement relates; or
- (d) an industrial organisation of employees whose members are employed in the industry to which the contract, arrangement or collateral arrangement relates; or
- (e) the Minister,

and not otherwise.

(2) An application under this Division in respect of a contract of carriage to which Chapter 6 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.

**Division does not apply to enterprise agreements**

278. This Division does not apply to an enterprise agreement.

**Division 2—Determination of remuneration under unfair etc.  
building and certain other contracts**

**Definitions**

279. In this Division:

“**building work**” means work carried out for the purpose of:

- (a) constructing, altering, 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; or
- (d) doing anything prescribed by the regulations as building work for the purposes of this definition,

but does not include work that:

- (e) is 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
- (f) 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 that 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 that the regulations declare to be door-to-door sales work for the purposes of this definition, but does not include work that the regulations declare not to be door-to-door sales work for the purposes of this definition.

### **Application of Division**

280. (1) This Division applies to a contract under which there is carried out:

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

except as provided by this Division.

(2) This Division does not apply to any such contract:

- (a) to the extent that it is a contract under which work is done by a person in the capacity of an employee; or
  - (b) unless at least one of the parties to the contract (other than a person who actually does the work) is a person who carries on a business of doing, or arranging for the doing, of that kind of work.
- (3) This Division does not apply to an enterprise agreement.

### **Division not to apply unless Industrial Court declares contract unfair etc.**

281. (1) This Division does not apply to a contract unless the Industrial Court has found (under Division 1 or on application under this section) that the contract:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest.

(2) The Industrial Court may make such a finding for the purposes of this Division. The application may be made only by an industrial organisation of employees whose members are employed in the industry or calling in connection with which work is done of the same kind as that done under the contract to which the application relates.

(3) The rules of the Industrial Court may make provision for the issue by the Registrar of the Industrial Court of certificates of such a finding of the Industrial Court under Division 1 or this section.

#### **Commission may determine remuneration under contract**

282. The Commission may, by its order, prescribe the minimum rate at which a person is (otherwise than as an employee) to be remunerated under a contract to which this Division applies.

#### **Notice of possible order**

283. (1) Before making an order under this Division, the Commission is to require the person in whose favour the order would be made to serve notice on such persons as the Commission considers have an interest in the matter that such an order might be made.

(2) A person served with such a notice is entitled to appear and be heard in relation to the matter.

#### **Time at which order takes effect**

284. An order under this Division takes effect:

- (a) 28 days after its 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**

285. (1) If an order is in force under this Division in relation to the doing of work under a contract:

- (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 Industrial Court may make a finding referred to in section 281,

are 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 Division and a contract in which it is incorporated by this section, the provision of the order prevails to the extent of the inconsistency.

#### **Variation or revocation of order**

286. The Commission may vary or revoke an order in force under this Division on its own initiative or on application by the industrial organisation of employees whose members are employed in the industry or calling concerned.

**CHAPTER 4—THE INDUSTRIAL COURT, INDUSTRIAL  
RELATIONS COMMISSION AND OTHER BODIES****PART I—THE INDUSTRIAL COURT****Division 1—Preliminary****Definitions**

287. In this Part:

“**Chief Judge**” means the Chief Judge of the Industrial Court;

“**Deputy Chief Judge**” means the Deputy Chief Judge of the Industrial court;

“**Judge**” means:

- (a) the Chief Judge; or
- (b) the Deputy chief Judge; or
- (c) any other Judge of the Industrial Court.

**Division 2—Establishment etc. of Industrial Court****Establishment of the Industrial Court**

288. (1) There is established by this Act a superior court of record with the name of the Industrial Court of New South Wales.

(2) The Industrial Court consists of:

- (a) the Chief Judge; and
- (b) such other Judges and Acting Judges as are appointed under this Part.

(3) The Industrial Court has the jurisdiction conferred on it by this Act and any other Act.

(4) The Industrial Court is to have a seal, and judicial notice is to be taken of the seal.

**The Judges**

289. (1) The Governor may, by commission under the public seal of the State, appoint as Chief Judge of the Industrial Court

- (a) a person who is already a Judge of the Industrial Court; or
- (b) a Judge of another court of record; or
- (c) an eligible barrister or solicitor who is under 72 years of age.

(2) The Governor may, by commission under the public seal of the State, appoint as Deputy Chief Judge of the Industrial Court

- (a) a person (other than the Chief Judge) who is already a Judge of the Industrial Court; or

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- (b) a Judge of another court of record (except such a Judge who is the Chief Justice of the Supreme Court or the Resident of the Court of Appeal); or
  - (c) an eligible barrister or solicitor who is under 72 years of age.
- (3) The Governor may, by commission under the public seal of the State, appoint as a Judge of the Industrial Court:
- (a) a Judge of another court of record (except such a Judge who is the Chief Justice of the Supreme Court or the Resident of the Court of Appeal); or
  - (b) an eligible barrister or solicitor who is under 72 years of age.
- (4) In this section, a reference to an eligible barrister or solicitor is a reference to:
- (a) a barrister who, at all times during the last preceding period of 5 years, was either on the roll of barristers or, when not on the roll of barristers, was on the roll of solicitors; or
  - (b) a solicitor who, at all times during the last preceding period of 7 years, was either on the roll of solicitors or, when not on the roll of solicitors, was on the roll of barristers.

**Dual appointment as Judge and member of Commission**

290. A person may be appointed and hold office as both a Judge (including an Acting Judge) and a Presidential Member of the commission.

**Judge who is also member of Commission not to deal with same matter**

291. (1) A Judge who is also a Residential Member of the Commission is not to exercise the jurisdiction of the Industrial Court in any of the following proceedings:

- (a) an appeal against a decision of the Commission made by the Judge as a member of the Commission;
- (b) proceedings on a reference from the commission made by the Judge as a member of the Commission;
- (c) proceedings for a breach of a disputes order made by the Judge as a member of the Commission;
- (d) any other proceedings on a matter which the Judge was involved as a member of the Commission, being proceedings which the Chief Judge determines should not be dealt with by the Judge.

(2) A Presidential Member of the Commission who is also a Judge is not to exercise the jurisdiction of the Commission in any of the following proceedings:

- (a) proceedings based on a certificate that a matter is a new issued by the Residential Member as a Judge of the Industrial Court;
- (b) proceedings based on a finding that a contract is unfair, harsh or unconscionable or against the public interest made by the Presidential Member as a Judge of the Industrial Court;

(c) any other proceedings on a matter which the Residential Member was involved as a Judge of the Industrial Court which the Resident of the Commission determines should not be dealt with by the Residential Member.

(3) This section applies even though the decision or other thing was made as a member of the Full Industrial Court or the Full Commission, as the case requires.

#### **Status, remuneration etc. of Judges**

292. (1) Each Judge has the same rank, title, status and precedence and, subject to subsection (2), the same remuneration and other rights, as a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal).

(2) The remuneration of the Chief Judge and the Deputy Chief Judge is to be determined under the Statutory and Other Offices Remuneration Act 1975.

#### **Acting Chief Judge**

293. (1) If the Chief Judge is absent from duty or there is a vacancy in the office of Chief Judge, the Deputy Chief Judge is to act as Chief Judge during the absence of the Chief Judge or during the vacancy in the office of Chief Judge unless the Deputy Chief Judge is absent from duty or there is a vacancy in the office of Deputy Chief Judge.

(2) If both the Chief Judge and the Deputy Chief Judge are absent from duty or there is a vacancy in both those offices, the next senior Judge who is present on duty is to act as Chief Judge until:

- (a) the return to duty of the Chief Judge or the Deputy Chief Judge; or
- (b) if there is a vacancy in both those offices—until one of the vacancies is filled.

(3) While acting as Chief Judge, the Deputy Chief Judge or other Judge has the functions of the Chief Judge and anything done by the Deputy Chief Judge or other Judge in the exercise of those functions has effect as if it had been done by the Chief Judge.

#### **Acting Judges**

294. (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Judge a person qualified for appointment as a Judge or a person who was formerly a Judge of the Industrial Court or of another court of record.

(2) The commission by which an Acting Judge is appointed:

- (a) may specify conditions and limitations to which the appointment is subject; and

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(b) must specify as the date on which the appointment expires a date that is not more than 12 months later than the date of the commission and is not later than the date on which the Acting Judge would attain the age beyond which the period of appointment of an Acting Judge of the Supreme Court may not then extend.

(3) Appointment as an Acting Judge may be subject to a condition excluding all, or a part, of the period served as an Acting Judge from being regarded as a period served in a prior judicial office as referred to in section 8 (2) of the Judges' Pensions Act 1953.

(4) An Acting Judge:

(a) has the functions of a Judge other than the Chief Judge; and

(b) is taken to be a Judge, subject to any conditions and limitations to which the appointment as Acting Judge was made.

**Appointment of Registrar and staff**

295. (1) A Registrar of the Industrial Court, a Deputy Registrar and such other staff as may be necessary to enable the Industrial Court to exercise its functions are to be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Registrar of the Industrial Court has the functions conferred and imposed on the Registrar by or under this or any other Act.

(3) The Deputy Registrar may exercise the functions of the Registrar of the Industrial Court:

(a) as directed by the Registrar; and

(b) during the absence of, or a vacancy in the office of, the Registrar.

(4) Anything done or omitted by the Deputy Registrar in exercising a function of the Registrar of the Industrial Court has effect as if it had been done or omitted by the Registrar.

**Jurisdiction generally exercisable by single Judge**

296. (1) The jurisdiction of the Industrial Court in relation to a matter is to be exercised by a Judge sitting alone unless the matter is one in respect of which this Act or another Act confers jurisdiction on the Full Industrial Court.

(2) This Section does not affect the provisions of the rules of the Industrial Court concerning the hearing and disposal of proceedings and business before the Registrar of the Industrial Court or another officer of the Industrial Court.

**The Full Industrial Court**

297. (1) The Full Industrial Court consists of 3 Judges, whether or not including either the Chief Judge or the Deputy Chief Judge, or both of them.



- (2) The Full Industrial Court has jurisdiction to hear and determine:
- (a) an appeal from a decision of the Commission, or a reference by the Commission, that may be made to the Full Industrial Court under Part 4; and
  - (b) an appeal to it allowed by special leave of the Full Industrial Court granted to an aggrieved party, or to the Crown, from a decision of a Judge sitting alone on a question of law arising in proceedings before the Commission; and
  - (c) a question of law that arises in the exercise of the jurisdiction of the Industrial Court by a Judge sitting alone and that is referred to the Full Industrial Court by the Judge; and
  - (d) an appeal to it from a decision of a Judge sitting alone in the exercise of the jurisdiction of the Industrial Court otherwise than on an appeal; and
  - (e) any matter in respect of which this Act or another Act confers jurisdiction on the Full Industrial Court.
- (3) The Full Industrial Court may exercise the functions of the court or person whose decision is the subject of an appeal, including:
- (a) amendment; and
  - (b) the drawing of inferences and the making of findings of fact; and
  - (c) the assessment of damages and other money sums.
- (4) The Full Industrial Court may make any finding or assessment, give any direction for entry of judgment, or make any order, which ought to have been made or which the nature of the case requires.
- (5) More than one sitting of the Full Industrial Court may be held at the same time.

### **Division 3—Provisions relating to proceedings before Industrial Court**

#### **Criminal jurisdiction**

298. (1) Proceedings for any offence in respect of which proceedings are taken before the Industrial Court are to be dealt with summarily by the Industrial Court.

(2) The Supreme Court (Summary Jurisdiction) Act 1967 applies to proceedings referred to in subsection (1) in the same way as it applies to proceedings that may be taken before the Supreme Court in its summary jurisdiction.

(3) For the purposes of subsection (2), a reference (however expressed) in the Supreme Court (Summary Jurisdiction) Act 1967:

- (a) to the Supreme Court (except in section 15)—is taken to be a reference to the Industrial Court; and
- (b) to rules—is taken to be a reference to rules of the Industrial Court; and
- (c) to the Prothonotary—is taken to be a reference to the Registrar of the Industrial Court.

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**Evidence on appeal etc.**

299. Except to the extent (if any) that another Act conferring jurisdiction on the Industrial Court provides otherwise, an appeal to the Industrial Court (including the Full Industrial Court) is to be determined:

- (a) on the evidence adduced in relation to the decision to which the appeal relates; and
- (b) on any other evidence (whether or not fresh or new evidence) and information called for by the Industrial Court as constituted for the hearing of the appeal.

**Anti-discrimination matters**

300. (1) In the exercise of its jurisdiction, the Industrial Court 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 Industrial Court without the leave of the Industrial Court.

(3) The Industrial Court may, at its discretion, admit in proceedings before it evidence given before, or findings made by, the Equal Opportunity Tribunal.

**Finality of decisions**

301. (1) Subject to the exercise of a right of appeal to the Full Industrial Court conferred by this Act or any other Act, a decision of the Industrial Court (however constituted) is final and may not be appealed against, 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 a decision of the Industrial Court (however constituted).

(3) This section does not affect the operation of section 48 of the Supreme Court Act 1970.

**Contempt of the Industrial court**

302. (1) A person in contempt of the Industrial Court is guilty of an offence. 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.

(2) For the purposes of subsection (1), conduct is a contempt only if the same conduct in relation to the Supreme Court would be a contempt of the Supreme court.

(3) proceedings for an offence against this section are to be taken before the Industrial Court.

**Proceedings in open court**

303. Proceedings before the Industrial Court are to be heard in open court unless the Industrial Court orders otherwise.

**Appearances**

304. A person may appear before the Industrial Court personally, or by a practising barrister or solicitor, or by an agent who is not a practising barrister or solicitor.

**Intervention**

305. (1) The Crown may appear before the Industrial Court 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 for Industrial Relations may, at any stage of proceedings before the Industrial Court, intervene by a barrister, solicitor or agent, examine witnesses and address the Industrial Court with respect to matters relevant to the proceedings.

**Issue of process**

306. All process issuing out of the Industrial Court is to be in the form required by the rules of the Industrial Court, is to be signed by the officer issuing the process and is to be marked with the Industrial Court office stamp.

**Judicial notice of certain signatures**

307. Judicial notice is to be taken of the signature of a Judge or the Registrar of the Industrial Court when appearing on a document issuing out of the Industrial Court.

**Powers of the Industrial Court as to the production of evidence**

308. The Industrial Court may exercise the functions of the Supreme Court in relation to:

- (a) compelling the attendance of witnesses and examining them on oath of affirmation, or by use of a statutory declaration; and
- (b) compelling the production, discovery and inspection of books, records, documents and other papers; and
- (c) compelling witnesses to answer questions which the Industrial Court considers to be relevant in any proceeding before it; and
- (d) the apprehension, detention and punishment of persons guilty of contempt, or of disobedience to any order made by the Industrial Court, or of disobedience to any process issuing out of the Industrial Court; and
- (e) directing that a witness be prosecuted for perjury.

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**Amendments and irregularities**

309. (1) The Industrial Court may, in any proceedings before it, order the making of any amendments to the proceedings that the Industrial Court considers to be necessary in the interests of justice.

(2) An order under this section may be made:

- (a) at any stage of the proceedings; and
- (b) on such terms as to costs or otherwise as the Industrial Court thinks fit.

(3) If this Act or a rule of the Industrial Court is not complied with in relation to the institution or conduct of proceedings before the Industrial Court, the failure to comply is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order in the proceedings.

(4) For the purposes of subsection (3), the Industrial Court may, by order on terms:

- (a) wholly or partly set aside the proceedings, a step taken in the proceedings, or a judgment, document or order in the proceedings; or
- (b) exercise its functions under this Act and the rules of the Industrial Court to allow amendments, and make orders, dealing with the proceedings generally.

(5) The Industrial Court may refuse to make an order under this section unless application for the order is made:

- (a) within a reasonable time; and
- (b) before the applicant has taken any fresh step after becoming aware of the irregularity.

**Costs**

310. (1) Subject to the rules of the Industrial Court and any other Act:

- (a) costs are in the discretion of the Industrial Court; and
- (b) the Industrial Court may determine by whom and to what extent costs are to be paid; and
- (c) the Industrial Court may order costs to be taxed or otherwise ascertained on a party and party basis or on any other basis.

(2) The Industrial Court may order a party instituting proceedings in the Industrial Court to give security for the payment of costs and to give the security for such amount, at such time, and in such manner and form, as the Industrial Court directs.

(3) The Industrial Court may reduce or increase the amount of security ordered under this Section to be given and may vary the time at which, or the manner or form in which, the security is to be given.

(4) If security, or further security, is not given in accordance with an order under this section, the Industrial Court may order that the proceedings be dismissed.

(5) The provisions of this section relating to security do not affect the operation of any provision made by or under any other Act or by the rules of the Industrial Court for or in relation to the furnishing of security.

(6) In this section, “costs” includes:

- (a) costs of or incidental to proceedings in the Industrial Court; and
- (b) in the case of an appeal to the Industrial Court, the costs of or incidental to the proceedings giving rise to the appeal, as well as the costs of or incidental to the appeal.

#### **Recovery of amounts (other than penalties)**

311. (1) Any amount ordered to be paid by the Industrial Court (other than a penalty for an offence) is to be certified by the Registrar of the Industrial Court.

(2) A certificate given under this section must identify the person liable to pay the certified amount.

(3) A certificate of the Registrar of the Industrial Court that:

- (a) is given under this section; and
- (b) is filed in the office of a court having jurisdiction to give judgment for a debt the same as the amount stated in the certificate,

operates as such a judgment.

(4) An appeal lies to the Industrial Court against the amount of a payment certified under this section.

#### **Trade secrets etc. tendered as evidence**

312. (1) In a proceeding before the Industrial Court:

- (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 this section to the tendering of information as evidence, the information may only be given as evidence under a direction of the Industrial Court.

(3) If information is given as evidence under subsection (2), it must not be published in any newspaper, or otherwise, unless the Industrial Court, by order, permits the publication.

(4) If the Industrial Court 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 Industrial Court may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, not be published.

(6) A person who contravenes this section or a direction under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

**Rules of the Industrial Court**

313. (1) The Chief Judge and 2 other Judges may make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by rules of the Industrial Court or that is necessary or convenient to be prescribed by rules of the Industrial Court for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), rules of the Industrial Court may be made for or with respect to:

- (a) the practice and procedure to be followed in the Industrial Court in any proceedings; and
- (b) the practice and procedure in the offices of the Industrial Court; and
- (c) the joinder of causes of action, the consolidation of proceedings, and the joinder, misjoinder and non-joinder of parties; and
- (d) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions, judgments and orders of the Industrial Court; and
- (e) the provision of security; and
- (f) the costs of proceedings in the Industrial Court; and
- (g) the functions of the Industrial Court that may be exercised by the Registrar of the Industrial Court or any other officer of the Industrial Court; and
- (h) matters incidental to practice and procedure in respect of which rules of the Industrial Court may be made.

(3) In relation to matters within the jurisdiction of the Industrial Court and without affecting the generality of subsections (1) and (2), rules of the Industrial Court may be made for or with respect to any matter that may be the subject of rules under the Supreme Court Act 1970.

(4) Rules of the Industrial Court may be made by adopting, with or without specified modifications, rules in force under the Supreme Court Act 1970.

**Regulations relating to fees**

314. The regulations may make provision for or with respect to the fees to be charged in respect of the business of the Industrial Court.

**PART 2—THE INDUSTRIAL RELATIONS COMMISSION****Division 1—Establishment etc. of Industrial Relations Commission****Establishment of the Commission**

315. (1) There is established by this Act the Industrial Relations Commission of New South Wales.

- (2) The Commission consists of:
- (a) a Resident; and

- (b) a Vice-President; and
  - (c) Deputy Presidents; and
  - (d) Conciliation Commissioners.
- (3) The Commission is to have a seal and the seal is to be judicially noticed.

#### **Appointment of members of the Commission**

316. (1) The members of the Commission are to be appointed by the Governor, on the recommendation of the Minister, by commission under the public seal of the State.

(2) The Minister may not recommend a person for appointment as a member of the Commission 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.

(3) It is the duty of a member of the Commission to maintain up to date knowledge of industrial affairs and conditions.

#### **Presidential members**

317. The President, the Vice-Resident and the Deputy Residents of the Commission are referred to in this Act as Presidential Members.

#### **Seniority**

318. (1) The members of the Commission have seniority according to the following order of precedence:

- (a) the Resident;
- (b) the Vice-Resident;
- (c) the Deputy Residents, 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) 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.

(2) If a member who is over 65 years of age is re-appointed under this Act, the member's seniority is to be determined as if there had been no break in the member's service.

#### **Acting President**

319. (1) The Vice-President is the Acting President during the absence from duty of the President.

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(2) If the Resident and the Vice-President are or are to be both absent from duty, the Minister may appoint a Deputy Resident to be Acting President during the absence.

(3) An Acting Resident has the functions of the Resident and anything done by an Acting Resident in the exercise of those functions has effect as if it had been done by the President.

(4) In this section, a reference to absence from duty includes a reference to a vacancy in the relevant office.

**Acting Deputy Presidents and Conciliation Commissioners**

320. (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Deputy Resident or Acting Conciliation Commissioner a person qualified for appointment as such if satisfied that the additional member is, necessary to enable the Commission to exercise its functions effectively during the period of the appointment.

(2) Any such person is to be appointed for such period (not exceeding 12 months) as is specified in the person's commission.

(3) An Acting Deputy Resident or Acting Conciliation Commissioner has the functions of, and is taken to be, a Deputy Resident or Conciliation Commissioner, as the case requires.

**Dual Federal and State appointments**

321. (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 of the commission 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.

#### **Age of members (other than Judges)**

322. (1) A person of or above the age of 65 years is not eligible to be appointed as a member of the Commission.

(2) However, a person who is or was a member of the Commission may be appointed as a member after the person reaches the age of 65 years.

(3) Any appointment under subsection (2):

(a) may not be made in respect of a person so as to extend beyond the date on which the person reaches the age of 72 years; and

(b) may be made before the person reaches the age of 65 years (in which case the appointment has effect on and from the date the person reaches that age); and

(c) is to be made for a term not exceeding 3 years at any one time.

(4) This section does not apply to the appointment of a person who is to be appointed or who is already a Judge of the Industrial Court.

#### **Remuneration**

323. (1) A member of the Commission 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.

(2) A member of the Commission who is also a Judge of the Industrial Court is only entitled to be, paid remuneration as a Judge.

#### **Vacancy in office of member**

324. (1) A member of the Commission who is also a Judge of the Industrial Court (other than an acting Judge) ceases to hold office as a member of the Commission on ceasing to hold office as a Judge.

(2) The office of any other member becomes vacant if the member:

(a) dies; or

(b) is an acting member 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 from office by the Governor under this section; or

(e) reaches the age of 65 years (unless appointed as a member after that age); or

- (f) is absent from duty, except on leave of absence granted by the President, or, in the case of the President, by the Minister for 14 consecutive days or for 28 days in any period of 12 months; or
  - (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
  - (h) becomes a mentally incapacitated person; or
  - (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 elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (3) The Governor may suspend a member (other than a member of the Commission who is also a Judge of the Industrial Court) from office for incapacity, incompetence or misbehaviour, but such a suspension expires unless the member is removed from office as provided by subsection (4).
- (4) If such a member is suspended under this section:
- (a) The Minister is to cause a full statement of the grounds of suspension to be laid before each House of Parliament within 7 sitting days after the suspension if Parliament is in session or if the House of 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).

#### **Disclosure of pecuniary and other interests**

325. (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 all the parties consent—the member must not take part in the proceeding or exercise any function in relation to the proceeding.
- (2) If the Resident becomes aware that subsection (1) applies to a proceeding, the President must:
- (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 subsection (2) (a)—the member must comply with the direction; of

(b) a disclosure is made in accordance with subsection (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 section does not invalidate a decision of the Commission or the exercise of a function under this Act.

### **Leave for members**

326. (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—preservation of rights**

327. (1) In this section:

**“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 section 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.

(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 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 is to be regarded as the employer, for the purposes of the scheme.

(5) This section 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.

### **Division 2—Establishment of Conciliation Committees and Contract Regulation Committees of the Commission**

#### **Establishment of Conciliation Committees**

328. 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**

329. (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 Industrial Registrar following nomination as prescribed by the regulations.

(3) The Industrial Registrar is not to appoint a nominee member of a Conciliation Committee unless:

- (a) the Industrial 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 Industrial Registrar is satisfied that the nominee supports the establishment of the Committee; and
- (c) the nominee agrees, in writing lodged with the Industrial Registrar, to comply with this Act and to endeavour at all times to achieve its objects.

(4) If the Industrial 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 Industrial Registrar may appoint as such a representative a person who, in the opinion of the Industrial Registrar, is acquainted with the working of the relevant industry or enterprise.

#### **Establishment of Contract Regulation Committees**

330. 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 Committee in respect of any class of contracts that are contracts to which Chapter 6 applies.

**Membership of Committees**

331. (1) A Contract Regulation Committee is to consist of:
- (a) a Conciliation Commissioner who is to be the Chairperson of the Committee; 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 Committee 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 Committee 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 Committee 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 Committee is established is a class of contracts of carriage—members representing carriers under contracts of that class.
- (2) The members of a Contract Regulation Committee other than the Chairperson are to be appointed by the Industrial Registrar.
- (3) The Industrial Registrar is not to appoint a nominee member of a Contract Regulation Committee unless the Industrial Registrar is satisfied that the person:
- (a) is or has been a party to contracts of the class with which the Committee is concerned or is acquainted with conditions prevailing in relation to contracts of that class; and
  - (b) supports the establishment of the Committee and agrees, in writing lodged with the Industrial Registrar, to comply with this Act and to endeavour at all times to achieve its objects.
- (4) If the Industrial Registrar is satisfied that there has been a failure to nominate a person who is willing to be a member of a Contract Regulation Committee to represent bailors, principal contractors, bailees or carriers, as the case may be, the Industrial Registrar may, subject to subsection (3), appoint a person without the person having been nominated.

**Remuneration of members**

332. A member of a Conciliation Committee or Contract Regulation committee 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**

333. (1) A deputy for each member of a Conciliation Committee is to be appointed, and a deputy for a member of a Contract Regulation Committee 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 Contract Regulation Committee in the same way as it applies to the member.

#### **Vacation of office by members**

334. (1) The office of a member of a Conciliation Committee or Contract Regulation Committee (other than a Conciliation Commissioner) becomes vacant if:

- (a) the member dies; or
- (b) the member resigns the office by instrument in writing addressed to the Industrial Registrar; or
- (c) the nominator of the member withdraws the nomination by giving notice to that effect to the Industrial Registrar; or
- (d) the Committee is dissolved.

(2) If a member of a Conciliation Committee or Contract Regulation Committee (other than a Conciliation Commissioner) ceases to hold the office, the Industrial Registrar may appoint an appropriately qualified person to the vacant office. The regulations may make provision for or with respect to the nomination of any such person for appointment to the vacant office.

#### **Continuation of hearing**

335. A Conciliation Committee or Contract Regulation Committee 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 Contract Regulation Committee**

336. (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 Contract Regulation Committee.

(3) Each Conciliation Committee and each Contract Regulation Committee is dissolved 3 years after it is established.

(4) Any Conciliation Committee or Contract Regulation Committee that is dissolved may be re-established.

#### **Notices of appointment etc.**

337. On the appointment of a member to a Conciliation Committee or Contract Regulation Committee or on the cessation of office of a member of a Conciliation Committee or Contract Regulation Committee, the Industrial 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—Organisation of the Commission**

#### **Constitution of Commission for exercise of functions**

**338. (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 Presidential Member and at least one must 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) More than one sitting of the Commission may be held at the one time.

#### **Panels of members**

339. (1) The Resident of the Commission may assign an industry and (if appropriate) an enterprise to a panel of members of the commission consisting of a Residential 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 any direction of the President.

(4) A member of a panel to whom work is allocated is to comply with any direction relating to the carrying out of the work that is given by the Residential Member who allocated the work.

(5) A member of the Commission may be a member of more than one panel.

#### **Regional matters**

340. (1) If the President of the Commission 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.

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(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.

(4) For the purposes of this Act, a region is any area of New South Wales prescribed by the regulations as a region.

**Continuation of hearing in absence of member**

341. (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 Resident of the Commission 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) A member becomes unavailable for the purposes of this section 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 section 325 (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 decision made in relation to the matter before the Commission was reconstituted.

**Arrangement of business**

342. The Resident of the Commission is (subject to this Act and the rules of the Commission) to direct the business of the Commission.

**Delegation by President**

343. The President of the Commission may delegate to another Presidential Member any of the functions of the Resident, other than this power of delegation.



**Annual report**

344. The President of the Commission is required to provide for the Minister, for presentation to Parliament, an annual report with regard to the functioning of the Commission.

**Division 4—Functions of Commission and Committees generally****Functions of Commission**

345. (1) The Commission has the functions conferred on it by this or any other Act.

(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 must consider, and report on, any matter referred to it by the Minister.

**Functions of the Full Commission**

346. (1) The Full Commission has the Functions 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 arising under contracts to which Chapter 6 applies which the Minister has referred to the Full Commission; and
- (c) any matter in a proceeding before a members of the Commission which the member considers should be referred to the Full 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.

**Functions of a Conciliation Committee**

347. (1) The functions of the Commission under this Act with respect to an industrial matter may be exercised in accordance with this Act by a Conciliation Committee, but only in respect of the industry or enterprise for which the Committee is established.

(2) Any such function may be so exercised only if:

- (a) the exercise of the function is referred to the Conciliation committee 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

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- (c) application for the exercise of the function is made to the Committee by:
- (i) an employer or employers of not fewer than 20 employees in the industry or enterprise for which the Committee is established; or
  - (ii) an industrial organisation whose members are employees or employers in that industry or enterprise.
- (3) Any function so exercised is taken to have been exercised by a member of the Commission (being a Conciliation Commissioner) sitting alone.
- (4) A Conciliation Committee is not to exercise a function if the Commission has directed that proceedings before the Committee on the matter be discontinued.

**Functions of a Contract Regulation Committee**

348. (1) The functions of the Commission under this Act with respect to a contract to which Chapter 6 applies may be exercised by a Contract Regulation Committee, but only in respect of a class of contracts for which the Committee is established.
- (2) Any such function may be so exercised only if:
- (a) the exercise of the function is referred to it by the Commission or the Minister; or
  - (b) application for the exercise of the function is made to the Committee in accordance with Chapter 6.
- (3) Any function so exercised is taken to have been exercised by a member of the Commission (being a Conciliation Commissioner) sitting alone.
- (4) A Contract Regulation Committee is not to exercise a function if the Commission has directed that proceedings before the Committee on the matter be discontinued.

**Restriction of functions of Commission: public sector**

349. (1) The Commission has no jurisdiction to make an award or order that:
- (a) is inconsistent with the exercise of any right of appeal under the Government and Related Employees Appeal Tribunal Act 1980 or the Police Regulation (Appeals) Act 1923; or
  - (b) is inconsistent with any function conferred or imposed by or under the provisions of the Police Service Act 1990 with respect to the discipline, promotion or transfer of a police officer, or with respect to police officers who are hurt on duty.
- (2) This section does not apply to the jurisdiction of the Commission under Part 8 of Chapter 3 (Unfair Dismissals).**

**Restriction of functions of Commission: trainees and apprentices**

350. (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.

#### **Anti-discrimination matters**

351. (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, ~~findings~~ made by, the Equal Opportunity Tribunal.

#### **Parties to negotiate in good faith**

352. (1) Persons who engage in negotiations with respect to industrial matters 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 the persons concerned when the Commission decides:

- (a) whether or not to exercise any of its functions; 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, order or other decision void or voidable.

### **Division 5—Procedure of the Commission and Committees**

#### **Application of Division to Commission and Committees of Commission**

353. (1) This Division applies to proceedings before the Commission, including proceedings before a Conciliation Committee, or a Contract Regulation Committee.

(2) Accordingly, a reference in this Division to the Commission includes a reference to such a committee.

#### **General procedure**

354. The Commission:

- (a) may, subject to this Act; determine its own procedure and
- (b) is to act as quickly as is practicable; 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; and
- (f) may conduct its proceedings publicly or privately.

#### **Commission to have powers under Royal Commissions Act 1923**

355. (1) In the exercise of its functions, the Commission (or, in the case of a Committee, its Chairperson) has the powers conferred by the Royal Commissions Act 1923 on a commissioner appointed under Division 1 of Part 2 of that Act.

(2) 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.

#### **Initiation of proceedings**

356. (1) The Commission is to exercise its functions under this Act:

- (a) on its own initiative or on application in accordance with this Act and the rules of the Commission; or
- (b) 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 exercise, on its own initiative, any function exercisable by it on application or by direction.

(3) The Commission may require a document to be served outside the State.

#### **Adjournment of proceedings**

357. (1) The Commission may adjourn proceedings to any time and place.

(2) The Commission may, at any stage, adjourn a matter before it to enable the parties to negotiate an amicable settlement of the matter.

(3) If proceedings are not able to proceed because of the absence of a member of the commission, the Industrial Registrar is to adjourn the proceedings to a time that the Industrial Registrar considers to be convenient.

#### **Frivolous or vexatious proceedings**

358. (1) The Commission may dismiss any matter referred to it or any application to it 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.
- (3) A Conciliation Committee or a Contract Regulation Committee is not to award such costs unless the decision is supported by its Chairperson.

**Representation of parties**

359. (1) A party to proceedings before the Commission may appear personally or be represented by a legal practitioner or by an agent who is not a legal practitioner.

(2) However, a party is not entitled to be represented in conciliation or similar proceedings by a person who is a legal practitioner without the leave of the Commission.

(3) The leave of the Commission is not required if the legal practitioner represents a member of an industrial organisation and is an officer or employee of the organisation.

(4) The Commission may allow any party appearing before it the services of an interpreter.

(5) In this section:

“**legal practitioner**” means a practising barrister or practising solicitor.

**Intervention by Crown etc. in proceedings**

360. (1) The Crown may appear before the Commission 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 a barrister, 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 that are proceedings:

- (a) to which an apprentice or trainee is a party; or
- (b) which relate to the employment of apprentices or trainees.

**Conferring with others**

361. The Commission may confer with any person as to anything affecting the settlement of an industrial matter.

**Issue of summons**

362. (1) A summons for the purposes of this Act is to be issued by the Industrial Registrar, unless it relates to proceedings before the Industrial Court.

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(2) Any such summons must be signed by a member of the Commission or the Industrial Registrar or as otherwise provided by the regulations.

(3) Any such 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 or other things.

(4) A person who, without reasonable excuse, fails to comply with the requirements of a summons is guilty of an offence.

Maximum penalty: 10 penalty units.

(5) A person does not comply with the requirements of a summons to confer if the person leaves the conference without the permission of the person presiding at the conference.

**Compliance with procedural rules may be waived**

363. The Commission may waive strict compliance with the requirements of any rules prescribing the procedure for the initiation or conduct of proceedings before it.

