

# Essential Services Act 1988 No 41

[1988-41]



New South Wales

## Status Information

### Currency of version

Historical version for 7 January 2011 to 7 December 2016 (accessed 29 November 2024 at 4:17)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32* (amended by *Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 87*) (not commenced)
  - Industrial Relations Amendment (Industrial Court) Act 2016 No 48* (not commenced — to commence on 8.12.2016)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Essential Services Act 1988 No 41



New South Wales

An Act to protect the community from disruption to essential services; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Essential Services Act 1988*.

### 2 Commencement

This Act commences on the date of assent.

### 3 Definitions

(1) In this Act:

**essential service** means a service that is an essential service by virtue of section 4.

**industrial action** has the same meaning as in the *Industrial Relations Act 1996*.

**industrial matter** has the same meaning as in the *Industrial Relations Act 1996*.

**industrial organisation** has the same meaning as in the *Industrial Relations Act 1996*.

**Industrial Registrar** means the Industrial Registrar appointed under the *Industrial Relations Act 1996*.

**place** includes land, road, building, structure, work, mine, vehicle and vessel.

**property** includes undertaking, equipment, goods, vehicles, vessels, articles and things of any kind.

(2) In this Act, a reference to the provision of an essential service includes a reference to the conduct, performance, maintenance, supply and distribution of an essential service.

(3) In this Act, a reference to the community includes a reference to any part of the

community.

(4) In this Act:

- (a) a reference to 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.

#### **4 Essential services**

(1) For the purposes of this Act, a service is an essential service if it consists of any of the following:

- (a) the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources,
- (b) the public transportation of persons or the transportation of freight (including the provision of rail infrastructure for those purposes),
- (c) the provision of fire-fighting services,
- (d) the provision of public health services (including hospital or medical services),
- (e) the provision of ambulance services,
- (f) the production, supply or distribution of pharmaceutical products,
- (g) the provision of garbage, sanitary cleaning or sewerage services,
- (h) the supply or distribution of water,
- (i) the conduct of a welfare institution,
- (j) the conduct of a prison,
- (k) a service declared to be an essential service under subsection (2),
- (l) a service comprising the supply of goods or services necessary for providing any service referred to in paragraphs (a)-(k).

(2) The Governor may, by order published on the NSW legislation website, declare any service to be an essential service for the purposes of this Act.

(2A) To avoid doubt, the regulation of bulk water supply by the Water Administration Ministerial Corporation in the exercise of its rights to the control, use and flow of water is capable of being declared to be an essential service for the purposes of this Act.

(3) Such an order may not be made unless the Minister has certified to the Governor that the service is essential in the public interest.

- (4) Any such order takes effect on the day on which it is published on the NSW legislation website.

**Editorial note—**

For orders under this section see Gazettes No 28 of 21.2.1990, p 1509 and No 59 of 19.4.1991, p 2961.

**5 Relationship to other Acts etc**

This Act has effect despite anything expressed or implied in:

- (a) any other Act, including:
- (i) the *Industrial Relations Act 1996*, or
  - (ii) the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989*, or
  - (iii) Part 6 of the *Energy and Utilities Administration Act 1987*, or
- (b) any State industrial instrument, or
- (c) any award or agreement within the meaning of the *Industrial Relations Act 1996*, or
- (d) any contract or agreement, whether oral or in writing, or
- (e) any deed, security, document or writing.

**6 Powers under this Act in aid of other powers**

The powers conferred by or under this Act or the regulations are in addition to and not in derogation from any other powers exercisable apart from this Act.

**7 Act binds Crown**

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

**Part 2 Disruption to essential service**

**8 Proclamation concerning an essential service**

- (1) Whenever it appears to the Governor that from any cause the provision of an essential service is, or is likely, for any period:
- (a) to cease, or
  - (b) to be interrupted or reduced, or
  - (c) to be provided in a manner that does not or is not likely to meet the reasonable requirements of the community, or

(d) otherwise to be rendered insufficient for the reasonable requirements of the community,

the Governor may, by proclamation published on the NSW legislation website, declare that the essential service is one in respect of which regulations may be made under section 9.

