

# House of Assembly

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South Australia

## Industrial Law Reform (Fair Work) Bill 2005

A BILL FOR

An Act to amend the *Industrial and Employee Relations Act 1994* and the *Long Service Leave Act 1987*.

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Industrial Law Reform (Fair Work) Act 2005*.

**2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Interpretation**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Industrial and Employee Relations Act 1994***

**4—Substitution of section 1**

Section 1—delete the section and substitute:

**1—Short title**

This Act may be cited as the *Fair Work Act 1994*.

**5—Amendment of section 3—Objects of Act**

- (1) Section 3—after paragraph (c) insert:
  - (ca) to promote and facilitate employment; and
- (2) Section 3—after paragraph (f) insert:
  - (fa) to establish and maintain an effective safety net of fair and enforceable conditions for the performance of work by employees (including fair wages); and
  - (fb) to promote and facilitate security in employment; and
- (3) Section 3(i)—after "industrial disputes" insert:

, and to ensure compliance with any obligations arising under this Act
- (4) Section 3(m) and (n)—delete paragraphs (m) and (n) and substitute:
  - (m) to help prevent and eliminate unlawful discrimination in the workplace; and

- (n) to ensure equal remuneration for men and women doing work of equal or comparable value; and
  - (o) to facilitate the effective balancing of work and family responsibilities.
- (5) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) In exercising powers and carrying out functions under this Act, the Court, the Commission and other industrial authorities are to have regard (where relevant) to the provisions of—
    - (a) the Worst Forms of Child Labour Convention 1999 (See Schedule 9); and
    - (b) the Workers with Family Responsibilities Convention 1981 (See Schedule 10); and
    - (c) the Workers' Representatives Convention 1971 (See Schedule 11).

#### **6—Amendment of section 4—Interpretation**

- (1) Section 4(1), definition of *apprentice*—delete the definition and substitute:
- apprentice* means an apprentice/trainee as defined in the *Training and Skills Development Act 2003*;
- (2) Section 4(1), after the definition of *award*—insert:
- child* means a person who has not attained the age of 18 years;
- (3) Section 4(1), definition of *Commission*—delete the definition and substitute:
- Commission* means the Industrial Relations Commission of South Australia;
- (4) Section 4(1), definition of *enterprise agreement*—delete "an employer" and substitute:
- 1 or more employers
- (5) Section 4(1), after the definition of *examinable arrangements*—insert:
- family*—the following are to be regarded as members of a person's family—
- (a) a spouse;
  - (b) a child;
  - (c) a parent;
  - (d) any other member of the person's household;
  - (e) any other person who is dependent on the person's care;
- (6) Section 4(1), definition of *industrial matter*—delete "the rights, privileges or duties of employers or employees (including prospective employers or employees)" and substitute:
- or relating to the rights, privileges or duties of an employer or employers (including a prospective employer or prospective employers) or an employee or employees (including a prospective employee or prospective employees)

- (7) Section 4(1), definition of *industrial matter*, (d)—delete paragraph (d) and substitute:
- (d) the relationship between an employer and an apprentice (and any matter relating to employment arising between an employer and an apprentice);
- (8) Section 4(1), definition of *industrial matter*—after paragraph (k) insert:
- (ka) any matter affecting or relating to the performance of work by outworkers, including—
    - (i) the giving out of work which is to be performed (or is reasonably likely to be performed), directly or indirectly, by an outworker;
    - (ii) the regulation of any person who gives out work which is to be performed (or is reasonably likely to be performed), directly or indirectly, by an outworker;
    - (iii) the creation of 1 or more contracts (including a series of contracts) dealing with the performance of work by outworkers;
    - (iv) the terms or conditions under which work is performed by outworkers;
    - (v) the protection of outworkers in any other respect;
- (9) Section 4(1), definition of *junior*—delete "or a trainee"
- (10) Section 4(1)—after the definition of *outworker* insert:
- peak entity* means—
- (a) the Minister; and
  - (b) the United Trades and Labor Council; and
  - (c) the South Australian Employers' Chamber of Commerce and Industry Incorporated; and
  - (d) the Employee Ombudsman; and
  - (e) any other body brought within the ambit of this definition by the regulations;
- (11) Section 4(1), definition of *trainee*—delete the definition and substitute:
- workplace* means any place where an employee works and includes any place where such a person goes while at work but does not include any premises of an employer used for habitation by the employer and his or her household other than any part of such premises where an outworker works.
- (12) Section 4(2)—delete subsection (2)
- (13) Section 4(3)—delete "However, a" and substitute:

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(14) Section 4—after subsection (4) insert:

- (5) The Registrar must, as soon as is reasonably practicable after the commencement of each year, determine the new amounts that are to apply (according to his or her calculations) under this Act on account of the operation of subsection (4) and cause those new amounts to be published on an Internet site.

### **7—Amendment of section 5—Outworkers**

(1) Section 5(1)(a)(i)—after "process" insert:

, clean

(2) Section 5(1)(b)(i)—after "process" insert:

, clean

(3) Section 5(1)—delete "premises of a prescribed kind that are not business or commercial premises" and substitute:

other premises that would not conventionally be regarded as being a place where business or commercial activities are carried out

(4) Section 5(3)—delete subsection (3) and substitute:

(3) To avoid doubt, a person who is engaged by another person to clean the private residence of a third person is not an outworker under this section.

(4) Apart from this Chapter, the other provisions of this Act apply to outworkers if (and only if)—

(a) a provision of an award or enterprise agreement relates to outworkers; or

(b) a regulation made for the purposes of this subsection extends the application of this Act to, or in relation to, outworkers,

and then, in such a case, the Act will apply in all respects to the relevant outworkers.

(5) A regulation made for the purposes of subsection (4) cannot come into operation until the time has passed during which the regulation may be disallowed by resolution of either House of Parliament.

### **8—Amendment of section 12—Jurisdiction to decide questions of law and jurisdiction**

(1) Section 12(a)—after "by" insert:

an industrial magistrate or

(2) Section 12(b)—after "the Commission" insert:

as part of proceedings brought pursuant to another provision of this Act

## **9—Insertion of section 15A**

After section 15 insert:

### **15A—Other matters**

The Court has any other jurisdiction conferred by this or any other Act.

## **10—Repeal of Chapter 2 Part 3 Division 2**

Chapter 2 Part 3 Division 2—delete Division 2

## **11—Amendment of section 26—Jurisdiction of the Commission**

Section 26(e)—delete paragraph (e) and substitute:

- (e) any other jurisdiction conferred by this or any other Act (including on account of a referral of a matter under the *Training and Skills Development Act 2003*).

## **12—Substitution of section 32**

Section 32—delete the section and substitute:

### **32—Term of office**

Subject to this Act, an appointment as the President or a Deputy President of the Commission will continue—

- (a) in the case of an office held by the Senior Judge or another Judge of the Court—until the person ceases to hold that particular judicial office within the Court; or
- (b) in any other case—until the person attains the age of 65 years or retires before attaining that age.

## **13—Amendment of section 33—Remuneration and conditions of office**

Section 33(5)(b)—delete paragraph (b) and substitute:

- (b) comes to the end of his or her term of office under this Act (including by retirement); or

## **14—Amendment of section 34—The Commissioners**

Section 34(3), (4) and (5)—delete subsections (3), (4) and (5) and substitute:

- (3) A Commissioner must be a person of standing in the community with experience in industrial affairs either through association with the interests of employees or through association with the interests of employers and the number of Commissioners of the former class must be equal to, or differ by no more than one from, the number of Commissioners of the latter class (part-time Commissioners being counted for the purposes of this subsection by reference to the proportion of full-time work undertaken).

## **15—Substitution of section 35**

Section 35—delete the section and substitute:

### **35—Term of office**

- (1) Subject to this Act, an appointment as a Commissioner will continue until the person attains the age of 65 years or retires before attaining that age.
- (2) A Commissioner may be appointed on an acting basis and, in that case, the term of appointment will be for a term of not more than 6 months.

## **16—Amendment of section 36—Remuneration and conditions of office**

Section 36(4)(b)—delete paragraph (b) and substitute:

- (b) comes to the end of his or her term of office under this Act (including by retirement) and, in the case of an appointment on an acting basis, is not reappointed; or

## **17—Amendment of section 39—Constitution of Full Commission**

Section 39(4)—delete subsection (4).