**Commission divided in opinion**

364. (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 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 Resident if the President is sitting; or
- (b) if the Resident is not sitting but the Vice-President is sitting—the opinion of the Vice-Resident; or
- (c) if the President and Vice-President are not sitting and only one Deputy Resident is sitting—the opinion of the Deputy President; or
- (d) if the Resident and Vice-President are not sitting and more than one Deputy Resident is sitting—the opinion of the senior Deputy President; or
- (e) in any other case—the opinion of the senior Conciliation Commissioner.

(3) This section does not apply to proceedings before a Conciliation Committee or a Contract Regulation Committee.

**Commission may reserve decision**

365. (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 Industrial Registrar, at a time and place of which the parties have been given reasonable notice.

**Finality of decisions**

366. (1) Subject to the exercise of a right of appeal conferred by this Act or any other Act, an award, order, direction, contract determination or other decision of the Commission (however constituted):

- (a) is final; and
- (b) may not be vitiated merely because of an informality or want of form; and
- (c) 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, contract determination or other decision of the Commission (however constituted) that relates to:

- (a) an industrial matter or a matter in respect of which the Commission has jurisdiction under Chapter 6; 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 Chapter 6.

(3) This section does not affect the operation of section 48 of the Supreme Court Act 1970.

**Contempt or disturbance of the Commission**

367. (1) A person must not:

- (a) wilfully insult or disturb a member of the Commission in the exercise of the person's functions as a member, or
- (b) interrupt the proceedings of the Commission; or
- (c) otherwise hinder or obstruct the Commission or any member or officer of the Commission in the exercise of any of its functions; or

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- (d) create or continue a disturbance, or take part in creating or continuing a disturbance, in or near a place at which the Commission is sitting in order to disrupt the sitting; or
- (e) use insulting language towards a member of the Commission exercising functions as a member; or
- (f) by writing or speech use words calculated to influence improperly a member of the Commission or a witness before the Commission; or
- (g) by writing or speech use words calculated to bring the Commission or a member of the Commission into disrepute; or
- (h) do any other thing that, if the Commission were the Supreme Court, would be a contempt in the face or hearing of the Court.

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.

(2) Proceedings for an offence against this section are to be taken before the Industrial Court.

**Recovery of costs and other amounts ordered to be paid**

368. (1) Any amount ordered to be paid by the Commission (including costs) is to be certified by the Industrial Registrar.

(2) A certificate given under this section must identify the person liable to pay the certified amount.

(3) A certificate of the Industrial Registrar that

(a) is given under this section; 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.

(4) An appeal lies to the Commission against any amount certified by the Industrial Registrar under this section.

(5) An appeal lies to the Industrial Court against an order by the Commission for the payment of costs.

**Trade secrets etc. tendered as evidence**

369. (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) A person who contravenes this section or a direction under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

#### **Meetings of Conciliation Committee or Contract Regulation Committee—special provisions**

370. (1) In this section, “Committee” means a Conciliation Committee of Contract Regulation Committee.

(2) The Chairperson of a Committee is to convene a meeting of the Committee:

- (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 Committee.
- (3) The order and conduct of business at a meeting of a Committee are to be:
- (a) as prescribed by the rules of the Commission; or
  - (b) to the extent that they are not so prescribed—as determined by the Committee.

(4) The Chairperson of a Committee is to preside at a meeting of the Committee.

(5) Each member of a Committee 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 Committee; 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 Committee.

(6) Any question before a Committee as to the admissibility of evidence is to be decided by the Chairperson of the Committee, and the decision of the Chairperson is final.

(7) The Chairperson may refer to the Commission for determination of directions any question or matter arising at a meeting of the Committee.

(8) When a matter comes before a Committee, the Chairperson of the Committee 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 Committee and so conduct the meeting as to enable it expeditiously and carefully to inquire into the matter and its 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 matter.

(9) The Commission may direct that any proceedings be discontinued before a Conciliation Committee or a Contract Regulation Committee so that the proceedings may be continued otherwise before the Commission.

### **Division 6—Rules of the Commission relating to practice and procedure**

#### **Establishment of the Rule Committee of the Commission**

371. (1) Rules of the Commission are to be made by a Rule Committee of the Commission comprising:

- (a) the President of the Commission; and
  - (b) 3 other members of the Commission appointed by the President, at least one of whom is a Conciliation Commissioner; and
  - (c) the Industrial Registrar; and
  - (d) a person nominated by the President's Advisory Council as the representative of employers; and
  - (e) a person nominated by the President's Advisory Council as the representative of employees.
- (2) The secretary of the Rule Committee is:
- (a) the Industrial Registrar; or
  - (b) in the absence of the Industrial Registrar—the Deputy Industrial Registrar.

#### **Subject-matter of rules of Commission**

372. (1) The Rule Committee of the Commission may make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by rules of the Commission or that is necessary or convenient to be prescribed in relation to the practice and procedure of the commission.

(2) Without affecting the generality of subsection (1), rules of the Commission may be made for or with respect to:

- (a) the form of references and applications to the Commission under this or any other Act; or
- (b) the procedure to be followed in, or for the purposes of, proceedings before the Commission under this or any other Act; or
- (c) the form and mode of service of notice of a meeting of the Commission; or
- (d) the taxation or other ascertainment of costs ordered to be paid by the Commission; or
- (e) the functions of the Industrial Registrar under this Act, including functions in relation to proceedings instituted before the Commission.

(3) This section extends to the making of rules relating to the practice and procedure of (and other matters relating to) a Conciliation Committee, a Contract Regulation Committee or the Industrial Registrar.

### **Provisions applicable pending making of rules of Commission**

373. (1) Until rules of the Commission are in force with respect to any matter for which rules may be made, the regulations may make provision with respect to that matter.

(2) If any such matter is not the subject of a rule of the Commission or a regulation, the regulations in force under the Industrial Arbitration Act 1940 immediately before its repeal apply to the matter with such modifications as may be necessary.

### **Meetings of the Rule Committee of the Commission**

374. (1) At a meeting of the Rule Committee of the Commission:

- (a) the President of the Commission is to preside; or
- (b) if the President is absent, the senior member of the Commission present is to preside.

(2) The person presiding at the meeting has a deliberative vote and, in the event of an equality of votes, has a casting vote.

(3) At a meeting, 4 members constitute a quorum.

(4) The procedure at a meeting is to be as determined by the Rule Committee.

## **Division 7—President's Advisory Council**

### **Establishment of the President's Advisory Council**

375. (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 of the Department; and
- (c) members appointed by the Minister.

(2) The appointed members are to be:

- (a) a person 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 appropriate.

**Meetings of the President's Advisory Council**

376. (1) Meetings of the Resident's 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 President's 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 Resident's Advisory Council, the Resident is to provide the Minister 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 President's Advisory Council**

377. (1) The President's 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 Resident's Advisory Council.

**Procedure of President's Advisory Council**

378. Subject to any directions of the Minister, the procedure for:

- (a) the calling of a meeting of the President's Advisory Council or a subcommittee; and
- (b) the conduct of business at the meeting,

is to be as determined by the President's Advisory Council or the subcommittee.

**Remuneration of members of President's Advisory Council**

379. A person who:

- (a) is appointed by the Minister as a member of the Resident's Advisory Council; or
- (b) is a member of a subcommittee of the president's Advisory Council,

is entitled to be paid such remuneration (including travelling and subsistence allowances) in connection with the business of the President's Advisory Council or subcommittee as is determined by the Minister in respect of the member.

**PART 3—THE INDUSTRIAL REGISTRAR AND REGISTRY****Appointment of Industrial Registrar and staff**

380. An Industrial Registrar, a Deputy Industrial Registrar and such other staff as may be necessary for the purposes of this Act are to be employed under Part 2 of the Public Sector Management Act 1988.

**Functions of Industrial Registrar and Deputy Industrial Registrar**

381. (1) The Industrial Registrar has the functions conferred and imposed on the Industrial Registrar by or under this or any other Act.

(2) The Deputy Registrar may exercise the functions of the Industrial Registrar:

- (a) as directed by the Industrial Registrar; and
- (b) during the absence of, or a vacancy in the office of, the Industrial Registrar.

(3) Anything done or omitted by the Deputy Registrar in exercising a function of the Industrial Registrar has effect as if it had been done or omitted by the Industrial Registrar.

(4) The Industrial Registrar is to establish an office of the Registry in each region.

**PART 4—APPEALS ETC.****Division 1—Appeals to Full Commission****Appeal from decision of Commission**

382. (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 of the Commission, appeal to the Full Commission.

(2) From a decision of the Commission (other than the Full Commission) an appeal lies, as prescribed by the rules of the Commission, to the Full Commission at the suit of

- (a) a party, or an industrial organisation, affected by the decision; or
- (b) without affecting paragraph (a)—an association registered under Chapter 6, 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) on any other evidence (whether or not fresh or new evidence) or information called for by the Full Commission.

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(5) On an appeal under this section, the Full Commission may (in accordance with this Act):

- (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 on the appeal take effect as from any specified date after the lodging of the application.

**Division 2—Appeals and references to the Industrial Court****Appeal to Industrial Court on question of law**

383. (1) On a question of law, an aggrieved party or the Minister may appeal to the Industrial Court against a decision of the Commission on the question. If the decision of the Commission is made by a member who is also a Judge of the Industrial Court any such appeal is to be made to the Full Industrial Court.

(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 Industrial Court given on the appeal, the Commission is to vary the award, order or determination to make it consistent with the opinion of the Industrial 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 Industrial Court by Commission on question of law**

384. (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 Industrial Court. The reference is to be made to the Full Industrial Court if the question is referred by a member who is also a Judge of the Industrial Court.

(2) Unless the question referred to the Industrial 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 Industrial 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 Industrial 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 Industrial 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.

(5) The Industrial Court may, on application, prohibit any proceedings pending before the Commission that the Commission does not have jurisdiction to entertain.

### **Division 3—References by, and appeals from, the Industrial Registrar**

#### **Reference by the Industrial Registrar to the Commission**

385. (1) The Industrial Registrar may refer to the President, for decision by the Commission:

- (a) a matter before the Industrial Registrar (other than a matter required to be referred to the Industrial Court); or
  - (b) a question (other than a question of law) arising in a matter before the Industrial Registrar.
- (2) The Commission may:
- (a) hear and determine the matter or question; or
  - (b) refer the matter or question back to the Industrial Registrar, with such directions or suggestions as the Commission considers appropriate.

#### **Removal of matter before the Industrial Registrar**

386. A matter before the Industrial 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 Industrial Registrar to the Commission**

387. (1) An appeal lies to the Commission, with the leave of the Commission, against:

- (a) a decision made, or an act done, by the Industrial Registrar in a matter arising under this Act (other than a decision from which an appeal lies to the Industrial Court); or
- (b) a refusal by the Industrial 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 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.

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(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 Industrial Registrar to take further action to deal with the subject-matter of the decision or act as directed by the commission.

**Reference to Industrial Court on question of law**

388. (1) The Industrial Registrar may refer for the opinion of the Industrial Court a question of law arising in a matter before the Industrial Registrar.

(2) On the determination of the question by the Industrial Court, the Industrial Registrar must not give a decision, or do anything in the matter, that is inconsistent with the opinion of the Industrial Court.

**Exercise of functions by Commission**

389. 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 4—Superannuation appeals****Industrial Court may determine superannuation appeals**

390. (1) The Industrial Court 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) In dealing with a Superannuation appeal, the Industrial Court 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.

(3) In making its determination, the Industrial Court 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.

(4) In dealing with a superannuation appeal, the Industrial Court 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**

391. For the purposes of an Act conferring a right to a superannuation appeal, the final decision given by the Industrial Court 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.

**PART 5—CO-OPERATION WITH THE COMMONWEALTH****Division 1—GENERAL****Definitions**

392. In this Part:

“**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 of the State Commission holding office under this Act;

“**State Registrar**” means the Industrial Registrar holding office under this Act.

**Co-operation between the State and the Commonwealth**

393. (1) The State President may accept any invitation from the Commonwealth Resident 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:

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- (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 system in Australia.

**Member of Commission may exercise functions under Commonwealth Act**

394. (1) If, under the Commonwealth Act, the Commonwealth Resident 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 the exercise of functions referred to in subsection (2) is, for the purposes of this Act, taken not to have been made by a member of the State Commission under this Act.

**Reference of industrial matter to Commonwealth Commission**

395. (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 such a request, the Commonwealth President nominates a member of the Commonwealth Commission, the State Resident 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 or 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 taken to be, and has effect as, an award or order of the State Commission.

(7) The State Resident 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**

396. (1) If the State President considers it 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).

(4) The State Resident 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 conducting any necessary investigation.

### **Conference with Commonwealth Commission**

397. (1) If it appears to the State Resident 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 M to be made by that authority or any matter arising under an Act conferring or imposing functions on that authority.

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(2) The State Resident may confer with the Commonwealth Commission in relation to the exercise, or the proposed exercise, under section 396 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.

### **Division 2—Special provisions relating to Oil Industry**

#### **Definitions**

398. In this Division:

“**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 1986

Engineering (Oil Companies) Award 1988

Storemen and Packers’ (Oil Companies) Award 1984

Storemen and Packers’ (Oil Refineries) Award 1988

Transport Workers (Oil Companies) Award 1988

“**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 402;

“**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 organisation registered as the Australian Works’ Union;

“**Presidential Member**” means a presidential member of the Commonwealth Commission.

#### **Exclusive jurisdiction and powers of State Commission**

399. (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 401, 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 Division**

400. The State President may make such arrangements with the Commonwealth President as are necessary or convenient for the execution of this Division.

### **Certain powers suspended during common negotiations**

401. (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**

402. (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 401 applies and affects, or is likely to affect, industry standards,

the State Commission is required, pursuant to arrangements made under this Division, to consult a Presidential Member so that the State Commission and the Residential 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 made under this Division, to take part in the joint sitting; or

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(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 Division) but, before making an order or award in relation to the matter, must confer with the Residential 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 Residential Member taking part in the joint sitting to ascertain the Member's opinion on the matter.

**Appearances**

403. (1) An organisation specified in the Table to this section is entitled to intervene, be represented and be heard before the State Commission for the purposes of section 401 or at a joint sitting under section 402.

(2) The Governor may, by proclamation published in the Gazette, amend the Table to this section 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.

**TABLE****RESPONDENTS TO OIL INDUSTRY AWARDS****PART 1—EMPLOYEE RESPONDENTS TO FEDERAL OIL INDUSTRY AWARDS**

The Australian Workers' Union.  
 Electrical Trades Union of Australia  
 Federated Clerks Union of Australia.  
 Federation of Industrial, Manufacturing and Engineering Employees  
 Metals and Engineering Workers' Union.  
 Transport Workers' Union of Australia.  
 National Union of Storeworkers, Packers, Rubber and Allied Workers.

**PART 2—EMPLOYER RESPONDENTS TO FEDERAL OIL INDUSTRY AWARDS**

Airport Fuel Services Pty. Ltd.  
 Altona Petrochemical Company Ltd.  
 Ampol 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 Oil Distribution Limited.  
 BP Petroleum Development Australia Pty. Ltd.

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BP Refinery (Kwinana) Pty. Ltd.  
 Caltex Oil (Aut.) Pty. Ltd.  
 Caltex Refining Co. Pty. Limited.  
 Castrol Australia Pty. Ltd.  
 Esso Australia Ltd.  
 Exxon Chemical Australia Limited.  
 Golden Fleece Petroleum Limited.  
 Liquefied Petroleum Gas Limited.  
 Mobil Oil Australia Limited.  
 Petroleum Refineries (Australia) Pty. Ltd.  
 Shell Chemical (Aust.) Pty. Ltd.  
 Shell Refining (Australia) Pty. Ltd.  
 South Coast Gas Co. Pty. Ltd.  
 The Shell Co. of Aust. Ltd.  
 Total Australia Limited.

**Procedure**

404. Subject to any arrangements made under this Division, the procedure at a joint sitting under this Division is to be such procedure under this Act as is determined by the State Commission and Presidential Member taking part in the joint sitting.

## **CHAPTER 5—ORGANISATIONS OF EMPLOYEES AND EMPLOYERS**

### **PART I—PRELIMINARY**

**Purpose of Chapter**

405. The purpose of this Chapter is:

- (a) to identify the organisations of employees or employers that are industrial organisations for the purposes of this Act, being those organisations that are authorised to participate on behalf of their members in the industrial relations system under this Act. Those organisations are:
  - (i) industrial organisations of employees or employers registered and incorporated under this Chapter; and
  - (ii) existing and other industrial organisations that, under Part 4, are recognised as industrial organisations of employees or employers; and
- (b) to provide (as an alternative to incorporation under the Corporations Law or any other Act) for the incorporation of organisations of employees or employers (whether industrial or non-industrial organisations); and
- (c) to provide for the control and regulation of organisations of employees and employers; and

- (d) to make provision as to voluntary unionism; and
- (e) to provide for recognition of State peak councils; and
- (f) to continue provisions for the legality of trade unions.

**Definitions**

406. (1) In this Chapter:

“committee of management”, in relation to an association or organisation referred to in this Chapter, means the group or body of persons (however described) that manages the affairs of the association or organisation;

“industrial organisation” means an industrial organisation of employees or employers registered or recognised as such under this Chapter;

“industrial organisation of employees” means an industrial organisation of employees registered or recognised as such under this Chapter;

“industrial organisation of employers” means an industrial organisation of employers registered or recognised as such under this Chapter;

“non-industrial organisation” means a non-industrial organisation registered or recognised as such under this Chapter;

“office”, in relation to an 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) or (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 existing policy of the organisation or decisions concerning the organisation; or
- (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) or (iii); or



- (e) the office of a person holding (whether as trustee or otherwise) property of the organisation or property in which the organisation has a beneficial interest;

“officer”, in relation to an organisation referred to in this Chapter, means a person who holds an office in the organisation.

(2) A reference in this Chapter to affairs of an organisation includes 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.

### **Industrial organisation of employees may be called industrial union of employees**

407. An industrial organisation of employees may also be called an industrial union of employees and a reference in any Act or instrument under any Act or in any document to an industrial union of employees is to be construed as a reference to an industrial organisation of employees registered or recognised under this Chapter.

## **PART 2—REGISTRATION AND INCORPORATION OF ORGANISATIONS**

### **Registration alternatives**

408. An association may be registered under this Chapter as an industrial organisation of employees or employers or as a non-industrial organisation but not as both an industrial organisation and a non-industrial organisation.

### **Associations capable of registration as industrial organisations of employees**

409. An association of employees that has, throughout the 6 months before the application for its registration was lodged with the Industrial Registrar, (on an average taken per month) not fewer than 50 members who are employees may be registered as an industrial organisation of employees.

**Associations capable of registration as industrial organisations of employers**

410. (1) An association of employers who have, in the aggregate, throughout the 6 months before the application for its registration was lodged with the Industrial Registrar, employed (on an average taken per month) not fewer than 50 employees, may be registered as an organisation of employers.

(2) An association must have more than one member.

**Associations capable of registration as non-industrial organisations**

411. (1) An association may be registered as a non-industrial organisation if:

- (a) it is an association of 7 or more members; and
- (b) there is no industrial organisation to which the members might conveniently belong; and
- (c) it is not an industrial organisation.

(2) The regulations may make provision for the registration of different classes of non-industrial organisations, including registration as an association of industrial organisations or of other categories of organisations.

**Criteria for registration**

412. (1) The Industrial Registrar may grant an application for registration made by an association that may be registered as an organisation if, and only if, satisfied that:

- (a) the association:
  - (i) is a genuine association of a kind referred to in this Chapter; 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) in the case of an application by an association to be registered as an industrial organisation—it is capable of representing its members in connection with industrial matters; and
- (c) the rules of the association make provision as required by this Act to be made by the rules of organisations; and
- (d) the association does not have the same name as that of an organisation registered under this Chapter and does not have a name that is so similar to the name of an organisation registered under this Chapter as to be likely to cause confusion; and

- (e) the name proposed by the association is not, in the opinion of the Industrial Registrar, unsuitable to be the name of an organisation; and
- (f) 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 an organisation; and
- (g) the registration of the association would further the objects of this Act; and
- (h) in the case of an application by an association to be registered as an industrial organisation of employees—there is no other industrial organisation of employees to which the members of the association might conveniently belong.

(2) The Industrial Registrar must not register an association consisting of the members of a branch of an organisation as an organisation under this Part unless the Industrial Registrar is satisfied that it is an association of sufficient importance to be registered separately.

(3) The Industrial Registrar must not register an association as an organisation under this Chapter unless the Industrial Registrar is satisfied that the association is a genuine trade union within the meaning of that term as defined in Part 6.

### **Application for registration**

413. An application to be registered under this Chapter is to be made in the manner and form approved by the Industrial Registrar who may require information to be verified by statutory declaration of one or more persons.

### **Proof of authority for application**

414. The Industrial Registrar may require such proof as the Industrial Registrar considers necessary to establish the authority of the persons making an application for registration to act on behalf of the association concerned.

### **Industrial Registrar to deal with application**

415. (1) On receipt of an application by an association to be registered under this Chapter, the Industrial Registrar must notify any organisation registered under this Part that, in the opinion of the Industrial Registrar, may be affected by the application.

(2) Any person may lodge with the Industrial Registrar a notice of objection to that application in the manner and within the time prescribed by the regulations.

(3) The notice of 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.

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(4) A copy of the notice of objection must be served on the applicant for registration by the objector within the time prescribed by the regulations

q Within 7 days after service of the notice of objection or such further time as the Industrial Registrar may allow, the applicant for registration may file a statutory declaration in answer to the notice of objection and must, within that period, serve a copy of that declaration on the objector.

(6) If no objections to the application are lodged within the time referred to in subsection (2), the Industrial Registrar must, as soon as practicable after having examined the application and the rules of the association, either register the association or refuse to register the association.

**Determination of objections etc.**

416. (1) If an objection is lodged in relation to an application, the Industrial Registrar must fix a day for considering the objection and give notice of the day so fixed to the applicant for registration and to the objector.

(2) On the day fixed for the consideration of the objection by the Industrial Registrar, the Industrial Registrar is to proceed to hear and determine the application for registration and all objections to the application, without prejudice to the Industrial 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 Industrial Registrar.

**Appeal against decision of Industrial Registrar on objections**

417. (1) An applicant whose application has been refused by the Industrial Registrar or a party to a hearing before the Industrial Registrar may appeal to the Industrial Court against a decision of the Industrial Registrar in relation to an application or an objection.

(2) On any such appeal, further evidence is admissible only with special leave of the Industrial Court.

**Decision of Industrial Court on appeal**

418. On the hearing of an appeal, the Industrial Court may do any one or more of the following:

- (a) affirm, vary or set aside the decision appealed against;
- (b) dismiss the appeal;
- (c) require the Industrial Registrar to register an association as an organisation;
- (d) require the Industrial Registrar to refuse to register an association as an organisation or require the Industrial Registrar to refuse to register the association unless the association changes its name or alters its rules;

- (e) require the Industrial Registrar to cancel the registration of an association as an organisation with the effect that the association is taken never to have been registered under this Act;
- (f) make any other order that the Industrial Court considers appropriate in the circumstances.

**Applicant for registration may change its name or alter its rules**

419. (1) The Industrial Registrar may, on the application of an association applying to be registered as an organisation, grant leave to the association, on such terms and conditions as the Industrial 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 Industrial Registrar.

(2) An association granted leave under this section 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 this section are binding on the members of the association:

- (a) despite anything in the other rules of the association; and
- (b) subject to any further alterations lawfully made.

**Registration**

420. (1) When the Industrial Registrar grants an application by an association to be registered as an organisation, the Industrial Registrar must immediately record, in the register kept for the purpose:

- (a) the name of the organisation; and
- (b) that the rules of the association are registered; and
- (c) the date of the entry.

(2) An association is taken to be registered under this Chapter when the Industrial Registrar records the information referred to in subsection (1).

(3) On registration, an association becomes an industrial organisation of employees, an industrial organisation of employers or a non-industrial organisation, as specified in the certificate of registration.

(4) The Industrial Registrar must issue to each association registered under this Chapter a certificate of registration in the form approved by the Industrial Registrar.

(5) A document purporting to be such a certificate is evidence of the registration of the association specified in the certificate in the absence of proof to the contrary.

(6) The Industrial Registrar may issue to an organisation a copy of, or a certificate replacing, the certificate of registration issued under this section or that certificate as amended by amalgamation under this Chapter.

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(7) The regulations may make provision for or with respect to the issue of such a copy or replacement certificate.

(8) The purported registration under this Chapter of an association otherwise than in accordance with the requirements of or under this Act is void.

**Incorporation**

421. (1) An association, when registered under this Chapter as an organisation:

- (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 person property; and
- (d) is required to have a seal; and
- (e) may sue or be sued in its registered name.

(2) The custody and manner of affixing of the seal is (subject to regulations) to be as prescribed by the rules of the organisation.

**Certain legislation not to apply to organisations**

422. The Industrial Registrar must not register as an organisation an association that is incorporated under the Corporations Law or the Co-operation Act 1923, Permanent Building Societies Act 1967 Credit Union Act 1969, Associations Incorporation Act 1984, Friendly Societies Act 1989 or any other Act.

**PART 3—REGULATION OF INDUSTRIAL AND  
NON-INDUSTRIAL ORGANISATIONS OF EMPLOYEES AND  
EMPLOYERS**

**Division 1—Preliminary**

**Application of Part**

423. (1) In this Part, “organisation” means an organisation that is registered under Part 2 as an industrial organisation of employees or employers or as a non-industrial organisation.

(2) The regulations may modify or exclude provisions of this Part in relation to their application to non-industrial organisations.

**Division 2—Rules**

**Subdivision 1—Content of rules**

**Organisations to have rules**

424. (1) An organisation must have rules that make provision as required by this Act.

(2) An organisation must not make any rule that is contrary to any term or provision of an award.

### **General requirements for rules of organisations**

425. (1) The rules of an 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 Industrial Court or any other Court or 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 or former industrial agreement; 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 Chapter, are oppressive, unreasonable or unjust.

(2) The rules must be:

- (a) contained in consecutively numbered paragraphs; and
- (b) printed, type-written or otherwise produced in legible form in a manner that is permanent, facilitates a reproduction by photographic means and is satisfactory to the Industrial Registrar; and
- (c) consolidated by the organisation whenever the number or nature of the alterations to the rules renders it reasonable to do so or whenever the Industrial Registrar so directs.

### **Rules to specify name, purposes and conditions of eligibility for membership**

426. The rules of an 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 in relation to which it is formed.

### **Rules to provide for procedural and administrative matters**

427. (1) The rules of an organisation must provide for:

- (a) the entrance fees, subscription, affiliation and other amounts (if any) to be paid by members of the organisation; and

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- (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, 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 meetings of the committees of the organisation; 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 intends 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
- (i) the control of committees of the organisation by the members of the organisation; and
- (j) the sources from which the funds of the organisation are to be, or may be, derived; and
- (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 times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members; and
  - (v) the resignation of members; and
  - (w) the keeping of a register of the members, arranged, if there are branches of the organisation, according to branches; and
  - (x) the manner in which the rules may be altered or rescinded; and
  - (y) any other matters that may be prescribed by the regulations.
- (2) The rules of an organisation may provide for the removal from office of a person elected to an office in the organisation only if 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 an organisation must require the 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 organisation.
- (4) The rules of an 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 organisation; or
  - (b) such a person succeeds to the business, or part of the business, of a member of the organisation,
- the member is required to notify the organisation of the assignment, transfer or succession.
- (5) The rules of an organisation may also provide for any other matter.
- (6) In this section:
- “**committee**”, in relation to an organisation, means a collective body of the organisation that has powers of the kind mentioned in the definition of “office” in Part 1 of this Chapter.

### **Rules to provide for elections for offices**

428. (1) The rules of an organisation must provide for the election of the Bolder of each office in the organisation by:

- (a) a particular direct voting system; or

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(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 Industrial Registrar for recording, the Industrial Registrar, having regard to such factors as the size, structure and resources of the organisation concerned, to any representations made to the Industrial Registrar by the organisation and to such other matters as the Industrial Registrar considers to be relevant, must specify the particular system of voting to be employed by the organisation.

**Rules may provide for elections for offices in State branch of Federal organisation to be elections for purposes of organisation**

429. (1) The rules of an organisation registered under this Chapter may provide that persons elected to offices in a State branch of a Federal organisation are taken to be validly elected to the corresponding offices in the organisation registered under this Chapter if the Industrial Registrar is satisfied that:

- (a) the membership of the State branch of the Federal organisation and the organisation registered under this Chapter is identical; and
- (b) the rules of the State branch of the Federal organisation relating to the election of the holders of offices comply substantially with the requirements relating to election of the holders of offices under this Act.

(2) In this section, “State branch of a Federal organisation” means a State branch of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth and “State branch of the Federal organisation” has an equivalent meaning.

**Rules to provide for elections by secret postal ballot**

430. (1) The rules of an 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 Industrial Registrar an application for an exemption from subsection (1), accompanied by particulars of proposed alterations of the rules of the organisation, to provide for the conduct of elections by a secret ballot other than a postal ballot.

(3) If the Industrial Registrar is satisfied, on application, that:

- (a) the proposed alterations of the rules:
  - (i) comply with and are not contrary to this Act and awards or orders made under this Act; 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 give the members entitled to vote an adequate opportunity of voting without intimidation,

the Industrial Registrar may grant to the organisation an exemption from subsection (1).

(4) Proposed alterations of the rules of an organisation referred to in subsection (2) take effect if and when the Industrial Registrar grants to the organisation an exemption from subsection (1).

(5) An exemption under this section remains in force until revoked under subsection (6).

(6) The Industrial Registrar may revoke an exemption granted to an organisation under this section:

- (a) on application by the organisation, if the Industrial Registrar is satisfied that the rules of the organisation comply with subsection (1); or
- (b) if the Industrial Registrar is no longer satisfied:
  - (i) that the rules of the organisation provide for the conduct of elections by a secret ballot other than a postal ballot; or
  - (ii) of a matter referred to in subsection (3) (b), and the Industrial Registrar has given the organisation an opportunity, as prescribed by the regulations, to show cause why the exemption should not be revoked.

(7) If the Industrial Registrar revokes an exemption granted to an organisation on a ground specified in subsection (6) (b), the Industrial Registrar may, by instrument in writing, after giving the organisation an opportunity, as prescribed by the regulations, to be heard, determine such alterations (if any) of the rules of the organisation as are, in the industrial Registrar's opinion, necessary to bring them into conformity with subsection (1).

(8) An alteration of the rules of an organisation determined under subsection (7) takes effect on the date of the instrument.

### **Rules to provide for terms of office**

431. (1) The rules of an organisation:

- (a) must, subject to this section, provide terms of office for officers in the organisation of no longer than 4 years without re-election; and
- (b) may provide that, if 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 subsection (1) (b), the rules must provide that if 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 may provide that a particular term of office is extended for a specified period, if the extension is for the purpose of synchronising elections for offices in the organisation.

(4) Rules made under subsection (3) may apply in relation to a term of office that started before the commencement of this section.

(5) The term of an office must not be extended under subsection (3) SO that the term exceeds 4 years.

(6) In this section:

“**retirement age**”, in relation to an office, means the retirement age applicable to the office under the rules of the organisation concerned or, if 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**

432. (1) The rules of an organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section, in any other manner provided in the rules.

(2) Any such rules 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 the rules, 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) In this section:

“**ordinary election**” means an election held under rules that comply with section 428;

“**relevant provisions**”, in relation to an organisation, means:

- (a) the provisions of this Act (other than this section); and
- (b) the rules of the Organisation (other than rules made under this section 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 far 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 Section 431 (1) (b) but having regard to any rule made under subsection (3) of that section) to hold the office without being re-elected.

**Rules to provide conditions for loans, grants and donations by organisations**

433. (1) The rules of an organisation must provide that a loan, grant or donation must not be made by the organisation unless the committee of management of the organisation:

- (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; 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) The rules of an organisation may, however, provide for a person authorised by the rules to make a loan, grant or donation to a member of the organisation, if the loan, grant or donation:

- (a) is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and
- (b) is subject to a condition to the effect that, if the 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 subsection (2), the committee of management must have regard to:

- (a) whether the loan, grant or donation was made under the rules of the organisation; 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 subsection (1) requires the rules of an organisation to make provision of the kind referred to in that subsection in relation to payments made by the organisation by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the organisation.

**Rules to provide conditions for imposing of levies and making of donations or other payments for political objects by organisations**

434. (1) The rules of an organisation must provide that no levy is to be imposed for political objects and no donation or other payment for political objects is to be made out of amounts levied by the organisation unless the rules require:

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- (a) that a separate fund be established for the purpose of the imposing of such levies and the making of such donations or other payments; and
- (b) that contributions raised from members of the organisation by any such levy be voluntary and be applied only to the purpose for which they were raised, unless the members making the contributions agree to some other application; and
- (c) that the committee of management of the organisation approve the imposing of each such levy and the making of each such donation Or payment and satisfy itself that the imposing of each such levy and the making of each such donation or other payment out of the amounts levied is in accordance with the other rules of the organisation.

(2) Any separate fund established for the purposes of this section 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.

(3) The requirements of this section do not apply to donations or other payments made to a charity registered, capable of being registered or exempted from registration under the Charitable Collections Act 1934.

(4) In this section:

“**candidate**” means a person nominated as a candidate for election to Parliament or to any public office;

“**donation or other payment for political objects**” 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 candidate, group or party, in relation to the election of candidates to Parliament or to some other public office;

“**group**” means a group of candidates, or part of a group of candidates, for election to Parliament or to any public office;

“**Parliament**” includes the Parliament of any other State and of a Territory and of the Commonwealth;

“**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;

“**public office**” means the office of a 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.

#### **Industrial Registrar may determine alterations of rules**

435. (1) If the rules of an organisation do not, in the Industrial Registrar’s opinion, make provision required by this Act, the Industrial Registrar may, by instrument in writing, after giving the organisation an opportunity, as prescribed by the regulations, to be heard on the matter, determine such alterations of the rules as are, in the Industrial Registrar’s opinion, necessary to bring them into conformity with this Act.

(2) Alterations determined under this section take effect on the date of the instrument.

(3) An organisation the rules of which have been or are to be altered under this section or a member of such an organisation may appeal to the Industrial Court against a decision of the Industrial Registrar made under this section.

(4) The appeal to the Industrial Court must be made in the manner and within the time prescribed by the regulations.

### **Change of name of organisation**

436. (1) A change in the name of an organisation does not take effect unless the Industrial Registrar consents to the change.

(2) The Industrial Registrar must not consent to a change unless satisfied that the change has been made under the rules of the organisation.

(3) The Industrial Registrar must not consent to a change in the name of an organisation unless satisfied that the proposed new name of the organisation:

(a) is not the same name as the name of another organisation registered under this Chapter and is not so similar to the name of another organisation registered under this Chapter as to be likely to cause confusion; and

(b) is not, in the opinion of the Industrial Registrar, unsuitable to be the name of an organisation.

