

SOUTH AUSTRALIA

**INDUSTRIAL CONCILIATION AND
ARBITRATION ACT, 1972**

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 30 November 1987.

The Commissioner of Statute Revision is authorized by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law. A report has been prepared containing a comprehensive list of textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

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SCHEDULE

INDUSTRIAL CONCILIATION AND ARBITRATION ACT, 1972

being

Industrial Conciliation and Arbitration Act, 1972, No. 125 of 1972 [Assented to 30 November 1972]¹

as amended by

Statutes Amendment (Judges' Salaries) Act, 1974, No. 8 of 1974 [Assented to 21 March 1974];

Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11 April 1974];

Industrial Conciliation and Arbitration Act Amendment Act (No. 3), 1974, No. 107 of 1974 [Assented to 5 December 1974];

Statutes Amendment (Judges' Salaries) Act, 1975, No. 18 of 1975 [Assented to 27 March 1975];

Industrial Conciliation and Arbitration Act Amendment Act, 1975, No. 64 of 1975 [Assented to 4 September 1975];

Industrial Conciliation and Arbitration Act Amendment Act (No. 5), 1975, No. 85 of 1975 [Assented to 13 November 1975];

Industrial Conciliation and Arbitration Act Amendment Act, 1978, No. 73 of 1978 [Assented to 16 November 1978];

Industrial Conciliation and Arbitration Act Amendment Act, 1979, No. 10 of 1979 [Assented to 8 March 1979]²;

Industrial Conciliation and Arbitration Act Amendment Act, 1981, No. 60 of 1981 [Assented to 31 August 1981]³;

Industrial Conciliation and Arbitration Act Amendment Act (No. 2), 1981, No. 85 of 1981 [Assented to 3 December 1981]⁴;

Judicial Remuneration Act, 1982, No. 92 of 1982 [Assented to 14 October 1982]⁵;

Industrial Conciliation and Arbitration Act Amendment Act, 1983, No. 33 of 1983 [Assented to 16 June 1983];

Industrial Conciliation and Arbitration Act Amendment Act (No. 2), 1983, No. 95 of 1983 [Assented to 15 December 1983];

Statutes Amendment (Magistrates) Act, 1983, No. 108 of 1983 [Assented to 22 December 1983]⁶;

Industrial Conciliation and Arbitration Act Amendment Act, 1984, No. 19 of 1984 [Assented to 3 May 1984]⁷;

Industrial Conciliation and Arbitration Act Amendment Act (No. 2), 1984, No. 37 of 1984 [Assented to 24 May 1984];

Industrial Conciliation and Arbitration Act Amendment Act, 1985, No. 52 of 1985 [Assented to 30 May 1985]⁸;

Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]⁹;

Statutes Amendment (Courts) Act, 1985, No. 70 of 1985 [Assented to 6 June 1985]¹⁰;

Industrial Conciliation and Arbitration Act Amendment Act, 1986, No. 10 of 1986 [Assented to 13 March 1986];

Occupational Health, Safety and Welfare Act, 1986, No. 125 of 1986 [Assented to 24 December 1986]¹¹;

Industrial Conciliation and Arbitration Act Amendment (Statute Law Revision) Act, 1987, No. 55 of 1987 [Assented to 7 May 1987]¹².

NOTE: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

¹ Came into operation 4 January 1973: *Gaz.* 4 January 1973, p. 51.

² Came into operation 2 January 1979: s. 2.

³ Came into operation 31 August 1981: *Gaz.* 31 August 1981, p. 801.

⁴ Came into operation 4 February 1982: *Gaz.* 4 February 1982, p. 309.

⁵ Came into operation 28 October 1982: *Gaz.* 28 October 1982, p. 1214.

⁶ Came into operation 2 April 1984: *Gaz.* 22 March 1984, p. 725.

⁷ Came into operation 14 May 1984: *Gaz.* 10 May 1984, p. 1090.

⁸ Came into operation 17 June 1985: *Gaz.* 13 June 1985, p. 2132.

⁹ Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

¹⁰ Came into operation 1 August 1985: *Gaz.* 11 July 1985, p. 92.

¹¹ Came into operation (except ss. 3-6, 19-71 and Schedules 1, 2 and 3) 16 April 1987: *Gaz.* 2 April 1987, p. 806; remainder of Act came into operation 30 November 1987: *Gaz.* 8 October 1987, p. 1068.

¹² Came into operation 1 November 1987: *Gaz.* 24 September 1987, p. 941.

An Act to consolidate and amend the law relating to industrial conciliation and arbitration and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the "Industrial Conciliation and Arbitration Act, 1972".

* * * * *

Objects of Act.

3. The chief objects of this Act are—

- (a) to promote goodwill in industry;
 - (b) to encourage and provide means for conciliation with a view to preventing or settling industrial disputes by amicable agreement;
 - (c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement—including threatened, impending and probable industrial disputes—with the maximum of expedition and the minimum of legal formality and technicality;
 - (d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes;
 - (e) to encourage the organization of representative associations of employers and employees and their registration under this Act;
- and
- (f) to encourage the democratic control of associations so registered and the full participation by members in the affairs of the associations.

* * * * *

Interpretation.

6. (1) In this Act, unless the contrary intention appears—

"adult" means a person of or over the age of 21 years:

"allowances" means allowances, concessions or customary payments in kind that have an assessable monetary value, but does not include—

- (a) uniforms;
- (b) privilege tickets or passes;
- (c) allowances or concessions granted to employees while in camp;
- (d) any other allowances, concessions or customary payments in kind declared by regulation not to be allowances for the purposes of this definition:

"apprentice" means an apprentice as defined in the Industrial and Commercial Training Act, 1981:

"association" means an association, society or body—

- (a) composed of or representative of employers or employees;
- or

(b) for furthering or protecting the interests of employers or employees,

and includes any branch of any such association, society or body:

“award” means an award or order of the Commission or a Committee and includes a variation of such an award:

* * * * *

“the Commission” means the Industrial Commission of South Australia:

“Commissioner” means a Commissioner appointed or continued in office under section 23:

“Committee” means a conciliation committee constituted under Part V and includes a committee to which that Part applies as if it were such a conciliation committee:

“the Commonwealth Act” means the *Conciliation and Arbitration Act 1904* of the Commonwealth, and includes any Act passed in substitution for that Act:

“the Commonwealth Commission” means the Australian Conciliation and Arbitration Commission:

“council” means a council as defined in the Local Government Act, 1934:

“the Court” means the Industrial Court of South Australia:

“decision” where used in reference to an appeal or right of appeal includes an omission, failure or refusal to make a decision:

“Deputy President” means—

(a) in relation to the Court, a Deputy President of the Court; and

(b) in relation to the Commission, a Deputy President of the Commission:

“employee” means—

(a) any person employed for remuneration in any industry;

(b) any person engaged to drive a motor vehicle, used for the purpose of transporting members of the public, which is not registered in the person’s name, whether or not the relationship of master and servant exists between that person and the person by whom that person has been so engaged;

(c) any person (not being the owner or occupier of premises) who is, pursuant to a contract or agreement, engaged to perform personally the work of cleaning those premises, whether or not the relationship of master and servant exists between that person and the person by whom that person has been so engaged;

or

(d) any person who is usually employed for remuneration in an industry or who is usually engaged in an occupation

or calling specified in paragraph (b) or (c), notwithstanding that at the material time the person is not so employed or engaged,

but does not include—

- (e) any person employed by his or her spouse or parent;
- (f) any person employed in a casual or part-time capacity where that employment is wholly or mainly carried on in or about a private residence and is not for the purposes of the employer's trade or business;

or

- (g) any person, or member of a class, excluded by regulation from the ambit of this definition:

“employer” includes any person or body, whether corporate or unincorporate, that employs (as principal or agent) one or more employees in an industry and—

- (a) in relation to public employees, means the Commissioner for Public Employment;

* * * * *

- (c) in relation to a person referred to in paragraph (b) of the definition of “employee”, means the person or body, whether corporate or unincorporate, in whose name the vehicle is registered;

and

- (d) in relation to a person referred to in paragraph (c) of the definition of “employee”, means the person or body that engaged the person to perform the work:

“the Full Commission” means the Commission constituted in accordance with section 24(2):

“the Full Court” means the Court constituted of not less than two Judges:

* * * * *

“industrial agreement” means—

- (a) an industrial agreement filed under section 108;
- (b) an industrial agreement that is continued in operation as an industrial agreement pursuant to section 112;

or

- (c) an industrial agreement that was in force immediately before the commencement of this Act and to or in relation to which this Act continues to apply:

“industrial dispute” means any dispute as to an industrial matter and includes a threatened, impending or probable dispute as to an industrial matter:

“industrial matter” means any matter, situation or thing or any industrial dispute affecting or relating to work done or to be done or the privileges, rights or duties of employers or employees

or persons intending to become employers or employees in any industry and, without limiting the generality of the foregoing, includes any matter, situation or thing affecting or relating to—

- (a) the wages, allowances or remuneration of any persons employed or to be employed in any industry, or the piece-work, contract or other prices paid or to be paid in respect of that employment, including any loading or amount that may be included in such wages, allowances, remuneration or prices as compensation for lost time and the wages, allowances or remuneration to be paid for work done during overtime or on holidays, or for other special work, and also the question whether piece-work will be allowed in any industry;
- (b) the hours of employment in any industry, including the lengths of time to be worked, and the quantum of work or service to be done, to entitle employees to any given wages, allowances, remuneration or prices, and what times are to be regarded as overtime;
- (c) the age, qualification or status of employees, and the manner, terms and conditions of employment;
- (d) the number or proportionate number of apprentices and juniors that may be employed by an employer in any industry;
- (e) the relationship of master and apprentice;
- (f) the employment of junior workers, or of any person or class of persons in any industry;
- (g) the refusal or neglect, without reasonable cause or excuse, of any person bound by an award, order or industrial agreement as to employment in any industry, to offer or accept employment, or to continue to be employed upon the terms of the award, order or agreement;
- (h) any established or allegedly established custom or usage of any industry, either generally or in any particular locality;
- (i) the monetary value of allowances granted to or enjoyed by employees;
- (ia) the dismissal of an employee by an employer;
- (j) any matter that is prescribed for the purposes of this definition;
- (k) all questions of what is fair and right in relation to any industrial matter having regard to the interests of the persons immediately concerned and of society as a whole:

“industry” means any undertaking, trade, business, occupation or calling in which persons are employed or engaged for remuneration or reward and, without limiting the generality of the foregoing, includes any such undertaking, trade, business, occupation or calling carried on or engaged in by—

- (a) the Crown or any instrumentality or agency of the Crown;
- (b) any council;

or

(c) any body corporate in respect of which the Governor or a Minister of the Crown has the right to appoint any one or more of the persons responsible for its conduct or management,

and includes any class, kind, division or section of any activity, trade, business, occupation or calling mentioned in this definition or any combination, arrangement or grouping of one or more of such classes, kinds, divisions or sections:

“Inspector” means an Inspector appointed under section 49:

“junior” means an employee who has not attained the age of 21 years and who is not an apprentice:

“legal practitioner” means a legal practitioner as defined in the Legal Practitioners Act, 1981:

* * * * *
* * * * *

“metropolitan area” means the area comprised of—

(a) Metropolitan Adelaide as defined in the Development Plan compiled under the Planning Act, 1982;

(b) the City of Adelaide;

and

(c) that part of the municipality of Gawler that is not within the area referred to in paragraph (a):

“order” means an order or direction of the Court or Commission and includes a variation of any such order or direction:

“the Permanent Head” means the officer for the time being designated by the Minister by notice published in the *Gazette* (which notice the Minister is hereby authorized from time to time to give) as Permanent Head for the purposes of this Act:

“prescribed employer” means—

(a) in relation to public employees—the Commissioner for Public Employment;

(b) any council;

(c) the State Bank of South Australia;

(d) the South Australian Meat Corporation;

(e) the South Australian Metropolitan Fire Service;

(f) the Electricity Trust of South Australia;

(g) the State Transport Authority;

(h) the South Australian Housing Trust;

(i) the Lotteries Commission of South Australia;

(j) the South Australian Totalizator Agency Board;

and

(k) any other body or person constituted by or under any Act or any instrumentality or agency of the Crown that is declared by regulation to be a prescribed employer for the purposes of this Act:

“the President” means—

(a) in relation to the Court, the President of the Court;
and

(b) in relation to the Commission, the President of the Commission:

“Presidential Member” in relation to the Commission, means the President or a Deputy President:

“public employee” means—

(a) any person employed under, or subject to, the Government Management and Employment Act, 1985;

and

(b) any other person employed for salary or wages in the service of the State:

“public holiday” means a public holiday within the meaning of the Holidays Act, 1910:

* * * * *
* * * * *
* * * * *

“registered association” means an association registered under Division I of Part IX and includes any association that is regarded as being registered under that Part:

“the Registrar” means the Industrial Registrar appointed or continued in office under section 48 and includes a Deputy Industrial Registrar so appointed or continued in office:

“Rules” means rules made by the President under Division IV of Part X or under any other provision of this Act under which the President is authorized to make rules.

* * * * *
* * * * *

(1a) For the purposes of this Act—

(a) an industrial dispute will be taken to have arisen in every case in which the Commission in its discretion so decides;

and

(b) an industrial dispute does not cease by reason of the cessation, in consequence of the dispute, of the relationship of employer and employee between the parties or any of them.

(1b) For the purposes of any award—

(a) “club” means a body, whether corporate or unincorporate, whose members associate for any social, literary, political, sporting, athletic or similar purpose;

and

(b) (i) a reference to the Industrial Code, 1920, or a provision of that Act will, so far as the context admits, be construed as a reference to this Act or a provision of this Act that corresponds with a provision of that Act;

and

(ii) a reference to a Part or provision of the Industrial Code, 1967, that is repealed by this Act will, so far as the context admits, be construed as a reference to a Part or provision of this Act that corresponds with that repealed Part or provision.

(2) The exercise by the Court, the Commission, a Committee or any other person of jurisdiction over an industrial matter does not depend upon the existence of a dispute or the making of a prior claim or demand in relation to the industrial matter and in relation to any matter affecting a member of the police force that jurisdiction is not affected, limited or restricted by the existence of any General Order under the Police Regulation Act, 1952.

(3) An award or order made against the Public Service Board or the Commissioner for Public Employment in pursuance of this Act, or an industrial agreement made by the Public Service Board or the Commissioner for Public Employment in pursuance of this Act, is binding on, and enforceable against, any body corporate or other person who would, at common law, be regarded as the employer of the employees to whom the award, order or agreement relates.

* * * * *

PART II

THE COURT

DIVISION I—CONSTITUTION OF THE COURT

Continuation of the Court.

8. (1) The Industrial Court of South Australia continues in existence.

(2) The Court continues as a court of record and the seal of the Court will be judicially noticed.

President and Deputy President.

9. (1) There shall be—

(a) a President of the Court (appointed by the Governor);

and

(b) such number of Deputy Presidents of the Court as the Governor thinks fit to appoint.

(2) A person is not eligible for appointment as the President of the Court unless that person is eligible for appointment as a Judge of the Supreme Court and a person is not eligible for appointment as a Deputy President of the Court unless that person is a legal practitioner of at least seven years standing.

(2a) A Deputy President of the Court may be appointed on an acting basis and, in that event, the appointment will be for a term (not exceeding six months) specified in the instrument of appointment.

(2b) A District Court Judge cannot be appointed as a Deputy President on an acting basis except on the recommendation of the Chief Justice of

the Supreme Court made with the concurrence of the Senior District Court Judge.

(3) A person appointed as the President or as a Deputy President of the Court must before assuming office make and subscribe an oath in the prescribed form before the Chief Justice of the Supreme Court.

(4) The President of the Court has the same rank, status and precedence as a Judge of the Supreme Court and is entitled to be styled "The Honourable Mr. Justice" or "The Honourable Justice"

10. (1) Subject to subsection (1a), where the President of the Court is or will be unable or unavailable to perform official duties, the Governor or the President may appoint a Deputy President to act in that office. Absence from the office of President.

(1a) The President of the Court cannot appoint a Deputy President to act in the office of President for a period exceeding two weeks.

(1b) A Deputy President of the Court, while acting in the office of the President, is entitled to receive an allowance determined by the Governor.

(2) A Deputy President of the Court while acting in the office of the President has and may exercise all the powers and functions conferred on the President by or under this Act or any other Act.

* * * * *

11. (1) Subject to this section, the remuneration of—

(a) the President of the Court;

or

(b) a Deputy President of the Court,

Remuneration of the President and Deputy Presidents of the Court.

will be at rates determined from time to time by the Remuneration Tribunal in relation to the respective offices.

(2) A rate of salary determined under this section cannot be reduced by subsequent determination.