## **18—Amendment of s 40—Constitution of the Commission**

Section 40(2)—delete subsection (2).

## **19—Insertion of new Division**

After section 44 insert:

### **Division 3A—Completion of part-heard matters**

#### **44A—Completion of part-heard matters**

A person who ceases to hold office as a member of the Court's judiciary, or as a member of the Commission, may nevertheless continue to act in the relevant office for the purpose of completing the hearing and determination of proceedings part-heard by the person when he or she ceased to hold that office.

## **20—Amendment of section 58—Appointment and conditions of office of Employee Ombudsman**

Section 58(1)—delete "which may be renewed for one further term of 6 years" and substitute:

(which may be renewed from time to time)

## **21—Amendment of section 62—General functions of Employee Ombudsman**

Section 62—after subsection (3) insert:

- (4) The Employee Ombudsman may in the performance of his or her functions, if the Employee Ombudsman thinks fit, determine not to disclose to an employer, or any other particular person, information that would enable an employee to be identified in a particular case.

## **22—Amendment of section 65—General functions of inspectors**

(1) Section 65(b)—delete paragraph (b) and substitute:

- (b) to conduct audits and systematic inspections to monitor compliance with this Act and enterprise agreements and awards; and
- (c) to conduct promotional campaigns to improve the awareness of employers and people within the workforce of their rights and obligations under this Act, and under enterprise agreements and awards; and
- (d) to do anything else that may be appropriate to encourage compliance and, if appropriate, take action to enforce compliance.

(2) Section 65—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) The powers of an inspector under this Act extend to acting in relation to persons who are no longer engaged in the performance of work.
- (3) An inspector, or a person assisting an inspector, who—
  - (a) addresses offensive language to any other person; or
  - (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,is guilty of an offence.

Maximum penalty: \$5 000.

## **23—Insertion of heading**

Chapter 3 Part 1—after the heading to Part 1 insert:

### **Division 1—Basic contractual features**

## **24—Amendment of section 68—Form of payment to employee**

Section 68—after subsection (5) insert:

- (6) An employer who fails to comply with a requirement under subsection (2) or (5) is guilty of an offence.

Maximum penalty: \$3 250.

Expiation fee: \$325.

## **25—Insertion of heading**

After section 68 insert:

### **Division 2—Contracts to be construed subject to relevant minimum standards**

## **26—Amendment of section 69—Remuneration**

- (1) Section 69(1)—delete "at in accordance with the relevant minimum standard under Schedule 2" and substitute:

in accordance with the minimum standard for remuneration in force under this section

- (2) Section 69(3)—after subsection (2) insert:

- (3) The minimum standard for remuneration in force under this section is a standard established by the Full Commission in accordance with the following provisions:

- (a) the Full Commission must establish a minimum standard for remuneration at least once in every year;
- (b) proceedings to establish the standard may be commenced by application by a peak entity, or by the Full Commission acting on its own initiative;
- (c) a minimum standard for remuneration must—
  - (i) fix a minimum weekly wage for an adult working ordinary hours; and
  - (ii) fix a minimum hourly rate for an adult working on a casual basis; and
  - (iii) fix age-based gradations for juniors having regard to existing award conditions; and
  - (iv) cover such other incidental or related matters as should, in the opinion of the Full Commission, be dealt with in the minimum standard.

## **27—Amendment of section 70—Sick leave/carer's leave**

- (1) Section 70(1)—delete "sick leave" wherever occurring and substitute in each case:

sick leave/carer's leave

- (2) Section 70(2)—delete "sick leave" and substitute:

sick leave/carer's leave

- (3) Section 70(3)—delete subsection (3) and substitute:

- (3) The Full Commission may, on application by a peak entity—

- (a) review the minimum standard for sick leave/carer's leave in force under this section; and

- (b) if satisfied that a variation of the minimum standard is necessary or desirable to give effect to the objects of this Act—substitute a fresh minimum standard.
- (4) An application under subsection (3) must not be made within 2 years after the completion of a previous review of the standard by the Full Commission under this section.

## **28—Insertion of section 70A**

After section 70 insert:

### **70A—Bereavement leave**

- (1) A contract of employment is to be construed as if it provided for bereavement leave in terms of the minimum standard for bereavement leave in force under this section unless—
  - (a) the provisions of the contract are more favourable to the employee; or
  - (b) the provisions of the contract are in accordance with an award or enterprise agreement.
- (2) The minimum standard for bereavement leave in force under this section is—
  - (a) the standard set out in Schedule 3A; or
  - (b) a standard substituted for that standard on review by the Full Commission under subsection (3).
- (3) The Full Commission may, on application by a peak entity—
  - (a) review the minimum standard for bereavement leave in force under this section; and
  - (b) if satisfied that a variation of the minimum standard is necessary or desirable to give effect to the objects of this Act—substitute a fresh minimum standard.
- (4) An application under subsection (3) must not be made—
  - (a) within 2 years after the commencement of this section; or
  - (b) within 2 years after the completion of a previous review of the standard by the Full Commission under this section.

## **29—Amendment of section 71—Annual leave**

Section 71(3)—delete subsection (3) and substitute:

- (3) The Full Commission may, on application by a peak entity—
  - (a) review the minimum standard for annual leave in force under this section; and
  - (b) if satisfied that a variation of the minimum standard is necessary or desirable to give effect to the objects of this Act—substitute a fresh minimum standard.

- (4) An application under subsection (3) must not be made within 2 years after the completion of a previous review of the minimum standard by the Full Commission under this section.

### **30—Amendment of section 72—Parental leave**

Section 72(3)—delete subsection (3) and substitute:

- (3) The Full Commission may, on application by a peak entity—
- (a) review the minimum standard for parental leave in force under this section; and
  - (b) if satisfied that a variation of the minimum standard is necessary or desirable to give effect to the objects of this Act—substitute a fresh minimum standard.
- (4) An application under subsection (3) must not be made within 2 years after the completion of a previous review of the minimum standard by the Full Commission under this section.

### **31—Insertion of sections 72A and 72B**

After section 72 insert:

#### **72A—Minimum standards—additional matters**

- (1) The Full Commission may, on application by a peak entity, establish a standard relating to paid parental leave that, subject to this section, is also to apply as a minimum standard to all employers and employees.
- (2) A contract of employment is to be construed as if it incorporated any minimum standard established under subsection (1) unless—
- (a) the provisions of the contract are more favourable to the employee; or
  - (b) the provisions of the contract are in accordance with an award or enterprise agreement.
- (3) The Full Commission may, when substituting or establishing a standard under this Division, exclude an award from the ambit of the standard (or a part of the standard).
- (4) Subject to subsections (5) and (6), a standard substituted or established by the Full Commission under this Division prevails over a preceding award to the extent that the standard is more favourable to employees than any standard prescribed by the particular award.
- (5) A party to an award may, within 28 days after a standard is set by the Full Commission under this Division, apply to the Full Commission to have the award excluded from the ambit of the standard (or a part of the standard).
- (6) The Full Commission may grant an application under subsection (5) if (and only if) the Full Commission is satisfied that there are cogent reasons for doing so taking into account matters or conditions that specifically apply or prevail in the relevant industry or industries.

- (7) The Full Commission may grant an application under subsection (5) on such conditions as the Full Commission thinks fit.
- (8) The Full Commission, in acting under this Division—
  - (a) must ensure that each peak entity is notified of the relevant proceedings and allowed a reasonable opportunity to make representations; and
  - (b) may (as it thinks fit) receive and take into account oral or written representations (or both) from any other person or persons who have, in the opinion of the Full Commission, a proper interest in the matter.