(4) If the Industrial Registrar consents to a change under this section, the change takes effect on the recording of the change by the Industrial Registrar.

(5) The recording of a change of name in the register does not affect any rights and liabilities of the organisation existing immediately before the recording.

### **Alteration of rules of organisation**

437. (1) An alteration of the rules of an organisation does not take effect unless the Industrial Registrar consents to the alteration.

(2) The Industrial Registrar may consent to an alteration of the rules in whole or part, but must not consent to an alteration unless 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 Industrial Registrar must not consent to an alteration of the rules of an organisation 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 Industrial Registrar, another organisation to which those persons might conveniently belong.

(4) If particulars of an alteration of the rules of an organisation have been lodged with or recorded by the Industrial Registrar, the Industrial Registrar may, with the consent of the organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.

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(5) If the Industrial Registrar consents under this section to an alteration, the alteration takes effect on the recording of the change by the Industrial Registrar.

(6) This section does not apply in relation to an alteration of the rules of an organisation that is:

- (a) determined by the Industrial Registrar under section 435 or 440; or
- (b) proposed to be made for the purpose of an amalgamation under Division 9.

**Certain alterations of rules to be recorded**

438. If there has been a change in the name of an organisation, or an alteration of the rules of an organisation, under this Act, the Industrial Registrar must:

- (a) immediately record, in the register kept for this purpose, particulars of the change or alteration, and the date of the recording of the change or alteration; and
- (b) as soon as practicable after the organisation produces its certificate of registration to the Industrial Registrar, amend the certificate accordingly and return it to the organisation.

**Evidence of rules**

439. In proceedings under this Act, a copy of the rules of an organisation certified by the Industrial Registrar to be a true and correct copy is evidence of the rules of the organisation.

**Subdivision 2—Validity and performance of rules****Rules contravening general requirements for rules etc.**

440. (1) A member of an organisation may apply to the Industrial Court 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 an organisation contravenes section 425 or that the rules of an organisation contravene that section 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 Industrial Court.

(4) The Industrial Court may, without limiting any other power of the Industrial Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the organisation an opportunity to alter its rules.

(5) If an order under this section declares that the whole or a part of a rule contravenes section 425 or that the rules contravene that section in a particular respect, the rule or that part of the rule or the rules in that particular respect, as the case may be, is or are taken to be void from the date of the order.



(6) If:

- (a) the Industrial Court makes an order 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 Industrial Registrar, brings them into conformity with section 425 in relation to the matters that gave rise to the order,

the Industrial Registrar must, after giving the organisation an opportunity, as prescribed by the regulations, to be heard on the matter, determine, by instrument in writing, such alterations of the rules as will, in the Industrial Registrar's opinion, bring them into conformity with that section in relation to those matters.

(7) The Industrial 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 Industrial Court may make such interim orders as it considers appropriate in relation to any matter raised in the proceedings.

(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.

#### **Directions for performance of rules**

441. (1) 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) 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.

(2) A member of an organisation may apply to the Industrial Court for an order under this section in relation to the organisation.

(3) Before making an order under this section, the Industrial Court must give any person against whom the order is sought an opportunity to be heard.

(4) The Industrial Court 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.

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(5) At any time after the making of an application for an order under this section, the Industrial Court may make such interim orders as it considers appropriate and, in particular, orders intended to further the resolution within the organisation concerned of the matter the subject of the application.

(6) An order under subsection (5) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

(7) An order must not be made under this section that would have the effect of treating as invalid an election to an office in an organisation or a step in relation to such an election.

(8) If the Industrial Court, in considering an application under this section, finds that the whole or a part of a rule of the organisation concerned contravenes section 425 or that the rules of the organisation concerned contravene that section in a particular respect, the Industrial Court may, by order, make a declaration to that effect.

(9) Section 440 (5)–(10) applies in relation to an order made under subsection (8) of this section as if the order had been made under those provisions.

(10) If the Industrial Court, 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 (8), the Industrial Court may order the organisation to pay damages, in the amount determined by the Industrial Court, to that member.

### **Division 3—Elections**

#### **Subdivision 1—Conduct of elections for office**

##### **Elections for offices compulsory**

442. Each office in an organisation must be filled by election.

##### **Cost of elections**

443. The expenses of an election conducted under this Division must be borne by the 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 Industrial Registrar**

444. (1) When an election is required to be held, an organisation must apply in writing to the Industrial Registrar requesting that the Industrial Registrar arrange for the conduct of an election for an office in the organisation in accordance with the rules of the organisation.

(2) For the purposes of subsection (1), an application by an organisation may be made:

- (a) by or on behalf of the committee of management of the organisation or otherwise as may be provided by the rules of the organisation; or
- (b) by a number of the members of the organisation that is not less than 1,000 or 10%, whichever is the lesser, of all the members of the organisation.

(3) If an application is made, or purports to be made, under this section, the Industrial Registrar must, after making such inquiries (if any) and such examination of the rules of the organisation as the Industrial Registrar considers necessary, decide whether or not to authorise the holding of the election.

(4) If the Industrial Registrar decides that the application has been duly made, the Industrial Registrar must inform the organisation 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 Industrial Registrar and named in a panel maintained by the Industrial Registrar in accordance with the regulations.

(5) A person conducting an election under this section for an office in an organisation may, despite anything contained in the rules of the organisation, 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 that may appear to the person to exist.

(6) An election conducted under this section is not to be invalidated merely because of:

- (a) a breach of the rules of the organisation 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 a person conducting an election under this section or carrying out a direction given under subsection (5).

Maximum penalty: 50 penalty units.

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(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 Industrial 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**

445. (1) The Industrial Registrar must inform the Industrial Court if an organisation fails to comply with the rules concerning elections and terms of office.

(2) The Industrial Court may suspend the registration of an organisation if the organisation 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.

**Industrial Registrar may issue exemptions concerning returning officer**

446. (1) An organisation may apply to the Industrial Registrar for approval to engage a person or body to conduct an election for an office in the organisation other than the persons referred to in section 444 (4).

(2) On being satisfied by the organisation that it is appropriate that a person or body other than a person referred to in section 444 (4) be appointed to conduct the election for the organisation, the Industrial Registrar may issue to the organisation a certificate to that effect and naming the person or body who or which is to conduct the election.

(3) The Industrial Registrar may have regard, in making a decision under this section, to the size, structure and resources of the organisation and to such other matters as the Industrial Registrar considers relevant.

**Procedure for conduct of elections**

447. (1) The procedure for the conduct of elections is to be as prescribed by the regulations.

(2) The voting system for an election is to be in accordance with the rules of the organisation concerned unless the rules provide, in accordance with section 429, that persons elected to offices in a State branch of a Federal organisation are taken to be validly elected to the corresponding offices in the organisation.

**Ballot-papers etc. to be preserved**

448. (1) Despite anything in the rules of an organisation, the organisation and every officer and employee of the organisation who is able to do so, and the person or body conducting an election for an office in the organisation under this Subdivision, must take such steps as are reasonably 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 for one year after the completion of the election.

- (2) A person must not contravene this section.  
Maximum penalty: 50 penalty units.

**Proof of election to office etc.**

449. (1) A certificate issued by the Industrial Registrar stating that a specified person is, or was at any specified time, elected to or the holder of a specified office in an organisation is prima facie evidence of that fact without proof of the Industrial Registrar's signature.

(2) A certificate may be issued by the Industrial Registrar under this section on proof to the Industrial Registrar's satisfaction that the person has been elected to the office in the organisation concerned and that the requirements of the rules of the 'specified organisation relating to the 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) of being requested to do so by the Industrial Registrar,

return the certificate to the Industrial Registrar for cancellation.

Maximum penalty: 20 penalty units.

**Right to participate in certain ballots**

450. Every financial member of an 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, except as may be otherwise stated by reasonable provisions in the rules of an organisation in relation to enrolment.

**Requests by members for information concerning elections and certain ballots**

451. A financial member of an organisation may request the returning officer:

- (a) in relation to an election for an office in 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,

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 2—Inquiries into elections****Definition of “irregularity”**

452. In this Division:

“**irregularity**”, in relation to an election for an office, includes a breach of the rules of an organisation and any act, omission or other thing that 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 otherwise adversely and unfairly affects the result of the election.

**Application for inquiry**

453. (1) A person who is, or within the preceding period of 12 months has been, a member of an organisation and who claims that there has been an irregularity in relation to an election for an office in the organisation may make an application for an inquiry by the Industrial Court into the matter.

(2) An application under this section must:

- (a) be in writing in a form approved by the Industrial Registrar; and
- (b) be lodged with the Industrial Registrar before the completion of the election or within such time after the completion of the election as may be prescribed by the regulations; 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, true.

**Action by Industrial Registrar**

454. (1) On lodgment of an application for an inquiry under this Subdivision, the Industrial Registrar must:

- (a) if the Industrial 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 that may have affected or may affect the result of the election; and
  - (ii) that the circumstances of the matter justify an inquiry by the Industrial Court,grant the application and refer the matter to the Industrial Court; or
- (b) if the Industrial Registrar is not so satisfied, refuse the application and inform the applicant accordingly.

(2) The Industrial Registrar may exercise his or her powers under this section on the basis of the matters stated in the application but the Industrial Registrar may also take into account any relevant information coming to his or her knowledge

(3) Any act or decision of the Industrial Registrar under this section is not subject to appeal to the Industrial Court.

### **Hindering or obstruction of Industrial Registrar**

455. A person must not hinder or obstruct the Industrial Registrar, or a person acting on the Industrial Registrar's behalf, in the exercise of the Industrial Registrar's functions under section 454.

Maximum penalty: 50 penalty units.

### **Inquiry by Industrial Court**

456. On receipt of a reference from the Industrial Registrar under this Subdivision, the Industrial Court must as soon as practicable proceed to inquire into the alleged irregularity.

### **Interim orders**

457. (1) At any time after an inquiry in relation to an election has been instituted, the Industrial Court 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) if the Industrial Court 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 would be inappropriate having regard to the nature of the inquiry, an order that a member of the organisation 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 Industrial Court orders that a person may act, or continue to act, in an office, the person must, while the order remains in force, and despite anything contained in the rules of the organisation, be taken, for all purposes, to hold the office.

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(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 Industrial Court in relation to the election and of all matters ordered (otherwise than under this section) by the Industrial Court in those proceedings.

**Procedure at hearing**

458. (1) The Industrial Court is to allow to appear or be represented at an inquiry all persons who apply to the Industrial Court for leave to appear or be represented, being persons who appear to the Industrial Court to be justly entitled to be heard. The Industrial Court may order any other person to appear or be represented.

(2) The persons appearing or represented, or ordered to appear or be represented, at an inquiry are taken to be parties to the proceedings.

(3) For the purposes of this Subdivision:

- (a) the procedure of the Industrial Court is, subject to this Act and rules of the Industrial Court, within the discretion of the Industrial Court; and
- (b) the Industrial Court 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 Industrial Court**

459. (1) At an inquiry, the Industrial Court 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 Industrial Court thinks necessary.

(2) In the course of conducting an inquiry, the Industrial Court may make such orders (including an order for the recounting of votes) as the Industrial Court considers necessary.

(3) If the Industrial Court finds that an irregularity has occurred, the Industrial Court 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 Industrial 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, despite anything contained in the rules of the organisation, the taking of such safeguards as the Industrial Court 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 in relation to the election, and to exercise such powers as the Industrial Court directs;

- (e) an order (including an order modifying the operation of the rules of the organisation 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 Industrial Court 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 Industrial Court 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.

#### **Discontinuance of inquiries**

460. Without limiting the power of the Industrial Court to terminate a proceeding before it, the Industrial Court 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 matter.

#### **Validity of certain acts etc. where election declared void**

461. (1) If the Industrial Court declares void the election of a person who has, since the election, purported to act in the office to which the person purports 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 Industrial Court may declare an act referred to in paragraph (a) to have been void, and, if the Industrial Court does so, the act is taken not to have been valid.

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(2) If an election is held, or a step in relation to an election is taken, under an order of the Industrial Court, the election or step is not invalid merely because of a departure from the rules of the organisation concerned that was required by the order of the Industrial Court.

**Costs**

462. (1) The Industrial Court may make such order as to the costs (including expenses of witnesses) of proceedings before the Industrial Court in relation to an inquiry under this Subdivision as the Industrial Court considers just, and the Industrial Court may assess the amount of such costs.

(2) If, on any such inquiry, the Industrial Court finds that an irregularity has occurred, the Minister may, if the Minister 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 (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 Industrial Court does not find that any irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Minister may authorise the grant by the State to that person of financial assistance in relation to the whole or a part of the costs of the applicant as specified in subsection (2).

(4) If the Minister is satisfied that, having regard to the findings of the Industrial Court 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 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 Minister may authorise the grant by the State to that person of financial assistance in relation to the whole or a part of those costs.

(5) If the Industrial Court 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 organisation) incidental or supplementary to, or consequential on, any other order made under section 459, to be taken,

the Minister may, if the Minister is satisfied that the nature of the irregularity found by the Industrial Court to have occurred is such that it would be unreasonable for the organisation to be required to bear, or to bear in full, the expenses involved in compliance with the order of the Industrial Court, authorise payment by the State of the whole or a part of those expenses.

**Savings as to Industrial Court's powers**

463. Nothing in this Division limits or in any way affects the functions conferred or imposed on the Industrial Court by any other provision of this Act.

**Division 4—Membership of organisations****Entitlement to membership of organisations**

464. (1) Subject to any award or order made under this Act, an employee who is eligible to become a member of an 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 generally 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 any award or order made under this Act, an employer who is eligible to become a member of an 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 generally 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 despite anything in the rules of the organisation concerned, except to the extent that those subsections 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) is, for the purposes of this section, taken to be an employee; and
- (b) despite 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.

**Application to Industrial Court as to entitlement to membership**

465. (1) If a question arises as to:

- (a) a person's entitlement under this Division to be admitted as a member of

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an organisation (whether for the first time or after having resigned, or been removed, as a member of the Organisation) 'or 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, if 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 Industrial Court for a declaration as to the entitlement of the person under this section.

(2) On the hearing of the application, the Industrial Court may, despite anything in the des of the organisation concerned, make such orders to give **effect** to its declaration as it considers appropriate.

(3) The orders that the Industrial Court may make include:

- (a) an order requiring the organisation concerned to treat a person to whom section 464 (1) or (3) applies as being a member of the organisation; and
  - (b) in the case of a question as to a person's entitlement under this Division to be admitted as a member of an organisation, if the person has previously been removed (whether before or after the commencement of this Division) 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 Industrial Court declares to be reasonable in the circumstances.
- (4) On the making of an order as mentioned in subsection (3) (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.

(5) If:

- (a) an order is made as mentioned in subsection (3) (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 taken to have been a member of the organisation during the period specified in the order.

(6) On the making of an order mentioned in subsection (3) (c), the rules affected are taken to have been altered or annulled in accordance with the order.

(7) On the making of an application to the Industrial Court 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 Industrial Court; 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 Industrial Court.

**Rationalising union coverage: voting for change**

466. (1) An application may be made to the Commission:

- (a) by one or more industrial organisations representing persons employed in an 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 one industrial organisation of employees.

(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 organisation of employees representing persons employed in the enterprise; and
- (b) the persons employed in the enterprise whether members of an organisation of employees or not; and
- (c) the enterprise employer.

(3) In determining whether to grant such permission, the Commission may take submissions from any person given a notice under subsection (2) and may seek advice on any relevant matter from any State peak council.

(4) 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) If permission for the holding of a ballot is granted by the Commission, either:

- (a) one or more industrial organisations representing the persons employed in the 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 organisation of employees.

(6) Any such ballot is to be conducted by a person who:

- (a) is appointed by the Commission for the purpose; and
- (b) meets any requirement that may be imposed for the purposes of this section by the regulations.

(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.

(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% of the number of persons employed in the enterprise; or
- (c) if there are more than 5,000 persons so employed—250.

**Rationalising union coverage: effect of vote in favour**

467. (1) If at least 65% of the persons employed in the enterprise vote in favour of being represented by a single industrial organisation of employees, that industrial organisation of employees is required:

- (a) to notify the Industrial Registrar and the other industrial organisation or organisations of employees concerned in writing of the result of the ballot; and
- (b) to supply the Industrial Registrar with such information concerning the ballot and related matters as the Industrial Registrar may request.

(2) The Industrial Registrar must record particulars of any such vote in favour of being represented by a single industrial organisation of employees notified to the Industrial Registrar, unless the Industrial Registrar is satisfied that there was an irregularity concerning the ballot.

(3) Such particulars are not to be recorded earlier than 14 days after the Industrial Registrar is notified of the result of the ballot.

(4) Unless satisfied that no alteration of the rules of any industrial organisation of employees concerned is necessary, the Industrial Registrar is then required, after giving each such industrial organisation of employees an opportunity to be heard, to specify such alterations (if any) of the rules of any such industrial organisation of employees as are, in the Industrial Registrar's opinion, necessary to give effect to the vote.

(5) An alteration of the rules of an industrial organisation of employees specified under this section takes effect on the day on which the Industrial Registrar records particulars of the vote or at a later time specified by the Industrial Registrar.

(6) The Industrial Registrar may do such other things as are necessary to give effect to the vote, including the alteration of the copy of the rules of any industrial organisation of employees held by the Industrial Registrar.

(7) The copy of the rules of an industrial organisation altered under this section by the Industrial Registrar is, to the extent of the alteration, taken to be the copy of the official rules of the organisation.

**Complaints about irregularities before ballot**

468. At any time before particulars of a vote taken at the ballot are recorded under section 467 by the Industrial Registrar, an industrial organisation of employees whose membership may be affected by a ballot proposed to be or that has been conducted under this Division may lodge a written complaint with the Industrial Registrar, particularising alleged irregularities in the procedure followed before the ballot is proposed to be or was conducted.

**Complaints about irregularities during ballot**

469. (1) If, at any time before particulars of a vote taken at a ballot are recorded under this Division, the Industrial 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 Industrial Registrar (if of the opinion that such action is justified) is to refrain from recording the particulars and may arrange with the employees concerned:

- (a) for the conduct of a further secret ballot, as requested in the complaint; and
- (b) for evidence of the result of the further ballot to be supplied to the Industrial Registrar.

(2) The result of any such further ballot is to be disregarded if the Industrial Registrar is not satisfied that it has been conducted in accordance with the Industrial Registrar's directions.

**Industrial Registrar may require further information**

470. For the purpose of:

- (a) investigating a written complaint authorised by this Division; or
- (b) ensuring the proper conduct of a secret ballot arranged by the Industrial Registrar under this Division,

the Industrial Registrar may require any person concerned to produce records relating to membership of a relevant industrial organisation of employees or to supply other relevant information to the Industrial Registrar.

**Disregarding result of ballot**

471. If the Industrial Registrar is satisfied the complaint is justified or that the secret ballot will not be or has not been properly conducted, the Industrial 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**

472. (1) The Industrial Registrar is required to disregard the results of a ballot conducted under a provision of this Division 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 Industrial Registrar.

**Rectification of register of members**

473. The Industrial Court may at any time, in a proceeding under this Act, order such rectifications of the register of members of an organisation as it considers necessary.

**Failure to amend rules or admit members**

474. An organisation that:

- (a) fails to amend its rules in accordance with an order made by the Industrial Court; or
- (b) fails to admit to membership a person whom the Industrial Court declares is entitled to such admission,

is guilty of an offence.

Maximum penalty: 50 penalty units.

**Request by member for statement of membership**

475. (1) An 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; and
- (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**

476. (1) A member of an organisation may resign from membership by written notice addressed and delivered to a person designated for the purpose in the rules of the organisation.

(2) A notice of resignation from membership of an 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, that 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 an organisation in relation to a period, not exceeding 6 months, 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 designated person mentioned in subsection (1) is taken to have been received by the organisation when it was delivered.

(5) A notice of resignation that has been received by the organisation is not invalid because it was not addressed and delivered in accordance with subsection (1).

(6) A resignation from membership of an 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**

477. (1) If a person has ceased to be eligible to become a member of an organisation and the person has not actively participated in the affairs of the organisation since that time, those circumstances are a defence to an action by the organisation for arrears of subscriptions or other sums in the nature of fines, levies, penalties or calls payable from the time when the person ceased to be so eligible.

(2) Such a person is taken to have ceased to be a member from the time when the person ceased to be so eligible.

(3) In any event, a person is not to be liable for arrears in relation to a time later than 6 months after the person ceased to be eligible to be a member of an organisation.

#### **Liability of member for arrears**

478. (1) An organisation is not entitled to sue for and recover arrears of subscriptions or other sums in the nature of fines, levies, penalties or Fails that are due and payable by a member in respect of so much of a period as exceeds 6 months 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 of the arrears becoming due.

**Membership of minors**

479. (1) A person under the age of 18 years but above the age of 16 years may be a member of an organisation unless the rules of the organisation prohibit such membership.

(2) A minor admitted to membership of an organisation in accordance with this section 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 an organisation in accordance with this section:

- (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.

**Division 5—Voluntary unionism****No preference for unionists in awards or agreements**

480. (1) An award or agreement cannot confer a right of preference of employment in favour of a member of an organisation of employees over a person who is not a member of an organisation of employees.

(2) This section applies to awards or agreements made before or after the commencement of this section and so applies despite any provision made before the commencement of this section in an award or agreement.

(3) Nothing in this Act 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.

**Victimisation: offence**

481. (1) An employer, or an organisation, must not victimise a person because:

- (a) the person does not belong to an organisation of employees; or
- (b) the person has refused to engage in industrial action; or
- (c) the person is a member of an organisation of employees or is an officer or delegate of an organisation of employees or is otherwise an elected representative of employees; or
- (d) the person is a member of a Conciliation Committee; or
- (e) the person claims a benefit of an award or agreement to which the person is entitled or
- (f) the person has informed any person that a breach or a suspected breach of an award or agreement has been committed by the employer; or
- (g) the person has appeared as a witness, or has given evidence in proceedings, relating to an industrial matter; or

- (h) the person 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
- (i) the person, after applying for (and being unreasonably refused) leave without pay for the purpose, is absent from work through being engaged in duties as a member of an organisation of employees 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.

Maximum penalty: 100 penalty units.

**(2)** An employer victimises a person if the employer:

- (a)** dismisses or threatens to dismiss the person from employment with the employer; or
- (b)** alters or threatens to alter the position of the person in his or her employment with the employer to the person's prejudice; or
- (c)** otherwise injures or 'threatens to injure the person in his or her employment with the employer; or
- (d)** refuses to employ the person.

**(3)** An organisation victimises a person if the organisation:

- (a)** advises, encourages or incites an employer to victimise the person; or
- (b)** takes, or threatens to take, industrial action or any other action against an employer with intent to coerce the employer to victimise the person; or
- (c)** takes, or threatens to take, action having the effect, directly or indirectly, of injuring the person in his or her employment.

**(4)** For the purposes of this section, anything done:

- (a)** by the committee of management of an organisation; or
- (b)** by an officer, employee or agent of an organisation acting in that capacity; or
- (c)** by a member or a group of members of an organisation acting under the rules of the organisation; or
- (d)** by a member of an organisation, who performs the function of dealing with an employer on behalf of the member and other members of the organisation of employees, acting in that capacity,

is taken to have been done by the organisation concerned.

**(5)** In any proceedings for an offence under this section or for an order under section 482 in which it is necessary to prove that this section has been contravened:

- (a)** if all matters necessary to prove the contravention alleged (other than the reason for the defendant's action) are proved, the defendant has the onus of proving that the defendant was not motivated by the reason alleged; and
- (b)** if the contravention alleged involves a person's having been unreasonably refused leave without pay, the defendant has the onus of proving that the leave was not unreasonably refused.

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(6) Proceedings for an offence under this section must be taken before the Industrial Court and may be taken only:

- (a) by the secretary of the organisation concerned in the industry in which the person alleged to have been victimised was employed; or
- (b) if the person is alleged to have been victimised because the person was an elected representative of employees, by the elected representative, or, in any case, by a person authorised by the Minister.

(7) If the Industrial Court convicts a person of an offence under this section, the Industrial Court may also make any order that it could have made if the person who was victimised had applied for an order under section 482.

**Victimisation: reinstatement, damages etc.**

482. (1) For the purposes of this section, a person is victimised if the person is the subject of a contravention of section 481 by an employer or an organisation, whether or not proceedings have been brought for an offence under that section in respect of the contravention.

(2) A person who alleges that he or she has been victimised may apply to the Industrial Court for an order under this section.

(3) If the Industrial Court decides, on the balance of probabilities, that a person who makes such an application has been victimised, the Industrial Court may make an order for such one or more of the following as the Industrial Court considers appropriate with respect to the kind of victimisation concerned:

- (a) for reinstatement of the person in the employment of the employer concerned in the position that the person held immediately before dismissal or demotion by the employer or in a position no less favourable than that position;
- (b) for the employer concerned not to carry out a threat of dismissal or to cease making such a threat, or both;
- (c) for the employer concerned to promote the person or otherwise advance the person in his or her employment with the employer;
- (d) for the employer concerned not to carry out a threat to demote or otherwise injure the person in his or her employment or to cease making such a threat, or both,
- (e) for the employer to employ the person;
- (f) for payment, by the employer or organisation concerned, of the whole or any part of wages lost by the person;
- (g) for payment, by the employer or organisation concerned, of other damages in such sum as appears to the Industrial Court to be appropriate to compensate the person for other loss suffered by the person.

(4) If an employee is reinstated pursuant to an order made under this section, the period of employment with the employer concerned is taken not to have been broken by the dismissal or demotion.

(5) The Industrial Court may make such order for the payment of costs, in any proceedings under this section, as may appear to it to be just and may assess the amount of the costs.

### **Division 6—Conduct etc. of officers**

#### **Subdivision 1—Duties of officers**

##### **Duty to act honestly**

483. (1) An officer of an 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.

(2) An officer of an organisation must not, with intent to deceive or defraud the organisation or the members of the organisation or for any other fraudulent purpose, act dishonestly in the exercise of any of the powers or the discharge of any of the duties of his or her office.

Maximum penalty: 200 penalty units.

##### **Duty to act with reasonable care and diligence**

484. An officer of an 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**

485. An officer or former officer of an 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, loss or damage to the organisation.

Maximum penalty: 200 penalty units.

##### **Use of position for profit**

486. An officer of an 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.

##### **Compensation to organisation**

487. (1) If the Industrial Court convicts a person of an offence under this Subdivision, the Industrial Court may, if satisfied that an 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 in the amount that the Industrial Court specifies.

(2) In determining the amount of compensation to award under this Subdivision, the Industrial Court must have regard to any amount that has been paid to the organisation or that the organisation is entitled to be paid by way of damages awarded in civil proceedings.

### **Recovery of compensation**

**488.** If an officer of an 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 the Industrial 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**

**489.** (1) An officer of an 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 if 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 taken not 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 a 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 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 declare in accordance with subsection (7) the fact and the nature, character and extent of the conflict.

Maximum penalty: 50 penalty units.

(6) 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 not, with intent to deceive or defraud the organisation or the members of the organisation or for any other fraudulent purpose, fail to declare in accordance with subsection (7) the fact and the nature, character and extent of the conflict.

Maximum penalty: 200 penalty units.

(7) A declaration required by subsection (5) or (6) 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) or (6) 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) or (6) 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.

(8) The secretary of an organisation must record every declaration under this section in the minutes of the meeting at which it was made.

(9) 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**

490. (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 an 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, “**officer**”, in relation to an 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 2—Disqualification from office****Interpretation**

491. (1) In this Subdivision, “**prescribed offence**” means:

- (a) an offence under a law of the Commonwealth, a State or Territory, or of another country, involving fraud or dishonesty and punishable on conviction by penal servitude or imprisonment for a period of 3 months or more; or
- (b) an offence against section 444, 448, 455, 540, 613 or 614 or any of the provisions of Subdivision 1 of Division 6 or Division 7; or
- (c) any other offence in relation to the formation, registration or management of an association or an organisation registered under this Chapter; or
- (d) any other offence under a law of the Commonwealth, a State or Territory, or of 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 Industrial 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 Industrial 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**

**492.** (1) A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an **office** in an organisation unless:

- (a) on an application made under section 493 or 494 (in this section called “**the specified sections**”) in relation to the conviction of the person for the prescribed offence:
  - (i) the person was granted leave to hold office in organisations; or
  - (ii) the person was refused leave to hold office in organisations but, under section 493 (2) (b) or 494 (2) (b), the Industrial Court 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 an 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 Industrial Court under either of the specified sections.

(3) Where a person who holds an office in an organisation makes an application to the Industrial Court under either of the specified sections 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 Industrial Court, 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 Industrial Court 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 Industrial Court 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) An organisation, a member of an organisation or the Industrial Registrar may apply to the Industrial Court for a declaration that, because of the operation of this section or either of the specified sections:

- (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 either of the specified sections in relation to a conviction of the person for a prescribed offence, of leave to hold offices in organisations does not affect the operation of this section or either of the specified sections in relation to another conviction of the person for a prescribed offence.

#### **Application for leave to hold office in organisations by prospective candidate for office**

**493.** (1) A person who:

- (a) wants to be a candidate for election to an office in an organisation; and
- (b) has been, within the immediately preceding period of 5 years convicted of a prescribed offence or released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence,

may, subject to subsection (4), apply to the Industrial Court for leave to hold office in organisations.

(2) If a person makes an application under this section, the Industrial Court may:

- (a) grant the person leave to hold office in organisations; or
- (b) refuse the person leave to hold office in organisations and specify, for the purposes of section 492 (1), a period of less than 5 years; or
- (c) refuse a person leave to hold office in organisations.

(3) A person who:

- (a) holds an office in an organisation; and
- (b) is convicted of a prescribed offence; and
- (c) on an application made under this section in relation to the conviction for the prescribed offence, is, under subsection (2) (b) or (c), refused leave to hold office in 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 494 in relation to the conviction.

#### **Application for leave to hold office in organisations by office holder**

**494.** (1) If a person who holds an office in an organisation is convicted of a prescribed offence, the person may, within 28 days after the conviction, apply to the Industrial Court for leave to hold office in organisations.

(2) If a person makes an application under this section, the Industrial Court may:

- (a) grant the person leave to hold office in organisations; or
- (b) refuse the person leave to hold office in organisations and specify, for the purposes of section 492 (1), a period of less than 5 years; or
- (c) refuse the person leave to hold office in organisations.

(3) A person who, on an application made under this section, is, under subsection (2), refused leave to hold office in 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 493 in relation to the conviction.

#### **Industrial Court to have regard to certain matters**

**495.** For the purposes of exercising the power under this Subdivision to grant or refuse leave to a person who has been convicted of a prescribed offence to hold office in organisations, the Industrial Court 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 organisations, having regard to the conviction for the prescribed offence; and
- (e) any other matter that, in the opinion of the Industrial Court, is relevant.

#### **Action by Industrial Court**

**496.** (1) The Industrial Court may, despite anything in the rules of any organisation concerned, make such order to give effect to a declaration referred to in section 492 (5) as it considers appropriate.

(2) Where an application is made to the Industrial Court under section 492 (5):

- (a) the person whose eligibility, or whose holding of office, is in question must be given an opportunity to be heard by the Industrial Court; 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 Industrial Court.
- (3) If an application is made to the Industrial Court under section 493 or 494, the organisation concerned must be given an opportunity to be heard by the Industrial Court.

### **Division 7—Oppressive conduct by organisations**

#### **Application to Industrial Court**

**497.** An application to the Industrial Court for an order under this Division in relation to an organisation may be made by the Industrial 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 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 Industrial Court**

**498.** (1) If the Industrial Court is of the opinion that:

- (a) the affairs of an 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, 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 Industrial Court may make such orders as the Industrial court considers appropriate

(2) The orders that the Industrial Court may make 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 11;

- (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 the 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 Industrial Court order**

**499.** An organisation or other person who contravenes an order of the Industrial Court under this Division is guilty of an offence.

Maximum penalty: 200 penalty units.

**Alterations of rules to be recorded**

**500.** Any alteration of the rules of an organisation that results from an order of the Industrial Court under this Division must be recorded by the Industrial Registrar in accordance with Division 2.

**Division 8—Records, accounts and audit****Subdivision 1—Records to be kept and lodged by organisations****Records to be kept and lodged by organisations**

**501.** (1) An organisation must keep 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;
- (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.

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- (2) An 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) An organisation must lodge with the Industrial Registrar once in each year, at such time as is prescribed by the regulations:
- (a) a statutory declaration by the secretary 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 of the organisation to be a correct statement of the information contained in those records.
- (4) An organisation must, within the period prescribed by the regulations, lodge with the Industrial 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 of the organisation to be a correct statement of the changes made.
- (5) The records kept by an organisation under this section must be kept at the registered office of the organisation.
- (6) A member of an organisation may inspect and make copies of, or take extracts from, the register of members of the organisation, or a part of the register but only after the member produces a certificate issued by the Industrial Registrar that the member has satisfied the Industrial Registrar that he or she is a candidate for election to an office in the organisation and is seeking information for that purpose.
- (7) An 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 who produces a certificate issued by the Industrial Registrar under that subsection.
- (8) If:
- (a) a member of an organisation to whom a certificate has been issued by the Industrial Registrar under subsection (6) requests the Industrial Registrar to give a direction under this subsection; and
  - (b) the Industrial 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 Industrial Registrar may direct the organisation to deliver to the Industrial Registrar, before a specified day, a copy of the register certified by statutory declaration by the secretary 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 the office of the Industrial Registrar

(9) The regulations may make provision for an officer of an organisation other than the secretary to certify documents by statutory declaration under this section.

(10) 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 (subsection (10)): 50 penalty units.

#### **Concealment, falsification etc. of books**

**502.** (1) An officer, former officer, member or former member of an organisation who conceals, destroys, mutilates or falsifies any securities of or belonging to the organisation or any books affecting or relating to the affairs of the organisation is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) It is a defence to a charge arising under this section 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**

**503.** If matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of an 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.

**Directions by Industrial Registrar concerning maintenance of register of members**

**504.** (1) The Industrial Registrar may give directions to an organisation in relation to the maintenance of the register of its members if the Industrial 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 Industrial Registrar may direct an 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 Industrial 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) An organisation that fails to comply with a direction given by the Industrial Registrar under this section is guilty of an offence.

Maximum penalty (subsection (3)): 50 penalty units.

**Organisations to notify particulars of loans, grants and donations**

**505.** (1) An organisation must, as soon as practicable after the end of each financial year, lodge with the Industrial Registrar a statement showing the relevant particulars in relation to each loan, grant or donation (other than a donation or other payment for political objects) of a relevant amount, and of all donations or other payments for political objects made by the organisation during the financial year.

(2) The statement must be signed by an officer of the organisation.