- (2) Any such proclamation may be made whether or not it appears to the Governor that an emergency situation exists, or is likely to exist, in relation to the essential service.
- (3) Any such proclamation shall specify the Minister who is to have the responsibility for recommending the making, and for the administration and enforcement, of any regulation made under section 9 in relation to the essential service the subject of the proclamation.
- (4) Any such proclamation takes effect on the day on which it is published on the NSW legislation website or, if a later day is specified in the proclamation for that purpose, on the later day so specified.
- (5) Any such proclamation continues in force for such period not exceeding 30 days from the day on which it takes effect as is specified in the proclamation.
- (6) Any such proclamation may be amended, varied or revoked by a later proclamation.

#### **9 Regulations operative during currency of proclamation**

- (1) At the same time as a proclamation is made under section 8 in relation to an essential service, or after the making of such a proclamation, the Governor may make a regulation with respect to any one or more of the following matters:
  - (a) regulating, controlling, directing, restricting or prohibiting the provision of the essential service and the activities of any person involved in the provision of the essential service,
  - (b) authorising any person to exercise such functions as appear to the Governor to be necessary or expedient to ensure or facilitate the proper provision of the essential service, including the making or giving of any order or direction, and in particular (but without limiting paragraph (a) or this paragraph) authorising any person:
    - (i) to regulate, control, direct, restrict and prohibit the provision of the essential service, whether generally or for any purpose or purposes specified in the regulation, and
    - (ii) to direct a person who provides or is engaged in the provision of the essential service, to provide it to a person specified in the regulation, and
    - (iii) to specify the terms and conditions on which the essential service shall be provided, and

- (iv) to direct that a person to whom an essential service is provided accept the provision of the essential service, and
  - (v) to make such orders, take such measures, give such directions and do such things as are in the opinion of the person necessary or expedient to carry into effect the purposes of this Act or the regulation,
  - (c) generally prescribing all such matters or things as the Governor considers necessary or expedient to be prescribed for the carrying into effect of the purposes of this Act or the regulation.
- (2) Any such regulation:
- (a) may be made before the proclamation under the authority of which it is made takes effect; but
  - (b) shall not take effect before that proclamation takes effect.
- (3) Any such regulation and any order or direction made or given under the authority of the regulation:
- (a) may be made or given so as to apply to or have operation throughout the whole or any specified part of the State, and
  - (b) may be made or given so as to operate for any period or periods or for any time or times or for any occasion or occasions specified in it, and
  - (c) may be of general operation or of specially limited operation according to any specified times, places, circumstances, conditions or restrictions, and
  - (d) may authorise a person specified in the regulation, order or direction:
    - (i) to enter any place, and
    - (ii) to take possession or control of, or use, any property, used for or in connection with the essential service.
- (4) Any order or direction referred to in subsection (3):
- (a) shall if published in the Gazette or on the NSW legislation website be taken to have been sufficiently served on or brought to the notice of all persons concerned or affected by it, and
  - (b) may be made or given so as to apply to any particular person and may be served on the person by delivering a copy of it to the person by hand, or by sending the copy to the person by post,
- or in the case of a direction may be given orally or by telegram.



- (5) Any such regulation shall, unless it sooner expires or is revoked, continue in force until the proclamation under the authority of which it was made is revoked or ceases to be in force.
- (6) Any such regulation may provide that a person who contravenes a provision of the regulation is guilty of an offence against the regulation, and, in particular, may provide that a person who refuses or fails to comply with an order or direction made or given under the regulation is guilty of such an offence.
- (7) An order or direction referred to in subsection (3) shall, unless it sooner expires or is revoked, continue in force until the regulation under the authority of which it was made or given is revoked.

## **10 State of emergency concerning an essential service**

- (1) Whenever it appears to the Governor that:
  - (a) from any cause the provision of an essential service is, or is likely, for any period:
    - (i) to cease, or
    - (ii) to be interrupted or reduced, or
    - (iii) to be provided in a manner that does not or is not likely to meet the reasonable requirements of the community, or
    - (iv) otherwise to be rendered insufficient for the reasonable requirements of the community, and
  - (b) an emergency situation exists, or is likely to exist, in relation to the essential service,

the Governor may, by order in writing, declare that a state of emergency exists in relation to the essential service.
- (2) Any such order:
  - (a) may apply to or have operation throughout the whole or any specified part of the State, and
  - (b) shall specify the Minister who may give directions under section 11 in relation to the essential service concerned.
- (3) Any such order takes effect from its making or, if a later day is specified in the order for that purpose, on the later day so specified.
- (4) Any such order (unless sooner revoked) continues in force for such period not exceeding 30 days as is specified in the order.

- (5) More than one order may be made under this section in respect of an emergency.
- (6) An order under this section shall be published in the Gazette or on the NSW legislation website as soon as practicable after it is made.