**72B—Special provision relating to severance payments**

- (1) The Full Commission must establish a minimum standard for severance payments on termination of employment for redundancy that will apply in the manner contemplated by subsection (5).
- (2) The Full Commission may thereafter, on application by a peak entity—
  - (a) review the minimum standard for severance payments on termination of employment for redundancy in force under this section; and
  - (b) if satisfied that a variation of the minimum standard is necessary or desirable to give effect to the objects of this Act—substitute a fresh minimum standard.
- (3) An application under subsection (2) must not be made within 2 years after the completion of previous proceedings to establish or review the standard by the Full Commission.
- (4) The Full Commission, in acting under this section—
  - (a) must ensure that each peak entity is notified of the relevant proceedings and allowed a reasonable opportunity to make representations; and
  - (b) may (as it thinks fit) receive and take into account oral or written representations (or both) from any other person or person who have, in the opinion of the Full Commission, a proper interest in the matter.
- (5) The Commission may, on application by—
  - (a) an employee (or a group of employees); or
  - (b) a registered association acting on behalf of an employee or a group of employees,make an order applying the minimum standard for severance payments in such manner as the Commission thinks fit.
- (6) An application may be made under subsection (5) if (and only if)—
  - (a) —

- (i) the relevant employee or employees have been given notice of a pending redundancy or redundancies; or
    - (ii) the employment of the relevant employee or employees has been terminated for redundancy; and
  - (b) the application is made within 21 days after the notice is given or the employment is terminated.
- (7) An order under subsection (5)—
- (a) need not be made by the Full Commission; and
  - (b) may provide for the variation of the minimum standard for severance payments in the circumstances of the particular case; and
  - (c) may be made on such conditions as the Commission thinks fit.
- (8) The Commission must only act under subsection (7)(b) if satisfied that there are cogent reasons for doing so.

### **32—Amendment of section 75—Who may make enterprise agreement**

- (1) Section 75(1)(a)—delete paragraph (a) and substitute:
  - (a) 1 or more employers;
- (2) Section 75(2)—delete subsection (2) and substitute:
  - (2) A registered association may enter into an enterprise agreement on behalf of—
    - (a) any member or members of the association who have given the association an authorisation to negotiate the enterprise agreement on their behalf; or
    - (b) any group of employees (whether or not members of the association) if the association is authorised, after notice has been given as required by the regulations, by a majority of the employees constituting the group to negotiate the enterprise agreement on behalf of the group.

### **33—Amendment of section 76—Negotiation of enterprise agreement**

- (1) Section 76(2)—delete "an association of employees" and substitute:

a registered association of employees
- (2) Section 76(3)—delete "an association" and substitute:

a registered association

(3) Section 76—after subsection (5) insert:

(5A) If an employee involved in negotiations for an enterprise agreement suffers from an intellectual disability that prevents the employee from having a proper understanding of the negotiations, then any of the following may negotiate on the employee's behalf and take any steps that the employee might take if he or she did not suffer from the disability:

- (a) a person who is—
  - (i) a guardian at law of the employee; or
  - (ii) the donee of a power of attorney from the employee; or
  - (iii) an enduring guardian of the employee; or
- (b) a person appointed to represent the employee's interests for the purposes of this Act by a person within the ambit of paragraph (a).

(4) Section 76(6)—delete "an association" and substitute:

a registered association

### **34—Insertion of section 76A**

After section 76 insert:

#### **76A—Best endeavours bargaining**

- (1) The parties to the negotiations must use their best endeavours to resolve questions in issue between them by agreement.
- (2) In particular, the parties to the negotiations (or their duly authorised representatives)—
  - (a) must meet at reasonable times, and at reasonable places, for the purpose of commencing and furthering the negotiations; and
  - (b) must state and explain their position on the questions at issue to all other parties to the negotiations; and
  - (c) must disclose relevant and necessary information; and
  - (d) must act openly and honestly; and
  - (e) must not alter or shift the ground of negotiation by capriciously adding matters for consideration or excluding matters from consideration; and
  - (f) must adhere to agreed negotiation procedures; and
  - (g) must adhere to agreed outcomes and commitments; and
  - (h) if the parties are able to arrive at an agreed timetable for achieving agreement—must use their best endeavours to meet the timetable.

- (3) The Commission may, on the application of a party to any negotiations, give directions to resolve any dispute as to the composition of the group of employees for negotiating purposes.
- (4) An employer cannot be required, as part of any negotiations under this Part, to produce any financial records relating to any business or undertaking of the employer.
- (5) The Commission may, on the application of a party to the negotiations, take steps to resolve a matter by conciliation.
- (6) Nothing in a preceding subsection prevents a party to negotiations for an enterprise agreement deciding to withdraw from the negotiations entirely.

### **35—Amendment of section 79—Approval of enterprise agreement**

- (1) Section 79(1)(c)—delete paragraph (c) and substitute:
  - (c) if the agreement is entered into by a registered association as representative of 1 or more employees bound by the agreement—the Commission is satisfied (in such manner as it thinks fit) that the association is authorised to act in accordance with the provisions of this Act; and
- (2) Section 79(1)(e)(ii)—delete "scheduled standards" and substitute:

standards that apply under Part 1 Division 2
- (3) Section 79—after subsection (1b) insert:
  - (1c) In deciding whether an agreement is in the best interests of an employee with a disability, the Commission must have regard to the *Supported Wage System* of the Commonwealth (or any system that replaces it), and any other relevant national disability standard identified by or under the regulations.
- (4) Section 79—after subsection (10) insert:
  - (11) The Commission may approve an enterprise agreement without proceeding to a formal hearing if the Commission—
    - (a) is satisfied on the basis of documentary material submitted in support of the application that the agreement should be approved; and
    - (b) has given public notice of its intention to approve the agreement in accordance with the rules.

### **36—Amendment of section 81—Effect of enterprise agreement**

Section 81—After subsection (3) insert:

- (4) Subject to subsection (5), if—
  - (a) an enterprise agreement applies to the employees or a particular class of employees engaged in a particular business or undertaking; and

- (b) a new employer becomes the successor, transmittee or assignee of the whole or part of the business or undertaking, the new employer succeeds to the rights and obligations of the employer under the enterprise agreement.
- (5) If—
- (a) an employer is bound by an enterprise agreement (the *outgoing employer*); and
- (b) another employer (the *incoming employer*) then becomes, or is likely to become at a later time, the successor, transmittee or assignee of the whole or part of the business or undertaking of the outgoing employer,
- the Commission may, on application under this subsection, by order—
- (c) vary the enterprise agreement; or
- (d) rescind the enterprise agreement.
- (6) An application under subsection (5) may be made—
- (a) by the outgoing employer (including such an employer who was previously an incoming employer), while he or she is still the employer under the enterprise agreement; or
- (b) by the incoming employer after he or she takes over the whole or a part of the business or undertaking of the outgoing employer; or
- (c) by an employee bound by the enterprise agreement (or a group of such employees) after the incoming employer takes over the whole or a part of the business or undertaking of the outgoing employer; or
- (d) by a registered association acting on behalf of an employee or a group of employees bound by the enterprise agreement after the incoming employer takes over the whole or a part of the business or undertaking of the outgoing employer.
- (7) The Commission may make an order on application under subsection (5) if (and only if)—
- (a) the order only relates to provisions that regulate the performance of duties by employees or that relate to the remuneration of employees; and
- (b) the Commission is satisfied that exceptional circumstances exist justifying the making of the order; and
- (c) the Commission is satisfied—
- (i) that the order will not disadvantage employees in relation to their terms and conditions of employment; or

- (ii) that the order will assist in a reasonable strategy on the part of the employer to deal with a short-term crisis in, and to assist in the revival of, the relevant business or undertaking.
- (8) For the purposes of subsection (7), an order disadvantages an employee or employees in relation to their terms and conditions of employment if, on balance, its making would result in a reduction in the overall terms and conditions of employment of that employee or those employees.
- (9) The Commission must, in making an order under subsection (5), take into account the length of time remaining until the end of the term of the enterprise agreement.
- (10) An order under subsection (5)—
  - (a) must not take effect before the transfer of the relevant business or undertaking to the incoming employer;
  - (b) may be made on the basis that the incoming employer will only be bound by the enterprise agreement for a limited period of time (and then the enterprise agreement will be taken to be rescinded);
  - (c) may be made on the basis that any variation to the enterprise agreement will only have effect for a limited period of time.
- (11) Nothing in this section limits the ability to vary or rescind an enterprise agreement under another provision.

**37—Amendment of section 82—Commission's jurisdiction to act in disputes under an enterprise agreement**

Section 82—after subsection (2) insert:

- (3) The Commission may, in acting under this section, settle a dispute over the application of an enterprise agreement.