(3) The Statement may be inspected at the registry, during office hours, by a member of the organisation concerned.

**(4)** The relevant particulars, in relation to a loan made by an 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 an 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) A relevant amount, in relation to a loan, grant or donation, other than a donation or other payment for political objects, 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 (subsection (7)): 50 penalty units.

### **Organisations to keep register of loans, grants and donations**

**506.** (1) An organisation must, in accordance with this Division:

- (a) keep and maintain at its registered office:
  - (i) a register of loans, grants and donations; and
  - (ii) a register of donations and other payments made for political objects,  
made by the organisation; and
- (b) ensure that contributions by members to the fund maintained for the purpose of making donations or other payments for political objects are voluntary; and
- (c) ensure:
  - (i) that the making of each donation or other payment for political objects is in accordance with the rules of the organisation; and
  - (ii) that the committee of management of the organisation has approved the making of the donation or other payment for political objects.

Maximum penalty: 50 penalty units.

(2) The relevant particulars in relation to each loan, grant or donation must be entered in the register within 14 days of the making of the loan, grant or donation.

(3) The register maintained by an organisation under this section may be inspected at the registered office of the organisation, during office hours, by a member of the organisation concerned.

(4) The provisions of section 505 (4) and (5) apply to this section.

### **Subdivision 2—Accounts and audit**

#### **Interpretation**

**507.** (1) If the rules of an 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, 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 Chapter, with respect to any financial year before the first financial year of the organisation that begins after the date of registration.

### **Organisations to keep proper accounting records**

**508.** (1) An organisation must keep:

- (a) accounting records that 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 that will enable accounts and statements to be prepared from them under section 510; and
- (c) its accounting records in a manner that will enable the accounts of the organisation to be conveniently and properly audited under this Subdivision.

(2) Accounting records of an organisation, so far as they relate to the income and expenditure of the organisation, are to be kept on an accrual basis or a cash basis or partly on an accrual basis and partly on a cash basis.

(3) An organisation must retain the accounting records kept under subsection (1) for at least 7 years after the completion of the transactions to which they relate.

(4) An organisation must not fail to comply with this section.

Maximum penalty (subsection (4)): 100 penalty units.

### **Financial year**

**509.** The financial year of an 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 Industrial Registrar may direct in respect of the organisation.

### **Organisations to prepare accounts etc.**

**510.** (1) As soon as practicable after the end of each financial year, an organisation:

- (a) must cause to be prepared, from the accounting records kept by the organisation under section 508 (1) in relation to the financial year, those accounts and other statements, in relation to the financial year, that are prescribed by the regulations; 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

(2) The regulations may provide for the giving of certificates in, or in relation to, accounts and other statements prepared under this section.

#### **False entries etc. in accounts etc.**

**511.** A person who wilfully makes or causes to be made any false entry in or any omission from accounting records kept under section 508 or accounts and other statements prepared under section 510 is guilty of an offence.

Maximum penalty: 100 penalty units

#### **Information to be provided to members or Industrial Registrar**

**512.** (1) A member of an organisation, or the Industrial Registrar, may apply to the organisation for specified information prescribed by the regulations in relation to the organisation.

(2) An organisation must, on the making of such an application, make the specified information available to the member or the Industrial Registrar in the manner, and within the time, prescribed by the regulations.

(3) Accounts prepared under section 510 must include a notice which refers to subsections (1) and (2) and which sets out the terms of those subsections.

(4) An organisation must not fail to comply with this section.

Maximum penalty (subsection (4)): 50 penalty units.

#### **Auditors of organisations**

**513.** (1) An 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 an 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 an organisation unless at least one member of the firm is a registered company auditor.

(5) A person who holds the position of auditor of an 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 an 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 an 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) An organisation must comply with this section.  
Maximum penalty (subsection (8)): 100 penalty units.

### **Powers and duties of auditors**

**514.** (1) An auditor of an organisation must inspect and audit the accounting records kept by the organisation in relation to each financial year and must, within the period prescribed by the regulations after the end of the year, make a report in relation to that 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 reasonably wants for the purposes of the audit.

(3) The auditor of an organisation 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 satisfactory accounting records were kept by the organisation in relation to the year, including:
  - (i) records of the sources and nature of the income of the organisation (including income from members); and
  - (ii) records of the nature and purposes of the expenditure of the organisation; and
- (b) whether in the auditor's opinion the accounts and other statements prepared under section 510 in relation to the year were properly drawn up so as to give a true and fair view of:
  - (i) the financial affairs of the organisation as at the end of the year, and
  - (ii) the income and expenditure, and any surplus or deficit, of the organisation for the year, and
- (c) 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), (b) ~~or~~ (c).

(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 Industrial Registrar.

Maximum penalty: 50 penalty units.

(6) An officer, employee or member of an organisation must not:

- (a) hinder or obstruct the auditor of the organisation when the auditor is 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).

### **Fees and expenses of auditors**

**515.** An organisation must pay the reasonable fees and expenses of an auditor of the organisation.

### **Removal of auditor from office**

**516.** An auditor of an organisation may be removed during the term of appointment of the auditor

- (a) if the auditor was appointed by the committee of management of the organisation—only 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—only 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**

**517.** (1) An 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

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(b) a copy of the accounts and other statements prepared under section 510 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 Industrial Registrar; and
- (b) the auditor certifies that the summary is, in the auditor's opinion, a fair and accurate summary of the report, accounts and statements; and
- (c) the summary contains a statement to the effect that the 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 514 (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 period prescribed by the regulations after the making by the organisation of the report concerned.

(4) An 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 other statements referred to in that subsection; or
- (b) by preparing a summary as described in subsection (2), complying with the requirements of that subsection 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), an organisation must cause the report, accounts and other statements referred to in subsection (1) to be presented:

- (a) within the period prescribed by the regulations (in this section called **“the specified 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 specified period—to the first meeting of the committee of management held after the specified period.

(6) If:

- (a) thereport sets out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 514 (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 specified period,

the organisation must, within the specified period, cause the report, accounts and other 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 an 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 other 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 (subsection (9)): 50 penalty units.

### **Reports etc. to be lodged with Industrial Registrar**

**518.** (1) An organisation must, within the period prescribed by the regulations after the meeting referred to in section 517 (5) or (6) (whichever is applicable) lodge with the Industrial Registrar

- (a) copies of the report, accounts and other statements presented to the meeting; and
- (b) a certificate by the secretary, or other officer prescribed by the regulations, of the organisation that the documents lodged are copies of the documents presented to the meeting.

(2) Subject to subsection (g), the Industrial Registrar must

- (a) if the documents lodged with the Industrial Registrar under subsection (1) include a report of an auditor setting out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 514 (4)—investigate the deficiency, failure or shortcoming; and
- (b) if, for any other reason, the Industrial Registrar considers that a matter revealed in the documents should be investigated—investigate the matter.

(3) If, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (2), the Industrial Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the organisation concerned, the Industrial Registrar may make the further investigation.

(4) At least the relevant number of members of the organisation concerned may request the Industrial Registrar to investigate the finances and the financial administration of the organisation where documents have been lodged with the Industrial Registrar under subsection (1).

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(5) On receipt of a request under subsection (4), the Industrial Registrar must investigate the finances and the financial administration of the organisation concerned.

(6) For the purpose of making any investigation under this section, the Industrial Registrar may, by written notice, require an officer or employee of the organisation concerned:

- (a) to provide the Industrial Registrar with specified information relevant to the investigation; or
- (b) to attend before the Industrial Registrar, so that the Industrial Registrar may put to the officer or employee questions relating to matters relevant to the investigation and to produce to the Industrial Registrar all records and other documents in the custody, or under the control, of the officer or employee relating to the matters.

(7) If, at the conclusion of an investigation under this section, the Industrial 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 Industrial Registrar must now 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.

(8) 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 Industrial Registrar, the Industrial Registrar must refer the matter to the Industrial Court which may suspend and, if appropriate, subsequently cancel or, if appropriate, may cancel the registration of the organisation under Division 11.

(9) The Industrial Registrar is not required by this section to investigate any deficiency, failure or shortcoming if, after consultation with the organisation concerned and the auditor, the Industrial Registrar is satisfied that the deficiency, failure or shortcoming is trivial or will be remedied in the following financial year.

(10) An organisation must not fail to comply with this section.

Maximum penalty (subsection (10)): 100 penalty units.

(11) 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% of the number of members of the organisation.

### **Offences relating to investigation by Industrial Registrar**

**519.** (1) A person must not:

- (a) refuse or fail, without reasonable excuse:



- (i) to attend before the Industrial Registrar in accordance with a requirement under section 518; or
- (ii) to provide information, or produce a document, that the person is required to provide or produce under section 518; or
- (b) in purported compliance with a requirement under section 518, 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 Industrial Registrar in accordance with a requirement under section 518, make a statement, whether orally or in writing, that is to the person's knowledge false or misleading in a material particular.

Maximum penalty: 100 penalty units.

(2) Any information furnished or statement made pursuant to a requirement made under section 518 is not, if the person furnishing the information or making the statement objected, at the time of furnishing it, to doing so on the ground that it may tend to incriminate the person, be admissible in evidence in any prosecution against that person for any offence, not being an offence under this section.

#### **Waiver of requirement to lodge reports etc.**

**520.** (1) An organisation may apply to the Industrial Registrar for exemption from the requirement under section 518 that the organisation must lodge specific documents with the Industrial Registrar if the organisation has lodged documents that comply with the requirements of section 280 of the Industrial Relations Act 1988 of the Commonwealth and that 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 Industrial Registrar under section 518, the Industrial 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 Industrial Registrar for the financial year specified in the certificate and, on issue of the certificate, section 518 applies to the organisation as modified by the certificate.

#### **Failure to lodge reports etc. with Industrial Registrar**

**521.** (1) The Industrial Registrar must inform the Industrial Court if an organisation fails to comply with section 517 or 518.

(2) The Industrial Court may suspend the registration of an organisation that fails to comply with this Subdivision.

#### **Organisations to forward notices etc. to auditor**

**522.** An 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.

Maximum penalty: 50 penalty units.

### **Auditor entitled to attend meetings at which report presented**

**523.** (1) An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of an organisation, or the committee of management of the organisation, at which:

- (a) the report of the auditor, or any accounts or other 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.

**Liability of auditors and other persons in certain circumstances**

**524.** (1) An auditor of an organisation is not, in the absence of malice, liable to an action 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 is not, in the absence of malice, liable to an action 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 Industrial Registrar.

(3) This section does not limit or affect any right, privilege or immunity that a defendant has in an action for defamation.

**Division 9—Amalgamation of organisations****Subdivision 1—General****Interpretation**

**525.** In this Division:

“**alternative provision**” means a provision of the kind mentioned in subsection 530 (1);

“**amalgamated organisation**”, in relation to a completed amalgamation, means the organisation of which members of the de-registered organisations have become members under section 559 (3) (d);

“**amalgamation day**”, in relation to a completed amalgamation, means the day fixed under section 559 (2) in relation to the amalgamation;

“**asset**” means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

“**authorised person**”, in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation;

“**charge**” means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise);

“**closing day**”, in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 546 as the closing day of the ballot;

**“commencing day”**, in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 546, as the commencing day of the ballot;

**“completed amalgamation”** means a proposed amalgamation that has taken effect;

**“defect”** includes a nullity, omission, error or irregularity;

**“de-registered organisation”**, in relation to a completed amalgamation, means an organisation that has been de-registered under this Division

**“de-registration”**, in relation to an organisation, means the cancellation of its registration;

**“instrument”** means an instrument of any kind, and includes:

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security,

whether express or implied and whether made or given orally or in writing;

**“instrument to which this Division applies”**, in relation to a completed amalgamation, means an instrument:

- (a) to which a de-registered organisation is a party; or
- (b) that was given to, by or in favour of a de-registered organisation; or
- (c) in which a reference is made to a de-registered organisation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a de-registered organisation;

**“invalidity”** includes a defect

**“irregularity”** includes a breach of the rules of an organisation, but in Subdivision 7 does not include an irregularity in relation to a ballot;

**“liability”** means a liability of any kind, and includes an obligation of any kind (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

**“proceeding to which this Division applies”**, in relation to a completed amalgamation, means a proceeding to which a de-registered organisation was a party immediately before the amalgamation day;

**“proposed alternative amalgamation”**, in relation to a **proposed** amalgamation, means an amalgamation proposed to be made under an alternative provision;

**“proposed amalgamated organisation”**, in relation to a proposed amalgamation, means the organisation of proposed organisation of which members of the proposed de-registering organisations are proposed ‘to become members under this Division;

**“proposed amalgamation”** means the proposed carrying out of arrangements in relation to 2 or more organisations under which:

- (a) an organisation is, or 2 or more organisations are, to be de-registered under this Division; and
- (b) members of the organisation or organisations to be de-registered are to become members of another organisation (whether existing or proposed);

**“proposed de-registering organisation”**, in relation to a proposed amalgamation, means an organisation that is to be de-registered under this Division;

**“proposed principal amalgamation”**, in relation to a proposed amalgamation, means:

- (a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or
- (b) in any other case—the proposed amalgamation.

#### **Procedure to be followed for proposed amalgamation etc,**

**526.** (1) For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Division is to be followed.

(2) If it appears to the Industrial Registrar that the performance of an act, including:

- (a) the de-registration of an organisation; and
- (b) the registration of an organisation; and
- (c) the giving of consent to:
  - (i) a change in the name of an organisation; or
  - (ii) an alteration of the eligibility rules of an organisation,

is sought for the purposes of a proposed amalgamation, the Industrial Registrar may perform the act only in accordance with this Division.

(3) If any difficulty arises, or appears likely to arise, in the application of this Act for the purpose of implementing the scheme for a proposed amalgamation, the Industrial Registrar may give directions and make orders to resolve the difficulty.

(4) Directions and orders under subsection (3):

- (a) have effect subject to any order of the Industrial Court; and

- (b) have effect despite anything in:
  - (i) the regulations or the rules of the Commission; or
  - (ii) the rules of an organisation or any association proposed to be registered as an organisation.

### **Subdivision 2—Preliminary matters**

#### **Federations**

**527.** (1) The existing organisations concerned in a proposed amalgamation may jointly lodge with the Industrial Registrar an application for recognition as a federation.

- (a) be lodged before an application is lodged under section 533 in relation to the amalgamation; and
- (b) include such particulars as are prescribed by the regulations.

(3) If the Industrial Registrar is satisfied that the organisations intend to lodge an application under section 533 in relation to the amalgamation within the period prescribed by the regulations, the Industrial Registrar must grant the application for recognition as a federation.

(4) If the application is granted, the Industrial Registrar must enter in the register kept for the purpose such details in relation to the federation as are prescribed by the regulations.

(5) On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Act.

(6) Subsection (5) does not authorise the federation to become a party to an award.

(7) After the federation is recognised, it may vary its composition by:

- (a) including, with the approval of the Industrial Registrar, another organisation within the federation if the other organisation intends to become concerned in the amalgamation; or
- (b) releasing, with the approval of the Industrial Registrar, an organisation from the federation.

(8) The federation ceases to exist:

- (a) on the day on which the amalgamation takes effect; or
- (b) if an application under section 533 is not lodged in relation to the amalgamation within the prescribed period—on the day after the end of the period; or
- (c) if it appears to the Full Commission, on an application by a person prescribed by the regulations, that the industrial conduct of the federation, or an organisation belonging to the federation, is preventing or hindering the attainment of an object of this Act—on the day the Full Commission so determines.

(9) Nothing in this section limits the right of an organisation belonging to a federation to represent itself or its members.

### **Use of resources to support proposed amalgamation**

**528.** (1) An existing organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if:

- (a) the committee of management of the organisation has resolved that the organisation should so use its resources; and
- (b) the committee of management has given reasonable notice of its resolution to the members of the organisation.

(2) This section does not limit by implication any power that the existing organisation has, apart from this section, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

### **Subdivision 3—Commencement of amalgamation procedure**

#### **Scheme for amalgamation**

**529.** (1) There is to be a scheme for every proposed amalgamation.

(2) The scheme must contain the following:

- (a) a general statement of the nature of the amalgamation, identifying the existing organisations concerned and indicating:
  - (i) if one of the existing organisations is the proposed amalgamated organisation—that fact; and
  - (ii) if an association proposed to be registered as an organisation is the proposed amalgamated organisation—that fact and the name of the association; and
  - (iii) the proposed de-registering organisations;
- (b) if it is proposed to change the name of an existing organisation—particulars of the proposed change;
- (c) if it is proposed to alter the eligibility rules of an existing organisation—particulars of the proposed alterations;
- (d) if it is proposed to alter any other rules of an existing organisation—particulars of the proposed alterations;
- (e) if an association is proposed to be registered as an organisation—the eligibility and other rules of the association;
- (f) such other matters as are prescribed by the regulations.

(3) Subsection (2) does not limit by implication the matters that the scheme may contain.

**Alternative scheme for amalgamation**

**530.** (1) Where 3 or more existing organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if:

- (a) the members of one or more of the organisations do not approve the amalgamation; and
- (b) the members of 2 or more of the organisations (in this subsection called the “**approving organisations**”) approve, in the alternative, the amalgamation so far as it involves:
  - (i) the other of the approving organisations; or
  - (ii) 2 or more of the other approving organisations; and
- (c) where one of the existing organisations is the proposed amalgamated organisation—~~that~~ organisation is one of the approving organisations,

there is to be an amalgamation involving the approving organisations.

(2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of:

- (a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and
- (b) the differences between the rules of any association proposed to be registered as an organisation, and any proposed alterations of the rules of the existing organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

**Approval by committee of management**

**531.** (1) The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing organisation concerned in the amalgamation.

(2) Despite anything in the rules of an existing organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

**Community of interest declaration**

**532.** (1) The existing organisations concerned in a proposed amalgamation may jointly lodge with the Industrial Registrar an application for a declaration under this section in relation to the amalgamation.

(2) The application must be lodged:

- (a) before an application has been lodged under section 533 in relation to the amalgamation; or
- (b) with the application that is lodged under section 533 in relation to the amalgamation.



(3) If the application is lodged before an application has been lodged under section 533 in relation to the amalgamation, the Industrial Registrar:

- (a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

(4) If, at the conclusion of the hearing arranged under subsection (3) or section 541 in relation to the proposed amalgamation, the Industrial Registrar is satisfied that there is a community of interest between the existing organisations in relation to their industrial interests, the Industrial Registrar must declare that he or she is so satisfied.

(5) The Industrial Registrar must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employees in relation to their industrial interests if the Industrial Registrar is satisfied that a substantial number of members of one of the organisations are:

- (a) eligible to become members of the other organisation or each of the other organisations; or
- (b) engaged in the same work or in aspects of the same or similar work as members of the other organisation or each of the other organisations; or
- (c) bound by the same awards as members of the other organisation or each of the other organisations; or
- (d) employed in the same or similar work by employers engaged in the same industry as members of the other organisation or each of the other organisations; or
- (e) engaged in work, or in industries, in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

(6) The Industrial Registrar must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employers in relation to their industrial interests if the Industrial Registrar is satisfied that a substantial number of members of one of the organisations are:

- (a) eligible to become members of the other organisation or each of the other organisations; or
- (b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or
- (c) bound by the same awards as members of the other organisation or each of the other organisations; or
- (d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

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(7) Subsections (5) and (6) do not limit by implication the circumstances in which the Industrial Registrar may be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations in relation to their industrial interests.

(8) If:

- (a) an application for a declaration under this section in relation to a proposed amalgamation is lodged before an application has been lodged under section 533 in relation to the amalgamation; and
- (b) a declaration is made under this section in relation to the amalgamation; and
- (c) an application is not lodged under section 533 in relation to the amalgamation within 6 months after the declaration is made,

the declaration ceases to be in force.

(9) The Industrial Registrar may revoke a declaration under this section if the Industrial Registrar is satisfied that there is no longer a community of interest between the organisations concerned in relation to their industrial interests.

**Application for approval for submission of amalgamation to ballot**

**533.** (1) The existing organisations concerned in a proposed amalgamation, and any association proposed to be registered as an organisation under the amalgamation, must jointly lodge with the Industrial Registrar an application for approval for the submission of the amalgamation to ballot.

(2) The application must be accompanied by:

- (a) a copy of the scheme for the amalgamation; and
- (b) a written outline of the scheme.

(3) Subject to section 550, the outline must, in no more than 3,000 words, provide sufficient information on the scheme to enable members of the existing organisations to make informed decisions in relation to the scheme.

**Holding office after amalgamation**

**534.** (1) The rules of:

- (a) an association proposed to be registered as an organisation that is the proposed amalgamated organisation under a proposed amalgamation; or
- (b) an existing organisation that is the proposed amalgamated organisation under a proposed amalgamation,

may, despite section 428, make provision in relation to:

- (c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed de-registering organisations immediately before the amalgamation takes effect; and
- (d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the proposed amalgamated organisation immediately before the amalgamation takes effect,

but the rules may not permit an office to be held under subsection (1) (c) or (1) (d) for longer than:

- (e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or
- (f) the period that ends 2 years after that day,

whichever ends last, without an ordinary election being held in relation to the office.

(2) If:

- (a) a person holds an office in an organisation, being an office held under rules made under subsection (1); and

(b) that organisation is involved in a proposed amalgamation,

the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

(3) The rules of an organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under subsection (1) (c) with elections for other offices in the organisation.

(4) Section 431 does not apply to an office held under rules made under subsection (1).

(5) Section 432 applies to an office held under rules made under subsection (1) (c).

(6) In this section:

“**ordinary election** means an election held under rules that comply with section 428.

### **Application for exemption from Ballot**

**535.** (1) The proposed amalgamated organisation under a proposed amalgamation may lodge with the Industrial Registrar an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

(2) The application must be lodged with the application that is lodged under section 533 in relation to the amalgamation.

### **Application for ballot not conducted under section 553**

**536.** (1) An existing organisation concerned in a proposed amalgamation may lodge with the Industrial Registrar an application for approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 553.

(2) The application must be lodged with the application that is lodged under section 533 in relation to the amalgamation.

#### **Lodging “yes” case**

**537.** (1) Subject to section 548, an existing organisation concerned in a proposed amalgamation may lodge a written statement of not more than 2,000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.

(2) The statement must be lodged with the application that is lodged under section 533 in relation to the amalgamation.

### **Subdivision 4—Role of Electoral Commissioner**

#### **Ballots to be conducted by Electoral Commissioner**

**538.** All ballots under this Division are to be conducted by the Electoral Commissioner.

#### **Notification of Electoral Commissioner**

**539.** (1) If an application is lodged under section 533 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the Electoral Commissioner of the application.

(2) On being notified of the application, the Electoral Commissioner must immediately take such action as the Electoral Commissioner considers necessary or desirable to enable the Electoral Commissioner to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

#### **Officer of organisation to provide information for ballot etc.**

**540.** (1) An electoral official who is authorised, in writing, by the Electoral Commissioner for the purposes of a proposed amalgamation may, if it is reasonably necessary for the purposes of any ballot that may be required of is required in relation to the amalgamation, by written notice, require an officer or employee of the organisation concerned:

- (a) to give to the electoral official, within a reasonable period (being a period of not less than 7 days), and in a reasonable manner, specified in the notice, any information within the knowledge or in the possession of the person; and
- (b) to produce or make available to the electoral official, at a reasonable time and place specified in the notice, any documents:
  - (i) in the custody or under the control of the person; or
  - (ii) to which the person has access.

(2) An officer or employee of the organisation must comply with a requirement made under this section.

Maximum penalty: 20 penalty units.

### **Subdivision 5—Procedure for approval of amalgamation**

#### **Fixing hearing in relation to amalgamation etc.**

**541.** If an application is lodged under section 533 in relation to a proposed amalgamation, the Industrial Registrar:

- (a) must immediately fix a time and place for hearing submissions in relation to:
  - (i) the granting of an approval for the submission of the amalgamation to ballot; and
  - (ii) if an application for a declaration under section 532 was lodged with the application—the making of a declaration under section 532 in relation to the amalgamation; and
  - (iii) if an application was lodged under section 535 for exemption from the requirement that a ballot be held in relation to the amalgamation—the granting of the exemption; and
  - (iv) if an application was lodged under section 536 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 553—the granting of the approval; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

#### **Submissions at amalgamation hearings**

**542.** (1) Submissions at a hearing arranged under section 532 (3) or section 541 may only be made under this section.

(2) Submissions may be made by the applicants.

(3) Submissions may be made by another person only with the leave of the Industrial Registrar and may be made by the person only in relation to a matter prescribed by the regulations.

#### **Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.**

**543.** (1) If, at the conclusion of the hearing arranged under section 541 in relation to a proposed amalgamation, the Industrial Registrar is satisfied:

- (a) that the amalgamation does not involve the registration of an association as an organisation; and

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- (b) that a person who is not eligible for membership of an existing organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and
- (c) that any proposed alteration of the name of an existing organisation concerned in the amalgamation will not result in the organisation having a name that is the same as the name of an organisation registered under this Chapter or is so similar to the name of an organisation registered under this Chapter as to be likely to cause confusion; and
- (d) that any proposed alterations of the rules of an existing organisation comply with, and are not contrary to, this Act and awards and are not contrary to law; and
- (e) that any proposed de-registration of an existing organisation complies with this Act and is not otherwise contrary to law,

the Industrial Registrar must approve the submission of the amalgamation to ballot.

(2) If the Industrial Registrar is not satisfied, the Industrial Registrar must, subject to subsections (3) and (7), refuse to approve, under this section, the submission of the amalgamation to ballot.

(3) If, apart from this subsection, the Industrial Registrar would be required to refuse to approve the submission of the amalgamation to ballot, the Industrial Registrar may:

- (a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation,

and, if the Industrial Registrar is satisfied that the matters mentioned in subsection (1) will be met, the Industrial Registrar must approve the submission of the amalgamation to ballot.

(4) A permission under subsection (3) (a):

- (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard, and
- (c) may be given subject to conditions.

(5) If:

(a) the Industrial Registrar:

(i) gives a permission under subsection (3) (a) subject to conditions;  
or

(ii) accepts an undertaking under subsection (3) (b); and

(b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Industrial Registrar,

the Industrial Registrar may:

(c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the proposed amalgamation; or

(d) give directions and orders:

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

(6) Subsection (5) does not limit by implication the powers that the Industrial Registrar has apart from that subsection.

(7) If, apart from this subsection, the Industrial Registrar would be required to refuse to approve the submission of the amalgamation to ballot, the Industrial Registrar may adjourn the proceeding.

(8) Subsection (7) does not limit by implication the power of the Industrial Registrar to adjourn the proceeding at any stage.

#### **Objections in relation to amalgamation involving extension of eligibility rules etc.**

**544.** (1) Objection to a matter involved in a proposed amalgamation may only be made to the Full Commission under this section.

(2) Objection may be made to the Full Commission in relation to the amalgamation only if the Industrial Registrar has refused to approve, under section 543, the submission of the amalgamation to ballot.

(3) Objection may be made by a prescribed person on a ground prescribed by the regulations.

(4) The Full Commission is to hear, as prescribed by the regulations, all objections duly made to the amalgamation.

#### **Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.**

**545.** (1) If, after the time prescribed by the regulations for making objections under section 544 in relation to a proposed amalgamation and after hearing any objections duly made to the amalgamation, the Full Commission:

(a) finds that no duly made objection is justified; and

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- (b) is satisfied that, so far as the amalgamation involves:
- (i) the registration of an association; or
  - (ii) a change in the name of an organisation; or
  - (iii) an alteration of the rules of an organisation; or
  - (iv) the de-registration of an organisation under this Division,
- it complies with, and is not contrary to, this Act and awards and is not otherwise contrary to law,

the Full Commission must approve the submission of the amalgamation to ballot.

(2) If the Full Commission is not satisfied, the Full Commission must, subject to subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

(3) If, apart from this subsection, the Full Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Full Commission may:

- (a) permit the applicants to alter the scheme for the amalgamation, including:
  - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
  - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including:
  - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
  - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation,

and, if the Full Commission is satisfied that the matters mentioned in subsection (1) will be met, the Full Commission must approve the submission of the amalgamation to ballot.

(4) A permission under subsection (3) (a) (i):

- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules of the association may be followed, or is to be followed, by the committees of management in that regard; and
- (c) may be given subject to conditions.



- (5) A permission under subsection (3) (a) (ii):
- (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
  - (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
  - (c) may be given subject to conditions.
- (6) If:
- (a) the Full Commission:
    - (i) gives a permission under subsection (3) (a) subject to conditions; or
    - (ii) accepts an undertaking under subsection (3) (b); and
  - (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Full Commission,
- the Full Commission may:
- (c) amend the scheme for the amalgamation, including:
    - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
    - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
  - (d) give directions and orders:
    - (i) in relation to the conduct of the ballot for the amalgamation; or
    - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.
- (7) Subsection (6) does not limit by implication the powers that the Full Commission has apart from that subsection.
- (8) If, apart from this subsection, the Full Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Full Commission may adjourn the proceeding.
- (9) Subsection (8) does not limit by implication the power of the Full Commission to adjourn the proceeding at any stage.

### **Fixing commencing and closing days of ballot**

**546.** (1) If the Industrial Registrar or the Full Commission approves, under section 543 or 545, the submission of a proposed amalgamation to ballot, the Industrial Registrar or the Full Commission must, after consulting with the Electoral commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.

(2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless:

- (a) the Industrial Registrar or the Full Commission is satisfied that the Electoral Commissioner requires a longer period to make the arrangements necessary to enable the Electoral Commissioner to conduct the ballot; or
- (b) the existing organisations concerned in the amalgamation request the Industrial Registrar or the Full Commission to fix a later day.

(3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.

(4) The Industrial Registrar may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

(5) Subsection (4) does not limit by implication the powers of the person conducting a ballot under this Division.

#### **Roll of voters for ballot**

**547.** The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the Industrial Registrar or Full Commission fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later):

- (a) have the right under the rules of the existing organisation concerned to vote at such a ballot; or
- (b) if the rules of the existing organisation concerned do not then provide for the right to vote at such a ballot—have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system

#### **“Yes” case and “no” case for amalgamation**

**548.** (1) If an existing organisation concerned in a proposed amalgamation lodges a statement under section 537 in relation to the amalgamation, the Industrial Registrar may permit the organisation to alter the statement.

(2) Not later than 7 days before the day fixed under section 541 for hearing submissions in relation to the amalgamation, members of the organisation (being members whose number is at least the required minimum number) may lodge with the Industrial Registrar a written statement of not more than 2,000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

(3) The Industrial Registrar may permit a statement lodged under subsection (2) to be altered.

(4) Subject to this section, a copy of the statements mentioned in subsections (1) and (2), or, if those statements have been altered or amended, those statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

(5) If 2 or more statements in opposition to the amalgamation are duly lodged with the Industrial Registrar under subsection (2):

- (a) the Industrial Registrar must prepare, or cause to be prepared in consultation, if practicable, with representatives of the persons who lodged each of the statements, a written statement of not more than 2,000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and
- (b) the statement prepared by the Industrial Registrar must accompany the ballot paper for the amalgamation as if it had been the sole statement lodged under subsection (2).

(6) The Industrial Registrar may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Act.

(7) A statement mentioned in subsection (1) or (2) may, if the Industrial Registrar approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(9) Subsections (4) and (5) (b) do not apply to a ballot that is not conducted under section 553.

(10) In this section:

**“required minimum number”**, in relation to an organisation, means:

- (a) 5% of the total number of members of the organisation on the day on which the application was lodged under section 533 in relation to the proposed amalgamation concerned; or
- (b) 250,

whichever is the lesser.

### **Alteration and amendment of scheme**

**549.** (1) The Industrial Registrar may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing organisations concerned in the amalgamation to alter the scheme for the amalgamation, including:

- (a) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
- (b) any proposed alterations of the rules of the existing organisations concerned in the amalgamation.

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- (2) A permission under subsection (1) (a):
- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
  - (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
  - (c) may be given subject to conditions.
- (3) A permission under subsection (1) (b):
- (a) may, despite anything in the rules of an existing organisation concerned in a proposed amalgamation, authorise the organisation to amend the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
  - (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
  - (c) may be given subject to conditions.
- (4) If:
- (a) the Industrial Registrar gives a permission under subsection (1) subject to conditions; and
  - (b) the conditions are breached,
- the Industrial Registrar may:
- (c) amend the scheme for the amalgamation, including:
    - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
    - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
  - (d) give directions and orders:
    - (i) in relation to the conduct of the ballot for the amalgamation; or
    - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.
- (5) Subsection (4) does not limit by implication the powers that the Industrial Registrar has apart from that subsection.
- (6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

**Outline of scheme for amalgamation**

**550.** (1) The outline of the scheme for a proposed amalgamation may, if the Industrial Registrar approves, consist of more than 3,000 words.

(2) The outline may, if the Industrial Registrar approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(3) The Industrial Registrar:

- (a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing organisations concerned in the amalgamation to alter the outline; and
- (b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Act.

**Exemption from ballot**

**551.** (1) If:

- (a) an application was lodged under section 535 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and
- (b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant organisation on the day on which the application was lodged,

the Industrial Registrar must, at the conclusion of the hearing arranged under section 541 in relation to the amalgamation, grant the exemption unless the Industrial Registrar considers that, in the special circumstances of the case, the exemption should be refused.

(2) If the exemption is granted, the members of the applicant organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

**Approval for ballot not conducted under section 553**

**552.** If:

- (a) an application was lodged under section 536 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 553; and
- (b) the proposal provides for
  - (i) the ballot to be by secret ballot of the members of the organisation; and
  - (ii) the ballot to be held at duly constituted meetings of the members; and
  - (iii) the ballot to be conducted by the Electoral Commissioner; and

- (iv) the members to be given at least 21 days' notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and
  - (v) the distribution or publication of the outline of the scheme for the amalgamation and the statements mentioned in section 548 (1) and (2); and
  - (vi) absent voting; and
  - (vii) the ballot to be otherwise conducted in accordance with the regulations; and
- (c) the Industrial Registrar is satisfied, after consulting with the Electoral Commissioner that the proposal is practicable and that approval of the proposal is likely:
- (i) to result in participation by members of the organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 553; and
  - (ii) to give the members of the organisation an adequate opportunity to vote on the amalgamation without intimidation,

the Industrial Registrar must, at the conclusion of the hearing arranged under section 541 in relation to the amalgamation, approve the proposal.

### **Secret postal ballot of members**

**553.** (1) If the Industrial Registrar or the Full Industrial Commission approves, under section 543 or 545, the submission of a proposed amalgamation to ballot, the Electoral Commissioner must, in relation to each of the existing organisations concerned in the amalgamation, conduct a secret postal 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 Electoral Commissioner must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

(3) If, under subsection (2), the Electoral Commissioner is required to conduct 2 or more ballots of the members of an organisation at the same time, the same ballot paper is to be used for both or all the ballots.

(4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Act.