(3) The remuneration payable under this section will be paid out of the General Revenue of the State which is appropriated to the necessary extent.

(4) In this section—

“remuneration” means salary and allowances.

12. (1) Subject to this section, the President and each Deputy President of the Court is, unless lawfully removed, entitled to hold office until the age of 65 years, and will cease to hold office on attaining that age. Tenure of office.

(1a) A Deputy President of the Court who has been appointed on an acting basis ceases to hold office on the expiration of the term of appointment.

(2) The President or a Deputy President of the Court may, after ceasing to hold office, complete the hearing and determination of any part-heard proceedings and, for the purpose of completing any such hearing and determination, will be taken to continue in office.

(3) The President or a Deputy President of the Court may, by written notice addressed to the Governor, retire before attaining the age of 65 years.

(4) Neither the President nor any Deputy President of the Court can be removed from office except in the manner in which and on the grounds on

which a Judge of the Supreme Court is by law liable to be removed from office.

Industrial magistrates.

13. (1) There shall be such industrial magistrates as are appointed, or continue in office, under the provisions of the schedule.

(2) The provisions of the schedule are consolidated with, and will be read and construed as part of, this Act.

Constitution of the Court.

14. (1) The President and the Deputy Presidents of the Court are Judges of the Court.

(2) Subject to this Act, the Court is constituted of—

(a) two or more Judges;

(b) a Judge;

or

(c) an Industrial Magistrate,

as directed by the President of the Court.

(3) A Judge of the Court may exercise the jurisdiction, powers or functions of an industrial magistrate.

DIVISION II—JURISDICTION AND POWERS OF THE COURT

Jurisdiction of the Court.

15. (1) In addition to the jurisdiction conferred on it elsewhere in this Act or under any other Act whether of this State or the Commonwealth, the Court has, subject to this Act, jurisdiction—

(a) to interpret any award or industrial agreement;

(b) to hear and determine any question of law or case stated that is referred to it by the Commission or a Committee;

(c) to hear and determine jurisdictional or other questions as to the validity of awards or orders of the Commission or of a Committee;

and

(d) to hear and determine—

(i) a claim for a sum due to an employee or former employee from an employer or former employer pursuant to this Act or pursuant to a contract that is governed by an award or industrial agreement;

(ii) a claim for a sum due to an employer or former employer from an employee or former employee pursuant to this Act or pursuant to a contract that is governed by an award or industrial agreement.

* * * * *

(2) A reference in subsection (1)(d) to a contract that is governed by an award or industrial agreement extends to a contract that is governed by an award or industrial agreement made, certified or having effect under this Act or the Commonwealth Act, but does not extend to a contract that is governed by an award under section 25a and by no other award or industrial agreement.

(3) A claim or application under subsection (1)(d)—

(a) may be made personally or, where the claimant is an employee or former employee, may be made on behalf of the claimant by a registered association;

(b) may be made by a minor as if the minor had attained the age of majority;

and

(c) must be made within three years after the sum claimed became payable.

(4) In the exercise of its jurisdiction under subsection (1) (d), the Court—

(a) may not proceed to hear and determine a claim if it appears to the Court that proceedings in relation to that claim have been commenced in another court and that those proceedings have not been withdrawn or struck out;

(b) subject to subsection (5), should not award costs;

and

(c) will be governed in its procedure, judgment, orders and decisions by equity, good conscience and the substantial merits of the case, without regard to technicalities, legal forms or the practice of other courts, and will not be bound by any rules or practice as to evidence but may inform itself on any matter in such manner as it thinks just.

(5) Where an appeal is commenced against a decision or order of the Court in the exercise of its jurisdiction under subsection (1) (d) and that appeal is not allowed or is withdrawn, the appellate court may award costs against the appellant.

(6) Costs awarded under subsection (5) will be—

(a) an amount assessed by the appellate court;

or

(b) an amount taxed by the Registrar in accordance with a scale fixed by the rules.

(7) Where the Court gives a judgment, or makes an order, for the payment of a pecuniary sum, it may, by the terms of the judgment or order, authorize the payment of that sum by instalments.

16. Subject to any other Act, a party may be represented in proceedings before the Court by a legal practitioner or agent. Representation.

17. (1) The Court has, in addition to the powers conferred on it elsewhere in this Act or by any other Act (including an Act of the Commonwealth) power— Powers of the Court.

(a) to take steps, at or before the hearing, to ascertain whether all persons and associations who should, in its opinion, be bound by its orders have been summoned to attend or are parties to, or represented in, the proceedings;

(b) to direct that persons or associations not summoned to attend or given notice of the proceedings be so summoned or given notice, if the Court is of the opinion, (from the suggestion of parties or otherwise) that those persons or associations should be so summoned or given notice of the proceedings;

* * * * *

- (d) to allow the amendment of any submission, reference, notice of appeal, report or application or any subsequent proceeding;
 - (e) to admit as evidence matter that is not, in law, so admissible, where in equity and good conscience it considers that the matter should be so admitted;
 - (f) to dismiss a matter or to refrain from further hearing or from determining a matter if it appears that the matter is trivial or that in the public interest further proceedings by the Court are not necessary or desirable;
 - (g) to proceed to hear and determine a matter in the absence of any party or other person who has been summoned or served with notice to appear;
 - (h) to sit in any place for the hearing and determination of a matter;
 - (i) to adjourn its sittings to any time and place or to a time and place to be fixed;
 - (j) to rescind or vary its orders, decisions, directions or any reference or act made or done by it, and to re-open any question;
 - (k) to direct parties to be joined or struck out;
 - (l) to correct an error, irregularity or defect in any proceedings (notwithstanding that the error, irregularity or defect may be such as to render the proceedings void);
 - (m) to extend any prescribed time, not being a time within which to lodge or file an appeal;
 - (n) to waive compliance with any Rule of the Court;
- and
- (o) generally to give all such directions and do all such things as it thinks necessary or expedient in the proceedings.

(1a) Where the Court corrects an error, irregularity or defect in the proceedings in pursuance of subsection (1) (l), the proceedings are as valid as if the error, irregularity or defect had never existed.

(1b) Subject to this Act, the Court has a discretion to hear and determine any matter within its jurisdiction as it thinks fit and to make such order in relation to the matter as it thinks fit.

(2) The Court, any member of the Court or any person authorized by the Court may at any time during working hours—

- (a) enter any place or premises or any ship or vessel of any kind, in which or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial matter exists, or any award has been made or is being sought;
- (b) inspect and view any work, material, machinery, appliances, article, matter or thing, in the place, premises, ship or vessel;

and

(c) question any person or persons who may be in or on the place, premises, ship or vessel in relation to any matter or thing referred to in paragraph (a) or (b).

(3) A person must not—

(a) hinder or obstruct the Court, a member of the Court or a person authorized by the Court in the exercise of any power conferred by or under this section;

(b) refuse to the Court, a member of the Court or a person authorized by the Court entrance to any place, premises, ship or vessel to which entry is authorized under subsection (2);

or

(c) refuse or fail to answer truthfully any question put pursuant to subsection (2).

Penalty: \$500.

(4) In any matter before the Court it may, on the application of any party or on its own initiative, and at any stage, give such directions or make such orders as it considers just and proper in relation to the institution and conduct of proceedings and in particular, but without prejudice to the generality of the foregoing, may give directions or make orders as to—

(a) the control, and prevention of abuse, of the process of the Court;

(b) the consequences of failure to comply with any direction or order of the Court and in particular the staying and dismissal of proceedings or the striking out of documents or portions of documents filed in the Court;

and

(c) any steps to be taken with a view to the more expeditious and efficient disposal of proceedings.

(5) The Court may if it thinks fit, at any stage of the proceedings before it, state a case for the opinion of the Full Court on any question that is, in its opinion, a question of law, and the Full Court will hear and determine the question and remit the case with its opinion to the Court and may make such order as to costs as it thinks fit.

(6) Except as is provided in this Act, the Court may make such order as to the payment of costs of proceedings by one party to any other party to those proceedings as it thinks proper and the Court may assess the amount of those costs or may direct that the costs be taxed by the Registrar in accordance with the scale fixed by the Rules.

(7) The Court may exercise the powers conferred on it by this section on such terms as it thinks fit.

* * * * *

19. (1) Where the Court orders a person (in this section called the "judgment debtor") to pay a sum of money to another person (in this section called the "judgment creditor") and that sum or any part of that sum is not paid within 14 days next following the day on which that order was made or within such other time as may be ordered by the Court, the judgment creditor may obtain from the Registrar a certificate of the order containing the following particulars:

Enforcement of orders for payment.