**Editorial note—**

For orders under this section see Gazettes No 31 of 2.3.1990, p 1799 (replaced by Gazette No 34 of 5.3.1990, p 1987); No 129 of 19.10.1990, p 9217; No 103 of 5.7.1991, p 5403 and No 121 of 30.8.1991, p 7438.

**11 Minister's powers in respect of state of emergency**

- (1) If an order is in force under section 10 in respect of an essential service, the Minister specified in the order may, by notice in writing:
  - (a) give such directions as are necessary to regulate, control, direct, restrict or prohibit the provision of the essential service and the activities of any person involved in the provision of the essential service, and
  - (b) direct a person who provides or is engaged in the provision of the essential service to provide it to a person specified in the direction, and
  - (c) direct a person to comply with such terms and conditions as the Minister determines relating to the provision of the essential service, and
  - (d) direct a person to whom an essential service is provided to accept the provision of the essential service, and
  - (e) direct any person to exercise such functions as appear to the Minister to be necessary or expedient to ensure or facilitate the proper provision of the essential service, including the making or giving of any order or direction.
- (2) Any such direction of the Minister:
  - (a) may apply to or have operation throughout the whole or any specified part of the State, and
  - (b) may, while an order referred to in section 10 is in force, operate for any period or periods or for any time or times or for any occasion or occasions specified in the direction, and
  - (c) may be of general operation or of specially limited operation according to any times, places, circumstances, conditions or restrictions specified in the direction, and
  - (d) may authorise a person specified in the direction:
    - (i) to enter any place, and
    - (ii) to take possession or control of, or use, any property,

used for or in connection with the essential service.

- (3) Any such notice:
- (a) may be published in the Gazette or on the NSW legislation website and when so published any direction contained in the notice shall be taken to have been sufficiently served on or brought to the notice of all persons concerned or affected by it, and
  - (b) may, without affecting the provisions of paragraph (a), where it applies to any particular person, be served on the person by delivering a copy of it to the person by hand, or by sending a copy to the person by post or telegram.

## **Part 3 Entry and inspection**

### **12 Appointment of inspectors**

- (1) The Minister or a Minister specified in a proclamation under section 8 or an order under section 10 may authorise a person to carry out inspections for the purposes of this Act.
- (2) The Minister granting the authorisation shall provide an inspector with a certificate of the inspector's authority in the prescribed form.
- (3) An inspector, in exercising in any place any function conferred or imposed under this Act, shall, if so required by a person apparently in charge of that place, produce the certificate of authority to that person.

### **13 Functions of inspectors**

- (1) The functions conferred under this section on an inspector shall not be exercised except:
  - (a) where a proclamation has been made by the Governor under section 8:
    - (i) during the period for which the proclamation remains in force, and
    - (ii) in relation to the essential service specified in the proclamation, or
  - (b) where the Governor has by order under section 10 declared that a state of emergency exists:
    - (i) during the period for which the order remains in force, and
    - (ii) in relation to the essential service specified in the order.
- (2) An inspector may, without any authority other than this section:
  - (a) enter and inspect any place used, or which may reasonably be believed by the inspector to be used, for or in connection with the provision of an essential

service, and

- (b) inspect and test any plant or equipment on or in any such place, being plant or equipment which is or may reasonably be believed by the inspector to be used for or in connection with the provision of an essential service, and
  - (c) require any person on any such place to produce any accounts, records, books or other documents relating to the provision of an essential service, and
  - (d) take copies of, or extracts or notes from, any such accounts, records, books or other documents, and
  - (e) require any person on any such place to answer questions or otherwise furnish information relating to the provision of an essential service on, in or from the place, and
  - (f) require the owner or occupier of any such place to provide the inspector with such assistance and facilities as are reasonably necessary to enable the inspector to exercise the inspector's functions under this section.
- (3) The functions conferred under this section are in addition to and not in derogation from any other functions exercisable apart from this section.

#### **14 Obstruction etc of inspectors**

- (1) A person shall not:
- (a) prevent an inspector from exercising any function conferred on the inspector under section 13, or
  - (b) hinder or obstruct an inspector in the exercise of any such functions, or
  - (c) refuse or fail to comply with any reasonable requirement or answer any question of an inspector, or
  - (d) furnish an inspector with information knowing that it is false or misleading in a material particular, or
  - (e) impersonate an inspector.

Maximum penalty: 10 penalty units.

- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) (c) by reason of the failure of the defendant to answer a question of an inspector under section 13 if the defendant proves that the defendant did not know, and could not with reasonable diligence ascertain, the answer to the question.
- (3) A person is not excused from answering any question of an inspector under section 13 on the ground that the answer might tend to incriminate the person or make the

person liable to a penalty, but the information furnished by the person is not admissible against the person in any proceedings, civil or criminal, except for an offence under subsection (1).

(4) If:

- (a) an answer to a question of an inspector under section 13, or
- (b) any information whatever,

is given to an inspector by an officer of a corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth, the answer and information are, for the purposes of any proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation.

(5) Subsection (4) does not apply if it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

## **Part 4 Industrial action**

### **15 Reference of industrial matter to the Industrial Relations Commission**

- (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 1996](#) by conciliation and arbitration and is not already being so dealt with under that Act.
- (3) The Industrial Relations Commission may hear and determine the industrial matter even though the proclamation under section 8 or order under section 10 has ceased to be in force.

### **16 Stand down of employees**

- (1) At any time while 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 industrial action, an employer who is adversely affected by the disruption to the essential service has the right to stand down any employee from duty for any period (including a day or part of a day).
- (2) The right conferred by this section may only be exercised in respect of an employee who has not been able to be usefully employed for at least 5 consecutive normal working days.

- (3) An employer who exercises the right conferred by this section shall give notice to each employee stood down.
- (4) Notice shall be taken to have been sufficiently given to an employee if:
  - (a) notice in writing has been given to the employee personally or by post or telegram, or
  - (b) notice has been published on the date of commencement of the period of stand down in a daily newspaper circulating in the area in which the employer's business is conducted.
- (5) An employee who is stood down under this section is not entitled to any salary, wages or other remuneration or allowance for the period of stand down.
- (6) Any period of stand down under this section forms part of an employee's period of employment:
  - (a) for the purposes of calculating the employee's entitlement to annual leave, sick leave, maternity leave and long service leave, and
  - (b) for the purposes of any superannuation or similar scheme which applies to the employee,but does not form part of the employee's period of employment for any other purpose.
- (7) A period of stand down under this section ceases:
  - (a) when terminated by the employer, or
  - (b) when the relevant proclamation under section 8 or order under section 10 ceases to be in force,whichever occurs first.
- (8) The Minister or an industrial organisation which represents employees stood down under this section may apply to the Industrial Relations Commission for an order restraining the stand down.
- (9) The Industrial Relations Commission shall hear and determine any application under this section as if the application had been made under the [Industrial Relations Act 1996](#).
- (10) On the hearing of an application by the Minister or an industrial organisation, the Minister or industrial organisation has the onus of proving that the employees concerned should not be stood down.

## **17 Suspension and cancellation of registration of industrial organisation**

- (1) At any time while a proclamation under section 8 or an order under section 10 is in force in relation to an essential service, the Minister may certify to the Governor that an industrial organisation whose members are engaged in providing the essential service has, by its executive, members or otherwise, engaged in activities which are contrary to the public interest.
- (2) The Minister shall not so certify until after:
  - (a) the Minister has consulted with 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 Commission made in relation to any such industrial action has not been complied with.
- (3) Where the Minister so certifies, the Governor may declare that this section applies to and in respect of the industrial organisation.
- (4) On such a declaration being made concerning an industrial organisation:
  - (a) the registration of the industrial organisation under the *Industrial Relations Act 1996* is, by operation of this section, suspended, and
  - (b) the registration of the industrial organisation under that Act shall, by operation of this section, be cancelled 7 days after the making of the declaration unless the Minister certifies to the Governor within the 7-day period that the industrial organisation has ceased to engage in activities which are contrary to the public interest.
- (5) A certification of the Minister under subsection (1) or (4) and a declaration of the Governor shall be published in the Gazette as soon as practicable after it is given or made.
- (6) Despite any provision of the *Industrial Relations Act 1996*, 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 228, 231 and 232 of the *Industrial Relations Act 1996* apply to a cancellation of registration under this Act.