(5) A copy of the outline of the scheme for the amalgamation as lodged under this Division, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

(6) Subject to this section, a ballot conducted under this section is to be conducted as prescribed by the regulations.

(7) This section does not apply to an existing organisation concerned in the amalgamation if:

- (a) the Industrial Registrar has granted the organisation an exemption under section 551 from the requirement that a ballot be held in relation to the proposed amalgamation; or
- (b) the Industrial Registrar has approved under section 552 a proposal by the organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

#### **Determination of approval of amalgamation by members**

**554.** Where the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation concerned in the amalgamation, the members of the organisation approve the amalgamation if, and only if:

- (a) where a declaration under section 532 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or
- (b) in any other case:
  - (i) at least 25% of the members on the roll of voters cast a vote in the ballot; and
  - (ii) more than 50% of the formal votes cast are in favour of the amalgamation.

#### **Further ballot if amalgamation not approved**

**555.** (1) If:

- (a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation; and
  - (b) the members of the organisation do not approve the amalgamation,
- the existing organisations concerned in the amalgamation may jointly lodge with the Industrial Registrar a further application under section 533 for approval for the submission of the amalgamation to ballot.

(2) If the application is lodged within 12 months after the result of the ballot is declared, the Industrial Registrar may order:

- (a) that any step in the procedure provided by this Division be dispensed with in relation to the proposed amalgamation; or
- (b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation,

and the Industrial Registrar may give such directions and make such further orders as the Industrial Registrar considers necessary or desirable.

(3) Subsection (2) does not by implication require a further application under section 533 to be lodged within the 12 months mentioned in that subsection.

**Inquiries into irregularities**

**556.** (1) Not later than 30 days after the result of a ballot under this Division is declared, application may be made to the Industrial Court, as prescribed by the regulations, for an inquiry by the Industrial Court into alleged irregularities in relation to the ballot.

(2) If the Industrial Court finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Industrial Court may:

- (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
- (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened,

and may make such further orders as it considers necessary or desirable.

(3) The regulations may make provision with respect to the procedure for inquiries by the Industrial Court into alleged irregularities in relation to ballots under this Division, and for matters relating to, or arising out of, inquiries.

**Approval of amalgamation**

**557.** (1) If the members of each of the existing organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Division.

(2) If:

- (a) the scheme for a proposed amalgamation contains an alternative provision; and
- (b) the members of one or more of the organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and
- (c) the members of 2 or more of the organisations (in paragraph (d) called the “**approving organisations**”) approve a proposed alternative amalgamation; and
- (d) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations,

the proposed alternative amalgamation is approved for the purposes of this Division.

**Expenses of ballot**

**558.** The expenses of a ballot under this Division are to be borne by the organisations, and associations proposed to be registered as organisations under the amalgamation, that apply for the approval to submit the amalgamation to ballot.



**Subdivision 6—Amalgamation taking effect****Action to be taken after ballot**

559. (1) The scheme of a proposed amalgamation that is approved for the purposes of this Division takes effect in accordance with this section.

(2) If the Industrial Registrar is satisfied:

- (a) that the period, or the latest of the periods, within which application may be made to the Industrial Court under section 556 in relation to the amalgamation has ended; and
- (b) that any application to the Industrial Court under section 556 has been disposed of, and the result of any fresh ballot ordered by the Industrial Court has been declared; and
- (c) that there are no proceedings (other than civil proceedings) pending against any of the existing organisations concerned in the amalgamation in relation to:
  - (i) contraventions of this Act or any other law of the State; or
  - (ii) breaches of awards or orders made under this Act or any other law of the State,

the Industrial Registrar must, after consultation with the existing organisations, by notice published as prescribed by the regulations, fix a day (in this Subdivision called the “amalgamation day”) as the day on which the amalgamation is to take effect.

(3) On the amalgamation day:

- (a) if the proposed amalgamated organisation is not already registered—the Industrial Registrar must enter, in the register kept for the purpose, such particulars in relation to the organisation as are prescribed by the regulations, and the date of the entry; and
- (b) any proposed alteration of the rules of an existing organisation concerned in the amalgamation takes effect; and
- (c) the Industrial Registrar must de-register the proposed de-registering 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 amalgamation organisation.

**Assets and liabilities of de-registered organisation become assets and liabilities of amalgamated organisation**

560. (1) On the amalgamation day, all assets and liabilities of a de-registered organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation

(2) For all purposes and in all proceedings, an **asset** or liability of a de-registered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

**Resignation from membership**

561. When the day on which the proposed amalgamation is to take effect is fixed, section 476 has effect in relation to resignation from membership of a proposed de-registering organisation as if the reference in section 476 (2) to 6 months were a reference to one month or such lesser period as the Industrial Registrar directs.

**Effect of amalgamation on awards and orders**

562. On and from the amalgamation day:

- (a) an award or an order of the Commission or an order of the Industrial Court or a former industrial 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 proposed amalgamated organisation and its members; and
- (b) the award, order or former industrial agreement has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the award, order or former industrial agreement to a de-registered organisation included references to the amalgamated organisation.

**Instruments**

563. (1) On and after the amalgamation day, an instrument to which this Division applies continues, subject to subsection (2), in full force and effect.

(2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to a de-registered organisation were a reference to the amalgamated organisation.

**Pending proceedings**

564. If, immediately before the amalgamation day, a proceeding to which this Division applies was pending in a court or before the commission or the Industrial Court:

- (a) the amalgamated organisation is, on that day, substituted for each de-registered organisation as a party; and
- (b) the proceeding is to continue as if the amalgamated organisation were, and had always been, the de-registered organisation.

**Subdivision applies despite laws and agreements prohibiting transfer etc.**

565. (1) This Subdivision applies, and must be given effect to, despite anything in:

- (a) any other State law; or
- (b) any contract, deed, undertaking, agreement or other instrument.

(2) Nothing done by this Subdivision, and nothing done by a person because of, or for a purpose connected with or arising out of this Subdivision:

(a) is to be regarded as:

- (i) placing an organisation or other person in breach of contract or confidence; or
- (ii) otherwise making an organisation or other person guilty of a civil wrong; or

(b) is to be regarded as placing an organisation or other person in breach of:

- (i) any State law; or
- (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or

(c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.

(3) Without limiting subsection (1), if, but ~~for~~ this section, the consent of a person would be necessary in order to give effect to this Subdivision in a particular respect, the consent is taken to have been given.

#### **Amalgamated organisation to take steps necessary to carry out amalgamation**

566. (1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Subdivision in relation to the amalgamation, are fully effective.

(2) The Full Commission may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

#### **Full Commission to resolve difficulties**

567. (1) If any difficulty arises in relation to the application of this Subdivision to a particular matter, the Full Commission may, OR the application of an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under this section has effect despite anything contained in this Act or in any other law.

#### **Regulations may vary requirements**

568. The regulations may make provision for or with respect to the variation of any of the requirements of this Division, including exclusion or modification of any of the requirements, so far as those requirements relate to a proposed amalgamation or a class of proposed amalgamations.

**Transitional regulations**

569. The regulations may make provision for or with respect to an amalgamation involving a trade union or trade unions registered under the Trade Union Act 1881 or an industrial union or industrial unions registered under the Industrial Arbitration Act 1940 that is taking place on the commencement of this Division.

**Subdivision 7—Validation****Validation of certain acts done in good faith**

570. (1) Subject to this section and to section 572, an act done in good faith for the purposes of a proposed or completed amalgamation by:

- (a) an organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association.

is valid despite any invalidity that may later be discovered in or in connection with the act.

(2) For the purposes of this section:

- (a) an act is treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
- (c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
- (d) knowledge of acts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.

(3) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done to or by an association before it became an organisation.

(4) Nothing in this section affects:

- (a) the operation of an order of the Industrial Court made before the commencement of this section; or
- (b) the operation of section 556, 566 or 567 or Division 10.

**Validation of certain acts after 4 years**

571. (1) Subject to subsection (2) and section 572, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by:

- (a) an organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association,

the act is taken to have complied with this Division and the rules of the organisation or association.

(2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Industrial Court or any other court made before the end of that 4 years.

(3) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); or
- (b) to an act done to or by an association before it became an organisation.

#### **Orders affecting application of section 570 or 571**

572. (1) If, on an application for an order under this section, the Industrial Court is satisfied that the application of section 570 or 571 in relation to an act would do substantial injustice, having regard to the interests of:

- (a) the organisation or association concerned; or
  - (b) members or creditors of the organisation or association concerned; or
  - (c) persons having dealings with the organisation or association concerned,
- the Industrial Court must, by order, declare accordingly.

(2) If a declaration is made, section 570 or 571, as the case requires, does not apply, and is taken never to have applied, in relation to the act **specified** in the declaration.

(3) The Industrial Court may make an order under subsection (1) on the application of the organisation or association concerned, a member of the organisation or association concerned or any other person having a sufficient interest in relation to the organisation or association concerned.

#### **Industrial Court may make orders in relation to consequences of invalidity**

573. (1) An organisation or association, a member of an organisation or association or any other person having a sufficient interest in relation to an organisation or association may apply to the Industrial Court for a determination of the question whether an invalidity has occurred in a proposed or completed amalgamation concerning the organisation or association.

(2) On an application under subsection (1), the Industrial Court may make such declaration as it considers proper.

(3) If, in a proceeding under subsection (1), the Industrial Court finds that an invalidity of the kind mentioned in that subsection has occurred, the Industrial Court may make such orders as it considers appropriate:

- (a) to rectify the invalidity or cause it to be rectified; or
- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or

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- (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.
- (4) If an order is made under subsection (3), the Industrial Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Industrial Court 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 association concerned; or
  - (b) any member or creditor of the organisation or association concerned; or
  - (c) any person having dealings with the organisation or association concerned.
- (6) 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.

**Division 10—Validating provisions for organisations****Definitions**

574. In this Division:

“**collective body**” means, in relation to an organisation, the committee of management or a conference, council, committee, panel or other body of or within the organisation;

“**validity**” 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 of an 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 of position in an organisation:
  - (i) has not been elected or appointed or duly elected or appointed; or
  - (ii) has purported to be elected or appointed by an election or appointment that was a nullity; or
  - (iii) was not entitled to be elected or appointed or to hold office; or
  - (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, as officers or voters or otherwise.

### **Validation of certain acts done in good faith**

575. (1) Subject to this section and section 577, all acts done in good faith by a collective body of an organisation, or by persons purporting to act as such a collective body, are valid despite 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.

(2) Subject to this section and section 577, all acts done in good faith by a person holding or purporting to hold an office or position in an organisation are valid despite 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.

(3) For the purposes of this section, 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.

(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 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 any 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 2 of Division 3 of this Part.

#### **Validation of certain acts after 4 years**

576. (1) Subject to this section and section 577, 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 an organisation and purporting to exercise power conferred by or under the rules of the organisation; or
  - (ii) by a person holding or purporting to hold an office or position in an organisation and purporting to exercise power conferred by or under the rules of the organisation; or
- (b) the election or purported election, or the appointment or purported appointment, of a person, to an office or position in an organisation; or
- (c) the making or purported making, or the alteration or purported alteration, of a rule of an organisation,

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.

(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 Industrial Court or any other 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 575 or 576**

577. (1) If, on an application for an order under this section, the Industrial Court is satisfied that the application of section 575 or 576 in relation to an act would do substantial injustice, having regard to the interests of:

- (a) the organisation; or



- (b) members or creditors of the organisation; or
- (c) persons having dealings with the organisation,

the Industrial Court must, by order, declare accordingly.

(2) Where a declaration is made under subsection (1), section 575 or 576, 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 Industrial Court 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 Industrial Court 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.

#### **Industrial Court may make orders in relation to consequences of invalidity**

578. (1) An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation may apply to the Industrial Court for the determination of the question whether an invalidity has occurred in:

- (a) the management or administration of the organisation; or
- (b) an election or appointment in the organisation; or
- (c) the making or alteration of the rules of the organisation.

(2) On an application under subsection (1), the Industrial Court may make such determination as it considers appropriate.

(3) If, in a proceeding under subsection (1), the Industrial Court determines that an invalidity of a kind referred to in that subsection has occurred, the Industrial Court 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 Industrial Court may give such ancillary or consequential directions as it considers appropriate.

(5) The Industrial Court 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 Industrial Court 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 organisation by person treated as having been a member**

579. (1) If:

- (a) a person who is eligible for membership of an 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 person's application to 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 Industrial Court to determine the entitlement of the person under this section.

(3) Subject to subsection (5), the Industrial Court may, despite 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 Industrial Court 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) Where an application is made to the Industrial Court 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 Industrial Court; 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 Industrial Court.
- (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.

#### **No challenge to dual membership with Federal organisation**

580. No proceedings may be taken to challenge:

- (a) the existence of an organisation; or
- (b) the registration of an organisation; or
- (c) the election of officers of an organisation; or
- (d) any decision made by an organisation,

only because members of the organisation are also members of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

### **Division 11—Suspension and cancellation of registration**

#### **Application of Division**

581. This Division does not apply to an organisation that is de-registered as the result of an amalgamation of organisations under Division 9.

Who may apply for suspension and cancellation of registration of organisations

582. An interested organisation, an interested person or the Minister may apply to the Industrial Court for suspension and cancellation, or cancellation, of the registration of another organisation.

Grounds on which registration may be suspended or cancelled

583. The registration of an organisation may be suspended and cancelled, or cancelled, on any one or more of the following grounds:

- (a) that, because of its breach of an order of the Industrial Court (including an order for payment of compensation, damages, debt or a penalty), an award or a former industrial agreement made under this Act, or its failure to ensure that its members comply with and observe any such order, award or former industrial agreement, or in any other respect, the conduct of the organisation has prevented or hindered the achievement of an object of this Act;

- (b) that, because of their breach of any such order, award or former industrial agreement, the conduct of a substantial number of the members of the organisation 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 or have engaged in any lock-out, unlawful industrial action, breach of an injunction relating to industrial action, breach of a dispute order or other 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 any lock-out, unlawful industrial action, breach of an injunction relating to industrial action, breach of a dispute order or other 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.

#### **Organisation entitled to be heard on application to suspend or cancel registration**

584. An organisation must be given an opportunity to be heard by the Industrial Court if an application is made to suspend or cancel its registration as an organisation.

#### **Suspension of registration of organisation by Industrial Court**

585. (1) If the Industrial Court

- (a) finds that a ground of an application under this Division 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 Industrial Court may, at its discretion, suspend the registration of the organisation for a period that the Industrial Court considers is appropriate.

(2) The Industrial Court may suspend on its own initiative the registration of an organisation if the Industrial Court is satisfied as to the matters referred to in subsection (1), but only if the organisation has been given an opportunity to be heard by the Industrial Court.

#### **Industrial Court may lift suspension of registration**

586. The Industrial Court may lift the suspension of the registration of an organisation under this Division at any time on grounds that appear to the Industrial Court to be appropriate, with or without the imposition of conditions on the organisation.

**Consequences of suspension of registration of organisation**

587. 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 Industrial Court, the Commission, a Conciliation Committee or a Contract Regulation Committee under this Act.

**Action on expiry of period of suspension**

588. On the expiry of the period of suspension, the Industrial Court may, at its discretion, cancel the registration of the organisation under this Chapter, but may not do so if:

- (a) the Industrial Court has already lifted the suspension under this Division; or
- (b) the organisation has satisfied the Industrial Court 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 Industrial Court has decided that it is appropriate:
  - (i) to require that the rules of the organisation be altered in accordance with an order of the Industrial Court under this Division; or
  - (ii) to defer suspension or cancellation in accordance with section 592.

**Cancellation of registration of organisation by Industrial Court**

589. (1) If the Industrial Court considers it appropriate in the particular circumstances because of the gravity of the case, the Industrial Court may, instead of suspending the registration of an Organisation, cancel such registration.

(2) Except if the cancellation of the registration of an organisation under this Chapter 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 Industrial Court, within the period prescribed by the regulations, why its registration as an organisation under this Chapter should not be cancelled.

**Industrial Court may require rules to be altered**

590. (1) If:

- (a) the Industrial Court finds that a ground of an application 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 Industrial Court may, if it considers it just to do so, instead of suspending or cancelling the registration of the organisation under this section, by its order,

alter the rules of the organisation so as to exclude from eligibility for membership of the organisation persons belonging to the section or class.

(2) An alteration of rules by an order made under this section takes effect on the date of the order or on such other day as is specified in the order.

### **Industrial Court may make necessary orders**

591. The Industrial Court may make such orders as are necessary to give effect to, or in consequence of, an order made for the suspension or cancellation of the registration of an organisation or the alteration of the rules of an organisation.

### **Orders where cancellation of registration deferred**

592. (1) The Industrial Court may, instead of making an order suspending or cancelling registration, or altering rules, of an 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, former industrial agreements 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, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.

(2) Having made such an order, the Industrial Court must defer the determination of the question whether to suspend or cancel the registration of the organisation concerned until:

- (a) any order made under this section ceases to be in force; or
- (b) on application by a party to the proceeding, the Industrial Court considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of any order and to any other relevant circumstance,

whichever happens first.

(3) An order made under this section has effect despite anything in the rules of the organisation concerned.

(4) An order made under this section:

- (a) may be revoked by the Industrial Court, 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 Industrial Court on application by a party to the proceeding made while the order remains in force.

(5) A person who contravenes an order made under subsection (1) (c) is guilty of an offence.

Maximum penalty: 50 penalty units.

### **Appeal against cancellation of registration by Industrial Court**

593. (1) An organisation may appeal to the Full Industrial Court against an order of the Industrial Court cancelling the registration of the organisation.

(2) On any such appeal, further evidence is admissible only with special leave of the Full Industrial Court.

(3) The Full Industrial Court may affirm, vary or set aside the decision appealed against as it thinks fit.

### **Voluntary cancellation etc. of registration**

594. (1) The Industrial Court may cancel the registration of an organisation:

- (a) on application by the organisation; or
- (b) on application by another interested organisation or an interested person, or by the Minister, if the Industrial Court is satisfied that any ground referred to in subsection (2) has been made out; or
- (c) on its own initiative if the Industrial Court 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 an organisation of employers that is no longer representative of its members; or
- (c) that the organisation is an organisation of employees that is no longer representative of its members.

(3) The Industrial Registrar may on his or her own initiative, without the necessity of obtaining an order from the Industrial Court, cancel the registration of an organisation if the Industrial Registrar is satisfied that the organisation is defunct.

(4) An organisation may appeal to the Full Industrial Court against the cancellation of its registration under this section.

### **Cancellation to be recorded**

595. If the registration of an organisation under this Chapter is cancelled, the Industrial Registrar must record the cancellation, and the date of the cancellation, in the register kept for the purpose.

### **Consequences of cancellation of registration**

596. (1) The cancellation of the registration of an organisation under this Act has the following consequences:

- (a) the organisation ceases to be an organisation for the purposes of this Act (this section excepted); and
- (b) the cancellation does not relieve the organisation 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 liquidator appointed by the Industrial Court and, on completion of the winding up, will cease to be a body corporate under this Act; and
- (d) subject to subsection (3), 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 556 of the Corporations Law.

(2) The Industrial Court may, on application by an organisation or person interested, make such order as the Industrial Court considers appropriate in relation to the winding up of the affairs of the organisation.

(3) For the purposes of a winding up under subsection (1) (c), the provisions of Part 5.7 of the Corporations Law relating to involuntary winding up of a body other than a company or of Part 5.5 of the Corporations Law relating to voluntary winding up of a body as if it were a company, as the case requires, apply as modified by the regulations.

(4) For the purposes of a distribution under subsection (1) (d), the Industrial 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 Industrial Court as appears to the Industrial Court to be just and equitable.

(5) If, in the opinion of the Industrial Court, an organisation has insufficient assets to justify its winding up, the Industrial Court may dispense with the requirement that the organisation be wound up and may cause notice to be given of this decision in the manner prescribed by the regulations.

### **Disqualification of certain officials**

597. (1) A person who is an official of an organisation whose registration has been cancelled under this Division must not, without the leave of the Industrial Court:

- (a) be involved in the formation of another organisation; or
- (b) hold office in another 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 Industrial Court may grant leave under subsection (1) on the application of the person or on its own initiative if the Industrial Court is of the opinion that the person did not participate, directly or indirectly, in the acts or omissions that resulted in cancellation of the registration of the organisation.



(3) A person who is refused leave under subsection (1) may appeal against that decision to the Full Industrial Court.

(4) On any such appeal, further evidence is admissible only with special leave of the Full Industrial Court.

(5) The Full Industrial Court may affirm, vary or set aside the decision appealed against as it thinks fit.

### **Division 12—Miscellaneous**

#### **Chapter to apply to public sector industrial agreements**

598. For the purposes of this Chapter, a former industrial agreement includes an agreement under section 64 of the Public Sector Management Act 1988 or any similar kind of agreement relating to Crown employees.

#### **Deduction of subscription etc.**

599. (1) A fine, levy, penalty, call or subscription that is due and payable by a member to an 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**

600. (1) If a member of an organisation:

(a) requests the secretary, or a person performing (in whole or part) the duties of secretary, of the organisation, to provide to the member a copy of the rules of the organisation; and

(b) pays or tenders to the secretary or other person such reasonable amount as the secretary or other person requires,

the secretary or other person must, within 14 days after the payment or tender of the amount, provide to the member a copy of the rules of the organisation 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 an organisation who contravenes this section is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **Certificate as to membership of organisation**

601. A certificate issued by the Industrial Registrar stating that a specified person was or was not at a specified time or during a specified period a member or officer of a specified organisation is, in all courts and proceedings, evidence that the facts are as stated.

**False representation as to membership of organisation**

602. A person must not knowingly make, in an application made under this Act, a false representation that he or she is a member of an organisation.  
Maximum penalty: 50 penalty units.

**List of officers to be evidence**

603. A list of the officers of an organisation lodged with the Industrial Registrar on behalf of the organisation, or a copy of any such list certified by the Industrial Registrar, is evidence that the persons named in the list were, on the day when the list was lodged, officers of the organisation.

**Registered office of organisation**

604. (1) An organisation must have an office in New South Wales for the time being registered with the Industrial Registrar to which all communications and notices may be addressed.

(2) An organisation and each of the officers of such organisation is guilty of an offence if the organisation does not have a registered office for more than 7 days.

(3) An organisation must give notice of the address of its registered office and of any change in that address to the Industrial Registrar.

(4) Until an organisation has given that notice, it is to be taken not to have a registered office.

Maximum penalty: 20 penalty units.

**Mortality fund**

605. (1) A member of an 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 by the organisation is to be paid at the member's death.

(2) The notice 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**

606. An organisation, an officer of an organisation or a member of a committee of management of an organisation that or who is bound by the rules of the 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 in accordance with the rules.

Maximum penalty: 50 penalty units.

### **Circulating false copies of rules etc.**

607. A person must not, with intent to mislead or defraud, give to any member of an 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.

### **Annual reports etc. by Industrial Registrar**

608. As soon as possible after 30 June each year, the Industrial Registrar must prepare for tabling in Parliament by 31 October each year an annual report in respect of anything done by the Industrial Registrar under this Chapter.

### **Injunctions**

609. (1) If a person has engaged or is engaging in any conduct that constituted or constitutes a contravention of this Chapter, the Industrial Court may, on the application of:

- (a) the Industrial 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 Industrial Court 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 Chapter to do, the Industrial Court may, on the application of:

- (a) the Industrial 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 Industrial Court for an injunction under subsection (1), the Industrial Court may, if in the opinion of the Industrial Court 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.

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(4) The Industrial Court may rescind or vary an injunction granted under this section.

(5) Where an application is made to the Industrial Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Industrial Court to grant the injunction may be exercised:

- (a) if the Industrial Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Industrial Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Industrial Court 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) Where an application is made to the Industrial Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Industrial Court to grant the injunction may be exercised:

- (a) if the Industrial Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Industrial Court 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 Industrial Court 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 Industrial Registrar makes an application to the Industrial Court for the grant of an injunction under this section, the Industrial Court must not require the Industrial Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) If the Industrial Court has power under this section to grant an injunction restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act ~~M~~ thing, the Industrial Court may, either in addition to or in substitution for the grant of the injunction, order the person to pay damages to any other person.

(9) In any proceeding relating to an injunction under this Chapter or an application for such an injunction, the Industrial Court may make such order for costs (including expenses of witnesses) as may be thought just and may assess the amount of such costs.

**Breach of injunction**

610. (1) If the person who obtained an injunction (whether or not an interim injunction) under this Division (in this section called “the aggrieved party”) lodges with the Industrial Registrar an application that:

- (a) is to the effect of the form, and includes the information, required by the Industrial Registrar who may require the information to be verified by statutory declaration of one or more persons; and
- (b) alleges a breach of the injunction,

the Industrial Registrar 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 Industrial Court should not take action under this section.

(2) The Industrial Court 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 Industrial Court may, after considering the history of the matter and the conduct that led to the injunction and after considering the record of the parties, by its order 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 Industrial Court 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) alter the coverage of an organisation to exclude certain persons from membership;
- (e) suspend for a specified time, or suspend and later cancel, the registration of an 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 an organisation or any other 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.

### **Consequential amendment of rules**

611. (1) If, under section 610, the Industrial Court:

- (a) alters the coverage of an organisation to exclude certain persons from membership; or
- (b) suspends or cancels the registration of an organisation,

the Industrial Court may, on the application of the Industrial Registrar, the aggrieved party 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 610, including an order altering the rules of any other 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 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 an organisation amended under this section.

#### **Application. to Industrial Court in relation to rectification of anomalies**

612. (1) An organisation, a member of an organisation or a person who appears to the Industrial Court to have a sufficient interest may apply to the Industrial Court for a declaration as to whether the organisation is complying with the requirements of the Act in relation to its rules, officials, ownership and vesting of assets or in any other respect.

(2) The Industrial Court may hear and determine such an application and may make such declaration and such orders, if any, directed at rectification of anomalies as it considers appropriate.

(3) If appropriate, the Industrial Court, when considering an application under this section, may have regard to any rules, other than those of the organisation, that are of relevance to the organisation such as the rules of a branch of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

#### **Offences in relation to elections**

613. (1) A person must not, without lawful authority or excuse, in relation to an election for an office in an organisation:

- (a) personate another person to secure a ballot-paper to which the personator is not entitled, or personate 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
- (d) deliver a ballot-paper or other paper to a person receiving ballot-papers for the purposes of the election or ballot; or
- (e) record a vote that the person is not entitled to record; or
- (f) record more than one vote; or
- (g) forge a nomination paper, ballot-paper or envelope, or utter a nomination paper, ballot-paper or envelope that the person knows to be forged; or

- (h) provide a ballot-paper; or
- (i) obtain, or have possession, of a ballot-paper; or
- (j) destroy, take, open or otherwise interfere with a ballot-box or other ballot receptacle.

(2) A person must not, without lawful authority or excuse, in relation to an election for an office in an organisation threaten, offer or suggest, or use, cause, inflict or procure, any violence, injury, punishment, damage, loss or disadvantage because of, or to induce:

- (a) any candidature or withdrawal of candidature; or
- (b) any vote or omission to vote; or
- (c) any support or opposition to any candidate; or
- (d) any promise of any vote, omission, support or opposition.

(3) A person (in this subsection called 'the relevant person') must not, without lawful authority or excuse, in relation to an election for an office in an organisation:

- (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.

### **Offences in relation to ballots**

614. (1) If an electoral officer or a person conducting a ballot requires an officer or employee of an organisation to provide or make available, for the purposes of a ballot, a register or list of:

- (a) the members of the organisation; or
- (b) a section or class of the members of the organisation or branch of the organisation,

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 a ballot:

- (a) personate another person to secure a ballot-paper to which the personator is not entitled or personate another person for the purpose of voting; or
- (b) destroy, deface, alter, take or otherwise interfere with a 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
  - (d) deliver a ballot-paper or other paper to a person receiving ballot-papers for the purposes of the ballot; or
  - (e) record a vote that the person is not entitled to record; or
  - (f) record more than one vote; or
  - (g) forge a ballot-paper or envelope, or utter a ballot-paper or envelope that the person knows to be forged; or
  - (h) provide a ballot-paper; or
  - (i) obtain or have possession of a ballot-paper; or
  - (i) destroy, take, open or otherwise interfere with a ballot-box or other ballot receptacle.
- (3) A person must not, without lawful authority or excuse, in relation to a ballot:
- (a) hinder or obstruct the taking of the ballot; or
  - (b) use any form of intimidation to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot; 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.
- (4) A person (in this subsection called “the relevant person”) must not, without lawful authority or excuse, in relation to a ballot:
- (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.
- (5) In this section, “**ballot**” means:
- (a) a ballot directed or ordered under Part 5 of Chapter 3; or
  - (b) a ballot conducted under Division 4 or 9 of this Part



**PART 4—RECOGNISED ORGANISATIONS****Division 1—Preliminary****Definitions**

615. In this Part:

**“continued incorporated industrial organisation”** means a body incorporated or taken to be incorporated under the Corporations Law or a body incorporated under any other law that, immediately before the commencement of this Chapter, was registered as an industrial union of employees or employers under the Industrial Arbitration Act 1940;

**“continued non-industrial organisation”** means a body that, immediately before the commencement of this Chapter, was registered as a trade union under the Trade Union Act 1881 and was not registered as an industrial union under the Industrial Arbitration Act 1940;

**“continued unincorporated industrial organisation”** means an unincorporated body that, immediately before the commencement of this Chapter, was registered as an industrial union of employees or employers under the Industrial Arbitration Act 1940.

**Application of Part**

616. (I) Organisations may be recognised, in accordance with this Part, as industrial organisations of employees or employers or as non-industrial organisations.

(2) The organisations that may be so recognised are:

- (a) continued incorporated industrial organisations; and
- (b) pending incorporation under this Chapter, continued unincorporated industrial organisations; and
- (c) pending incorporation under this Chapter, continued non-industrial organisations; and
- (d) organisations recognised by the regulations as industrial organisations.

**Division 2—Continued incorporated industrial organisations****Subdivision 1—Recognition and regulation****Recognition of continued incorporated industrial organisations**

617. A continued incorporated industrial organisation is, on the commencement of this Chapter, recognised as an industrial organisation of employees or employers for the purposes of this Act and is taken to be registered under this Chapter but Parts 2 and 3 do not apply to such an organisation except as applied by regulations under section 623.

**Examination of constituent documents of organisations by Industrial Registrar**

618. Within 18 months after the commencement of this Division, the Industrial Registrar must carry out an examination of the constituent documents of all continued incorporated industrial organisations recognised under this Division.

**Notice to comply with requirements**

619. (1) If, as a consequence of such an examination, the Industrial Registrar becomes aware that an organisation does not comply with one or more of the requirements for rules under Part 3 applicable to the organisation, the Industrial Registrar must serve a notice on the organisation.

(2) The notice must specify each of the requirements with which the organisation does not comply and require the organisation to comply with each such requirement:

- (a) within 6 months after service of the notice; or
- (b) within such longer period as the Industrial Registrar may consider reasonable in the circumstances.

**Cancellation of recognition on non-compliance**

620. The Industrial Registrar must cancel the recognition of an organisation if it does not comply with the notice.

**Registration of complying organisations**

621. (1) If the Industrial Registrar is satisfied (as a consequence of an examination or because of compliance with a notice served under this Division) that an organisation does comply with the requirements for rules under Part 3 applicable to the organisation, the Industrial Registrar must confirm the registration, under Part 2, of the Organisation as an industrial organisation of employees or employers, as the case requires, in the manner prescribed by the regulations.

(2) Section 421 (Incorporation) does not apply to a continued incorporated industrial organisation whose registration is confirmed under this section.

**References to alteration of rules that affect continued incorporated industrial organisations**

622. (1) A reference in this Act to the alteration of the rules of an industrial organisation is taken, in the case of a continued incorporated industrial organisation, to be a reference:

- (a) in the case of a continued incorporated industrial organisation incorporated, or taken to be incorporated, under the Corporations Law, to the alteration of the memorandum and articles of association of the organisation in accordance with that Law; and

- (b) in the case of a continued incorporated industrial organisation incorporated under the Co-operation Act 1923 or the Associations Incorporation Act 1984, to the alteration of the rules of the organisation in accordance with the Co-operation Act 1923 or the Associations Incorporation Act 1984, as the case requires.

(2) The Industrial Court may order that an alteration of the memorandum and articles of association or rules of a continued incorporated industrial organisation be made within a period specified by the Industrial Court.

### **Regulations may require compliance with provisions of Part 3**

623. The regulations may apply to and in respect of a continued incorporated industrial organisation specified requirements of Part 3 (with or without modifications).

### **Subdivision 2—Suspension and cancellation of recognition**

#### **Who may apply for suspension or cancellation of recognition**

624. An interested organisation registered or recognised under this Chapter, an interested person or the Minister may apply to the Industrial Court for suspension and cancellation, or cancellation, of the recognition of a continued incorporated industrial organisation.

#### **Grounds on which recognition may be suspended or cancelled**

625. (1) The recognition of a continued incorporated industrial organisation may be suspended or cancelled on any one or more of the following grounds:

- (a) that, because of its breach of an order of the Commission or the Industrial Court (including an order for payment of compensation, damages, debt or a penalty), an award or a former industrial agreement made under this Act, or its failure to ensure that it or its members comply with and observe any such order, award or former industrial agreement, or in any other respect, the conduct of the organisation has prevented or hindered the achievement of an object of this Act;
- (b) that, because of their breach of any such order, award or former industrial agreement, the conduct of a substantial number of the members of the organisation 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 or have engaged in any lock-out, unlawful industrial action, breach of an injunction relating to industrial action, breach of a dispute order or other 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 any lock-out, unlawful industrial

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action, breach of an injunction relating to industrial action, breach of a dispute order or other 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;

- (e) that the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation (being, in each case, corporations), is or are in breach of provisions of the legislation under which the organisation or organisations were incorporated which provisions are equivalent to the provisions of Part 3 that apply to organisations registered under this Chapter.

(2) The regulations may specify, for the purposes of this section, which provisions of Part 3 are, or are not, equivalent to provisions of the legislation under which a continued incorporated industrial organisation, or a member or a section or class of members of a continued incorporated industrial organisation, was incorporated.

**Organisation entitled to be heard on application to suspend or cancel recognition**

626. A continued incorporated industrial organisation must be given an opportunity to be heard by the Industrial Court if an application is made to suspend or cancel its recognition as an organisation.

**Suspension of recognition of organisation by Industrial Court**

627. (1) If the Industrial Court:

- (a) finds that a ground of an application under this Subdivision 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 Industrial Court may, at its discretion, suspend the recognition of the continued incorporated industrial organisation for a period that the Industrial Court considers is appropriate.

(2) The Industrial Court may suspend on its own initiative the recognition of a continued incorporated industrial organisation if the Industrial Court is satisfied as to the matters referred to in subsection (1), but only if the organisation has been given an opportunity to be heard by the Industrial Court.