- (a) the name, place of residence and occupation or description of the judgment creditor;
- (b) the name, place of residence and occupation or description of the judgment debtor;
- (c) the date on which the order was made;
- and
- (d) the amount ordered to be paid.

(2) On production of a certificate referred to in subsection (1) to a clerk of a local court, the clerk must forthwith register the certificate by entering the particulars of the certificate in a book to be kept by the clerk and to be called the "Register of Industrial Court Orders".

(3) From the date of registration by the clerk of the local court the certificate is a record of the local court in which it is registered and has the same force and effect as a judgment or order of that court, and proceedings may be taken on the certificate as if the order to which it relates were a judgment or order of that court.

(4) The costs of and incidental to registering a certificate and of any proceedings under a certificate will be added to the amount payable under the certificate and payment of those costs will be enforceable accordingly.

(5) No execution can be issued or other proceedings taken on any such certificate unless an affidavit, made by the judgment creditor or some other person with knowledge of the facts, has been filed in the court within 30 days before the execution is issued or the proceedings are taken or such greater period as a judge or special magistrate may (without notice to the judgment debtor) order, stating that the amount for which it is proposed to issue execution or to take other proceedings is actually due and unpaid.

(6) The local court in which any such certificate has been registered has, in respect of execution on the certificate and the enforcement of the order, the same control and jurisdiction over the order as if it were a judgment or order of that local court.

(7) The power to make rules of court under the Local and District Criminal Courts Act, 1926, includes a power to make rules regulating the practice and procedure relating to the registration of certificates under this section, the conduct of subsequent proceedings and the payment of court fees.

* * * * *

PART III

THE COMMISSION

DIVISION I—CONSTITUTION OF THE COMMISSION

Continuation of the Commission.

20. (1) The Industrial Commission of South Australia continues in existence.

(2) The seal of the Commission will be judicially noticed.

* * * * *

Presidential members.

22. (1) The President of the Court is the President of the Commission.

(2) Each Deputy President of the Court is a Deputy President of the Commission.

(3) The Governor may make further appointments specifically to the office of Deputy President of the Commission.

(4) A Deputy President of the Commission may be appointed under subsection (3) on an acting basis and, in that event, the appointment will be for a term (not exceeding six months) specified in the instrument of appointment.

(5) A person is not eligible for appointment under subsection (3) unless that person—

(a) is a legal practitioner of at least five years standing;

(b) has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government;

or

(c) has, not less than five years previously, obtained a degree of a university, or an educational qualification of a similar standard, after studies in law, economics or industrial affairs or some other field of study considered by the Governor to have substantial relevance to the duties of a Deputy President of the Commission,

and is, in the opinion of the Governor, by reason of his or her qualifications, experience and standing in the community, a fit and proper person to hold the office of Deputy President of the Commission.

(6) The remuneration and conditions of office of a Deputy President of the Commission appointed under subsection (3) are the same as for a Deputy President of the Court.

(7) A person who ceases to hold office as a Deputy President of the Commission may, with the approval of the President, continue to sit to hear and determine part-heard proceedings and, for the purposes of those proceedings, will be taken to continue in office.

23. (1) The Governor may appoint one or more Commissioners.

Commissioners.

(2) A Commissioner is, unless lawfully removed from office, entitled to hold office until reaching the age of 65 years, but subject to subsection (3), ceases to hold office on reaching that age.

(3) A person who ceases to hold office as a Commissioner may, with the approval of the President, continue to sit to hear and determine part-heard proceedings and, for the purposes of those proceedings, will be taken to continue as a Commissioner.

(4) The persons holding office as Commissioners at the commencement of this Act continue, subject to this Act, as Commissioners.

(5) Each Commissioner must be a person experienced in industrial affairs either—

(a) by reason of having been associated with the interests of employees;

or

(b) by reason of having been associated with the interests of employers,

and the power of appointing Commissioners must be so exercised as to ensure that the number of Commissioners who have acquired their experience in industrial affairs through their association with the interests of employees is equal to, or differs by no more than one from, the number of Commissioners who have acquired their experience in industrial affairs through their association with the interests of employers.

(6) A Commissioner may retire at any time but, whenever the office of Commissioner becomes vacant, the Governor may, subject to subsection (5), appoint another person to the vacant office.

(7) A Commissioner—

(a) will be paid such salary and allowances as are determined from time to time by the Remuneration Tribunal;

and

(b) is subject to such provisions of Part II of the Government Management and Employment Act, 1985, as the Governor may from time to time determine.

(8) Each Commissioner is an employee as defined in the Superannuation Act, 1974.

(9) Each Commissioner must as soon as practicable after accepting office take the prescribed oath before the President.

(10) Where a Commissioner is for any reason unable to perform official duties, the Governor may appoint a person to act in the office of Commissioner during the period of the inability and while that person is so acting this Act applies to and in relation to that person as if he or she were a Commissioner appointed under this Act.

Composition of
the Commission.

24. (1) Except as expressly provided in this Act, the Commission will, at the direction of the President, be constituted of—

(a) a Presidential Member;

or

(b) a Commissioner.

(2) Except as expressly provided by this Act, the Commission sitting as the Full Commission will, at the direction of the President, be constituted of at least three members consisting of one or more Presidential Members and one or more Commissioners.

(3) Where in the opinion of the President an appeal or reference to the Full Commission does not appear to involve substantial matters of law, the President will wherever practicable direct that the Full Commission be constituted of a Presidential Member and two Commissioners.

(3a) The Full Commission will not be constituted of more than three members if any party, before the commencement of a hearing, objects to the Full Commission being so constituted for the purposes of the hearing.

(4) Where the Commission is constituted of more than one member, a decision in which a majority of the members concur is a decision of the Commission.

DIVISION II—JURISDICTION AND POWERS OF THE COMMISSION

25. (1) In addition to the jurisdiction elsewhere conferred on the Commission by this Act, the Commission has, subject to this Act, jurisdiction to hear and determine—

Jurisdiction of the Commission.

(a) any matter or thing arising from or relating to any industrial matter;

and

(b) any question as to the rights of employees in a specified occupation or calling or in specified occupations or callings to do certain work or a certain kind of work to the exclusion of all other employees or to the exclusion of employees in all or some specified occupations or callings,

but except as provided in this Act the Commission does not have jurisdiction over any matter or thing that is within the jurisdiction of a Committee.

(2) In the exercise of its jurisdiction under this Act, the Commission must, at all times, make all such suggestions and do all such things as appear to it to be right and proper for effecting conciliation between parties, for preventing and settling disputes and for settling claims by amicable agreement between parties.

(3) Notwithstanding subsection (1), the Commission does not, except as is provided in this Act, have jurisdiction over any industrial matter concerning an industry for which a Committee is or is in the course of being constituted if the Committee has or will have jurisdiction as to that matter, but the alteration of the area of the State within which a Committee has jurisdiction or the constitution of a new Committee does not affect the validity of an award or order of the Commission in operation at the time when the alteration or constitution becomes effective, and every such award or order continues in force, subject to section 32, until a Committee makes an award dealing with the same matter or, if the Committee makes an award dealing with some only of the matters dealt with in the award or order of the Commission, it continues in force as regards matters not dealt with by the Committee.

25a. (1) The Full Commission has jurisdiction to make an award of general application regulating remuneration or conditions of employment.

Power to make awards of general application.

(2) An award made under this section is, subject to this section and any qualification stated in the award, binding upon all employers and employees.

(3) An award made under this section affects a condition of employment of an employee only to the extent to which that condition is inferior to a condition prescribed by the award.

(4) An award cannot be made under this section except upon the application of—

(a) the Minister;

(b) the United Trades and Labor Council;

(c) the Chamber of Commerce and Industry, South Australia Incorporated;

(d) the South Australian Employers' Federation Incorporated;

or

- (e) any other registered association that applies by leave of the Full Commission.

Advisory
jurisdiction of the
Commission.

25b. The Commission has jurisdiction to inquire into, and report and make recommendations to the Minister on, a question related to any industrial or other matter that is referred to the Commission for inquiry by the Minister.

Mediation.

26. (1) Where it appears to a Presidential Member or a Commissioner that mediation in an industrial matter is desirable in the public interest, the Presidential Member or Commissioner may—

- (a) direct a Committee that has jurisdiction in the matter to act as mediator and for that purpose to call a voluntary conference of the parties involved;

or

- (b) act personally as mediator in the matter and call a voluntary conference of the parties involved.