**38—Amendment of section 83—Duration of enterprise agreement**

Section 83(1)—delete "(not exceeding 2 years)" and substitute:

(not exceeding 3 years)

**39—Amendment of section 84—Power of Commission to vary or rescind an enterprise agreement**

- (1) Section 84(1)—after paragraph (b) insert:
  - (c) to bring the agreement into conformity with an undertaking on the basis of which the agreement was approved.
- (2) Section 84(4) and (5)—delete subsections (4) and (5) and substitute:
  - (4) A party to an enterprise agreement, an employee bound by the agreement, or a registered association with at least 1 member who is bound by the agreement, may apply to the Commission for an order rescinding the agreement after the end of the term of the agreement.

- (5) On receiving an application for rescission under subsection (4), the Commission must take such steps as it considers appropriate to obtain the views of the persons bound by the agreement about whether the agreement should be rescinded.
- (6) If on an application under subsection (4) the Commission is satisfied—
  - (a) that the employer or a majority of the employees bound by the agreement want it rescinded; and
  - (b) that the rescission of the agreement will not unfairly advance the bargaining position of a particular person or group in the circumstances of the particular case,the Commission may rescind the agreement.

#### **40—Repeal of section 89**

Section 89—delete the section

#### **41—Amendment of section 90—Power to regulate industrial matters by award**

Section 90(3)—delete subsection (3) and substitute:

- (3) The Commission may provide in an award for remuneration, leave or other conditions of employment that are more favourable to employees than the standards that apply under Part 1 Division 2.

#### **42—Insertion of section 90A**

After section 90 insert:

##### **90A—Equity in remuneration**

In making an award regulating remuneration, the Commission must take all reasonable steps to ensure that the principle of equal remuneration for men and women doing work of equal or comparable value is applied (insofar as may be relevant).

#### **43—Amendment of section 91—Who is bound by award**

Section 91—after its present contents (now to be designated as subsection (1)) insert:

- (2) If—
  - (a) an award is expressed to apply to a particular employer, or to an employer engaged in a particular business or undertaking (the *outgoing employer*); and
  - (b) another employer (the *incoming employer*) becomes the successor, transmittee or assignee of the whole or part of the business or undertaking of the outgoing employer,the incoming employer succeeds to rights and obligations of the outgoing employer under the award.
- (3) Subsection (2) operates subject to any provision made by the Commission (on application under this Act) to vary or rescind the relevant award.

#### **44—Substitution of section 98**

Section 98—delete the section and substitute:

##### **98—Consolidation or correction of awards**

- (1) The Registrar must ensure that the text of any award that has been amended by another award is consolidated to include the amendments at least once in each period of 12 months.
- (2) The Registrar may, at any time, correct clerical or other errors in an award.

#### **45—Insertion of new Division**

Before Chapter 3 Part 3 Division 2 insert:

##### **Division 1A—Special provision relating to child labour**

##### **98A—Special provision relating to child labour**

- (1) The Commission may, by award—
  - (a) determine that children should not be employed in particular categories of work or in an industry, or a sector of an industry, specified by the award;
  - (b) impose special limitations on hours of employment of children;
  - (c) provide for special rest periods for children who work;
  - (d) provide for the supervision of children who work;
  - (e) make any other provision relating to the employment of children as the Commission thinks fit.
- (2) Subsection (1) does not limit the powers of the Commission to make awards that relate to children under the other provisions of this Act.
- (3) Without limiting subsection (1), the Commission must, within 1 year after the commencement of this section, commence reviewing the awards applying under this Act that may be relevant to the employment of children to ensure that they reflect appropriate standards with respect to the employment of children (insofar as may be relevant).
- (4) The Commission must, in acting under subsection (3), give priority to those awards that relate to industries (or sectors of industries) where the employment of children is most prevalent.
- (5) The Commission may, in making an award under this section, make a determination that only relates to children of a specified age or ages.

## **Division 1B—Special provision relating to trial work**

### **98B—Special provision relating to trial work**

- (1) The Commission may, by award—
  - (a) determine that a person who undertakes a specified category of work (in any specified circumstances) on a trial basis in an industry, or a sector of an industry, specified by the award with a view to obtaining employment with the person from whom the work is performed is entitled to be paid for that work in accordance with the terms of the award;
  - (b) impose limitations of the performance of work on a trial basis in an industry, or a section of an industry, specified in the award;
  - (c) make any other provision relating to work on a trial basis as the Commission thinks fit,

if the Commission is of the opinion that action under this section is justified in order to prevent the abuse of the performance of work on a trial basis in the relevant circumstances.

- (2) The Commission may, in setting rates of pay with respect to particular work under subsection (1), specify different rates according to the different levels of skill or experience that persons undertaking the work may possess.
- (3) Subsection (1) does not limit the powers of the Commission to make any award under the other provisions of this Act.
- (4) Subsection (1) applies even though the persons to whom an award will relate will not be employees for the purposes of this Act.
- (5) A person who is entitled to be paid under an award under this section is entitled to recover the amount that should be paid as if the person were an employee of the person for whom the work was performed.

## **46—Insertion of new Part**

After section 99 insert:

### **Part 3A—Outworkers**

#### **Division 1—Preliminary**

##### **99A—Interpretation**

In this Part—

*apparent responsible contractor*—see section 99D;

*code of practice* means the code of practice in operation under Division 2 (if any);

*remuneration* includes—

- (a) any remuneration or other amount, including Commission, payable in relation to work done by an outworker;
- (b) any amount payable to an outworker in respect of annual leave or long service leave;
- (c) any amount for which an outworker is entitled to be reimbursed or compensated for under the code of practice;

*unpaid remuneration* means remuneration that is the subject of a claim under section 99D.

### **99B—Responsible contractors**

- (1) Subject to this section, a person will be taken to be a responsible contractor in relation to an outworker or a group of outworkers engaged (or previously engaged) under a contract of employment with someone else if the person is a person who initiates an order for the relevant work (other than (if relevant) as a purchaser at the point of sale by retail), or distributes the relevant work (even though there may then be a series of contracts before the work is actually performed by the outworker or outworkers).
- (2) The fact that a person is to be taken to be a responsible contractor for the purposes of this Part does not affect any obligation of another person as an employer under a contract of employment.
- (3) A person whose sole business in connection with the clothing industry is the sale of clothing (and associated items) by retail will not be taken to be a responsible contractor under this section (but may be taken to be an employer under a contract of employment between the person and an outworker).

## **Division 2—Code of practice**

### **99C—Code of practice**

- (1) The Governor may, by regulation, establish a code of practice for the purpose of ensuring that outworkers are treated fairly in a manner consistent with the objects of this Act.
- (2) The code of practice may make different provision according to the matters or circumstances to which they are expressed to apply.
- (3) The code of practice may apply, adopt or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or as in force from time to time.
- (4) A code of practice may—
  - (a) require employers or other persons engaged in an industry, or a sector of an industry, specified or described in the code to adopt the standards of conduct and practice with respect to outworkers set out in the code; and

- (b) make arrangements relating to the remuneration of outworkers, including by specifying matters for which an outworker is entitled to be reimbursed or compensated for with respect to his or her work or status as an outworker; and
  - (c) make provision to assist outworkers to receive their lawful entitlements; and
  - (d) make such other provision in relation to the work or status of outworkers as the Governor thinks fit.
- (5) The Commission may make an award incorporating any term of the code of practice or make any other provision to give effect to the code of practice.
- (6) Subsection (5) does not limit the powers of the Commission to make awards that relate to outworkers under the other provisions of this Act.
- (7) If there is an inconsistency between an award and the code of practice, the award prevails to the extent of the inconsistency.

### **Division 3—Recovery of unpaid remuneration**

#### **99D—Outworker may initiate a claim against a responsible contractor**

- (1) An outworker may initiate a claim for unpaid remuneration (an *unpaid remuneration claim*) against a person identified by the outworker as the person who the outworker believes on reasonable grounds to be a responsible contractor in relation to the outworker (the *apparent responsible contractor*).
- (2) The unpaid remuneration claim may be for all or any of the remuneration that is payable to the outworker on account of work performed by the outworker that was (or apparently was) initiated or distributed by the apparent responsible contractor (and it does not matter that there may be more than 1 responsible contractor).
- (3) The unpaid remuneration claim must be made within 6 months after the relevant work is completed by the outworker.
- (4) The unpaid remuneration claim is to be made by serving a written notice on the apparent responsible contractor that—
  - (a) claims payment of the unpaid remuneration; and
  - (b) sets out the following particulars:
    - (i) the name of the outworker; and
    - (ii) the address at which the outworker may be contacted; and
    - (iii) a description of the work that has been performed; and

- (iv) the date or dates on which the work was performed; and
  - (v) the amount of unpaid remuneration claimed in respect of the work.
- (5) The particulars set out in the unpaid remuneration claim must be verified by statutory declaration.
- (6) A claim under this section may only be made in respect of work performed after the commencement of this section.