**Industrial Court may lift suspension of recognition**

628. The Industrial Court may lift the suspension of the recognition of a continued incorporated industrial organisation under this Subdivision at any time on grounds that appear to the Industrial Court to be appropriate, with **or** without the imposition of conditions on the organisation.

**Consequences of suspension of recognition of organisation**

629. While the recognition of a continued incorporated industrial organisation is suspended under this Act, the organisation is not to be regarded as an industrial organisation for the purposes of this Act.

**Action on expiry of period of suspension**

630. On the expiry of the period of suspension, the Industrial Court may, at its discretion, cancel the recognition of the continued incorporated industrial organisation under this Part, but may not do so if:

- (a) the Industrial Court has already lifted the suspension under this Subdivision; or
- (b) the organisation has satisfied the Industrial Court that its recognition should not be cancelled and that the suspension of its recognition should be lifted, with or without the imposition of conditions on the organisation; or
- (c) the Industrial Court has decided that it is appropriate:
  - (i) to require that the memorandum and articles of association or the rules of the organisation be altered in accordance with an order of the Industrial Court under this Subdivision; or
  - (ii) to defer suspension or cancellation in accordance with this Subdivision.

**Cancellation of recognition of organisation by Industrial Court**

631. (1) If the Industrial Court considers it appropriate in the particular circumstances because of the gravity of the case, the Industrial Court may, instead of suspending the recognition of a continued incorporated industrial organisation, cancel such recognition.

(2) Except if the cancellation of the recognition of an organisation under this Subdivision is effected under the Essential Services Act 1988, the recognition of an organisation is not to be cancelled unless the organisation has the opportunity to show cause to the Industrial Court, within the period prescribed by the regulations, why its recognition as an organisation under this Part should not be cancelled.

**Industrial Court may require rules to be altered**

632. (1) If:

- (a) the Industrial Court finds that a ground of an application 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 continued incorporated industrial organisation,

the Industrial Court may, if it considers it just to do so, instead of suspending or cancelling the recognition of the organisation under this section, by its order,

direct the organisation to alter the memorandum and articles of association or rules of the organisation so as to exclude from eligibility for membership of the organisation persons belonging to the section or class.

(2) The Industrial Court may order that an alteration of the memorandum and articles of association or rules of an organisation under this Subdivision must take effect before a date specified in the order if the organisation is not to be in breach of the order.

### **Industrial Court may make necessary orders**

633. The Industrial Court may make such orders as are necessary to give effect to, or in consequence of, an order made for the suspension or cancellation of the recognition of a continued incorporated industrial organisation or the alteration of, the memorandum and articles of association or rules of such an organisation.

### **Orders where cancellation of recognition deferred**

634. (1) The Industrial Court may, instead of making an order suspending or cancelling recognition, or directing alteration of the memorandum and articles of association or rules, of a continued incorporated industrial organisation, make one or both 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 Act or under awards, former industrial agreements or orders made under this Act;
- (b) an order giving directions as to the exercise of any rights, privileges or capacities that have been suspended.

(2) If the Industrial Court makes an order under this section, it must defer the determination of the question whether to suspend or cancel the recognition of the organisation concerned until:

- (a) any order made under this section ceases to be in force; or
- (b) on application by a party to the proceeding, the Industrial Court considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of the order and to any other relevant circumstance,

whichever happens first.

(3) An order made under this section:

- (a) may be revoked by the Industrial Court, 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 Industrial Court on application by a party to the proceeding made while the order remains in force.

**Appeal against cancellation of recognition by Industrial Court**

635. (1) A continued incorporated industrial organisation may appeal to the Full Industrial Court against an order of the Industrial Court cancelling the recognition of the organisation.

(2) On any such appeal, further evidence is admissible only with special leave of the Full Industrial Court.

(3) The Full Industrial Court may affirm, vary or set aside the decision appealed against as it thinks fit.

**Voluntary cancellation etc. of recognition**

636. (1) The Industrial Court may cancel the recognition of a continued incorporated industrial organisation:

- (a) on application by the organisation; or
- (b) on application by another interested organisation or an interested person, or by the Minister, if the Industrial Court is satisfied that any ground referred to in subsection (2) has been made out; or
- (c) on its own initiative if the Industrial Court is satisfied that the organisation is defunct.

(2) The grounds on which recognition may be cancelled under subsection (1) (b) are:

- (a) that the organisation was recognised by mistake; or
- (b) that the organisation is an organisation of employers that is no longer representative of its members; or
- (c) that the organisation is an organisation of employees that is no longer representative of, its members.

(3) The Industrial Registrar may on his or her own initiative, without the necessity of obtaining an order from the Industrial Court, cancel the recognition of an organisation if the Industrial Registrar is satisfied that the organisation is defunct.

(4) An organisation may appeal to the Full Industrial Court against the cancellation of its recognition under this section.

**Cancellation to be recorded**

637. (1) If the recognition of a continued incorporated industrial organisation under this Part is cancelled, the Industrial Registrar must record the cancellation, and the date of cancellation, in the register kept for the purpose.

(2) On cancellation of the recognition of an organisation, the Industrial Registrar must also record the cancellation of the registration of the organisation under Part 2, and the date of the cancellation, in the register kept for the purpose.

**Consequences of cancellation of recognition**

638. If the recognition of a continued incorporated industrial organisation is cancelled, the organisation is not to be regarded as an industrial organisation for the purposes of this Act.

**Disqualification of certain officials**

639. (1) A person who is an official of a continued incorporated industrial organisation whose recognition has been cancelled under this Subdivision must not, without the leave of the Industrial Court:

- (a) be involved in the formation of another industrial organisation; or
- (b) hold office in another industrial organisation,

for a period of 5 years after the cancellation of the recognition of the organisation in which the person is an official.

(2) The Industrial Court may grant leave under this section on the application of the person or on its own initiative if the Industrial Court is of the opinion that the person did not participate, directly or indirectly, in the acts or omissions that resulted in cancellation of the recognition of the organisation.

(3) A person who is refused leave under this section may appeal against that decision to the Full Industrial Court.

(4) On any such appeal, further evidence is admissible only with special leave of the Full Industrial Court.

(5) The Full Industrial Court may affirm, vary or set aside the decision appealed against as it thinks fit.

**Recognition of organisation suspended before commencement of Chapter**

640. (1) If the registration of a continued incorporated industrial union as an industrial union of employees or employers under the Industrial Arbitration Act 1940 was suspended when this Part commenced, the organisation is, on that commencement, taken to be a recognised industrial organisation whose recognition and registration has been suspended under this Act.

(2) Nothing prevents the suspension or cancellation, after the commencement of this section, of the recognition and registration of a continued incorporated industrial organisation.

**Division 3—Continued unincorporated industrial organisations and continued non-industrial organisations****Recognition of continued unincorporated industrial organisations**

641. A continued un-incorporated industrial organisation of employees or employers is, on the commencement of this Chapter, recognised as an industrial organisation of employees or employers for the purposes of this Act and is taken to be registered (but not incorporated) under this Chapter.



**Recognition of continued non-industrial organisation**

642. A continued non-industrial organisation of employees or employers is, on the commencement of this Chapter, recognised as a non-industrial organisation for the purposes of this Act and is taken to be registered (but not incorporated) under this Chapter.

**Examination of rules of organisations by Industrial Registrar**

643. Within 18 months after the commencement of this Division, the Industrial Registrar must carry out an examination of the rules of

- (a) all continued unincorporated industrial organisations; and
- (b) all continued non-industrial organisations,

recognised under this Division.

**Notice to comply with requirements**

644. (1) If, as a consequence of such an examination, the Industrial Registrar becomes aware that an organisation does not comply with one or more of the requirements for rules under Part 3 applicable to the organisation, the Industrial Registrar must serve a notice on the organisation.

(2) The notice must specify each of the requirements with which the organisation does not comply and require the organisation to comply with each such requirement:

- (a) within 6 months after service of the notice; or
- (b) within such longer period as the Industrial Registrar may consider reasonable in the circumstances.

**Cancellation of recognition on non-compliance**

645. The Industrial Registrar must cancel the recognition of an Organisation if it does not comply with the notice.

**Registration and incorporation of complying organisations**

646. (1) If the Industrial Registrar is satisfied (as a consequence of an examination or because of compliance with a notice served under this Division) that an organisation does comply with the requirements for rules under Part 3 applicable to the organisation, the Industrial Registrar must Confirm the registration, under Part 2, of the organisation as:

- (a) an industrial organisation of employees or employers; or
- (b) a non-industrial organisation,

as the case requires, in the manner prescribed by the regulations.

(2) On the date of such confirmation, section 421 (Incorporation) applies to any such organisation in the same way as it applies to an association registered as an industrial organisation or non-industrial organisation after the commencement of that section.

**Saving of certain industrial organisations of employees**

647. It does not matter for the purposes of this Division if an industrial organisation of employees has fewer than 50 members who are employees.

**Recognition of organisation suspended before commencement of Chapter**

648. (1) If the registration of a continued unincorporated industrial organisation as an industrial union of employees or employers under the Industrial Arbitration Act 1940 was suspended when this Part commenced, the Organisation is, on that commencement, taken to be a recognised industrial organisation whose recognition and registration has been suspended under this Act.

(2) If the registration of a continued non-industrial organisation under the Trade Union Act 1881 was suspended when this Part commenced, the organisation is, on that commencement, taken to be a recognised non-industrial organisation whose recognition and registration has been suspended under this Act.

(3) Nothing prevents the suspension or cancellation, after the commencement of this section, of the recognition and registration of an organisation to which this Division applies.

**Division 4—Transitional provisions****Transitional regulations**

649. The regulations may make provision for or with respect to:

- (a) **examination of the constituent documents or rules of continued incorporated or unincorporated industrial organisations or non-industrial organisations to which this Part applies; and**
- (b) declaring the circumstances in which those organisations are, or are not, taken to comply with specified requirements of Part 3; and
- (c) the variation of the requirements of Part 2 to enable the confirmation of the registration of those organisations after the commencement of that Part; and
- (d) the application of provisions of Part 3 to those organisations until their registration is confirmed under Part 2.

**Existing office holders**

650. (1) A person who, immediately before the commencement of this Part, held an office in a continued incorporated or unincorporated industrial organisation or continued non-industrial organisation that, on that commencement, becomes a recognised organisation under this Part is taken to have been elected to that office for the remainder of the term for which he or she was appointed or elected, or for a period of 4 years, whichever is the lesser.

(2) Despite subsection (1), the regulations may provide for the extension of the term of office of a person for a longer period than that referred to in that subsection for the purpose of synchronising elections for offices in an industrial organisation and a State branch of a Federal organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

(3) This section applies only to those organisations recognised under this Part to which the provisions of Division 2 of Part 3 apply.

### **Elections for offices**

651. (1) A continued incorporated or unincorporated industrial organisation or non-industrial organisation that has not held elections before the commencement of this Division must apply to the Industrial Registrar under section 444 for the conduct by the Industrial Registrar of an election within 18 months after that commencement.

(2) The Industrial Registrar must serve on an organisation that fails or refuses to comply with subsection (1) a notice requiring the organisation to hold an election within 6 months after the date of the notice or such further period as the Industrial Registrar considers reasonable in the circumstances and specifies in the notice.

(3) The Industrial Registrar must cancel the recognition or registration of an organisation which fails to comply with a notice served under this section.

(4) This section applies only to those organisations recognised under this Part to which the provisions of Division 2 of Part 3 apply.

## **Division 5—Organisations recognised by the regulations**

### **Recognition of organisation by regulations**

652. The regulations may provide that an organisation is to be recognised as an industrial organisation of employees or employers for the purposes of this Act.

### **Regulations may require compliance with provisions of Part 2 or 3**

653. The regulations may apply to and in respect of an organisation recognised under this Division specified requirements of Part 2 or 3 (with or without modifications).

## **PART 5—STATE PEAK COUNCILS**

### **Definition**

654. In this Part, “State peak council” means an organisation approved for the time being by the Commission as a State peak council for employers or the Labor Council of New South Wales (being the State peak council for employees).

**Approval of State peak councils**

655. (1) An organisation for employers that:

- (a) operates primarily throughout New South Wales; and
- (b) is representative of a significant number of member associations or organisations for employers,

may be approved by the Commission as a State peak council for employers.

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

(3) 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) The regulations may make provision for or with respect to the making of an application for the purposes of this section.

(5) The regulations may apply to and in respect of an organisation recognised under this Part specified requirements of Part 3 (with or without modifications).

**Functions of State peak councils**

656. A State peak council may:

- (a) subject to establishing a sufficient interest in the proceedings, intervene in proceedings before the Industrial Court, the Commission, a Conciliation Committee or a Contract Regulation Committee and make such representations as it considers necessary to safeguard the interests of any one or more of its members; and
- (b) exercise such other functions as are conferred by this Act.

**PART 6—LEGALITY OF TRADE UNIONS****Definition**

657. In this Chapter, “**trade union**” means any temporary or permanent combination (whether or not registered under this Chapter):

- (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.

**Illegality on grounds of restraint of trade excluded (cf. The Trade Union Act 1871 (U.K.), secs. 2–4; Industrial Relations Act 1971 (U.K.), sec. 135)**

658. The purposes of a trade union are not, by reason only that they are in restraint of trade, unlawful, so as:

- (a) to make any member of the trade union liable to criminal proceedings for conspiracy or otherwise; or
- (b) to make any agreement or trust void or voidable.

**Certain agreements not affected**

659. Nothing in this Part affects:

- (a) any agreement between partners as to their own business; or
- (b) any agreement between an employer and those employed by the employer as to such employment; or
- (c) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

**CHAPTER 6—PUBLIC VEHICLES AND CARRIERS****PART 1—PRELIMINARY****Definitions**

660. In this Chapter:

- “**contrast determination**” means a contract determination made under Part 4;
- “**contrast of bailment**” has the meaning given by section 662;
- “**contract of carriage**” has the meaning given by section 663;
- “**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 663 (3) is to be considered to be a principal contractor; or
  - (b) except as provided by section 663 (3)—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 vehicle, within the meaning of the Passenger Transport Act 1990,
- “**registered agreement**” means an agreement registered under Part 3.

**Contracts to which Chapter applies**

661. The contracts to which this Chapter applies are contracts of bailment and contracts of carriage.

**Contract of bailment—meaning**

662. (1) In this Chapter, a “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 vehicle is bailed to a person to transport passengers in such a transport district.
- (2) If a person:
- (a) is in possession of a private hire vehicle 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 vehicle pursuant to a licence under the Passenger Transport Act 1990 of which the person is not the holder,

the provisions of this Chapter 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.

**Contract of carriage—meaning**

663. (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 Chapter to a contract of carriage does not include a reference to 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 (3), 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) 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 Chapter, to be regarded as the principal contractor under the contract to the exclusion of the offeror.

(4) For the purposes of subsection (2) (a), the carrier under a contract of carriage made as referred to in subsection (3) 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 (3) 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.

**PART 2—ASSOCIATIONS OF CONTRACTORS, DRIVERS  
AND CARRIERS****Association of employing contractors**

664. (1) The Industrial 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 form approved by the Industrial Registrar, 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 Industrial Registrar enters in the register of associations of employing contractors the name of the association, particulars of the class of contracts in relation to which it is registered and such other particulars as may be prescribed by the regulations.

**Cancellation of registration**

665. (1) The Industrial Court may order cancellation of the registration of an association of employing contractors:

- (a) if the Industrial Court 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, of the class in relation to which the association is registered, with at least 25 different carriers; or
- (b) if the Industrial Court is satisfied that the group or organisation comprising the association has ceased to exist; or
- (c) for any other reason that to the Industrial Court seems appropriate.

(2) If the Industrial Court makes such an order, the Industrial Registrar is to cancel the registration of the association by removing from the register of associations of employing contractors the name of the association.

**Associations of contract drivers and contract carriers**

666. (1) The Industrial Registrar may, on application:

- (a) register as an association of contract drivers any group or organisation (including an industrial organisation of employees) 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 organisation of employees) 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 form approved by the Industrial Registrar; 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 Industrial Registrar is to cause notice of an application under this section to be published as prescribed by the regulations.

#### **Objections to registration of drivers' and carriers' associations**

667. (1) Any person may, by notice in writing served on the Industrial Registrar within the period prescribed by the regulations, object to the granting of an application under section 666 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 Industrial Registrar is to fix a time and place for the hearing by the Industrial 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 Industrial Registrar must, if the Industrial Registrar sustains the objection, refuse the application to which the objection relates.

(4) The Industrial Registrar must notify in writing all objectors to the granting of the application, and the applicant, of the Industrial Registrar's decision on the objections and of the reasons for that decision.

#### **Grant or refusal of applications**

668. (1) Whether or not an objection is made, the Industrial Registrar can refuse to register the applicant group or organisation as an association on the basis of an application under section 666 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 666 is registered when the Industrial Registrar enters in the register of associations of contract drivers or the register of associations of contract carriers the name of the association, particulars of the class of contracts in relation to which it is registered and such other particulars as may be prescribed by the regulations.

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(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 Industrial Registrar, it is of sufficient importance to be separately registered:

**Withdrawal or cancellation of registration**

669. (1) The Industrial Registrar may issue a certificate of withdrawal of registration 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 manner prescribed by the regulations; and
- (b) written notice of the intention to apply for such a certificate has been given within the period and in the manner prescribed by the regulations; and
- (c) such other conditions as may be prescribed by the regulations have been complied with.

(2) The Industrial Court may order cancellation of the registration of an association of contract drivers or an association of contract carriers:

- (a) if the Industrial 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 Industrial Court.

(3) If, in relation to an association of contract drivers or an association of contract carriers:

- (a) a certificate of withdrawal of registration has been issued under subsection (1) and the period of 28 days immediately following the issue of the certificate has expired; or
- (b) an order has been made under subsection (2),

the Industrial Registrar is to cancel the registration of the association by removing from the relevant register the name of the association.

(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 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.

**Modification or revocation of certain rights of bailees of public vehicles or carriers**

670. 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.

**Demarcation questions relating to associations**

671. (1) The Commission may, by its order, determine any question as to the demarcation of the interests of associations in the regulation of the conditions of contracts to which this Chapter applies.

(2) Application for an order under this section may be made by the Minister, a bailor, a principal contractor or an association.

**Change of name or amalgamation of associations**

672. (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 Industrial 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 manner and form approved by the Industrial Registrar 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 that existed immediately before the recording was made.

(4) The Industrial 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 666 under the changed or amalgamated name.

**Certificates of registration etc.**

673. (1) On the registration of an association of employing contractors, contract drivers or contract carriers, the Industrial Registrar is to issue to the association a certificate of registration in the form approved by the Industrial Registrar.

(2) Such a certificate is conclusive evidence that the requirements of this Act as to registration have been satisfied.

(3) On application made to the Industrial Registrar by a person claiming to be the secretary of an association of employing contractors, contract drivers or contract carriers, the Industrial 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 form approved by the Industrial Registrar that the person is the secretary of the association.

(4) A document purporting to be a certificate under subsection (3) 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.

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(5) A person to whom a certificate has been issued under subsection (3) must, on ceasing to hold office as secretary of the association specified in the certificate, or on being requested by the Industrial Registrar to do so, forthwith return the certificate to the Industrial Registrar for cancellation.

Maximum penalty: 5 penalty units.

**Registers to be kept**

674. (1) The Industrial 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 that are to be open to inspection by any person at the office of the Industrial Registrar at all times when that office is open for business.

(2) A certificate purporting to be signed by the Industrial 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.

**PART 3—AGREEMENTS****Agreements concerning contract conditions**

675. (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.**

676. (1) If an agreement under this Part 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 Part, 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 Part is registered when it is filed in the office of the Industrial Registrar.

(3) An agreement that, by the operation of this Part, 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 Industrial Registrar a 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**

677. 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 Industrial Registrar.

### **PART 4—CONTRACT DETERMINATIONS**

#### **Applications to exercise functions**

678. (1) An application for the exercise of a function of the Commission **under** this Part 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 last 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 concerned; or

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(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 concerned.

(2) An application must be in such form, and contain such particulars, as are required by the rules of the Commission.

**Jurisdiction of Commission with respect to contracts of bailment**

679. (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**

680. (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.

#### **Conference to precede contract determination**

681. (1) When application is made to the Commission to exercise its jurisdiction under this Part, 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.

#### **Contract determinations**

682. (1) After hearing an application for it to exercise its jurisdiction under this Part, 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

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- (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**

683. (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**

684. (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**

685. 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 Industrial 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.

## **PART 5—ENFORCEMENT OF CONTRACT DETERMINATIONS AND AGREEMENTS**

### **Division 1—Recovery of remuneration and similar amounts**

#### **Recovery of remuneration under contract of bailment or carriage**

686. (1) If a contract determination or registered agreement applies to a contract of bailment, 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 registered agreement applies to a contract of carriage, the principal contractor under the contract must pay in full to the carrier under the contract 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 to which a contract determination or registered agreement applies may apply to a Local Court or to the Industrial Court 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 registered agreement applies may apply to a Local Court or to the Industrial Court 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 to which a contract determination or registered agreement applies may apply to a Local Court or to the Industrial Court 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 considers just, award costs to either party and assess the amount of those costs.

### **Recovery of unpaid superannuation**

687. (1) If a contract determination or registered agreement applies to a contract of bailment or carriage and the bailor or principal contractor is required under the determination or agreement to make a contribution to a superannuation fund on behalf of the bailee or carrier, the bailee or carrier may apply to a Local Court or to the Industrial Court for an order under this section.

(2) An order under this section is an order directing the bailor or principal contractor to make a payment to or in respect of the bailee or carrier for the purpose of restoring the bailee or carrier, as far as practicable, to the position that he or she would have been in had the bailor or principal contractor not failed to make the contribution.

(3) Without limiting the generality of subsection (2), an order under this section may direct the bailor or principal contractor to pay to the relevant superannuation fund:

- (a) the amount of the contribution that is unpaid; and
- (b) the amount that, in the opinion of the Local Court or Industrial Court, would have accrued in respect of the contribution in the fund had it been paid to the fund when due.

(4) An application for an order under this section may only be made if the contribution was required to be made during the period of 6 years immediately before the application was made.

(5) The Local Court or Industrial Court may, on an application for an order under this section, make such order as it considers just, award costs to either party and assess the amount of those costs.

(6) An order under this section may be made despite any smaller payment by the bailor or principal contractor or any express or implied agreement to the contrary.

(7) A certificate signed, or purported to be signed, by a trustee of a superannuation fund as to:

- (a) the amount of contribution that has been, or should have been paid in respect of a bailee or carrier for a particular period of time or
- (b) the eligibility of a bailee or carrier for membership of the fund; or

(c) the amount that would have accrued in respect of a contribution or a series of contributions had it been in the fund over a particular period, is evidence of the matters stated in the certificate.

#### **Recovery of amount in a Local Court**

688. Any amount ordered to be paid by a Local Court under this Division may, to the extent that it does not exceed \$40,000 or such greater amount as may be prescribed by the regulations, be recovered as if it were a judgment of the Local Court for the payment of a debt of the same amount.

#### **Alternative proceedings in other courts**

689. A person entitled to apply for an order for the payment of money under this Division may, instead of applying for such an order, recover the money as a debt in any court of competent jurisdiction.

#### **Age of claimant not a bar**

690. A person may take proceedings under this Division, 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.

#### **Persons who may bring proceedings**

691. (1) Proceedings that may be taken by a bailee under this Division 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 this Chapter.

(2) Proceedings that may be taken by a carrier under this Division 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 this Chapter; 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 Industrial Court or Local Court (as the case requires) may order that any of those proceedings be stayed, or dismissed, on such terms as it thinks fit.

(4) Any amount ordered to be paid as a result of proceedings taken in accordance with this section (not being payments under section 687) 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 amounts**

692. (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 of the Department, 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.

#### **Division 2—Breach of contract determinations or agreements**

##### **Penalty for breach**

693. (1) A person who contravenes the provisions of a contract determination or registered agreement is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) If in proceedings for such an offence, it appears that the contravention complained of relates to the failure of the defendant to pay any money that may be recovered under Division 1, the Local Court or Industrial Court may also make such an order with respect to that money as might have been made in proceedings under Division 1.

(3) An order under this section may be made without motion and is a bar to proceedings under Division 1 in respect of the money concerned.

### **Injunctions**

694. (1) If a penalty is imposed under section 693 and the Industrial Court is of the opinion that the breach was committed because of the wilful act or default of a person, the Industrial Court 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 contract determination or registered agreement, 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: 100 penalty units in the case of a corporation; 10 penalty units in any other case.

(3) Proceedings for an offence under this section are to be disposed of summarily by the Industrial Court.

### **Proceedings for offences**

695. (1) Proceedings for a breach of a contract determination or registered agreement may be instituted (in addition to any person authorised by this Act to institute proceedings) by a bailor under a contract of bailment, a principal contractor under a contract of carriage or the secretary of an association registered under this Chapter.

(2) The Local Court or Industrial Court may, in any such proceedings, award costs to either party and assess the amount of costs.

(3) Evidence given in proceedings under Division 1 is not admissible against a person in any such proceedings.

### **Secretary of association receiving money for breach of award etc.**

696. A secretary of an 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 association, who receives any money paid in respect of any act constituting a breach of a contract determination or registered agreement, otherwise than in pursuance of the order or with the previous approval of the Industrial Registrar or a Local Court is guilty of an offence.

Maximum penalty: 50 penalty units.

### **Power to amend proceedings**

697. (1) Where in any proceedings under this Division or Division 1 it appears that the contract determination or registered agreement 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 determination or agreement is appropriate to the proceedings, the Local Court or Industrial Court may

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amend the application, information or complaint and proceed to deal with the matter as though proceedings had been instituted in the application, information or complaint as so amended.

(2) If the amendment appears to the Local Court or Industrial Court to be of such a kind as to provide reasonable grounds to suspect that the bailor or principal contractor may have been deceived or misled with respect to the nature of the proceedings, the Court 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 6—MISCELLANEOUS****Compulsory conference with respect to disputes**

698. (1) If subsection (2) or (3) applies or the Commission has reasonable cause to believe that it 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 association registered under this Chapter or a bailor or a principal contractor becomes aware of a question, dispute or difficulty that might lead, or has led:

- (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.

(3) 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.

(4) Notice that subsection (2) or (3) applies must be given to the Industrial Registrar:

- (a) if subsection (2) applies—by the association registered under this Chapter or by the bailor or principal contractor, immediately on becoming aware that the subsection applies; or

(b) if subsection (3) applies—by the principal contractor, immediately on becoming aware that the subsection applies.

(5) 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.

(6) 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) or (3); and
- (b) all reasonable steps have been taken to effect an amicable settlement of the question, dispute or difficulty,

it may make a contract determination expressed to be an interim determination made under this subsection.

(7) An interim determination made under subsection (6):

- (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.

#### **Records to be kept by bailors and principal contractors**

699. (1) Such daily or other periodic records as are prescribed by the regulations must be kept by:

- (a) the bailor under a contract of bailment to which a contract determination or registered agreement applies; and
- (b) the principal contractor under a contract of carriage to which a contract determination or registered agreement applies.

(2) Any such record is to be kept in such manner as may be prescribed by the regulations or approved by the Commission for a period of at least Q years after the last entry in it.

Maximum penalty: 20 penalty units.

#### **Evasion of Chapter**

700. (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.

**CHAPTER 7—PRIVATE EMPLOYMENT AGENTS****PART 1—DEFINITIONS****Definitions**

701. In this Chapter:

“**approved**” means approved by the Director-General;

“**Director-General**” means the Director-General of the Department;

“**licence**” means a licence in force under this Chapter;

“**licensee**” includes a person who holds a licence jointly with another person or other persons.

**Definition of “carrying on the business of a private employment agent”**

702. (1) A person carries on the business of a private employment agent for the purposes of this Chapter if the person acts as an agent for the purpose of:

- (a) finding or assisting to find a person to carry out work for a person seeking to have work carried out; or
- (b) finding or assisting to find 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 does not carry on the business of a private employment agent merely because the person publishes an advertisement placed by or on behalf of some other person who is seeking to have work carried out or to be employed

(4) A person does not carry on the business of a private employment agent merely because the person carries out any functions in the course of his or her employment by some other person.

**PART 2—LICENSING OF BUSINESS OF PRIVATE EMPLOYMENT AGENTS****Private employment agents to be licensed**

703. (1) A person who carries on the business of a private employment agent must not demand or receive any fee, charge or other remuneration in respect of that business unless the person is the holder of a licence.

(2) A licensee must not carry on the business of a private employment agent at a place other than the place to which the licence, or another licence held by the person, relates.

Maximum penalty: 50 penalty units.

**Persons to be in charge at each place of business**

704. (1) A person must not act as the person in charge at the place of business to which a licence relates unless:



- (a) the person is the licensee or the person has been duly appointed under this section to do so; or
  - (b) the person is so acting:
    - (i) for a period not exceeding 1 month in the place of an absent person referred to in paragraph (a); or
    - (ii) for a period not exceeding 7 days pending an appointment of a person under this section.
- (2) A licensee must not permit a contravention of subsection (1) at a place to which the licence relates.
- (3) If a person is a licensee in respect of more than one place of business, the person 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 the person has nominated that place of business by lodging with the Director-General a notice in the approved form.
- (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 approved form. The appointment takes effect on the date the notice is lodged or a later date specified in the notice.
- (5) A licensee must not appoint a person under this section if the licensee knows, or could reasonably be expected to know that within the proceeding 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 the refusal or cancellation has been overturned by a Local Court on an appeal under this Chapter.
- (6) A nomination or appointment under this section ceases to have effect on the day on which a notice in the approved form is lodged with the Director-General by the licensee or on a later date specified in the notice.
- Maximum penalty: 20 penalty units.

#### **Application for licence as private employment agent**

705. (1) An application for a licence must be:
- (a) in the approved form; and
  - (b) advertised by the applicant in the approved manner in a newspaper circulating generally throughout the State at least 7 days, but not more than 14 days, before the application is made; and
  - (c) accompanied by the fee prescribed by the regulations; and
  - (d) lodged with the Director-General.
- (2) A separate application is required for each place of business.

**Inquiries and objections relating to applications etc.**

706. (1) The Director-General may request the Commissioner of Police to report to the Director-General whether or not any one or more of the following is a fit and proper person to hold a licence:

- (a) an applicant for a licence or a director of a corporation that is an applicant for a licence;
- (b) a person appointed under this Chapter to be in charge of a place of business to which a licence relates.

(2) On receipt of such a request, the Commissioner of Police is required to have such inquiries made as the Commissioner considers necessary in order to comply with the request and is required to furnish a report of the result of those inquiries to the Director-General.

(3) A person may, within 21 days after an application for a licence has been duly advertised under this Chapter, lodge with the Director-General a notice of objection to the grant of the application.

(4) The notice of objection must be in the approved form and the information it contains must be verified by statutory declaration.

(5) The Director-General may, by notice served:

- (a) on the applicant for a licence; or
- (b) on a licensee who appoints a person as the person in charge at the place of business to which the licence relates,

require that applicant or licensee to furnish, within the period specified in the notice, further information or documents in connection with the application or appointment.

**Determination of application for licence**

707. (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 a licence to an applicant if the Director-General is satisfied that:

- (a) the application has been duly made; and
- (b) each applicant (and, in the case of a corporation, each director of the corporation) is a fit and proper person to hold a licence; and
- (c) each applicant (not being a corporation) is over 18 years of age; and
- (d) the place of business to which the application relates is reasonably suitable for carrying on the business of a private employment agent.

(3) Otherwise, the Director-General is to refuse the application for the licence and serve on the applicant notice of the refusal and of the reasons for the refusal. The notice may be served on any one of the applicants in the case of a joint application.

(4) The Director-General may have regard to the following matters when determining whether a person is a fit and proper person to hold a licence:

- (a) the person's character;
- (b) any report on the person finished under this Chapter by the Commissioner of Police;
- (c) any other relevant matter (including any matter specified in any notice of objection lodged under this Chapter).

#### **Form of licence**

708. (1) A licence is to be in the approved form.
- (2) A licence is to specify the following:
- (a) the name of the licensee or the names of the licensees;
  - (b) the place of business to which the licence relates;
  - (c) the date on which the licence is granted;
  - (d) any other approved particulars.

#### **Duration of licence**

709. (1) A licence has effect on and from the date it is granted and continues in force until it is cancelled under this Chapter.

(2) The Director-General may cancel a licence if, before the end of any successive period of 12 months after the licence is granted, the licensee:

- (a) fails to lodge with the Director-General a statement in the approved form containing the information relating to the licence that is required by that form; or
- (b) fails to pay to the Director-General the fee prescribed by the regulations for the continuation of the licence.

#### **Notice of changed particulars**

710. (1) A licensee must notify the Director-General if any of the following events occur:

- (a) the licensee ceases to carry on the business of a private employment agent;
- (b) the business of the licensee is carried on at a place other than the place specified in the licence;
- (c) the name under which the licensee carries on business is changed,
- (d) the name of a corporation that is the licensee is changed;
- (e) the licence is held by a corporation and the directors of the corporation are changed;
- (f) 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;

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- (g) 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) any other event relating to the licence or licensee that is prescribed by the regulations

Maximum penalty: 5 penalty units.

(2) The notification is to be in the approved form and is to be given within the time and in the manner required by that approved form.

(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 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**

711. The Director-General may cancel a licence for such reasons as the Director-General thinks fit, including (but without being limited to) any of the following reasons:

- (a) that the licensee (or a person on behalf of the licensee) made a statement, in or in connection with the application for the grant of the licence or in a statement furnished under this Chapter, 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 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 a fit and proper person to be the holder of a licence;
- (e) that the licensee has failed to comply with a provision of this Chapter (whether or not the licensee has been convicted of an offence against this Chapter);
- (f) that the business of the licensee as a private employment agent has not been or is not being properly conducted;
- (g) 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.

**Procedure for cancellation**

712. (1) If the Director-General proposes to cancel a licence, the Director-General must give the licensee a notice 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.

(2) If the Director-General cancels a licence, the Director-General is to cause a notice of cancellation to be served on the licensee. The notice is to state the reasons for the cancellation of the licence.

(3) A notice of proposed cancellation or of cancellation is not, however, required if the cancellation is on either of the following bases:

- (a) a request has been made by the licensee 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.

(4) The cancellation of a licence takes effect on the expiration of 21 days after the day on which the notice of cancellation is served.

(5) However, if an appeal is duly lodged under this Chapter against the cancellation of the licence, the cancellation does not take effect unless the Local Court hearing the appeal confirms the cancellation or the appeal is withdrawn.

(6) A person who was the holder of a licence cancelled under this Chapter must, on the cancellation of the licence taking effect, deliver the licence to the Director-General as soon as possible.

Maximum penalty: 5 penalty units.

(7) in the case of joint licensees, it is sufficient if a notice under this section is served on any one of the joint licensees.