(1a) Where a Committee is directed to call a voluntary conference—

- (a) the conference will be called, on behalf of the Committee, by its presiding officer;

and

- (b) the presiding officer will preside at the conference.

(2) Any person who attends a voluntary conference called under subsection (1) is, on application to the Registrar, entitled to be paid out of the General Revenue of the State (which is appropriated to the necessary extent) such recompense as the person who is presiding over the conference certifies to be reasonable, having regard to the conduct of the person in relation to the matter of the conference both before and at the conference and to the expenses and loss of time incurred by the person.

Compulsory
conference.

27. (1) In respect of any industrial matter the President may, in the exercise of a personal initiative or on application by a registered association or a member of a Committee—

- (a) call a compulsory conference of the parties involved;
(b) direct a Committee that has jurisdiction in the matter to call a compulsory conference of the parties involved;

or

- (c) direct a Presidential Member or a Commissioner to call a compulsory conference of the parties involved.

(1a) Where a Committee is directed to call a compulsory conference—

- (a) the conference will be called, on behalf of the Committee, by its presiding officer;

and

- (b) the presiding officer will preside at the conference.

(1b) Where a compulsory conference is called by a Presidential Member or a Commissioner, the Presidential Member or the Commissioner, as the case may be, will preside at the conference.

(2) The person who is presiding, or is to preside, at a compulsory conference may summon any person to attend at the conference.

(3) Any person may be summoned under this section (notwithstanding that the person is not a party to or directly involved in the matter the subject of the conference) if the person presiding at the conference considers that the presence of that person is likely to assist in dealing with or settling the matter.

(4) A conference referred to in subsection (1) may be held in public or in private or partly in public and partly in private, at the discretion of the person presiding at the conference.

(5) Any person who, having been summoned under this section, attends a conference as directed by the person presiding at the conference will, on application to the Registrar, be entitled to be paid out of the General Revenue of the State (which is appropriated to the necessary extent) such recompense as the person presiding at the conference certifies to be reasonable, having regard to the conduct of the person in relation to the matter of the conference both before and at the conference and to the expenses and loss of time incurred by the person.

(6) A person summoned under this section must not, without reasonable excuse (proof of which lies on that person), refuse or fail—

(a) to attend the conference in obedience to the summons;

or

(b) to continue in attendance as directed by the person presiding at the conference.

Penalty: \$2 000.

(7) It is a defence to proceedings for an offence against subsection (6) for the defendant to prove that the summons was not brought to his or her attention.

(8) A person will be taken to have been summoned under this section if—

(a) the person is served with a copy of the summons in any manner provided for the service of documents under this Act;

(b) the substance of the summons is contained in a telegram sent to that person at his or her place of residence or business last known to the Commission;

or

(c) a copy of the summons is sent by certified mail to the person at his or her place of residence or business last known to the Commission.

(9) The person presiding at the conference, if of the opinion that it is desirable to do so, may, after giving reasonable notice to the persons attending at the conference, refer the matter of the conference to the Commission (which may, where the person presiding is a Presidential Member or a Commissioner, be constituted of himself or herself) and the Commission may hear and determine any industrial matter or thing arising out of the conference notwithstanding that the industrial matter or thing would, but for this subsection, be within the jurisdiction of a Committee.

(9a) A matter may be referred to the Commission under subsection (9) orally and without formality.

(10) Notwithstanding any other provision of this Act, an order, made by the Commission in the exercise of the power conferred on it by subsection (9) is binding only on those persons represented before the Commission or summoned to appear at the conference.

General powers of
the Commission.

28. (1) The Commission has power—

(a) to take steps at or before the hearing to ascertain whether all persons and associations who should, in its opinion, be bound by its award have been summoned to attend the proceedings, or given notice of the proceedings;

(b) to direct that summonses be issued, or notice of the proceedings be given, to persons who should, in its opinion, be summoned to appear or receive notice of the proceedings;

* * * * *

(d) to allow the amendment of any relevant application, reference, notice of appeal, report or any subsequent proceedings;

(e) to give any direction in the course or in pursuance of the hearing or determination of a matter;

(f) to dismiss a matter, or to refrain from further hearing or from determining a matter if it appears that the matter is trivial, or that in the public interest further proceedings by the Commission are not necessary or desirable;

(g) to order any party to a matter to pay to any other party such costs and expenses, including expenses of witnesses but excluding costs of preparation of the case and representation during the hearing, as are specified in the order, or as may be taxed by the Registrar;

(h) to proceed to hear and determine a matter in the absence of any party or other person who has been summoned or served with notice to appear;

(i) to sit in any place for the hearing and determination of a matter;

(j) to adjourn its sittings to any time and place or to a time and place to be fixed;

(k) to refer any technical matter or matters of account to an expert, and to accept that expert's report as evidence;

(l) subject to this Act, to rescind or vary its awards, orders, decisions, directions or appointments, or any reference or act made or done by it, and to re-open any question;

(m) to direct parties to be joined or struck out;

(n) to correct an error, irregularity or defect in any proceedings (notwithstanding that the error, irregularity or defect may be such as to render the proceedings void);

(o) to extend any prescribed time, other than the time for appealing prescribed by section 98(1);

and

(p) to waive compliance with any Rule made pursuant to this Act which applies to the Commission.

(1a) The cost of an expert's report under subsection (1) (k) will, if the Minister so determines, be paid out of the General Revenue of the State.

(1b) Where the Commission corrects an error, irregularity or defect in proceedings in pursuance of subsection (1) (n), the proceedings are as valid as if the error, irregularity or defect had never existed.

(2) Subject to this Act, the Commission—

(a) has a discretion to determine a matter as it thinks fit;

and

(b) may exercise its powers on such terms and conditions as it thinks fit.

(3) The Commission, any member of the Commission or any person authorized by the Commission may at any time during working hours—

(a) enter any place or premises or any ship or vessel of any kind, in which or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial matter exists, or any award has been made or is being sought;

(b) inspect and view any work, material, machinery, appliances, article, matter, or thing, in the place, premises, ship or vessel;

and

(c) question any person or persons who may be in or on the place, premises, ship or vessel in relation to any matter or thing referred to in paragraph (a) or (b).

(4) A person must not—

(a) hinder or obstruct the Commission, a member of the Commission or a person authorized by the Commission in the exercise of any power conferred by or under this section;

(b) refuse to the Commission, a member of the Commission or a person authorized by the Commission entrance to any place, premises, ship or vessel to which entry is authorized under subsection (3);

or

(c) refuse or fail to answer truthfully any question put pursuant to subsection (3).

Penalty: \$500.

(5) Notwithstanding any law or practice to the contrary, the Commission, in the exercise of any jurisdiction, power or function under this Act—

(a) is governed in its procedure and in its judgments, awards, orders and decisions by equity, good conscience, and the substantial merits of the case, without regard to technicalities, legal forms or the practice of courts;

and

(b) is not bound by any rules or practice as to evidence, but may inform itself on any matter in such manner as it thinks just.

Further powers of
the Commission.

29. (1) In the exercise of its powers the Commission may—

- (a) make an award, including an interim award and, without being restricted to the specific relief claimed by the parties, may include in the award or interim award any matter or thing which the Commission thinks necessary or expedient;
- (b) by award, appoint a board of reference consisting of one or more members to hear and determine any matters prescribed by the award (but such a board does not have power to make an award or order for the payment of money alleged to be payable in pursuance of the award);
- (c) by award, authorize an official of a registered association of employees, subject to such terms and conditions as the Commission thinks fit, after giving the employer notice prescribed by the award, to enter the premises of an employer subject to the award, or any other premises where employees of the employer may be working, and—
 - (i) inspect time books and wage records of the employer at those premises;
 - (ii) inspect the work carried out by the employees and note the conditions under which the work is carried out;

and

 - (iii) interview employees (being employees who are members, or are eligible to become members, of the association) in relation to the membership and business of the association;

* * * * *

- (e) include in any award provisions setting out the procedure to be adopted in the settlement of any industrial dispute (but such a provision cannot limit, restrict or affect the exercise or performance of the jurisdiction or powers of the Commission in relation to any such dispute);
- (f) direct (with due regard to local circumstances) within what limits of area (if any) and subject to what conditions and exceptions (if any) an award is to be binding on the persons engaged in an industry whether as employers or employees.

* * * * *

(2) An award of the Commission is binding on all persons and associations expressed to be bound by the award.

(3) Subject to subsection (4), an award of the Commission has, if it so provides, retrospective operation.