### **99E—Liability of apparent responsible contractor on a claim**

- (1) Except as provided by subsection (4), an apparent responsible contractor served with an unpaid remuneration claim is liable for the amount of unpaid remuneration claimed.
- (2) An apparent responsible contractor may, within 14 days after being served with an unpaid remuneration claim, refer the claim to another person the apparent responsible contractor knows or has reason to believe is the employer of the outworker under this Act (the *designated employer*).
- (3) An apparent responsible contractor refers an unpaid remuneration claim under subsection (2) by—
- (a) advising the outworker who has made the claim, in writing, of the name and address of the designated employer; and
  - (b) serving a copy of the claim (a *referred claim*) on the actual employer.
- (4) The apparent responsible contractor is not liable for the whole or any part of an amount of an unpaid remuneration claim for which the designated employer served with a referred claim accepts liability in accordance with section 99F.

### **99F—Liability of actual employer to which a claim is referred**

- (1) A designated employer served with a referred claim under section 99E may, within 14 days after being served, accept liability for the whole or any part of an amount of unpaid remuneration claimed by paying it to the outworker concerned.
- (2) A designated employer who accepts liability under subsection (1) must serve notice in writing on the apparent responsible contractor of that acceptance and of the amount paid.

### **99G—Recovery of amount of unpaid remuneration**

- (1) An amount payable to an outworker by an apparent responsible contractor that is not paid in accordance with the requirements of this Division may be recovered by the outworker as a monetary claim under Chapter 5 Part 2.
- (2) Sections 165 and 182 will not apply in proceedings brought under this section.

- (3) In proceedings brought under this section, an order for the apparent responsible contractor to pay the amount claimed must be made unless the apparent responsible contractor satisfies the Court that the work was not performed or that the amount of the claim for the work in the unpaid remuneration claim is not the correct amount in respect of the work.

### **99H—Ability of responsible contractor to claim contribution or to make deduction**

- (1) If an apparent responsible contractor pays to the outworker concerned the whole or any part of the amount of any unpaid remuneration claim under this Division, the apparent responsible contractor may—
  - (a) recover the amount paid from a related employer; or
  - (b) deduct or set-off the amount paid from or against any amount that the apparent responsible contractor owes to a related employer (whether or not in respect of work that has been carried out by the outworker).
- (2) For the purposes of subsection (1), a related employer in relation to an apparent responsible contractor is—
  - (a) the actual employer of the outworker concerned; or
  - (b) another responsible contractor whose contractual relationship with the outworker concerned on account of the work performed by the outworker is, when all relevant contractual relationships are considered, closer than the contractual relationship between the apparent responsible contractor and the outworker.

### **99I—Offence provision**

A person must not—

- (a) by intimidation or by any other act or omission, intentionally hinder or prevent a person from making an unpaid remuneration claim under section 99D; or
- (b) make a statement that the person knows to be false or misleading in a material particular in any referred claim under section 99E or any notice served for the purposes of section 99F; or
- (c) serve a referred claim on a person under section 99E that the person does not know, or have reasonable grounds to believe, is an actual employer.

Maximum penalty: \$5 000.

### **99J—Non-derogation**

Nothing in this Division—

- (a) limits or excludes any other right of recovery of remuneration of an outworker, or any liability with respect to payment of remuneration to an outworker (whether arising under this Act or any other Act or law or whether arising by virtue of any award or other industrial instrument or by virtue of an agreement or otherwise); or
- (b) limits or excludes any right of recovery arising under any other law with respect to any amount of money owed by a responsible contractor to another person.

### **47—Amendment of section 100—Adoption of principles affecting determination of remuneration and working conditions**

Section 100—after subsection (2) insert:

- (3) A declaration under this section may be made on the basis that it is to apply in relation to (and prevail to the extent of any inconsistency with)—
  - (a) awards generally; or
  - (b) awards generally, other than a specified award or awards; or
  - (c) a specified award or awards (and no other awards).
- (4) In addition, a party to an award that is affected by a declaration under this section may, within 28 days after the declaration is made, apply to the Full Commission to have the award excluded from the declaration (or a part of the declaration), despite the operation of subsection (3).
- (5) The Full Commission may grant an application under subsection (4) on such conditions as the Full Commission thinks fit.

### **48—Amendment of section 102—Records to be kept**

- (1) Section 102(1)—delete "who is bound by an award or enterprise agreement must, subject to subsection (6), keep for employees to whom the award of agreement applies" and substitute:

must, subject to subsections (6) and (7), keep for all employees

- (2) Section 102(2)—delete subsection (2) and substitute:

- (2) The records must be kept in the English language.

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (2a) The records may be kept in writing or in electronic form.

- (2b) The information kept in the time book must be verified as follows:
- (a) if the time book is kept in writing, it must, if practicable, be verified by signature of the employee on, or as soon as possible after, each pay day and the signature constitutes evidence of the correctness of the entries;
  - (b) if the time book is kept electronically, a printout of the relevant entries must, if practicable, be verified by signature of the employee on, or as soon as possible after, each pay day and the employer must keep the signed printouts as evidence of the correctness of the entries.

Maximum penalty: \$1 250.

Expiation fee: \$105.

- (3) Section 102(3)—delete "six years" and substitute:  
7 years
- (4) Section 102(4)—after paragraph (b) insert:
- (c) at the reasonable request of an inspector, produce reasonable evidence of the payment of wages and details of how the amounts of the payments were calculated and details of any amounts that remained unpaid and how they are calculated.
- (5) Section 102—after subsection (5) insert:
- (5a) On the transmission of the records, the employer's obligations in relation to the records passes to the transferee or assignee.
- (6) Section 102(7)—delete subsection (7) and substitute:
- (7) The requirement to keep a time book does not apply with respect to any employee who is not paid on an hourly basis, or on a basis under which the employee's remuneration varies according to the time worked.
  - (8) When an employer makes a payment of wages, the employer must provide the employee with a pay slip showing—
    - (a) the name of the employer; and
    - (b) the amount of the payment; and
    - (c) the period of employment to which the payment relates; and
    - (d) if the employee is paid on an hourly basis, or on a basis on which the rate of pay varies according to the time worked—
      - (i) the number of hours worked by the employee during the period to which the payment relates (distinguishing between ordinary time and overtime); and
      - (ii) the rate or rates of pay on which the payment is based; and

- (e) if the employer has made a contribution to a superannuation fund for the benefit of the employee - the name of the fund to which the contribution was made and the amount of the contribution.

Maximum penalty: \$1 250.

Expiation fee: \$105.

#### **49—Amendment of section 104—Powers of inspectors**

- (1) Section 104(1)(a)—delete paragraph (a) and substitute:
  - (a) enter any workplace; and
- (2) Section 104(2)—delete subsection (2) and substitute:
  - (2) An inspector must, when entering or as soon as practicable after entering a place under this section, produce his or her identity card for inspection by the occupier or person in charge of the place.
- (3) Section 104—delete subsection (4) and substitute:
  - (4) In addition to the powers set out in subsections (1) and (3), if an inspector has reason to believe that a document required to be kept by an employer under this Act or any other Act is not accessible during an inspection under subsection (3), the inspector may, by notice in writing to an employer, require the employer to produce the document to the inspector within a reasonable period (of at least 24 hours) specified by the inspector.
  - (4a) A document produced under subsection (3) or (4) may be retained by the inspector for examination and copying (and, accordingly, the inspector may take it away), subject to the qualification that the inspector must then return the document within 7 days.
- (4) Section 104(5)(a)—delete "take away a" and substitute:

retain an original
- (5) Section 104(5)(b)—delete paragraph (b) and substitute:
  - (b) the inspector may not retain the original of a document that is required for the day-to-day operations of the employer (but the inspector may copy it at the time of its production).