## **18 Amendment of industrial organisation rules as alternative to cancellation etc of**

### **registration**

- (1) Where the Minister certifies to the Governor in respect of an industrial organisation as referred to in section 17 (1), the Governor may, if satisfied that the activities the subject of the Minister's certification are those, or mainly those, of a particular group or description of members of the industrial organisation, instead of declaring that section 17 applies to and in respect of the industrial organisation, order that the rules of the industrial organisation be amended as specified in the order so as to terminate the membership of, and to exclude from eligibility for membership of the industrial organisation, persons belonging to that group or of that description.
- (2) Any such order takes effect from its making or, if a later day is specified in the order for that purpose, on the later day so specified.
- (3) An order under this section shall be published in the Gazette as soon as practicable after it is made.
- (4) On the day on which an order under this section takes effect, the rules of the industrial organisation shall be taken to be amended in the manner specified in the order.
- (5) An amendment under this section to the rules of an industrial organisation may be further amended or revoked pursuant to this Act or any other law providing for the amendment or revocation of those rules.

### **19 Amendment of rules following cancellation of registration**

- (1) If the registration of an industrial organisation is cancelled by operation of section 17, the Industrial Relations Commission in Court Session, on application by the Minister or of its own motion, may order that the rules of another industrial organisation be amended so as to make eligible for membership of that other industrial organisation persons who were members of the industrial organisation the registration of which was cancelled.
- (2) If the rules of an industrial organisation are amended under section 18 so as to terminate the membership of certain persons and to exclude those persons from eligibility for membership of the industrial organisation, the Industrial Relations Commission in Court Session, on application by the Minister or of its own motion, may order that the rules of another industrial organisation be amended so as to make those persons eligible for membership of that other industrial organisation.
- (3) The rules of the industrial organisation shall be taken to be amended:
  - (a) on the date of the order or, if a later date is specified in the order for that purpose, on the later date so specified, and
  - (b) in the manner specified in the order.



- (4) An amendment under this section to the rules of an industrial organisation may be further amended or revoked pursuant to this Act or any other law providing for the amendment or revocation of those rules.

## **20 Giving of effect to amendment of industrial organisation rules**

- (1) The Industrial Registrar may do all such things as are necessary to give effect to an order under section 18 or 19 in respect of an industrial organisation, including the alteration of the copy of the industrial organisation's rules held by the Industrial Registrar.
- (2) The copy of an industrial organisation's rules altered under this section by the Industrial Registrar shall, to the extent of the alteration, be taken to be the official rules of the industrial organisation.

## **21 Restriction on appeals**

- (1) A certificate given, or declaration made, under section 17 or an order made under section 18 shall not be challenged, appealed against, quashed or called into question by any court, except as provided by sections 22, 23 and 24.
- (2) An order made under section 19 shall not be challenged, appealed against, quashed or called into question by any court except in accordance with the [Industrial Relations Act 1996](#).
- (3) Except as provided by subsection (2), no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of:
  - (a) a certificate given, or declaration made, under section 17 or an order made under section 18 or 19, or
  - (b) any decision, proceeding, step or other matter involved in the giving or making of any such certificate, declaration or order.

## **22 Appeals against cancellation of registration**

- (1) An industrial organisation may apply to the Full Industrial Relations Commission in Court Session for leave to appeal to the Full Industrial Relations Commission in Court Session against the cancellation of the industrial organisation's registration under section 17.
- (2) The Full Industrial Relations Commission in Court Session shall not grant leave to appeal unless it is satisfied that, within the 7-day period referred to in section 17 (4) (b):
  - (a) the executive of the industrial organisation has, at a meeting of its members or of those members (in this subsection called the **relevant members**) whose actions

have caused the disruption of the provisions of the essential service, or by means of an announcement made in a newspaper circulating throughout New South Wales or made by radio or television or by any other means that the Full Industrial Relations Commission in Court Session considers reasonable, directed the relevant members not to take part in or continue to take part in or to aid or abet the disruption of the provision of the essential service, and

- (b) the executive of the industrial organisation has not, in any manner, aided, abetted or encouraged the relevant members to take part in or continue to take part in or to aid or abet the disruption of the provision of the essential service, and
  - (c) the executive of the industrial organisation has, by enforcement of the industrial organisation's rules and by any other means reasonable in the circumstances, endeavoured to prevent the relevant members from taking part in or continuing to take part in or aiding or abetting the disruption of the provision of the essential service, and
  - (d) the members of the industrial organisation recommenced work under normal working conditions within the essential service concerned and that at all times after that period they have continued to work under normal working conditions.
- (3) On an appeal made pursuant to leave granted under subsection (2), the Full Industrial Relations Commission in Court Session shall not restore the registration of the industrial organisation unless it is satisfied that it is in the public interest to do so.
- (4) For the purposes only of an application for leave to appeal and the making of an appeal, an industrial organisation shall be taken not to have had its registration cancelled.