(4) An award cannot operate retrospectively as from a day antecedent to the day on which the application in respect of which the award is made was lodged with the Commission unless—

- (a) there is some nexus between the award and—
 - (i) another award of the Commission;

or

 - (ii) an award or agreement under the Commonwealth Act,

and, in view of that nexus, it is desirable that there should be common dates of operation;

- (b) the award gives effect to, in whole or in part and with or without modification, any principles, guidelines or conditions relating to remuneration enunciated or laid down in, or attached to, any relevant decision or declaration of the Commonwealth Commission;

or

- (c) the day as from which the award is to operate is fixed with the consent of all parties to the proceedings.

(5) An appeal lies against a determination of a board of reference appointed under subsection (1) (b) to the Full Commission.

(6) An award under subsection (1) (b) may appoint, or provide for the appointment of, a person to preside over the proceedings of the board of reference but no such appointment may be made unless the Commission has first consulted with all parties to the award.

(7) A board of reference appointed by an award under subsection (1) (b) must notify the parties to the award of—

- (a) the times and places at which it proposes to sit for the purpose of hearing and determining any matter prescribed by the award;

and

- (b) any determination made by the board.

(8) The powers conferred on an official of a registered association by an award under subsection (1) (c) must not be exercised so as to hinder or obstruct an employee in carrying out any duty of employment.

29a. (1) The Commission may, by an award, direct that preference be given, in relation to such matters, in such manner and subject to such conditions as are specified in the award, to such registered associations or members of registered associations as are specified in the award.

Power to grant preference to members of registered associations.

(2) Notwithstanding the terms of a direction under subsection (1)—

- (a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal;

and

- (b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

30. (1) Except as otherwise provided in this Act, proceedings before the Commission can only be commenced by an application made to the Commission—

Applications to the Commission.

- (a) where, in the Minister's opinion, it is in the public interest that the matter be dealt with by the Commission—by the Minister;

- (b) by an employer, or group of employers, employing not less than 20 employees in the industry concerned or not less than 75 per cent of the employees in that industry (whichever is the less);

- (c) by not less than 20 employees in the industry concerned or not less than 75 per cent of the employees in that industry (whichever is the less);
- (d) by a registered association of employers the members of which employ not less than 20 employees in the industry concerned or not less than 75 per cent of the employees in that industry (whichever is the less);

or

- (e) by a registered association of employees the membership of which consists of, or includes, not less than 20 employees in the industry concerned or not less than 75 per cent of the employees in that industry (whichever is the less).

(2) The Commission will not deal with any matter the subject of an application before it until it is satisfied that the substance of the application and the day and time on which it is to be heard have been advertised in the manner prescribed by the Rules or have been communicated to representatives of all persons likely to be bound by the award.

(3) The Commission will not entertain an application under subsection (1) (b) or (c) unless it is satisfied that it is in the public interest to do so.

Special jurisdiction of the Commission to deal with cases of unfair dismissal.

31. (1) Where an employer dismisses an employee, the employee may, within 21 days after the dismissal takes effect, apply to the Commission for relief under this section.

(2) An application cannot be made under this section where the dismissal of the employee is subject to appeal or review under some other Act or law.

(3) Where in proceedings under this section the Commission is of the opinion that the dismissal of the applicant was harsh, unjust or unreasonable, the Commission may—

- (a) order that the applicant be re-employed by the employer in the applicant's former position without prejudice to the former conditions of employment;
- (b) where it would be impracticable for the employer to re-employ the applicant in accordance with an order under paragraph (a), or such re-employment would not, for some other reason, be an appropriate remedy—order that the applicant be re-employed by the employer in some other position (if such a position is available) on conditions (if any) determined by the Commission;

or

- (c) where, after considering whether to make an order under paragraph (a) or (b), the Commission considers that re-employment by the employer of the applicant in any position would not be an appropriate remedy—order the employer to pay to the applicant an amount of compensation determined by the Commission.

(4) Where the Commission makes an order for re-employment under this section, then, subject to any contrary direction of the Commission—

- (a) the employee must be remunerated in respect of the period intervening between the date that the dismissal took effect and the

date of re-employment as if the employee's employment in the position from which the employee was dismissed had not been terminated;

- (b) the employer is entitled to the repayment of any amount paid to the employee on dismissal on account of any accrued entitlement to recreation leave or long service leave;

and

- (c) for the purposes of determining rights to recreation leave, sick leave and long service leave, the interruption to the employee's continuity of service caused by the dismissal will be disregarded.

(5) Where, in the opinion of the Commission, an application under this section is frivolous or vexatious, the Commission may make an order for costs against the applicant (including any costs incurred by the other party to the application in respect of representation by a legal practitioner or agent).

(6) Before an application is heard by the Commission under this section, a conference of the parties to the application must be held in accordance with the rules of the Commission for the purpose of exploring the possibility of resolving the matters at issue by conciliation and ensuring that the parties are fully informed of the possible consequences of further proceedings upon the application.

32. (1) Any award of the Commission, not being an order of the Commission, in any matter—

Form, operation
and continuance
of award.

- (a) is binding on all persons it is expressed to bind;
- (b) must be framed so as best to express the decision of the Commission and to avoid unnecessary technicality;
- (c) has effect, subject to any variation ordered by the Commission, within the locality or localities specified in the award;
- (d) subject to subsections (2) and (3) continues in force for a period to be specified in the award not exceeding two years;
- (e) prevails over any contract of service or apprenticeship or over any contract or agreement under which services are or are to be rendered so far as the terms of the award are more beneficial to the employee than those of the contract or agreement (and the contract or agreement will thereafter have effect as if it had been modified, so far as necessary, in order to conform to the award, but no provision of an award which is at variance with a provision of the Industrial and Commercial Training Act, 1981, has effect so as to vary the terms of an apprenticeship);

and

- (f) must be settled and signed by the Registrar.

(2) After the expiration of the period referred to in subsection (1) (d), an award continues in force, unless the Commission otherwise orders, until a new award has been made with respect to any of the employees covered by the award, in which case the former award ceases to have effect as regards those employees.

(3) Notwithstanding subsection (1)(d) but subject to section 33, the Commission may vary an award whether or not the period of operation specified in the award has elapsed.

Exercise of powers by the Commission.

33. (1) Subject to subsection (2), the Commission may, in the course of any proceedings before it, exercise any of its powers on its own initiative or on the application of any party to the matter, or of any association or person bound by the award.

(2) No award or order of the Commission can be varied and no application can be re-opened except on the application of an association or person affected or aggrieved by the award or order, or claiming to be so affected or aggrieved.

Representation of parties, etc.

34. (1) In proceedings before the Commission any party may be represented by a legal practitioner or agent.

(2) The costs incurred by a party in respect of such representation will not be included in any order for the payment of costs under this Act.

(3) Where the interests of a registered association, or members of a registered association, that is affiliated with the United Trades and Labor Council are affected (either directly or indirectly) by proceedings before the Commission, the United Trades and Labor Council is entitled to intervene in the proceedings.

DIVISION III—ALTERATION OF AWARDS

* * * * *

Alteration of awards.

36. (1) Where the Full Commission is satisfied that, having regard to any decision of the Commonwealth Commission affecting or likely to affect the wages or other remuneration payable generally to employees subject to its awards in this State, any variation should be made in the wages or other remuneration payable generally to employees under awards, the Full Commission may order that any such variation be made, and such a variation will come into force as from a day or days determined by the Full Commission.

(2) An order may be made under subsection (1) by the Full Commission on its own initiative or on the application of—

- (a) the Minister;
- (b) the Chamber of Commerce and Industry, South Australia Incorporated;
- (c) the South Australian Employers' Federation Incorporated;
- (d) the United Trades and Labor Council;

or

- (e) by leave of the President—any registered association.

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PART IV

PROCEEDINGS BEFORE THE COURT OR COMMISSION, ETC.

DIVISION I—PROCEEDINGS

40. (1) The President may make all such arrangements as are necessary or convenient for the hearing and disposing of all causes, actions, matters and proceedings that are pending before the Court, the Commission or a Committee.

President may make arrangements.

(2) Subject to this section, the President may assign a Commissioner, for a term of assignment (not exceeding two years) specified in the instrument of assignment, to an industry or group of industries and may from time to time vary or revoke any such assignment and that Commissioner will, so far as is practicable, deal with industrial disputes relating to that industry or that group of industries.

(3) An assignment of a Commissioner under subsection (2) expires on the expiration of the term of assignment but the President may then reassign the Commissioner to the same industry or group of industries.