#### **50—Insertion of section 104A**

After section 104 insert:

##### **104A—Compliance notices**

- (1) If it appears that an employer has failed to comply with a provision of this Act, or of an award or enterprise agreement, an inspector may issue a compliance notice requiring the employer, within a period stated in the notice—
  - (a) to take specified action to remedy the non-compliance; and
  - (b) to produce reasonable evidence of the employer's compliance with the notice.

- (2) An employer who fails to comply with a compliance notice within the time allowed in the notice is guilty of an offence.  
Maximum penalty: \$3 250.  
Expiation fee: \$325.
- (3) The following applications may be made to the Court for a review of a notice issued under this section:
  - (a) an employer may apply to the Court on the ground that the employer has in fact complied with this Act, or the relevant award or enterprise agreement (as the case may be);
  - (b) an employee may apply to the Court on the ground that the employer's failure to comply with this Act, or an award or enterprise agreement, is more extensive than stated in the notice.
- (4) The Court may, at the conclusion of the review—
  - (a) confirm the notice; or
  - (b) confirm the notice with such modification as it thinks fit; or
  - (c) cancel the notice.
- (5) A reference in this section to this Act includes a reference to a code of practice made under this Act.

### **51—Amendment of section 105A—Application of this Part**

Section 105A(4)—after "completion of the specified task" insert:

, unless the employee has, on the basis of the employer's conduct, a clear expectation of continuing employment by the employer

### **52—Amendment of section 106—Application for relief**

- (1) Section 106—delete subsections (2) and (3) and substitute:
  - (2) An employee cannot simultaneously bring proceedings for dismissal before 2 or more adjudicating authorities.
  - (3) If an employee takes proceedings for dismissal under this Part or some other law and the adjudicating authority before which the proceedings are brought considers that the proceedings might have been more appropriately brought under another law before another adjudicating authority—
    - (a) the adjudicating authority may, after hearing the parties, refer the proceedings to the other adjudicating authority to be dealt with under that other law; and
    - (b) the adjudicating authority to which the proceedings are referred must deal with the proceedings as if they had been commenced before that adjudicating authority under the relevant law.

**Note—**

Suppose that an employee brings proceedings under the *Equal Opportunity Act 1984* seeking relief for dismissal on the ground that the dismissal constitutes an act of discrimination in respect of which a remedy is available under that Act. The relevant authorities under that Act might, if of the opinion that the proceedings might have been more appropriately brought the Commission under this Act, refer the proceedings to the Commission. The proceedings would then proceed in the Commission as if they had been commenced by an application for relief under this Part.

- (3a) The period that applies under subsection (1) does not apply in a case involving the referral of proceedings to the Commission under another law.
- (2) Section 106—delete subsection (4) and substitute:
  - (4) No fee may be imposed with respect to an application for relief under this Part.

**53—Repeal of Chapter 3 Part 6 Division 3**

Chapter 3 Part 6 Division 3—delete Division 3

**54—Amendment of section 108—Question to be determined at the hearing**

Section 108(2)—after paragraph (b) insert:

- (c) the degree to which the size of the relevant undertaking, establishment or business impacted on the procedures followed in effecting the dismissal; and
- (d) the degree to which the absence of dedicated human resource management specialists or expertise in the relevant undertaking, establishment or business impacted on the procedures followed in effecting the dismissal; and
- (e) whether the employer has failed to comply with an obligation under section 58B or 58C of the *Workers Rehabilitation and Compensation Act 1986*; and
- (f) any other factor considered by the Commission to be relevant to the particular circumstances of the dismissal.

**55—Amendment of section 109—Remedies for unfair dismissal from employment**

Section 109—after subsection (1) insert:

- (1a) Re-employment is to be regarded as the preferred remedy, and the Commission may only award an alternative remedy if satisfied that there are cogent reasons to believe that re-employment would not, in the circumstances of the particular case, be an appropriate remedy.

- (1b) However, the Commission need not regard re-employment as the preferred remedy if the position to which the applicant would be re-employed is in a business or undertaking where, at the time of the Commission's decision on the application, less than 50 employees are employed.

### **56—Amendment of section 112—Slow, inexperienced or infirm workers**

Section 112—after subsection (6) insert:

- (7) If an award or enterprise agreement makes provision for the remuneration of employees who are under a disability that adversely affects work performance in some way, the award or enterprise agreement excludes from the ambit of this section an employee who comes within the terms of the relevant provision of the award or enterprise agreement.

### **57—Amendment of section 140—Powers of officials of employee associations**

- (1) Section 140(1)—delete ", if authorised to do so by an award or enterprise agreement, enter an employer's premises at which one or more members of the association are employed" and substitute:
- enter any workplace at which 1 or more members of the association work
- (2) Section 140(1)(a)—delete "premises" and substitute:
- workplace
- (3) Section 140(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:
- (b) inspect the work carried out at the workplace and note the conditions under which the work is carried out; and
- (c) if specific complaints about non-compliance with this Act, an award or an enterprise agreement have been made—interview any person who works at the workplace about the complaints.
- (4) Section 140—after subsection (1) insert:
- (1a) The powers conferred by subsection (1) may be exercised at a time when work is being carried out at the workplace.
- (5) Section 140(2)—delete "and comply with any other requirements imposed by the award or enterprise agreement"
- (6) Section 140—after subsection (2) insert:
- (2a) For the purposes of subsection (2)—
- (a) the notice must be given in writing; and
- (b) a period of 24 hours notice will be taken to be reasonable unless some other period is reasonable in the circumstances of the particular case.
- (2b) An official exercising a power under subsection (1) must not interrupt the performance of work at the workplace.

- (7) Section 140(3)—after paragraph (a) insert:
  - (ab) address offensive language to an employer or an employee; or
- (8) Section 140(3)—after paragraph (b) insert:
  - (c) use or threaten to use force in relation to an employer, an employee or any other person.
- (9) Section 140—after subsection (4) insert:
  - (5) Despite a preceding subsection, an official of an association may not enter a workplace under this section if—
    - (a) no more than 20 employees are employed at the workplace; and
    - (b) the employer—
      - (i) is a member of the Christian fellowship known as *Brethren*; and
      - (ii) holds a certificate of conscientious objection under section 118 that has been endorsed in a manner that indicates that each employee employed at the workplace agrees to the exclusion of this section; and
    - (c) no employee employed at the workplace is a member of an association registered under this Act.

### **58—Amendment of section 141—Register of members and officers of association**

- (1) Section 141(3)—after paragraph (b) insert:
  - (c) information as to—
    - (i) the number of financial members of the association; and
    - (ii) the number of non-financial members of the association,as at the immediately preceding 30 June.
- (2) Section 141—after subsection (3) insert:
  - (3a) A person is entitled to inspect (without charge) a copy of any information provided under subsection (3) during ordinary business hours at the office of the Registrar.

### **59—Amendment of section 151—Representation**

Section 151(1)—after paragraph (b) insert:

- (ba) if an association is itself a party or intervener—an officer or employee of the association or an officer or (by permission of the Court or Commission) an officer or employee of some other association with similar or related interests; or

## **60—Amendment of section 152—Registered agents**

Section 152—delete subsections (2), (3), (4) and (5) and substitute:

- (2) A person who applies for registration or renewal of registration is entitled to registration or renewal of registration (as the case requires) if the person—
  - (a) has the qualifications and experience required by regulation for registration or the renewal of registration (as the case requires); and
  - (b) satisfies the Registrar as to any other matter or requirement prescribed by the regulations; and
  - (c) pays the relevant fee fixed by regulation.
- (3) A person who is not entitled to practise as a legal practitioner because his or her name has been struck off the roll of legal practitioners in this State or elsewhere or because of other disciplinary action taken against him or her is not eligible to become or remain registered as an agent.
- (4) Registration will be granted or renewed for a period (not exceeding 2 years) determined by the Registrar.
- (5) The Governor may, by regulation, establish a code of conduct to be observed by registered agents.
- (6) The code of conduct may (for example) deal with the following matters:
  - (a) it may regulate the fees to be charged by registered agents;
  - (b) it may require proper disclosure of fees before the registered agent undertakes work for a client;
  - (c) it may limit the extent to which a registered agent may act on the instructions of an unregistered association.