### **23 Appeals against amendment of rules**

- (1) An industrial organisation affected by an order under section 18 may apply to the Full Industrial Relations Commission in Court Session for leave to appeal to the Full Industrial Relations Commission in Court Session against the order.
- (2) The Full Industrial Relations Commission in Court Session shall not grant leave to appeal unless it is satisfied that the persons whose membership of the industrial organisation has been terminated by the order did not, at the time at which the Minister's certificate was given under section 17 (1), engage in activities which were contrary to the public interest.
- (3) On an appeal made pursuant to leave granted under this section, the Full Industrial Relations Commission in Court Session shall not revoke the order unless it is satisfied that it is in the public interest to do so.
- (4) Section 20 applies in relation to an order made by the Full Industrial Relations Commission in Court Session on an appeal under this section in the same way as it

applies in relation to an order under section 18.

#### **24 Provisions relating to appeals**

The Full Industrial Relations Commission in Court Session 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 1996*.

#### **25 (Repealed)**

#### **26 Recovery of penalty by appointment of receiver**

- (1) If an industrial organisation, a member of the executive of an industrial organisation or a member of an industrial organisation fails to pay a penalty imposed by or under this Act within such time as is determined by the person or court which imposed the penalty, the penalty becomes a charge on the assets of the industrial organisation.
- (2) Any such penalty imposed on a member of the executive of an industrial organisation or a member of an industrial organisation does not become a charge on the assets of the industrial organisation if the member acted in the matter concerned against the express resolutions or directions of either the industrial organisation or the executive of the industrial organisation.
- (3) Despite any other Act, if a member of the executive of an industrial organisation or a member of an industrial organisation is, by any conviction or order, adjudged to pay such a penalty:
  - (a) the member is not liable to imprisonment in default of payment of the penalty, and
  - (b) the amount of the penalty (or any part of it) may be recovered as a debt due to the Crown in a court of competent jurisdiction.
- (4) The Industrial Relations Commission in Court Session, on the application of the Minister, may appoint a receiver for the purpose of entering into possession or assuming control of the property of the industrial organisation in order to enforce the charge.
- (5) The terms of appointment of a receiver shall be as determined by the Industrial Relations Commission in Court Session.
- (6) A receiver appointed under this section:
  - (a) has such functions as may be conferred on the receiver by order of the Industrial Relations Commission in Court Session, and
  - (b) is entitled to recover the costs and expenses of the receivership from the assets of the industrial organisation.

(7) (Repealed)

(8) In this section, a reference to a penalty includes a reference to any costs and expenses imposed in relation to the penalty.

## **Part 5 Miscellaneous**

### **27 Liability of persons acting under this Act**

No action, claim or demand shall lie or be made or allowed by or in favour of any person against the Crown, a Minister or any person acting in the execution of this Act or any proclamation, regulation, notice, order or direction made or given under this Act for or in respect of any damage, loss or injury sustained or alleged to be sustained by reason of the enactment of this Act or of its operation or of anything done or purporting to be done under this Act or under any such proclamation, regulation, notice, order or direction.

### **28 Disclosure of information**

A person shall not disclose any information obtained in connection with the administration or execution of this Act or the regulations unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations or the *Industrial Relations Act 1996*, or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or the *Industrial Relations Act 1996*, or
- (d) in accordance with a requirement of the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

### **29 Offence and penalty**

- (1) A person who commits an offence against a regulation made under section 9 is liable to a penalty not exceeding 10 penalty units.
- (2) A person shall not refuse or fail to comply with:
  - (a) a direction given under section 11, or
  - (b) an order or direction made or given under section 30.

Maximum penalty: 10 penalty units.

### **30 Denial of use of essential service**

- (1) If a person is convicted of an offence against a regulation made under section 9, a person authorised in the regulation or in any order or direction made or given under the authority of the regulation may make such orders or give such directions in respect of the availability or use of the essential service concerned to the firstmentioned person during such period as the authorised person thinks fit.
- (2) If a person is convicted of failing to comply with a direction given by a Minister under section 11, that Minister may make such orders or give such directions in respect of the availability or use of the essential service concerned to the person during such period as that Minister thinks fit.
- (3) An order made or direction given under this section has no further force or effect if the regulation, order or direction referred to in subsection (1) or (2) is no longer in force.

### **31 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before the Local Court.

### **32 Regulations**

- (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) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.