(4) The President may not assign or reassign a Commissioner to an industry or group of industries under this section unless the President has first consulted with those registered associations that have, in the opinion of the President, an interest in the industry or group of industries to which the proposed assignment or reassignment relates.

40a. (1) Where it appears to the President to be desirable, in relation to an industrial matter, that a conference should be held with an industrial authority of the Commonwealth or of another State or Territory of the Commonwealth the President may, if that authority is willing, confer with that authority, or arrange for a Deputy President to confer with that authority, with a view to securing co-ordination between awards made, or to be made, under this Act and orders, awards, decisions or determinations made or given, or to be made or given, by that authority.

Co-operation between industrial authorities.

(2) Where it appears to the President to be desirable that proceedings in relation to an industrial matter before an industrial authority of the State should be heard in joint session with an industrial authority of the Commonwealth or of another State or Territory of the Commonwealth, the President may, with the consent of that authority, authorize the industrial authority of the State to hear the proceedings in joint session with that authority and to confer with that authority in relation to the proceedings and the order, award, decision or determination to be made or given in those proceedings.

(3) In this section—

“industrial authority” means a commission, court, board, tribunal or committee having authority under the law of the Commonwealth or any State or Territory of the Commonwealth to exercise powers of conciliation or arbitration in relation to industrial disputes.

40b. (1) In respect of any industrial matter the President may, on his or her own initiative, request the President of the Commonwealth Commission to nominate a member of that Commission to deal with the whole or any part of the industrial matter.

Reference of industrial matters to Commonwealth Commission.

(2) Where, in accordance with a request under subsection (1), the President of the Commonwealth Commission nominates a member of that Commission, the President of the Commission may refer the whole or part of the industrial matter in respect of which the request was made to the member to be dealt with by that member in accordance with the provisions of this Act.

(3) For the purposes of dealing with a matter that is referred under subsection (2), the member of the Commonwealth Commission may exercise all the powers of the Commission under this Act and will, in the exercise of those powers, be taken to be the Commission.

(4) Without limiting subsection (3), an award made by a member of the Commonwealth Commission in relation to an industrial matter that is referred to the member under subsection (2) will, for the purposes of this Act, be taken to be an award made under this Act.

(5) The reference of an industrial matter to a member of the Commonwealth Commission under subsection (2) is revocable by the President at will and does not derogate from the power of the Commission to act itself in relation to the matter.

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Commission may exercise powers vested by certain other Acts.

40c. (1) Subject to this Act, the Commission may exercise such powers as may be conferred on it by or under the Commonwealth Act or any other prescribed Act.

(2) An award, decision or determination made by the Commission in the exercise of a power as provided by subsection (1) will not be regarded as having been made by the Commission under this Act.

Proceedings may be in public or private.

41. (1) The proceedings of the Court or the Commission must be conducted in public, unless at any stage of the proceedings the Court or the Commission on its own initiative or on the application of any of the parties directs that the proceedings be conducted in private.

(2) Whenever the Court or the Commission directs that the proceedings be conducted in private, all persons (other than the parties, their representatives, the officers of the Court or the Commission and any witness under examination) must withdraw.

Power to issue orders to take evidence.

42. (1) The Court or the Commission may, with the consent of the parties, issue an order appointing any person to take evidence on behalf of the Court or the Commission in relation to any matter over which it has jurisdiction.

(2) The person so appointed has all the powers of the Court or the Commission (as the case may be) in relation to the summoning of witnesses, the production of books and documents, and the taking of evidence on oath, affirmation or declaration.

Special mode of service may be directed.

43. (1) Where it appears to the Court or the Commission that service of a summons, notice or other document cannot be promptly effected on a party in a manner authorized or required by or under this Act, it may—

(a) make an order for substituted service on a person, and in a manner, stipulated in the order;

or

(b) order that notice of the summons, notice or other document be given in a manner stipulated in the order.

(2) Compliance with an order under subsection (1) constitutes sufficient service of the summons, notice or other document to which the order relates.

Intervention by Crown and others.

44. (1) The Minister, if of the opinion that the public interest is likely to be affected by the award, order, decision or determination of the Court or Commission in any proceedings, may intervene in those proceedings and make such representations and tender such evidence as the Minister thinks necessary.

(2) Any other person or registered association that can show an interest may, with the leave of the Court or Commission, intervene in any proceedings.

45. (1) In any proceedings before the Court or the Commission the Court or Commission may reserve its decision.

Decisions and adjournments.

(2) Where a decision has been so reserved—

(a) it may be delivered at a subsequent sitting of the Court or Commission (constituted of one or more of the members who participated in the decision, but not necessarily of all members who did so);

or

(b) it may be delivered on behalf of the Court or the Commission by the Registrar.

(3) When the Court or Commission is unable to sit at the time appointed for the hearing of any matter or for any proceeding, the Registrar may adjourn the Court or the Commission and also adjourn any business set down for the day to such day and time as the Registrar thinks convenient.

46. (1) Subject to this Act, the following provisions apply in all proceedings before the Court or the Commission:

Summons and evidence, etc.

(a) on the application of any of the parties, the Registrar may issue a summons to any party or other person to appear and give evidence before the Court or the Commission;

(b) the summons will be in the prescribed form, and may require any person named in the summons to produce before the Court or the Commission any books, papers and other documents in his or her possession or control in any way relating to the matter;

(c) all books, papers and other documents produced before the Court or the Commission may be inspected by such of the parties as the Court or the Commission allows, but information so obtained must not be made public without the permission of the Court or the Commission;

(d) books, papers or other documents produced before the Court or the Commission relating to any trade secret or to the profits or financial position of any person must not, without the consent of that person, be inspected except by the Court or the Commission and any parts of the books, papers or other documents which in the opinion of the Court or Commission do not relate to any matter in issue before the Court or Commission may be sealed up;

(e) evidence relating to a trade secret or to the profits or financial position of a witness or party must not be disclosed or published without the consent of the person entitled to the benefit of the trade secret or non-disclosure;

(f) every person who duly attends as a witness on a summons, or who gives evidence at the request of a party, is entitled to be paid by the party who called him or her an allowance—

(i) if no allowance is prescribed—in accordance with the scale for the time being in force with respect to witnesses in civil actions in the Supreme Court;

(ii) if some other allowance is prescribed—in accordance with the prescribed scale;

(g) any party to the proceedings before the Court or the Commission is competent and may be compelled to give evidence as a witness;

(h) the Court or the Commission may, if it thinks fit, dispense with evidence on any matter on which all parties have agreed or on any matter as to which the Court or the Commission thinks evidence unnecessary;

and

(i) the Court or the Commission may take evidence on oath, affirmation or declaration.

(2) A summons may, if the Registrar thinks fit, be addressed to more than one person.

(3) The time and place at which a person is to appear in obedience to the summons must be stated in the summons.

Protection of the Commission, etc.

47. The President of the Commission, each Deputy President of the Commission, each Commissioner, each Industrial Magistrate and the Registrar have, in the performance of their functions and duties pursuant to this Act or any other Act, the same protection and immunity as the President of the Industrial Court.

DIVISION II—OFFICERS

Industrial Registrar.

48. (1) There shall be—

(a) an Industrial Registrar;

and

(b) such Deputy Industrial Registrars and other officers as the Governor thinks necessary for the purposes of this Act.

(2) The Industrial Registrar, the Deputy Industrial Registrars and any other officer will be appointed under and be subject to Part II of the Government Management and Employment Act, 1985.

(3) In connection with any matter over which the Court, the Commission or a Committee has jurisdiction, the Industrial Registrar, any Deputy Industrial Registrar and any other officer have and may exercise such powers, duties and functions as are prescribed or as are directed by the President.

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Inspectors.

49. (1) The Governor may appoint any person to be an Inspector under this Act.

(2) Each Inspector must be furnished by the Minister with a certificate of appointment.

(2a) An Inspector must produce the certificate of appointment for inspection by any person who questions his or her authority to exercise the powers of an Inspector under this Act.

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Powers of Inspectors, etc.

50. (1) An Inspector may at any time, with such assistants as the Inspector considers necessary, without any warrant other than this section—

- (a) enter any place or premises or any ship or vessel of any kind, in which or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial matter exists, or any award has been made, or any offence against this Act is suspected;
 - (b) inspect and view any work, material, machinery, appliances, article, matter or thing, in the place, premises, ship or vessel;
- and
- (c) question any person or persons who may be in or on the place, premises, ship, or vessel in relation to any matter or thing referred to in paragraph (a) or (b).