## **61—Insertion of section 152A**

After section 152 insert:

### **152A—Inquiries into conduct of registered agents or other representative**

- (1) The Registrar may inquire into the conduct of a registered agent or other representative in order to determine whether proper grounds for disciplinary action exist.
- (2) Proper grounds for disciplinary action exist if—
  - (a) in the case of a registered agent—
    - (i) the agent commits a breach of the code of conduct; or
    - (ii) the agent is not a fit and proper person to remain registered as an agent; or

- (b) in the case of another representative—the representative's conduct falls short of the standards that should reasonably be expected of a person undertaking the representation of another in proceedings before the Court or the Commission.
- (3) If, on inquiry, the Registrar finds that proper grounds for disciplinary action exist, the Registrar may—
  - (a) issue a letter of admonition; or
  - (b) if the representative is a legal practitioner—refer the matter to the Legal Practitioners Conduct Board for investigation; or
  - (c) if the representative is a registered agent—
    - (i) suspend the agent's registration for a period of up to 6 months; or
    - (ii) cancel the agent's registration.
- (4) An appeal lies to the Court against a decision of the Registrar under subsection (3)(c).
- (5) An appeal must be instituted in accordance with the rules of the Court.

## **62—Insertion of new Division**

After section 155 insert:

### **Division 4A—Conciliation conferences**

#### **155A—Application of Division**

This Division applies to proceedings founded on—

- (a) a monetary claim;
- (b) a claim for relief against unfair dismissal.

#### **155B—Conciliation conference**

- (1) Before the Court or the Commission hears proceedings to which this Division applies, a conference of the parties must be held for the purpose of exploring—
  - (a) the possibility of resolving the matters at issue by conciliation and ensuring that the parties are fully informed of the possible consequences of taking the proceedings further; and
  - (b) if the proceedings are to progress further and the parties are involved in 2 or more sets of proceedings under this Act—the possibility of hearing and determining some or all of the proceedings concurrently.

- (2) Any member of the Court or Commission may preside at a conference under subsection (1) unless the parties are in a remote part of the State, in which case the President may authorise a stipendiary magistrate to call and preside at the conference.
- (3) The person presiding at the conference (the presiding officer) must, not more than 3 business days after the conclusion of the conference—
  - (a) give the parties a preliminary assessment of the merits of the claim (or, if there is more than 1 claim, of each claim) and any defence to the claim (or claims); and
  - (b) recommend to the parties how best to proceed to resolution of the questions in issue between them (or, if in the presiding officer's opinion the application patently lacks merit, recommend that the claim be withdrawn).
- (4) If a claim is not resolved by conciliation or withdrawn, it will be set down for hearing before the Court or Commission (as the case requires).

### **63—Amendment of section 167—Extension of time**

Section 167—after subsection (2) insert:

- (3) Subject to subsection (2), if—
  - (a) a person commences proceedings before the Commonwealth Commission or a court of the Commonwealth in relation to an industrial matter; and
  - (b) the proceedings are dismissed or discontinued on the ground of lack of jurisdiction, or on the ground that the proceedings should have been brought under this Act instead of under Commonwealth law; and
  - (c) the person applies to bring proceedings before the Court or the Commission under this Act in relation to the same (or substantially the same) matter within 21 days after the earlier proceedings are dismissed or discontinued,

the Court or Commission (as the case requires) must, if relevant, on application under this subsection, extend any time limitation that would otherwise apply to the proceedings unless the Court or Commission determines that there are good and cogent reasons for not doing so.

### **64—Insertion of section 174A**

After section 174 insert:

#### **174A—Power to refer question for report**

The Full Court or the Full Commission may refer a matter to a member or officer of the Court or Commission for report or for investigation and report.

**65—Amendment of section 175—General power of direction and waiver**

Section 175—after subsection (2) insert:

- (3) The Court or the Commission may punish non-compliance with a procedural direction by striking out proceedings, or any defence, in whole or in part.

**66—Amendment of section 178—Rules**

Section 178—after subsection (5) insert:

- (6) The rules and process of the Court and the Commission—
  - (a) should be expressed in plain English; and
  - (b) should be as brief and as simple as the nature of the subject-matter reasonably allows.

**67—Amendment of section 187—Appeals from Industrial Magistrate**

Section 187—after its present contents (now to be designated as subsection (1)) insert:

- (2) A single Judge may refer an appeal under this section to the Full Court if of the opinion that the appeal raises questions of importance or difficulty that justify consideration by the Full Court.

**68—Amendment of section 190—Powers of appellate court**

Section 190(3)(b)—delete "Full"

**69—Amendment of section 194—Applications to the Commission**

Section 194—after its present contents (now to be designated as subsection (1)) insert:

- (2) A natural person may bring an application as of right if the application is authorised under some other provision of this Act but otherwise must establish to the satisfaction of the Commission—
  - (a) that the claim arises out of a genuine industrial grievance; and
  - (b) that there is no other impartial grievance resolution process that is (or has been) reasonably available to the person.

**70—Amendment of section 198—Assignment of Commissioner to deal with dispute resolution**

Section 198(2)—delete subsection (2)

**71—Amendment of section 208—Procedure on appeal**

Section 208(3)(c)—delete "Commissioner" wherever occurring and substitute in each case:

member of the Commission

## **72—Insertion of section 225A**

After section 225 insert:

### **225A—Use of offensive language against a representative**

An employer, or an officer, employee or representative of an association of employers, must not address offensive language to a duly authorised representative of an association of employees (insofar as the person is acting as such a representative).

Maximum penalty: \$5 000.

## **73—Amendment of section 235—Proceedings for offences**

Section 235(2)—delete "12 months" and substitute:

2 years

## **74—Insertion of 236A**

After section 236 insert:

### **236A—Offences by body corporate**

- (1) If—
  - (a) a body corporate commits an offence against this Act; and
  - (b) a member of the governing body of the body corporate intentionally allowed the body corporate to engage in the conduct comprising the offence,that person also commits an offence and is liable to the same penalty as may be imposed for the principal offence.
- (2) A person referred to in subsection (1) may be prosecuted and convicted of an offence against that subsection whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

## **75—Repeal of Schedule 2**

Schedule 2—delete the Schedule

## **76—Substitution of heading**

Schedule 3, heading—delete the heading and substitute:

### **Schedule 3—Minimum standard for sick leave/carer's leave**

## **77—Amendment of Schedule 3**

- (1) Schedule 3, section 4—after subsection (4) insert:
  - (5) An employee may take sick leave for a part of a day in a block of 1 or more hours.

- (6) The following provisions apply in connection with subsection (5):
- (a) if a period of sick leave exceeds 1 hour but does not equal a whole number of hours, the fraction of an hour will be taken to be a whole hour; and
  - (b) when the number of hours taken as sick leave under subsection (5) equals the number of hours usually worked by the employee in a day, then the employee will be taken to have taken 1 day's sick leave.
- (2) Schedule 3—after section 5 insert:

### **6—Carer's leave**

- (1) An employee with an accrued entitlement to sick leave under a preceding section may use up to 5 days of that entitlement in each year to care for and support members of the employee's family when they are sick.
- (2) The employee must, if practicable before taking leave under this section, give the employer notice of—
  - (a) the employee's intention to take the leave; and
  - (b) the reason for the leave; and
  - (c) the name of the person requiring the care and that person's relationship to the employee; and
  - (d) the time the employee expects to be absent,but if it is not possible to give the notice before commencing the leave, the employee must give the notice as soon as practicable in the circumstances.
- (3) The employee must, if required by the employer, produce reasonable evidence of the sickness and the need for the employee's care.
- (4) An employee is, while taking leave under this section, entitled to pay at the same rate as if he or she was on sick leave.

## **78—Insertion of Schedule 3A**

After Schedule 3 insert:

### **Schedule 3A—Minimum standard for bereavement leave**

#### **1—Bereavement leave**

- (1) An employee is entitled to 2 days bereavement leave in the case of the death of a member of the employee's family.
- (2) The leave may be taken—
  - (a) at a time of the employee's choosing within a period commencing on the date of death of the family member and ending 2 days after the funeral; or

- (b) at some other time agreed with the employer.
- (3) The employee must, if required by the employer, produce reasonable evidence of the death and of the relationship of the deceased to the employee.
- (4) A full-time employee is entitled to full pay for a period of bereavement leave.
- (5) A part-time employee is entitled to pro-rata pay for a period of bereavement leave.