**If licence cancelled holder not qualified to obtain licence**

713. A person whose licence under this Chapter 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.

**Right of appeal against refusal of application or cancellation of licence**

714. (1) An applicant for a licence may appeal to a Local Court against the refusal of the Director-General to grant the licence.

(2) A licensee may appeal to a Local Court against the cancellation by the Director-General of the licence.

(3) Notice of an appeal under this section, specifying the grounds of appeal, must be lodged not later than 21 days after the day of service of the notice of refusal or cancellation.

**Appeal procedure**

715. (1) Notice of the time and place of the hearing of an appeal is to be given by the Clerk of the Local Court to the Director-General and to the appellant and the notice is to state the grounds of the appeal.

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(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 is satisfied that the appellant 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 Chapter 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 on an appeal as evidence of the contents of the report.

(4) The Local Court 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 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 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, the appeal is to be instituted, heard and determined in accordance with those regulations.

**Register to be kept by Director-General**

716. (1) The Director-General is required to keep a register of licences granted under this Chapter and 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 the name of the person in charge at a place of business to which a licence relates; and
- (e) particulars of each such place of business; and
- (f) if the Director-General causes a notice of cancellation to be served on a licensee, a note to that effect; and
- (g) particulars of any cancellation of the licence and any appeal against the cancellation; and
- (h) any other matter the Director-General considers relevant.

(2) The register under this section is to be kept in an approved form.

(3) 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) did or did not appear in the register under this section is, without proof of the signature of the Director-General, evidence of the particulars certified.

### **PART 3—CONDUCT OF BUSINESS OF EMPLOYMENT AGENT**

#### **Persons from whom licensees may obtain fee, charge or other remuneration**

717. (1) A licensee must not, in connection with the business of a private employment agent, demand or receive any fee, charge or other remuneration except from a person for whom the licensee finds or assists in finding a person to undertake employment or otherwise to carry out work.

Maximum penalty: 50 penalty units.

(2) It is immaterial whether the work or employment is to be carried out or undertaken pursuant to a contract of employment or otherwise.

#### **Production of licence required to recover fee etc.**

718. A licensee is not entitled to recover in a court any fees, charges or other remuneration in connection with the business of a private employment agent unless the licensee produces his or her licence to the court.

#### **Registers and letters to be kept by licensees**

719. (1) A licensee must:

- (a) keep a register containing particulars of the name and address of every person who applies to the licensee for employment and of every person who applies to the licensee for labour and the nature of the employment or labour required; and
- (b) keep a register 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
- (c) retain the originals of all letters received by the licensee in connection with his or her business as a private employment agent for a period of at least 12 months after their receipt.

(2) A register under this section is to be kept in an approved form.

(3) A licensee must retain a register under this section for a period of at least 12 months after the making of the last entry in it.

(4) A licensee must:

- (a) allow the Director-General or an officer authorised by the Director-General to inspect, at any reasonable time, a register or any letters kept under this section; and

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(b) furnish to the Director-General, within the time specified in a notice served on the licensee by the Director-General, such information as the Director-General requires in relation to the particulars contained in the register referred to in subsection (1) (b).

(5) A person must not make in a register kept under this section any entry that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

**Advertising by licensees**

720. (1) A licensee must not advertise or cause to be advertised any matter that, by its tenor, suggests or implies that the matter is not advertised by or on behalf of a private employment agent.

(2) A licensee must not advertise or cause to be advertised a position as being available when no such position exists.

(3) In this section, “**advertise**” includes publish in a newspaper or in any other media.

Maximum penalty: 50 penalty units.

**PART 4—GENERAL****Persons exempted from Chapter**

721. (1) This Chapter does not apply to or in respect of:

- (a) a model or modelling agency; or
- (b) a licensee under the Entertainment Industry Act 1989; or
- (c) a person or class of persons exempted from this Chapter by the regulations.

(2) The regulations may also exempt a person or class of persons from specified provisions of this Chapter.

(3) An exemption may be provided by the regulations subject to conditions or unconditionally.

**Performance of Director-General’s functions**

722. Anything authorised or required under this Chapter 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. Anything purporting to have been done by, lodged with or paid to an officer so authorised is taken to have been done by, lodged with or paid to the Director-General.

**Loss or destruction of licence**

723. On satisfactory proof of loss or destruction of a licence, the Director-General may, at the request of the licensee, issue a duplicate licence. The duplicate is for all purposes to be treated as if it were the original licence.



**Service of notices**

724. (1) A notice that is required to be served or given under this Chapter may be served personally or by post.

(2) The Director-General may serve or give any such notice to a licensee by posting it addressed to the place of business to which the licence relates or by delivering it to a person apparently working at that place.

**Regulations**

725. The regulations may make provision for or with respect to:

- (a) the exhibition of licences and other documents by licensees; and
- (b) the scale of fees, charges or other remuneration chargeable by and payable to licensees; and
- (c) contracts for the employment abroad in any capacity of any persons; and
- (d) special requirements in connection with the carrying on of the business of an employment agent for baby-sitting services.

**Transitional provisions**

726. (1) A licence in force under Division 2A of Part 14 of the Industrial Arbitration Act 1940 (relating to private employment agents) immediately before the repeal of that Division is taken to have been issued by the Director-General of the Department under this Chapter.

(2) A register kept under that Division is taken to have been kept under this Chapter.

**CHAPTER 8—MISCELLANEOUS PROVISIONS****PART 1—PROVISIONS RELATING TO ENTRY AND INSPECTION****Definition of “premises”**

727. In this Part, “premises” includes any mine, structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part of it.

**Appointment of inspectors**

728. (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 or imposed by or under this or any other Act on inspectors appointed for the purposes of this Act.

(3) The Director-General is to provide each inspector with a certificate of authority as an inspector. An inspector is required to produce the certificate of authority in the circumstances prescribed by the regulations.

**Powers of inspectors**

729. (1) 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 has reasonable grounds to suspect any such industry is carried on, and inspect any work being done there; and
- (b) require the employer in any 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 the industry; and
- (c) question any employee in any such industry as to the prices for piecework and the rate of wages paid to the employee, and as to the employee's hours of work.

(2) An inspector may at any reasonable time:

- (a) 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
- (b) 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
- (c) question 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.

(3) An inspector does not have authority under this Act to enter any part of premises used for residential purposes, except:

- (a) with the permission of the occupier; or
- (b) under the authority conferred by a search warrant

**Additional powers of inspectors**

730. (1) If an employee claims that an employer has not paid the full amount of any payment due to or in respect of 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 or in respect of the employee,**

as the inspector considers necessary in order to investigate the claim.

(2) 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 or in respect of 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 or in respect of the bailee or carrier,

as the inspector considers necessary in order to investigate the claim.

(3) A public servant authorised for the purpose by the Director-General of the Department may exercise the powers conferred on an inspector by this section.

#### **Obstruction etc. of inspector in exercise of functions**

##### **731. (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, offers or promises any bribe 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 that the inspector is authorised under this Act or the regulation 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 that the inspector is authorised under this Act or the regulation to have delivered or sent to the inspector; or
- (g) fails to comply with any order or demand that 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 730 to exercise the functions of an inspector.

**Power of entry of members of Commission etc,**

732. (1) A member of the Commission, the Industrial Registrar or an authorised person may at any time during working hours enter any premises in or in respect of which he or she has reasonable grounds to suspect that:

- (a) any industry is being 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 or is to be 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) Any such person does not have authority to enter any part of premises used for residential purposes, except with the permission of the occupier.

(3) A person who hinders or obstructs a member of the Commission, the Industrial Registrar or any authorised person in the exercise of any power conferred by this section is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) In this section, “authorised person” means:

- (a) a member of a Conciliation Committee, or a Contract Regulation Committee, authorised in writing by the chairperson of the Committee; or
- (b) any person authorised in writing by the Commission.

**Right of entry of officer of industrial organisation of employees**

733. (1) An officer of an industrial organisation of employees authorised for the purpose by the Industrial Registrar may:

- (a) enter any premises where members of that organisation are engaged during working hours for the purpose of talking with or interviewing the employees at the premises in any lunch time or non-working time; and
- (b) enter any premises of an employer where members of that organisation 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 the industry or enterprise in which those members are engaged; and
- (c) for the purpose of investigating any such suspected breach, require the employer 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 related to the suspected breach kept by the employer of the employee; and

- (d) make copies of the entries in any such time-sheets and pay-sheets and other documents related to any such suspected breach.
- (2) Before exercising any power conferred in subsection (1) (paragraph (a) excepted), the officer must give the employer concerned at least 7 days' notice.
- (3) An officer who is authorised under this section must not wilfully hinder or obstruct the employees during their working time.  
Maximum penalty: 20 penalty units.
- (4) An authority issued by the Industrial Registrar under this section:
- (a) remains in force until it expires in accordance with paragraph (b) or it is revoked under this section; and
  - (b) expires when the person to whom it was issued ceases to be an officer of the industrial organisation of employees; and
  - (c) may, on an application made to the Industrial Registrar in the manner prescribed by the regulations, be revoked by the Industrial Registrar if the Industrial 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.
- (5) 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 any premises in accordance with this section is guilty of an offence.  
Maximum penalty: 20 penalty units.
- (6) An officer authorised under this section does not have authority to enter any part of premises used for residential purposes, except with the permission of the occupier.
- (7) 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 Industrial Registrar for cancellation.  
Maximum penalty: 20 penalty units.
- (8) 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 an industrial organisation of employees, and it applies as if in this section:
- (a) a reference to members of the industrial organisation of employees were a reference to members of the association; and
  - (b) a reference to employees were a reference to those members.
- (9) In this section, "officer" of an organisation includes any person who is concerned in, or takes part in, the management of the organisation.

### **Search warrant**

734. (1) An inspector may apply to an authorised justice for the issue of a search warrant 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 premises.

(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 police officer:

- (a) to enter the premises; and
- (b) to search the premises for evidence of a contravention of this Act or the regulations.

(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 an authorised justice within the meaning of the Search Warrants Act 1985.

## **PART 2—CHIEF AND OTHER INDUSTRIAL MAGISTRATES**

### **Appointment of Chief and other Industrial Magistrates**

735. (1) The Governor may appoint a Magistrate to be an Industrial Magistrate, and may appoint any such Industrial Magistrate to be the Chief Industrial Magistrate.

(2) The Governor may appoint a Magistrate to act as Chief Industrial Magistrate during the illness or absence of the Chief Industrial Magistrate and the Magistrate is, while so acting, taken to be the Chief Industrial Magistrate.

(3) A person appointed to any office under this section ceases to hold that office if the person ceases to be a Magistrate or the person resigns that office by instrument in writing addressed to the Governor.

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

### **Jurisdiction of Chief and other Industrial Magistrates**

736. (1) The Chief Industrial Magistrate or any other Industrial Magistrate may exercise throughout the State the jurisdiction conferred by the following Acts on a Local Court constituted by a Magistrate:

- this Act
- Annual Holidays Act 1944
- Bread Act 1969
- Building and Construction Industry Long Service Payments Act 1986
- Construction Safety Act 1912
- Essential Services Act 1988
- Factories, Shops and Industries Act 1962
- Industrial and Commercial Training Act 1989
- Long Service Leave Act 1955
- Long Service Leave Metalliferous Mining Industry) Act 1963
- Occupational Health and Safety Act 1983

Textile products Labelling Act 1954

Workers Compensation Act 1987

Any other Act which provides that proceedings under that Act may be dealt with by an Industrial Magistrate.

(2) The Chief Industrial Magistrate or other Industrial Magistrate constitutes a Local Court when exercising that jurisdiction.

(3) The Justices Act 1902 and other Acts regulating the procedure before Local Courts constituted by a Magistrate (but not the Local Courts (Civil Claims) Act 1970) apply to the exercise of that jurisdiction, except as provided by the regulations under this section.

(4) The regulations may make provision for or with respect to procedure and other matters relating to the exercise of any jurisdiction of the Chief Industrial Magistrate or other Industrial Magistrate that does not concern proceedings for an offence.

### **PART 3—PROVISIONS RELATING TO LEGAL PROCEEDINGS**

#### **Proceedings by and against unincorporated associations**

737. (1) For the purposes of this Act, the secretary of an unincorporated association is 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 Act 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.

#### **Evidence of an award, order, agreement etc,**

738. (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 Industrial Registrar; or
- (c) a document certified by the Industrial Registrar to be a true copy of the award.

(2) Evidence of an 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 Industrial Registrar; or
- (b) a document certified by the Industrial Registrar to be a true copy of the agreement.

(3) A document certified by the Industrial Registrar as being a true copy of an award or 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 Industrial Registrar is taken to have been so certified in the absence of proof to the contrary.

(5) In this section:

“award” includes an order of the Commission and a contract determination.

### **Penalty notices**

739. (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 against this Act or the regulations, being an offence 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 is not to be regarded as an admission of liability for the purpose of, and does not 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 is not to exceed the maximum amount of penalty that 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 that may be taken in respect of offences.

(9) In this section, “authorised officer” means an officer of the Department authorised by the Director-General of the Department for the purposes of this section or a person authorised to institute proceedings for an offence against this Act.

### **Summary procedure for offences under this Act or regulations**

740. (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; or
- (b) before the Industrial Court.

(2) The maximum penalty that may be imposed in those proceedings by a Local Court 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 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**

741. (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 the dismissal by the Local Court of an application for such an order; or
- (b) any conviction or penalty imposed by the Local Court for an offence against this Act or the regulations.

(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 in respect of proceedings to which this section applies.

#### **Authority to prosecute**

742. (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 any such proceedings, 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.

(3) Any such proceedings instituted by an officer of the Department may be prosecuted on his or her behalf by any officer of the Department.

- (4) This section does not apply to the following offences:
- (a) an offence under section 302 (Contempt of the Industrial Court);
  - (b) an offence under section 367 (Contempt or disturbance of the Commission);
  - (c) an offence under section 216 (Unlawful industrial action);
  - (d) an offence under Division 3 of Part 2 of Chapter 2 (Parental leave).

### **Recovery of penalty by appointment of receiver**

743. (1) If.

- (a) an industrial or non-industrial organisation fails to pay a penalty imposed under this Act on the organisation; or
- (b) a person who is a member of the committee or other executive body of an industrial or non-industrial organisation fails to pay a penalty imposed under this Act 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 an industrial or non-industrial 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 Industrial Court may, on the application of the Minister and on terms determined by the Industrial Court, appoint a receiver for the purpose of entering into possession, or assuming control, of the property of the 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 Industrial Court; and
- (b) is entitled to recover the costs and expenses of the receivership from the assets of the 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**

744. (1) The amount of any penalty recovered under this Act must be paid into the Consolidated Fund.

(2) However, if any such penalty has been imposed on the complaint or information of the secretary or other officer of an industrial organisation, the court concerned may order that the penalty, or part of the penalty, be paid to the Industrial Registrar for payment to the industrial organisation.

#### **PART 4—OTHER MISCELLANEOUS PROVISIONS**

##### **Disclosure of information**

745. (1) A person who is, or was at any time, an inspector or other public servant engaged in the administration of this Act must not disclose any information relating to any manufacturing or commercial secrets or working processes obtained by him or her in connection with the administration of this 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 of this Act; 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 permission for any such disclosure only if the Minister is satisfied that to do so would be in the public interest.

##### **Reprinting of awards and contract determinations**

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

(2) Before reprinting an award or contract determination, the Industrial Registrar may alter the wording or form of the award or determination if, in the opinion of the Industrial 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, whether made before or after the commencement of this section.

##### **Obsolete awards etc.**

747. (1) The Industrial Registrar, after such inquiry as the Industrial Registrar considers sufficient may notify in the Industrial Gazette the intention

to declare that an award, former industrial 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 may, in accordance with the rules of the Commission, lodge with the Commission notice of objection to any such award, former industrial 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 Industrial Registrar may notify in the Industrial Gazette that the award, former industrial 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, former industrial agreement, exemption, order or contract determination includes a reference to any part of it.

### **Service of documents**

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

### **Regulations**

749. (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 this Act.

(2) In particular, regulations may be made for or with respect to any of the following:

- (a) the forms required or permitted to be used for the purposes of this Act or the regulations (including provision for any such forms to be as approved by the Minister or other body or officer);
- (b) the exhibition at workplaces of copies of awards and other information relating to this Act;
- (c) the payment of expenses of witnesses and persons summoned under this Act;
- (d) the procedure to be followed in enforcing judgments, convictions or orders given or made under this Act;
- (e) the enforcement of orders made under this Act;
- (f) the powers and duties of the Industrial Registrar;

- (g) the registration under this Act of associations of employees or employers, associations of employing contractors, associations of contract drivers and associations of contract carriers;
  - (h) 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 Contract Regulation Committee;
  - (i) the oaths of office to be taken by members of the Commission, a Conciliation Committee or a Contract Regulation Committee.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

**Repeal of Industrial Arbitration Act 1940, Trade Union Act 1881, Truck Act 1900 and regulations**

750. (1) The following Acts (and the regulations made under those Acts) are repealed:

Industrial Arbitration Act 1940  
Trade Union Act 1881  
Truck Act 1900

(2) Different days may be appointed for the commencement of subsection (1) for the purpose of repealing different provisions of the Acts listed in that subsection or the regulations made under them on different days.

**Savings, transitional and other provisions**

751. Schedule 2 has effect.

**Amendment of other Acts**

752. The Acts specified in Schedule 3 are amended as set out in that Schedule.

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**SCHEDULE 1—PERSONS DEEMED TO BE EMPLOYEES**

(Sec. 5)

**Persons to be treated as employees**

1. The following persons are 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 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 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 last-mentioned contractor is 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 taken to be the employer. This provision does not apply to work of repair, alteration or addition to existing premises used as residences.);
  - (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. (In such a case, the employer is 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 taken to be the employer.);

**SCHEDULE 1—PERSONS DEEMED TO BE EMPLOYEES—  
*continued***

- (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 of a class prescribed by the regulations (whether or not of the same kind as the other classes of persons referred to in this clause). Any such regulation must specify the person who, for the purposes of this Act, is taken to be the employer of any person of a class so prescribed.

**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

“**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.

**Exceptions**

3. This Schedule does not operate so as to require a person to be taken to be the employer:

SCHEDULE 1—PERSONS DEEMED TO BE EMPLOYEES—  
*continued*

- (a) of his or her spouse or a member of the family of whom he or she is the parent; or
- (b) of any person who perform any work as an act of charity.

**Substitution of employer**

4. (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 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—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 751)

**PART 1—PRELIMINARY**

**Definitions**

1. In this Schedule:
  - “**1940 Act**” means the Industrial Arbitration Act 1940;
  - “**former Industrial Commission**” means the Industrial Commission of New South Wales as constituted under the 1940 Act immediately before the repeal of that Act;
  - “**former Conciliation Committee**” means a Conciliation Committee as constituted under the 1940 Act immediately before the repeal of that Act;
  - “**former Contract Regulation Tribunal**” means a contract regulation tribunal as constituted under the 1940 Act immediately before the repeal of that Act;
  - “**new Commission**” means the Industrial Relations Commission established under this Act.

**Regulations**

2. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of this Act.



**SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER  
PROVISION—*continued***

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State of an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS RELATING TO THE INDUSTRIAL  
COURT AND COMMISSION****Definition of “appointed day”**

3. In this Part, “**appointed day**” means the day on which the Industrial Court is established.

**Members of former Commission and Conciliation Commissioners to  
continue in office**

4. On the appointed day:

- (a) the person holding office as Resident of the former Industrial Commission immediately before that day is taken to be appointed as Chief Judge of the Industrial Court and President of the new Commission; and
- (b) the person holding office as Vice-Resident of the former Industrial Commission immediately before that day is taken to be appointed as Deputy Chief Judge of the Industrial Court and Vice-President of the new Commission; and
- (c) a person holding office as any other judicial member of the former Industrial Commission immediately before that day is taken to be appointed as a Judge of the Industrial Court (other than Chief Judge or Deputy Chief Judge) and as a Deputy President of the new commission; and
- (d) a person holding office as a non-judicial member of the former Industrial Commission immediately before that day is taken to be appointed as a Presidential Member of the new Commission; and
- (e) a person holding office as a Conciliation Commissioner under the 1940 Act immediately before that day is taken to be appointed as a Conciliation Commissioner of the new Commission.

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Judicial members of former Industrial Commission taken to be appointed as Judges**

S. (1) This clause applies to a person who was a judicial member of the former Industrial Commission and who is taken to be appointed as Chief Judge, Deputy Chief Judge or other Judge of the Industrial Court under clause 4.

(2) In the case of a person who is taken to have been appointed as Chief Judge or Deputy Chief Judge, the remuneration that the person is entitled to be paid is to be not less than the remuneration from time to time determined on the basis of the same comparison with a Judge of the Supreme Court as that on which the remuneration of the person had been determined immediately before the appointed day. This subclause has effect despite the provisions of the Statutory and Other Offices Remuneration Act 1975 relating to the Chief Judge and the Deputy Chief Judge.

(3) In the case of a person who is taken to have been appointed as another Judge, Chapter 4 of this Act provides that the remuneration payable is to be the same as that payable to a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal).

(4) Service as a judicial member of the former Industrial Commission of a person to whom this clause applies is to be reckoned for all purposes as service as a Judge of the Industrial Court.

**Non-judicial members of former Industrial Commission taken to be appointed as members of new Commission (other than Judges)**

6. (1) This clause applies to a person who was a non-judicial member of the former Industrial Commission and who is taken to be appointed as a member of the new Commission under clause 4.

(2) Any such person has, while holding the office to which the person is taken to have been appointed, the same rank, status, precedence and other rights as the person had under the 1940 Act immediately before the appointed day.

(3) The remuneration that a person to whom this clause applies is entitled to be paid is to be not less than the remuneration from time to time determined on the basis of the same comparison with a Judge of the Supreme Court as that on which the remuneration of the person had been determined immediately before the appointed day. This subclause has effect despite the provisions of the Statutory and Other Offices Remuneration Act 1975 relating to members of the new Commission.

(4) The Judges' Pensions Act 1953 does not apply to a person to whom this clause applies.

(5) The Judicial Officers Act 1986 (including, despite its repeal, section 44 (2) of that Act) continues to apply to a person to whom this clause applies and so applies in the same way as it applied to the person as a non-judicial member

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*

of the former Industrial Commission. Accordingly, the provisions of this Act relating to the vacation of office of members of the new Commission do not apply to such a person.

(6) Service as a non-judicial member of the former Industrial Commission of a person to whom this clause applies is to be reckoned for all purposes as service as a member of the new Commission.

**Conciliation Commissioners taken to be appointed as members of new Commission**

7. (1) This clause applies to a person who was a Conciliation Commissioner under the former Act and who is taken to be appointed as a member of the new Commission under clause 4.

(2) The remuneration that a person to whom this clause applies is entitled to be paid is to be not less than the remuneration that was payable to the person as a Conciliation Commissioner immediately before the appointed day. This subclause has effect despite the provisions of the Statutory and Other Offices Remuneration Act 1975 relating to members of the new Commission.

(3) Despite their repeal, the provisions of section 15 (1A) (a), (7), (8), (8A) and (8B) of the 1940 Act continue to apply to a person to whom this clause applies and so apply in the same way as they applied to the person when the person was a Conciliation Commissioner under the 1940 Act.

(4) Service as a Conciliation Commissioner of a person to whom this clause applies is to be reckoned for all purposes as service as a member of the new Commission.

**Temporary continuation of existing Conciliation Committees and existing Contract Regulation Tribunals**

8. (1) A Conciliation Committee, or a Contract Regulation Tribunal, holding office under the 1940 Act immediately before the appointed day becomes, on that day, a Conciliation Committee or a Contract Regulation Committee, holding office under this Act, except that the Chairperson is to be a Conciliation Commissioner who holds office under this Act and is nominated as Chairperson by the new Commission.

(2) A Conciliation Committee of a Contract Regulation Committee constituted by subclause (1) continues until:

- (a) the committee is replaced by a committee stated by the new commission to be its replacement; or
- (b) the first anniversary of the appointed day,

whichever occurs first.

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS— *continued***Matters pending before former Industrial Commission, Conciliation Commissioner etc.**

9. (1) If, before the appointed day, proceedings in relation to a matter were instituted in the former Industrial Commission, before a Conciliation Commissioner sitting alone, or before a Conciliation Committee or a Contract Regulation Tribunal, but the hearing of the matter had not been commenced before the appointed day, the proceedings are taken to be:

- (a) proceedings instituted in the new Commission, if they are of a kind in respect of which the new Commission has jurisdiction on the appointed day; or
- (b) proceedings instituted in the Industrial Court, if they are of a kind in respect of which the Industrial Court has jurisdiction on the appointed day.

(2) If, before the appointed day, the former Industrial Commission, a Conciliation Committee or a Contract Regulation Tribunal had commenced the hearing of, but had not determined, a matter, the person or persons constituting the Commission, Committee or Tribunal hearing the matter are to continue the hearing, and are to determine the matter, sitting as the Industrial Court, the new Commission, a Conciliation Committee or a Contract Regulation Committee, as the case requires.

(3) If, before the appointed day, a Conciliation Commissioner sitting alone had commenced the hearing of, but had not determined, a matter, the Conciliation Commissioner is to continue the hearing, and is to determine the matter, sitting as the new Commission.

(4) A determination of a matter made under subclause (2) or (3) has effect:

- (a) if the matter determined is of a kind in respect of which the new Commission has jurisdiction at the time of the determination—as a determination of the new Commission; or
- (b) if the matter determined is of a kind in respect of which the Industrial Court has jurisdiction at the time of the determination—as a determination of the Industrial Court.

(5) If proceedings referred to in subclause (1) are proceedings to be heard before the former Industrial Commission sitting as the Commission in Court Session, the reference in that subclause to the Industrial Court is a reference to the Industrial Court sitting as the Full Industrial Court.

**Chief Industrial Magistrate**

10. On the appointed day, a person holding office as Chief Industrial Magistrate under the 1940 Act immediately before that day is taken to be appointed as Chief Industrial Magistrate under this Act.

**SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*****Matters pending before industrial magistrates**

11. (1) If, before the appointed day, proceedings in relation to a matter were instituted before an industrial magistrate, but the hearing of the matter had not been commenced before that day, the proceedings are taken to be proceedings instituted before a Local Court constituted by an Industrial Magistrate.

(2) If, before the appointed day, an industrial magistrate had commenced the hearing of, but had not determined, a matter, the hearing of the matter is to continue before a Local Court constituted by an Industrial Magistrate as if it had been partly heard by the industrial magistrate as an Industrial Magistrate constituting a Local Court.

(3) Any decision made by an industrial magistrate before the appointed day is taken to have been made by a Local Court constituted by an Industrial Magistrate for the purposes of allowing the commencement of an appeal, or the commencement of any other further proceedings, under this Act relating to that decision on or after the appointed day.

(4) Any monetary restriction imposed by this Act on the jurisdiction of a Local Court in dealing with proceedings of the kind to which this clause applies has effect with respect to particular proceedings to which this clause applies only to the extent (if any) that an industrial magistrate dealing with proceedings of the same kind under the 1940 Act would have been bound by the restriction.

**Registrar, Deputy Registrar and inspectors**

12. Any person appointed under Part 2 of the Public Sector Management Act 1988 to the office of Industrial Registrar, Deputy Industrial Registrar or inspector for the purposes of the 1940 Act and holding that office immediately before the appointed day is taken to have been so appointed to the corresponding office for the purposes of this Act.

**PART 3—GENERAL PROVISIONS****Awards, orders and contract determinations**

13. (1) An award or order made under the 1940 Act by the former Industrial Commission or Retail Trade Industrial Tribunal, or a former Conciliation Committee or Conciliation Commissioner (being an award or order in force immediately before the commencement of this clause) is taken to have been made under this Act.

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SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) A contract determination made under Part 8A of the 1940 Act (being a contract determination in force immediately before the commencement of this clause) is taken to have been made under this Act.

**Saving of certain exemptions**

14. An exemption from an award made under the 1940 Act (being an exemption in force immediately before the commencement of this clause) is taken to have been granted under this Act.

**Savings for existing enterprise agreements**

15. (1) Any enterprise agreement registered under Part 1C of the 1940 Act and in force immediately before the repeal of that Part is taken to be an enterprise agreement registered under this Act.

(2) Any works committee formed under Part 1C of the 1940 Act and in existence immediately before the repeal of that Part is taken to be a works committee formed under this Act.

(3) Any enterprise agreement lodged for registration under Part 1C of the 1940 Act and not dealt with immediately before the repeal of that Part is to be dealt with as if lodged for registration under this Act.

**Construction of superseded references**

16. A reference in another Act, in an instrument made under an Act or in any document:

- (a) to the 1940 Act—~~is~~ to be read as a reference to this Act; or
- (b) to the Trade Union Act 1881 or the Truck Act 1900—~~is~~ to be read as a reference to the corresponding provisions of this Act; or
- (c) to the former Industrial Commission—~~is~~ to be read as a reference to the Industrial Relations Commission established under this Act or to the Industrial Court, as is appropriate; or
- (d) to a former Conciliation Committee—~~is~~ to be read as a reference to a Conciliation Committee established under this Act; or
- (e) to a former Contract Regulation Tribunal—~~is~~ to be read as a reference to a Contract Regulation Committee established under this Act; or
- (f) to an industrial magistrate—~~is~~ to be read as a reference to a Magistrate or a Local Court constituted by a Magistrate sitting alone, as is appropriate; or
- (g) to an award or industrial agreement under the 1940 Act—~~is~~ to be read as a reference to an award under this Act or a former industrial agreement.

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SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*

**Expiration of current period**

17. U, for any purpose, time had commenced to run under a provision of the 1940 Act before, but had not expired before, the repeal of the provision, it expires for the corresponding purpose under this Act, at the time at which it would have expired if the provision had not been repealed.

**General saving**

18. (1) If anything done or commenced under the 1940 Act, the Trade Union Act 1881 or the Truck Act 1900 before the commencement of this clause and still having effect or not completed immediately before that commencement could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced:

- (a) the thing done continues to have effect; or
- (b) the thing commenced may be completed,

as if it had been done or commenced under this Act.

- (2) This clause is subject to any express provision of this Act on the matter.

**SCHEDULE 3—AMENDMENT OF OTHER ACTS**

(Sec. 752)

**Annual Holidays Act 1944 No. 31**(1) Section 2 (**Interpretation**):

- (a) From section 2 (1), omit the definition of “Agreement”, insert instead:

**“Agreement”** means an agreement within the meaning of the Industrial Relations Act 1991.

- (b) From the definitions of “Award” and “Inspector” in section 2 (1), omit “Industrial Arbitration Act, 1940”. insert instead “Industrial Relations Act 1991”.

(2) Section 3 (**Annual holidays with pay**):

From section 3 (4). omit “Industrial Arbitration Act, 1940”, insert instead “Industrial Relations Act 1991”.

(3) Section 5 (**Special provisions—annual holidays otherwise than under this Act**):

From section 5 (1A), omit “Industrial Arbitration Act, 1940”, insert instead “Industrial Relations Act 1991”.

*Industrial Relations 1991*SCHEDULE 3—AMENDMENT OF OTHER, ACTS—*continued*(4) Section 12 (**Proceedings for recovery of penalties**):

(a) Omit section 12 (1), insert instead:

(1) Proceedings for the recovery of a penalty under this Act are to be taken before a Local Court constituted by a Magistrate sitting alone or before the Industrial Court and may be taken by:

- (a) an inspector; or
- (b) the secretary of an industrial organisation whose members are engaged in the industry concerned; or
- (c) a person whose rights are impaired.

(b) From section 12 (2), omit ““industrial magistrate”, insert instead “Industrial Court”.

(c) From section 12 (3), omit “Local Court or industrial magistrate before whom”, insert instead “Local Court or Industrial Court before which”.

(5) Section 13 (**Recovery of holiday pay**):

(a) From section 13 (1), omit “any industrial magistrate appointed under the Industrial Arbitration Act, 1940,”, insert instead “the Industrial Court”.

(b) From section 13 (1), omit “industrial magistrate may make any order the court or magistrate”, insert instead “Industrial Court may make any order it”.

(c) Omit section 13 (1A).

(d) From section 13 (3), omit “industrial union registered as such under the Industrial Arbitration Act, 1940”, insert instead “industrial organisation of employees registered under the Industrial Relations Act 1991”.

## (6) Section 14:

Omit the section, insert instead:

**Provisions as to enforcement of orders, appeals etc.**

14. The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to:

- (a) recovery of a penalty; and
- (b) the making of an order for the payment of interest OR an amount of money; and
- (c) an application for, and enforcement of, an order for the payment of money or interest on an amount of money; and
- (d) an appeal from, or the stating of a case by, a Local Court to the Industrial Court,



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 SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

apply to proceedings under this Act for the recovery of a penalty or the payment of money or interest on an amount of money.

**Anti-Discrimination Act 1977 No. 48**

Section 95A:

After section 95, insert:

**Leave of Tribunal required for inquiry into certain industrial issues**

95A. (1) An issue that is the subject of proceedings before the Industrial Relations Commission or the Industrial Court may not be the subject of proceedings before the Tribunal without the leave of the Tribunal.

(2) This section does not affect the operation of section 107 in relation to evidence given before, or findings made by, the Industrial Relations Commission or the Industrial Court.

**Bail Act 1978 No. 161**

(1) Section 4 (**Definitions**):

- (a) From the definition of “court” in section 4 (1), omit “the Industrial Commission”, insert instead “the Industrial Court”.
- (b) Omit the definition of “Industrial Commission” from section 4 (1), insert instead:
 

**“Industrial Court”** means the Industrial Court of New South Wales, and includes a Judge of that Court;
- (c) From the definition of “Judge” in section 4 (1), omit “or District Court or a judicial member of the Industrial Commission”, insert instead “, Industrial Court or District Court”.
- (d) From the definition of “Local Court” in section 4 (1), omit “, the Children’s Court and a court constituted by an industrial magistrate under the Industrial Arbitration Act 1940”, insert instead “and the Children’s Court”.

(2) Part 4, Division 7:

Omit the Division, insert instead:

**Division 7—Industrial Court****Power of Industrial Court to grant bail**

30B. The Industrial Court may grant bail in accordance with this Act to a person accused of an offence, where proceedings for the offence are pending in that Court.

*Industrial Relations 1991*SCHEDULE 3—AMENDMENT OF OTHER ACT—*continued*(3) Section 44 (**Power of justices, magistrates and certain courts to review**):

Omit section 44 (5), insert instead:

(5) Subject to this Part, the Industrial Court may review any decision made by the Industrial Court (however constituted) in relation to bail.

**Bread Act 1969 No. 54**(1) Section 4 (**Definitions**):

(a) From the definition of “inspector” in section 4 (1), omit “Industrial Arbitration Act 1940,” insert instead “Industrial Relations Act 1991”.

(b) From section 4 (1), omit the definition of “the Commission”.