#### **79—Amendment of Schedule 4**

Schedule 4, section 5—after subsection (2) insert:

- (3) If an employee's employment comes to an end before the employee has taken all the annual leave to which the employee is entitled, the employee (or the employee's estate) is entitled to the monetary equivalent of that leave.

#### **80—Insertion of Schedules 9 to 11**

After Schedule 8 insert:

### **Schedule 9—Worst Forms of Child Labour Convention 1999**

#### **C182 Worst Forms of Child Labour Convention, 1999**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

### **Article 1**

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

### **Article 2**

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

### **Article 3**

For the purposes of this Convention, the term the worst forms of child labour comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

**Article 4**

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

**Article 5**

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

**Article 6**

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

**Article 7**

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
  - (a) prevent the engagement of children in the worst forms of child labour;

- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
  - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
  - (d) identify and reach out to children at special risk; and
  - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

#### **Article 8**

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

#### **Article 9**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

#### **Article 10**

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

#### **Article 11**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### **Article 12**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

#### **Article 13**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

#### **Article 14**

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### **Article 15**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;
  - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

## **Article 16**

The English and French versions of the text of this Convention are equally authoritative.

## **Cross references**

Conventions: C029 Forced Labour Convention, 1930  
Conventions: C138 Minimum Age Convention, 1973  
Recommendations: R035 Forced Labour (Indirect Compulsion) Recommendation, 1930  
Recommendations: R036 Forced Labour (Regulation) Recommendation, 1930  
Recommendations: R146 Minimum Age Recommendation, 1973  
Supplemented: R190 Complemented by the Worst Forms of Child Labour Recommendation, 1999  
Constitution: 22: article 22 of the Constitution of the International Labour Organisation

## **Schedule 10—Workers with Family Responsibilities Convention 1981**

### **C156 Workers with Family Responsibilities Convention, 1981**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity", and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are "aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women", and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts the twenty-third day of June of the year one thousand nine hundred and eighty-one, the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

**Article 1**

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
3. For the purposes of this Convention, the terms dependent child and other member of the immediate family who clearly needs care or support mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.
4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as workers with *family responsibilities*.

#### **Article 2**

This Convention applies to all branches of economic activity and all categories of workers.

#### **Article 3**

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.
2. For the purposes of paragraph 1 of this Article, the term discrimination means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

#### **Article 4**

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken—

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

#### **Article 5**

All measures compatible with national conditions and possibilities shall further be taken—

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as child-care and family services and facilities.

### **Article 6**

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

### **Article 7**

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

### **Article 8**

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

### **Article 9**

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

### **Article 10**

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.
2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

### **Article 11**

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

### **Article 12**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### **Article 13**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

### **Article 14**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

### **Article 15**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

### **Article 16**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

### **Article 17**

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

### **Article 18**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
  - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

### **Article 19**

The English and French versions of the text of this Convention are equally authoritative.

### **Cross references**

Conventions: C100 Equal Remuneration Convention, 1951  
Recommendations: R090 Equal Remuneration Recommendation, 1951  
Conventions: C111 Discrimination (Employment and Occupation) Convention, 1958  
Recommendations: R111 Discrimination (Employment and Occupation) Recommendation, 1958  
Recommendations: R150 Human Resources Development Recommendation, 1975  
Recommendations: R123 Employment (Women with Family Responsibilities) Recommendation, 1965  
Constitution: 22: article 22 of the Constitution of the International Labour Organisation

## **Schedule 11—Workers' Representatives Convention 1971**

### **C135 Workers' Representatives Convention, 1971**

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-sixth Session on 2 June 1971, and  
Noting the terms of the Right to Organise and Collective Bargaining Convention, 1949, which provides for protection of workers against acts of anti-union discrimination in respect of their employment, and  
Considering that it is desirable to supplement these terms with respect to workers' representatives, and  
Having decided upon the adoption of certain proposals with regard to protection and facilities afforded to workers' representatives in the undertaking, which is the fifth item on the agenda of the session, and  
Having determined that these proposals shall take the form of an international Convention,  
adopts the twenty-third day of June of the year one thousand nine hundred and seventy-one, the following Convention, which may be cited as the Workers' Representatives Convention, 1971:

**Article 1**

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

**Article 2**

1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.
2. In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.
3. The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

**Article 3**

For the purpose of this Convention the term workers' representatives means persons who are recognised as such under national law or practice, whether they are—

- (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

- (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

**Article 4**

National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

**Article 5**

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

**Article 6**

Effect may be given to this Convention through national laws or regulations or collective agreements, or in any other manner consistent with national practice.

**Article 7**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

**Article 8**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

### **Article 9**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

### **Article 10**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

### **Article 11**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

### **Article 12**

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

### **Article 13**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### **Article 14**

The English and French versions of the text of this Convention are equally authoritative.

#### **Cross references**

Conventions: C098 Right to Organise and Collective Bargaining Convention, 1949

## **Part 3—Amendment of the *Long Service Leave Act 1987***

### **81—Amendment of section 3—Interpretation**

- (1) Section 3(2)(b)—delete "at some time during the period" and substitute:  
during the whole or part of the period
- (2) Section 3(2)(b)—after subparagraph (ii) insert:
  - (iii) the worker worked on a casual or part-time basis,

## **Schedule 1—Transitional provisions**

### **1—Interpretation**

- (1) In this Schedule—  
*principal Act* means the *Industrial and Employee Relations Act 1994*.
- (2) Unless the contrary intention appears, terms used in this Schedule have meanings consistent with the meanings they have in the principal Act.

### **2—Enterprise Agreement Commissioners**

A person holding office as an Enterprise Agreement Commissioner immediately before the commencement of this clause will continue as a Commissioner appointed to the Commission for the balance of his or her term of appointment as an Enterprise Agreement Commissioner (and is then eligible for reappointment under the principal Act as amended by this Act).

### **3—Term of office of other members of Commission**

The amendments made to the principal Act by sections 12 or 15 of this Act do not apply to members of the Commission appointed before the commencement of this clause (and accordingly such a member of the Commission will cease to hold office at the end of the term for which he or she was appointed (unless the term comes to an end under the principal Act sooner) but the member will then be eligible for reappointment under the principal Act as amended by this Act).

#### **4—Enterprise agreements**

- (1) The amendments made to the principal Act by section 32(2), 33(1), (2) and (4) and 35(1) of this Act do not apply with respect to any negotiations or proceedings to enter in an enterprise agreement being conducted or undertaken by an association that is not a registered association if the association was, before the commencement of this subclause, authorised to negotiate the agreement on behalf of a group of employees in accordance with section 75(2) of the principal Act (as in existence immediately before the commencement of this clause).
- (2) The amendment made to section 81 of the principal Act by this Act does not apply with respect to the transfer of a business or undertaking that takes effect before the commencement of this subclause.

#### **5—Awards**

The amendment made to section 91 of the principal Act by this Act does not apply with respect to the transfer of a business or undertaking that takes effect before the commencement of this clause.

#### **6—Registered agents**

The term of registration of a person holding a registration as an agent immediately before the commencement of this clause will be taken to be 2 years from the date of that commencement.

#### **7—Minimum standards**

- (1) Schedule 2 of the principal Act (and any determination of the Full Commission under that Schedule) will, despite the repeal of that Schedule by this Act, continue to have effect until the Full Commission establishes a minimum standard under subsection (3) of section 69 of the principal Act (as enacted by this Act).
- (2) The President of the Commission must take reasonable steps to ensure that the first determination of the Full Commission under subsection (3) of section 69 of the principal Act (as enacted by this Act) is made as soon as is reasonably practicable after the commencement of this subclause.
- (3) The President of the Commission must take reasonable steps to ensure that the Full Commission establishes the minimum standard contemplated by section 72B of the principal Act (as enacted by this Act) as soon as is reasonably practicable after the commencement of this subclause.
- (4) Proceedings for the purposes of subclause (2) or (3) may be commenced by application by a peak entity, or by the Full Commission acting on its own initiative.

#### **8—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Part, apply to any amendment or repeal effected by this Act.