## (2) Section 5:

Omit the section, insert instead:

**Definitions**

5. In this Part:

“**award**” means an award under the Industrial Relations Act 1991;

“**employee**” means an employee within the meaning of that Act;

“**industrial agreement**” means a former industrial agreement or enterprise agreement within the meaning of that Act;

“**industrial tribunal**” means the Industrial Relations Commission or a Conciliation Committee of that Commission.

(3) Section 6 (**Starting and ceasing times for bread manufacture and delivery**):

Omit section 6 (2) (b), insert instead:

(b) an industrial agreement (whenever made); or

## (4) Sections 12 (8), (11), 13 (7), (9), 14 (2), (3):

Omit “Commission” wherever occurring, insert instead “Industrial Court”.

(5) Section 30 (**Proceedings**):

(a) From section 30 (4), omit “or an industrial magistrate appointed under the Industrial Arbitration Act 1940”.

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(b) Omit section 30 (5), insert instead:

(5) The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**Builders Labourers Federation (Special Provisions) Act 1986 No. 17****Section 4 (Eligibility of certain building industry employees for membership of certain organisations):**

(a) From section 4 (3), omit “if an alteration so made of which the Industrial Commission of New South Wales or the Industrial Registrar has approved under the Industrial Arbitration (General) Regulations”, insert instead “if an alteration is duly so made in accordance with the law then in force”.

(b) After section 4 (S), insert:

(6) A reference in this section to an industrial union registered or becoming registered under the Industrial Arbitration Act 1940 includes a reference to an industrial organisation registered or becoming registered under the Industrial Relations Act 1991.

**Building and Construction Industry Long Service Payments Act 1986 No. 19****Section 64 (Proceedings for offences):**

Omit section 64 (1) and (2). insert instead:

(1) Proceedings for offences against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) The provisions of the Industrial Relations Act 1991 relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**Coal Mines Regulation Act 1982 No. 67****Section 156 (Where proceedings taken):**

(a) From section 156 (1), omit “an industrial magistrate”, insert instead “a Local Court constituted by a Magistrate sitting alone”.

(b) Omit section 156 (3).

*Industrial Relations 1991*SCHEDULE 3—AMENDMENT OF OTHER ACT—*continued***Construction Safety Act 1912 No. 38****Section 21 (Penalties and proceedings for offences):**

(1) From section 21 (1), omit “or before an industrial magistrate appointed under the Industrial Arbitration Act 1940, as amended by subsequent Acts”.

(2) From section 21 (1), omit the third paragraph.

(3) After section 21 (1A), insert:

(1B) The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**Employment Protection Act 1982 No. 122**

After section 6, insert:

**Industrial Relations Act 1991**

6A. (1) After the repeal of the Principal Act, this Act continues to have effect and is to be construed subject to the Industrial Relations Act 1991.

(2) In particular:

(a) references in this Act are to be construed in accordance with clause 16 of Schedule 2 to the Industrial Relations Act 1991; and

(b) references to agreements are to be construed as references to agreements within the meaning of that Act, except in section 14 (2) (b) and (3) of this Act where the references are to be construed as references to former industrial agreements.

**Essential Services Act 1988 No. 41**

(1) Section 3 (**Definitions**):

(a) Omit the definitions of “award” and “industrial agreement”.

(b) Omit the definitions of “industrial matter” and “industrial registrar”, insert instead:

“**industrial action**” has the same meaning as in the Industrial Relations Act 1991;

“**industrial matter**” has the same meaning as in the Industrial Relations Act 1991;

“**Industrial Registrar**” means the Industrial Registrar appointed under the Industrial Relations Act 1991;

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (c) Omit the definition of “union”, insert instead:  
**“industrial organisation”** has the same meaning as in the Industrial Relations Act 1991.
- (2) Section 5 (**Relationship to other Acts etc.**):
- (a) Omit section 5 (a) (i), insert instead:  
 (i) the Industrial Relations Act 1991; or
- (b) Omit section 5 (c), insert instead:  
 (c) any award or agreement within the meaning of the Industrial Relations Act 1991; or
- (3) Part 4 (**Industrial action**):  
 Omit “union”, “union’s” and “industrial registrar” wherever occurring (except where omitted by another amendment in this Schedule), insert instead “industrial organisation”, “industrial organisation’s” and “Industrial Registrar” respectively.
- (4) Section 15 (**Reference of industrial matter to the Industrial Relations Commission**):
- (a) Section 15 (1) and (2):  
 Omit the subsections, insert instead:  
 (1) When a proclamation under section 8 or an order under section 10 is in force in relation to an essential service which is being disrupted by any question, dispute or difficulty involving industrial action or potential industrial action, the Minister must refer any industrial matter relating to the question, dispute or difficulty to the Industrial Relations Commission.  
 (2) The Minister is required to refer the industrial matter only if it can be dealt with under the Industrial Relations Act 1991 by conciliation and arbitration and is not already being so dealt with under that Act.
- (b) After “Industrial” in section 15 (3), insert “Relations”.
- (5) Section 16 (**Stand down of employees**):
- (a) From section 16 (l), omit “any question, dispute or difficulty of the nature referred to in section 25 (1) (a), (b) or (c) of the Industrial Arbitration Act 1940”, insert instead “industrial action”.
- (b) Before “Commission” wherever occurring in section 16 (8) and (9), insert “Relations”.
- (c) From section 16 (g), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*(6) Section 17 (**Suspension and cancellation of registration of industrial organisation**):

(a) Omit section 17 (2) (a) and (b), insert instead:

(a) the Minister has consulted with the Chief Judge of the Industrial Court and the President of the Industrial Relations Commission as to the state of any industrial action involving the industrial organisation of which either of them is aware; and

(b) the Minister is satisfied that any order of the Court or the Commission made in relation to any such industrial action has not been complied with.

(b) Omit section 17 (4) (a), insert instead:

(a) the registration of the industrial organisation under the Industrial Relations Act 1991 is, by operation of this section, suspended; and

(c) Omit section 17 (6), insert instead:

(6) Despite any provision of the Industrial Relations Act 1991, if the registration under that Act of an industrial organisation is cancelled by operation of this section, the Industrial Registrar must refuse any application made within 3 years after the cancellation for registration of an industrial organisation under that Act which, in the opinion of the Industrial Registrar, is (because of its membership, executive or otherwise) the same, or substantially the same, as the industrial organisation.

(7) Sections 591, 595, 596 and 597 of the Industrial Relations Act 1991 apply to a cancellation of registration under this Act.

(7) Section 19 (**Amendment of rules following cancellation of registration**):

From section 19 (1) and (2), omit “Commission” wherever occurring, insert instead “Court”.

(8) Section 21 (**Restriction on appeals**):

From section 21 (2), omit “section 14 (8) of the Industrial Arbitration Act 1940”, insert instead “the Industrial Relations Act 1991”.

(9) Section 22 (**Appeals against cancellation of registration**):

(a) From section 22 (1), omit “Industrial Commission in court session” wherever occurring, insert instead “Full Industrial court”.

(b) From section 22 (2) and (3), omit “Industrial Commission” wherever occurring, insert instead “Full Industrial Court”.

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*(10) Section 23 (**Appeals against amendment of rules**):

- (a) From section 23 (1), omit “Industrial Commission in court session” wherever occurring, insert instead “Full Industrial Court”.
- (b) From section 23 (2)—(4), omit “Industrial Commission” wherever occurring, insert instead “Full Industrial Court”.

## (11) Sections 24, 25:

Omit the sections, insert instead:

**Provisions relating to appeals**

24. The Full Industrial Court is required to hear and determine any application for leave to appeal, or any appeal, under section 22 or 23 as if the application or appeal had been made under the Industrial Relations Act 1991.

(12) Section 26 (**Recovery of penalty by appointment of receiver**):

- (a) From section 26 (4)—(6), omit “Commission” wherever occurring, insert instead “Court”.
- (b) Omit section 26 (7).

(13) Section 28 (**Disclosure of information**):

From section 28 (b) and (c), omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.

(14) Section 31 (**Proceedings for offences**):

Omit “an industrial magistrate or”.

**Factories, Shops and Industries Act 1962 No. 43**(1) Section 145 (**Proceedings**):

- (a) In section 145 (3) (a), after “Magistrate;”, insert “or”.
- (b) Omit section 145 (3) (b).
- (c) From section 145 (3A), omit “or before an industrial magistrate, the maximum penalty that the Local Court or industrial magistrate”, insert instead “, the maximum penalty that the Local court”.
- (d) Omit section 145 (4), insert instead:
  - (4) The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act of the regulations.

*Industrial Relations 1991*

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SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*

- (2) Sections 145A (1), 147 (2), 148 (2) (a):  
Omit “or industrial magistrate” wherever occurring.

**Industrial and Commercial Training Act 1989 No. 77**

- (1) Section 4 (**Definitions**):  
From the definition of “conciliation committee” in section 4 (1), omit “section 18 of the Industrial Arbitration Act 1940”, insert instead “the Industrial Relations Act 1991”.
- (2) Section 5 (**Relationship with Industrial Relations Act 1991**):  
Omit section 5 (b), insert instead:  
(b) the provisions of the Industrial Relations Act 1991 or of any regulation, order, award or agreement under that Act,
- (3) Section 71 (**Legal representation**):  
(a) From section 71 (2) and (3), omit “an industrial union of employers or employees” wherever occurring, insert instead “an industrial organisation”.  
(b) After section 71 (3), insert:  
(4) In this section:  
“**industrial organisation**” has the same meaning as it has in the Industrial Relations Act 1991.
- (4) Section 88 (**Determination of appeals**):  
(a) From section 88 (5), (6) and (7), omit “Industrial Commission” wherever occurring, insert instead “Industrial Relations Commission”.  
(b) From section 88 (6), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.
- (5) Section 94 (**Proceedings for offences**):  
From section 94 (1), omit “before an industrial magistrate or”.

**Industrial Arbitration (Special Provisions) Act 1984 No. 121**

- Section 3 (**Cancellation of certain registration**):  
Omit section 3 (4), insert instead:  
(4) After the cancellation of the registration of the union under the principal Act, the Industrial Registrar must refuse any application for registration of an industrial organisation under the



**SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued***

Industrial Relations Act 1991 which, in the opinion of the Industrial Registrar, is (by reason of its membership, executive or otherwise) the same, or substantially the same, as the union.

**Judges<sup>9</sup> Pensions Act 1953 No. 41****(1) Section 2 (Definitions):**

After the words “Industrial Commission of New South Wales,” in the definition of “Judge” in section 2 (1), insert “Judge of the Industrial Court,”.

**(2) Section 8 (Prior Judicial service):**

After the words “Industrial Commission of New South Wales,” in section 8 (3), insert “an Acting Judge of the Industrial Court,”.

**Judicial Officers Act 1986 No. 100****(1) Section 3 (Definitions):**

(a) Omit paragraph (b) of the definition of “judicial officer” in section 3 (1), insert instead:

(b) a Judge of the Industrial Court;

(b) Omit section 3 (5) (b), insert instead:

(b) the Chief Judge of the Industrial Court, in relation to a Judge of the Court;

**(2) Section 5 (The Commission):**

Omit section 5 (4) (b), insert instead:

(b) the Chief Judge of the Industrial Court;

**(3) Section 44 (Retirement of judicial officers):**

Omit section 44 (2).

**Justices Act 1902 No. 27****Section 1001 (Interpretation):**

Insert (in alphabetical order) in the statutory provisions listed in paragraph (a) of the definition of ‘penalty notice’, the following matter:

Industrial Relations Act 1991, section 739;

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 SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*
**Land and Environment Court Act 1979 No. 204**(1) Section 8 (**Appointment and qualification of Judges**):

Omit section 8 (2) (b), insert instead:

(b) a Judge of the Industrial Court;

(2) Section 9 (**Remuneration etc.**):

From section 9 (2A), omit “President of the Industrial Commission of New South Wales”, insert instead “Chief Judge of the Industrial Court of New South Wales”.

**Long Service Leave Act 1955 No. 38**(1) Section 3 (**Definitions**):

(a) Before the definition of “Award” in section 3 (1), insert:

“**Agreement**” means an agreement within the meaning of the Industrial Relations Act 1991.

(b) From the definitions of “Award”, and “Inspector” in section 3 (1), omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.

(c) From section 3 (1), omit the definition of “Enterprise agreement\*\*”.

(d) From section 3 (1), omit the definition of “Industrial agreement”.

(e) From section 3 (4), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.

(2) Section 4 (**Long service leave**):

(a) From section 4 (2) (al) (i), omit “made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act 1940 or has been fixed by an industrial agreement made pursuant to or registered under those Acts or by an enterprise agreement”, insert instead “in force under the Industrial Relations Act 1988 of the Commonwealth or by an award or agreement in force under the Industrial Relations Act 1991”.

(b) From section 4 (2) (al) (i), omit “industrial agreement or enterprise”.

(c) From section 4 (2) (al) (iii), omit, enterprise agreement or industrial agreement”, insert instead “or agreement”.

(d) From section 4 (11) (al) (iii), omit “section 88C of the Industrial Arbitration Act 1940”, insert instead “Division 8 of Part 2 of Chapter 2 (Sick leave) of the Industrial Relations Act 1991”.

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 SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*

- (e) From section 4 (13) (a), omit the definition of “Award”, insert instead:

“Award” includes:

- (a) an agreement; and
- (b) an award in force under the Industrial Relations Act 1988 of the Commonwealth.

(3) Section 5 (**Exemptions**):

- (a) From section 5 (1) (a), omit “industrial”.
- (b) From section 5 (1) (b), omit “or by an enterprise agreement”.
- (c) From section 5 (1) (b), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.
- (d) From section 5 (2) (a), (d) and (4), omit “Industrial Commission of New South Wales” wherever occurring, insert instead “Industrial Relations Commission”.
- (e) From section 5 (4), omit “an industrial union of employers or employees”, insert instead “an industrial organisation registered under the Industrial Relations Act 1991”.

(4) Section 5A (**Review of exemptions**):

- (a) From section 5A (2), (3) and (4), omit “Industrial Commission of New South Wales” wherever occurring, insert instead “Industrial Relations Commission”.
- (b) From section 5A (3) (b), omit “an industrial union of employers or employees”, insert instead “an industrial organisation registered under the Industrial Relations Act 1991”.

(5) Section 6 (**Savings as to powers etc.**):

- (a) Omit “Industrial Commission of New South Wales”, insert instead “Industrial Relations Commission”.
- (b) Omit “or a conciliation commissioner” wherever occurring.
- (c) Omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.

(6) Section 11 (**Recovery of penalties**):

- (a) Omit section 11 (1), insert instead:
  - (1) Proceedings for the recovery of a penalty under this Act are to be taken before a Local Court constituted by a Magistrate sitting alone and may be taken by:
    - (a) an inspector; or

*Industrial Relations 1991*SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*

- (b) the secretary of an industrial organisation registered under the Industrial Relations Act 1991 whose members are engaged in the industry concerned; or
  - (c) a person whose rights are impaired.
  - (b) From section 11 (2), omit “or industrial magistrate,”.
  - (c) From section 11 (3), omit “or industrial magistrate”
- (7) Section 12 (**Recovery of long service leave pay**):
- (a) From section 12 (1), omit “or to any industrial magistrate appointed under the Industrial Arbitration Act 1940”, insert instead “or to the Industrial Court”.
  - (b) From section 12 (1), omit “or industrial magistrate may make any order the court or magistrate”, insert instead “or Industrial Court may make any order it”.
  - (c) Omit section 12 (1A).
  - (d) From section 12 (2), omit “industrial” where firstly and thirdly occurring.
  - (e) From section 12 (2), omit “an industrial union registered as such under the Industrial Arbitration Act 1940”, insert instead “an industrial organisation of employees registered under the Industrial Relations Act 1991”.
- (8) Section 14:
- Omit the section, insert instead:
- Provisions as to enforcement of orders, appeals etc.**
14. The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to:
- (a) recovery of a penalty; and
  - (b) an application for, and enforcement of, an order for the payment of money; and
  - (c) an appeal from, or the stating of a case by, a Local Court to the Industrial Court,
- apply to proceedings under this Act for the recovery of a penalty or the payment of money.

**Long Service Leave (Metalliferous Mining Industry) Act 1963 No. 48**

- (1) Section 3 (**Definitions**):
- (a) Before the definition of “Award” in section 3 (1), insert:
    - “**Agreement**” means an agreement within the meaning of the Industrial Relations Act 1991.

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 SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (b) From the definitions of “Award” and “Inspector” in section 3 (1), omit “Industrial Arbitration Act, 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.
- (c) From section 3 (1), omit the definition of “Enterprise agreement”.
- (d) From section 3 (1), omit the definition of “Industrial agreement”.
- (e) From section 3 (3), omit “Industrial Arbitration Act, 1940”, insert instead “Industrial Relations Act 1991”.

(2) Section 4 (**Long service leave**):

- (a) From section 4 (2) (b) (i), omit “made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act, 1940, or has been fixed by an industrial agreement made pursuant to or registered under the said Acts or by an enterprise agreement”, insert instead “in force under the Industrial Relations Act 1988 of the Commonwealth or by an award or agreement in force under the Industrial Relations Act 1991”.
- (b) From section 4 (2) (b) (i), omit “industrial agreement or enterprise agreement” insert instead “or agreement”.
- (c) From section 4 (2) (b) (iii), omit “, enterprise agreement or industrial agreement”, insert instead “or agreement”.
- (d) From section 4 (11) (a) (i), omit “section 88C of the Industrial Arbitration Act, 1940”, insert instead “Division 8 of Part 2 of Chapter 2 (Sick Leave) of the Industrial Relations Act 1991”.
- (e) From section 4 (13) (a), omit the definition of “Award”, insert instead:

“Award” includes:

- (a) an agreement; and
- (b) an award in force under the Industrial Relations Act 1988 of the Commonwealth.

(3) Section 5 (**Exemptions**):

- (a) From section 5 (1) (a), omit “industrial”.
- (b) From section 5 (1) (a), omit “or by an enterprise agreement”.
- (c) From section 5 (1) (b), omit “Industrial Arbitration Act, 1940”, insert instead “Industrial Relations Act 1991”.
- (d) From section 5 (2) (a) and (d), omit “Industrial Commission of New South Wales” wherever occurring, insert instead “industrial Relations Commission”.

*Industrial Relations 1991*

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (e) From section 5 (2) (d) (ii), omit “said Industrial Commission”, insert instead “Industrial Relations Commission”.
  - (f) From section 5 (2) (d) (ii), omit “an industrial union of employers or employees”, insert instead “an industrial organisation registered under the Industrial Relations Act 1991”.
- (4) Section 5A (**Review of exemptions**):
- (a) From section 5A (2), (3) and (4), omit “Industrial Commission of New South Wales” wherever occurring, insert instead “Industrial Relations Commission”.
  - (b) From section 5A (3) (b), omit “an industrial union of employers or employees”, insert instead “an industrial organisation registered under the Industrial Relations Act 1991”.
- (5) Section 6 (**Savings as to powers etc.**):
- (a) Omit “Industrial Commission of New South Wales”, insert instead “Industrial Relations Commission”.
  - (b) Omit “or a conciliation commissioner” wherever occurring.
  - (c) Omit “Industrial Arbitration Act, 1940,”, insert instead “Industrial Relations Act 1991”.
- (6) Section 11 (**Recovery of penalties**):
- (a) Omit section 11 (1), insert instead:
    - (1) Proceedings for the recovery of a penalty under this Act are to be taken before a Local Court constituted by a Magistrate sitting alone and may be taken by:
      - (a) an inspector, or
      - (b) the secretary of an industrial organisation registered under the Industrial Relations Act 1991 whose members are engaged in the industry concerned; or
      - (c) a person whose rights are impaired.
  - (b) From section 11 (2), omit “or industrial magistrate”.
  - (c) From section 11 (3), omit “or industrial magistrate”.
- (7) Section 12 (**Recovery of long service leave pay**):
- (a) From section 12 (1), omit “or to any industrial magistrate appointed under the Industrial Arbitration Act, 1940,”, insert instead “or to the Industrial Court,”.
  - (b) From section 12 (1), omit “or industrial magistrate may make any order the court or magistrate”. insert instead “or Industrial Court may make any order it”.

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (c) Omit section 12 (1A).
- (d) From section 12 (2), omit “industrial” where firstly and thirdly occurring.
- (e) From section 12 (2), omit “an industrial union registered as such under the Industrial Arbitration Act, 1940,” insert instead “an industrial organisation of employees registered under the Industrial Relations Act 1991”.

## (8) Section 14:

Omit the section, insert instead:

**Provisions as to enforcement of orders, appeals etc.**

14. The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to:

- (a) recovery of a penalty; and
- (b) an application for, and enforcement of, an order for the payment of money; and
- (c) an appeal from, or the stating of a case by, a Local Court to the Industrial Court,

apply to proceedings under this Act for the recovery of a penalty or the payment of money.

**Monopolies Act 1923 No. 54**Section 4 (**Definitions**):

From the definition of “Industrial Commission”, omit “Industrial Commission of New South Wales”, insert instead “Industrial Relations Commission of New South Wales”.

**Motor Vehicle Repairs Act 1980 No. 71**(1) Section 4 (**Definitions**):

From section 4 (1), omit the definition of “industrial magistrate”.

(2) Section 49 (**Notice of revocation etc.**):

- (a) From section 49 (6), omit “industrial magistrate” wherever occurring, insert instead “Local Court”.
- (b) From section 49 (6) (b) (i), omit “that magistrate”, insert instead “the Local Court”.

*Industrial Relations 1991*SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*(3) Section 50 (**Appeals**):

- (a) From section 50 (1), omit the definition of “registrar”, insert instead:

“**clerk of the court**” means the clerk of the Local Court to which an appeal is made under this Part.

- (b) From section 50 (2), (3), (8) and (11), omit “an industrial magistrate” wherever occurring, insert instead “a Local Court”.
- (c) From section 50 (4) and (5) omit “registrar” wherever occurring, insert instead “clerk of the court”.
- (d) From section 50 (7), omit “the industrial magistrate”, insert instead “the Local Court”.
- (e) From section 50 (9) and (10), omit “An industrial magistrate\*” wherever occurring, insert instead “A Local Court”.
- (f) From section 50 (9), omit “him” wherever occurring, insert instead “the Local Court”.
- (g) From section 50 (10), omit “he”, insert instead “the Local Court”.

(4) Section 87 (**Proceedings**):

- (a) From section 87 (1) (b), omit “before an industrial magistrate or”  
 @) Omit section 87 (3).

**Occupational Health and Safety Act 1983 No. 20**(1) Section 4 (**Definitions**):

Omit the definition of “Industrial Commission”.

## (2) Section 47 (Summary procedure for offences):

- (a) From section 47 (1) (a), omit “alone;”, insert instead “alone; or”.
- (b) Omit section 47 (1) (b) and (c), insert instead:  
 (b) before the Industrial Court.
- (c) From section 47 (2), omit “or an industrial magistrate”,
- (d) From section 47 (3), omit “Industrial Commission”, insert instead “Industrial Court”.
- (e) After section 47 (3), insert:

(4) The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.



SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued***Search Warrants Act 1985 No. 37**Section 10 (**Definitions**):

In alphabetical order of Acts in the definition of “search warrant”, insert:

section 734 of the Industrial Relations Act 1991;

**Stamp Duties Act 1920 No. 47**Second Schedule (**Stamp Duties and Exemptions**):

Omit clause (7) of the General Exemptions from Stamp Duty under Part 3, insert instead:

(7) In respect of any registration, certificate, agreement, award or instrument effected, issued or made under the Industrial Relations Act 1991.

**Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)**

## (1) Schedule 1:

- (a) Omit “President of the Industrial Commission of New South Wales”, insert instead “Chief Judge of the Industrial Court”.
- (b) Omit “Vice-President of the Industrial Commission of New South Wales”, insert instead “Deputy Chief Judge of the Industrial Court”.

## (2) Schedule 2, Part 1:

- (a) Omit “Conciliation Commissioner (under the Industrial Arbitration Act 1940)”.
- (b) At the end of Part 1, insert:
  - President of the Industrial Relations Commission.
  - Vice-President of the Industrial Relations Commission:
  - Deputy President of the Industrial Relations Commission.
  - Conciliation Commissioner (being a member of the Industrial Relations Commission).

## (3) Schedule 4:

Omit “Member of the Industrial Commission of New South Wales, other than the Resident or Vice-President”, insert instead “Judge of the Industrial Court other than the Chief Judge and the Deputy Chief Judge”.

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued***Supreme Court Act 1970 No. 52**(1) Section 26 (**Appointment and qualifications: Chief Justice and other Judges**):

Omit section 26 (2) (b), insert instead:

(b) a Judge of the Industrial Court;

(2) Section 48 (**Assignment to the Court of Appeal**):

Omit paragraph (ii) of the definition of “specified tribunal” in section 48 (1) (a), insert instead:

(ia) the Industrial Court or a Judge of that Court;

(ii) the Industrial Relations Commission or a member of that Commission;

**Textile Products Labelling Act 1954 No. 26**Section 8 (**Proceedings for offences**):

Omit section 8 (2) and (3), insert instead:

(2) Proceedings for offences against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(3) The provisions of the Industrial Relations Act 1991 relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**Workers Compensation Act 1987 No. 70**(1) Section 149 (**Definitions**):

From paragraph (f) of the definition of “damages” in section 149 (1), omit “an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940”, insert instead “an award or agreement within the meaning of the Industrial Relations Act 1991”.

(2) Section 278 (**Proceedings for offences**):

(a) From section 278 (1) (a), omit “alone;”, insert instead “alone; or”.

(b) Omit section 278 (1) (b) and (c), insert instead:

(b) before the Industrial Court.

(c) From section 278 (2), omit “or an industrial magistrate”.

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (d) From section 278 (3), omit “Industrial Commission of New South Wales”, insert instead “Industrial Court”.
  - (e) After section 278 (3), insert:
    - (4) The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.
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**NOTE**

**SEE: Chapter 3, Part 10 (Secondary and other boycotts)**  
**TEXT OF SECTIONS 45D AND 45E OF TRADE PRACTICES ACT**  
**1974 OF THE COMMONWEALTH**

**Secondary boycotts**

45D. (1) Subject to this section, a person shall not, in concert with a second person, engage in conduct that hinders or prevents the supply of goods or services by a third person to a fourth person (not being an employer of the first-mentioned person), or the acquisition of goods or services by a third person from a fourth person (not being an employer of the first-mentioned person), where:

- (a) the third person is, and the fourth person is not, a corporation and:
  - (i) the conduct would have or be likely to have the effect of causing:
    - (A) substantial loss or damage to the business of the third person or of a body corporate that is related to that person; or
    - (B) a substantial lessening of competition in any market in which the third person or a body corporate that is related to that person supplies or acquires goods or services; and
  - (ii) 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 fourth person; or
    - (B) a substantial lessening of competition in any market in which the fourth person acquires goods or services;
- or
- (b) the fourth person is a corporation and the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing:

**NOTE—continued**

- (i) substantial loss or damage to the business of the fourth person or of a body corporate that is related to that person; or
- (ii) a substantial lessening of competition in any market in which the fourth person or a body corporate that is related to that person supplies or acquires goods or services.

(1A) Subject to this section, a person shall not, in concert with another person, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person (not being an employer of the first-mentioned person) from engaging in trade or commerce:

- (a) between Australia and places outside Australia;
- (b) among the States; or
- (c) within a Territory, between a State and a Territory or between two Territories.

(1B) In a proceeding under this Act in relation to a contravention of sub-section (1A), it is a defence if the defendant proves:

- (a) that the conduct concerned is the subject of an authorization in force under section 88;
- (b) that a notice in respect of the conduct has been duly given to the Commission under subsection 93 (1) and the Commission has not given a notice in respect of the conduct under subsection 93 (3); or
- (c) that the dominant purpose for which the defendant engaged in the conduct concerned was to preserve or further a business carried on by him.

(1C) The application of subsection (1A) in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that the other person proves any of the matters mentioned in subsection (1B) in respect of that conduct.

(2) Paragraph 4F (b) does not apply in relation to subsection (1) or (1A) of this section but a person shall be deemed to engage in conduct for a purpose mentioned in that subsection if he engages in that conduct for purposes that include that purpose.

(3) A person shall not be taken to contravene, or to be involved in a contravention of, sub-section (1) or (1A) by engaging in conduct where:

- (a) the dominant purpose for which the conduct is engaged in is substantially related to:
  - (i) the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person; or

**NOTE—*continued***

- (ii) an employer of that person having terminated, or taken action to terminate, the employment of that person or of another person employed by that employer; or
- (b) in the case of conduct engaged in by the following persons in concert with each other (and not in concert with any other person), that is to say:
  - (i) an organization or organizations of employees, or an officer or officers of such an organization, or both such an organization or organizations and such an officer or officers; and
  - (ii) an employee, or 2 or more employees who are employed by the one employer,

the dominant purpose for which the conduct is engaged in is substantially related to:

- (iii) the remuneration, conditions of employment, hours of work or working conditions of the employee, or of any of the employees, referred to in sub-paragraph (ii); or
- (iv) the employer of the employee, or of the employees, referred to in sub-paragraph (ii) having terminated, or taken action to terminate, the employment of any of his employees.

(4) The application of subsection (1) or (1A) in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that subsection (3) operates to preclude the other person from being taken to contravene, or to be involved in a contravention of, subsection (1) or (1A) in respect of that conduct.

(5) If two or more persons (in this subsection referred to as the “participants”) each of whom is a member or officer of the same organization of employees (being an organization that exists or is carried on for the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment) engage in conduct in concert with one another, whether or not the conduct is also engaged in concert with other persons, the organization shall be deemed for the purposes of this Act to engage in that conduct in concert with the participants, and so to engage in that conduct for the purpose or purposes for which that conduct is engaged in by the participants, unless the organization establishes that it took all reasonable steps to prevent the participants from engaging in that conduct.

(6) Where an organization of employees engages, or is deemed by sub-section (5) to engage, in conduct in concert with members or officers of the organization in contravention of subsection (1) or (1A):

- (a) any loss or damage suffered by a person as a result of the conduct shall be deemed to have been caused by the conduct of the organization;

**NOTE—continued**

- (b) if the organization is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organization; and
  - (c) if the organization is not a body corporate:
    - (i) a proceeding in respect of the conduct may be instituted under section 77, 80 or 82 against an officer or officers of the organization as a representative or representatives of the members of the organization and a proceeding so instituted shall be deemed to be a proceeding against all the persons who were members of the organization at the time when the conduct was engaged in;
    - (ii) subsection 76 (2) does not prevent an order being made in a proceeding mentioned in sub-paragraph (i) that was instituted under section 77;
    - (iii) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in sub-paragraph (ii) is the penalty applicable under section 76 in relation to a body corporate;
    - (iv) except as provided by subparagraph (i), a proceeding in respect of the conduct shall not be instituted under section 77 or 82 against any of the members or officers of the organization; and
    - (v) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in sub-paragraph (i) that is instituted under section 77 or 82, process may be issued and executed against any property of the organization or of any branch or part of the organization, or any property in which the organization or any branch or part of the organization has, or any members of the organization or of a branch or part of the organization have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the organization were a body corporate and the absolute owner of the property or interest but no process shall be issued or executed against any other property of members, or against any property of officers, of the organization or of a branch or part of the organization.
- (7) Nothing in this section affects the operation of any other provision of this Part.

**Prohibition of contracts, arrangements or understandings affecting supply or acquisition of goods or services**

45E. (1) Subject to this section, 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 shall not make a contract or arrangement, or arrive at an understanding, with a third person (being an organization of employees, an officer of such an organization, or another person acting for or

**NOTE—*continued***

on behalf of such an organization or officer) 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, as the case may be, from acquiring or continuing to acquire any such goods or services from the second person;
- (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 (not being a condition to which the supply of such goods or services by the first-mentioned person to the second person has previously been subject by reason of a provision of a contract existing between those persons) as to the persons to whom, as to the manner in which, or as to 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 (not being a condition to which the acquisition of such goods or services by the first-mentioned person from the second person has previously been subject by reason of a contract existing between those persons) as to the persons to whom, as to the manner in which, or as to the terms on which, the second person may supply any goods or services.

(2) Sub-section (1) does not apply in relation to a contract, arrangement or understanding that is in writing if the second person mentioned in that sub-section is a party to the contract, arrangement or understanding or has consented in writing to the contract or arrangement being made or the understanding being arrived at.

(3) In a case where the person first mentioned in subsection (1) is not a corporation, that subsection applies only if the second person mentioned in that sub-section is a corporation.

(4) Paragraph 4F (a) applies in relation to subsection (1) of this section as if sub-paragraph 4F (a) (ii) were omitted.

(5) Subject to subsection (6), a reference in this section to a person who has been accustomed to supply goods or services to a second person shall be construed as including a reference to:

- (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 and
- (c) a person who at any time during the immediately preceding period of 3 months supplied any such goods or services to the second person.

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NOTE—*continued*

## (6) Where:

- (a) goods or services have been supplied by a person to a second person pursuant to a contract between those persons under which the first-mentioned person was required over a particular period to supply such goods or services;
- (b) that period has expired; and
- (c) after the expiration of that period the second person has been supplied with such goods or services by another person or other persons and has not been supplied with such goods or services by the first-mentioned person,

then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first-mentioned person shall be deemed not to be a person who has been accustomed to supply such goods or services to the second person.

(7) Subject to sub-section (8), a reference in this section to a person who has been accustomed to acquire goods or services from a second person shall be construed as including a reference to:

- (a) a regular acquirer of any such goods or services from the second person;
- (b) a person who, when he last acquired such goods or services, acquired them from the second person; and
- (c) a person who at any time during the immediately preceding period of 3 months acquired any such goods or services from the second person.

## (8) 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 such goods or services;
- (b) that period has expired; and
- (c) after the expiration of that period the second person has refused to supply such goods or services to the first-mentioned person,

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first-mentioned person shall be deemed not to be a person who has been accustomed to acquire such goods or services from the second person.

## (9) If:

- (a) a person has, whether before or after the commencement of this section, made a contract or arrangement, or arrived at an understanding, with another person; and



NOTE—*continued*

(b) by reason of a provision included in the contract, arrangement or understanding, the making of the contract or arrangement, or the arriving at the understanding, by the first-mentioned person contravened subsection (1) or would have contravened that subsection if this section had been in force at the time when the contract or arrangement was made, or the understanding was arrived at,

a person shall not give effect to that provision of the contract, arrangement or understanding.

(10) In determining for the purposes of paragraph (9) (b) whether a contract or arrangement made, or understanding arrived at, before the commencement of this section would have contravened subsection (1) if this section had been in force at the time when the contract or arrangement was made, of the understanding was arrived at, subsection (2) shall be read as if the words “that is in writing” and the words “in writing” were omitted.

(11) Nothing in this section affects the operation of any other provision of this Part.

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