(1a) Before, or as soon as practicable after, entering any place, premises, ship or vessel in pursuance of this section, an Inspector must produce his or her certificate of appointment for inspection by the occupier or person in charge of the place, premises, ship or vessel.

(2) An Inspector may require the production of any book, paysheet, notice, record, list, indenture of apprenticeship or other document which is required to be kept by this Act or any other Act and may inspect, examine and copy them.

(2a) Subject to subsection (2b), any document produced under subsection (2) may be taken away by the Inspector for examination and copying, and the Inspector may retain possession of it for a period not exceeding seven days.

(2b) Subsection (2a) is subject to the following qualifications:

- (a) the Inspector may not take away a document if the employer supplies a copy of it to the Inspector for his or her own use;
- (b) the Inspector may not take away the original of any document that is required for the day-to-day operations of the employer.

(3) It is the duty of an employer at all reasonable times to facilitate, so far as may be practicable in the circumstances, the exercise by an Inspector of powers under this section.

(4) Where an Inspector puts a question to a person through an interpreter that question will, for the purposes of this Act, be taken to have been put to the person by the Inspector and an answer to the question given by the person to the interpreter will be taken to have been given by the person to the Inspector.

(5) A person must not—

- (a) hinder or obstruct any Inspector or person authorized under subsection (1) in the exercise of any power conferred by or under this section;
- (b) refuse to any Inspector or person so authorized entrance to any place, premises, ship or vessel referred to in subsection (1);
- (c) refuse or fail to answer truthfully any question put pursuant to subsection (1);

or

- (d) without lawful excuse (proof of which lies on the person) fail to comply with a requirement of an Inspector acting under this section.

Penalty: \$500.

Protection for Registrar, etc.

51. No suit, prosecution or other legal proceeding lies against any person, in his or her personal capacity, in respect of any act or thing done or performed in good faith in the exercise or performance or the purported exercise or performance of his or her powers, functions or duties as—

- (a) the Industrial Registrar;
- (b) a Deputy Industrial Registrar;
- or
- (c) an Inspector.

Inspector divulging contents of record.

52. (1) An Inspector or former Inspector must not divulge the contents of any record of persons employed, or of the work done, in any industry except to the Minister or the officers of the Minister's department.

Penalty: \$2 000.

(1a) A person who, being authorized by an award or order to do so, has inspected any record must not divulge the contents of the record so inspected except—

- (a) to the appropriate officials of his or her association;
- or
- (b) to the Court or the Commission.

Penalty: \$2 000.

(2) A person must not make use of knowledge of the contents of any such record, except for the purpose of the compilation of general statistical information or for the purpose of proving an offence under this Act.

Penalty: \$2 000.

PART V

CONCILIATION COMMITTEES

DIVISION I—CONSTITUTION OF COMMITTEES

Interpretation.

53. In this Part—

“calling” in relation to an employee, means the occupation of an employee of a prescribed employer:

“employee” does not include a person who is remunerated by way of annual salary:

“industry” does not include—

- (a) any undertaking, trade or business, not being an undertaking, trade or business carried on by the Crown or any instrumentality or agency of the Crown—

- (i) in which persons are employed or engaged for remuneration;

and

- (ii) which is not carried on by way of trade or for the purpose of gain;

or

(b) the employment of persons in receipt of wages by the St. John Ambulance Brigade South Australia District Incorporated or the St. John Council for South Australia Incorporated:

“occupation” in relation to an employee, means the occupation of an employee of an employer other than a prescribed employer:

“trade or business” in relation to an employer, means an activity of an employer other than a prescribed employer:

“undertaking” in relation to an employer, means an activity of a prescribed employer.

54. (1) The Full Commission may inquire into any of the following matters, namely:

Inquiries by the Commission with reference to Conciliation Committees.

(a) whether, and if so what, Committees should be constituted in relation to an industry;

(b) what number of members a Committee should have and, in relation to an existing Committee, whether the number of members should be increased or decreased;

(c) to which—

(i) part of the State;

(ii) undertaking, trade or business, occupation or calling;

(iii) classes of employers and employees,

the jurisdiction of a Committee should extend;

(d) whether a Committee should be dissolved.

(2) The Full Commission may inquire into the matters referred to in subsection (1) on its own initiative or upon application made in the prescribed manner by—

(a) an employer or employers who, in the opinion of the Full Commission, have a direct interest in the subject of the inquiry;

(b) not less than 20 employees who, in the opinion of the Full Commission, have a direct interest in the subject of the inquiry;

or

(c) a registered association whose members, in the opinion of the Full Commission, have a direct interest in the subject of the inquiry.

(3) In an inquiry under this section, the Full Commission must, before arriving at a determination, consider whether the general interests of the community and of the employers and employees affected would be best and most conveniently served by the proposed determination.

55. If a conflict arises in respect of the application of the awards of two or more Committees, an award of a Committee expressed to relate to the occupation or calling of a particular employee or class of employees in a trade or business or undertaking prevails over the terms of an award of a Committee expressed to relate to occupations or callings generally which in turn prevails over the terms of an award of a Committee expressed to relate to a particular trade, business or undertaking.

Governing principles where a conflict arises between the awards of Committees.

56. (1) On the conclusion of an inquiry under this Part, the Full Commission may, by determination—

Powers of the Full Commission upon conclusion of inquiry.

- (a) constitute a new Committee;
- (b) alter the membership of an existing Committee;
- (c) dissolve a Committee;
- (d) define or redefine the jurisdiction of the Committee;
- (e) define or redefine the part of the State in relation to which jurisdiction is to be exercisable by the Committee.

(2) In determining or altering the membership of a Committee, the Full Commission must endeavour to secure, as far as possible, a fair representation of the interests of all relevant employers and employees.

(3) Where the Full Commission constitutes a new Committee or alters the membership of an existing Committee, it may make any provision that it thinks necessary or expedient in relation to the appointment and tenure of office of members of the Committee.

(4) Subject to any provision made under subsection (3), the appointment and tenure of office of members of a Committee are governed by the Rules.

(5) A determination of the Full Commission under this section must be published in the *Gazette*.

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Members of Committees.

58. (1) Each Committee will consist of a presiding officer and the number of members (not exceeding eight) fixed by the Full Commission.

(2) One-half of such members must be representatives of the employers and the other half must be representatives of the employees.

(3) Except as provided in subsection (5), the representatives of the employers must be actual employers or managing experts in one of the industries in respect of which the appointment of a Committee has been recommended.

(4) Except as provided in subsection (5), the representatives of the employees must be actual employees in one of the industries in respect of which the appointment of a Committee has been recommended.

(5) Notwithstanding subsections (3) and (4), one representative on each side may be appointed who does not hold the qualifications referred to in those subsections but no such member may be a legal practitioner.

Chairman of Committees.

59. (1) The President will, after consultation with associations representing the relevant employers and employees, appoint a Commissioner to be the presiding officer of a Committee.

(2) The President may appoint another Commissioner to act as an alternative presiding officer of a Committee.

(3) Where the presiding officer of a Committee is for any reason absent or unable to act as presiding officer, the Commissioner appointed as the alternative presiding officer may act as the presiding officer of the Committee.

(4) The appointment of a Commissioner as a presiding officer or an alternative presiding officer of a Committee may be cancelled at any time by the President.

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DIVISION II—JURISDICTION AND DUTIES OF COMMITTEES

69. (1) A Committee, on any direction or application to it, has, with respect to the industry and area of the State in relation to which it has been constituted, jurisdiction—

Jurisdiction of Committees.

- (a) to deal with any industrial matter pursuant to this Part and to make an award concerning any such industrial matter;
- (b) to rescind or vary any award made in respect of the relevant industry;

* * * * *

(d) to include in any award provisions setting out the procedure to be adopted in the settlement of any industrial dispute (but such a provision cannot limit, restrict or affect the exercise or performance of the jurisdiction or powers of the Commission or Committee in relation to any such dispute);

(e) to authorize, by award, an official of a registered association of employees, subject to such terms and conditions as the Committee thinks fit, after giving the employer notice prescribed by the award, to enter the premises of an employer subject to the award, or any other premises where employees of the employer may be working, and—

(i) inspect time books and wage records of the employer at those premises;

(ii) inspect the work carried out by the employees and note the conditions under which the work is carried out;

and

(iii) interview employees (being employees who are members, or are eligible to become members, of the association) in relation to the membership and business of the association;

(f) to appoint a board of reference in the same manner and subject to the same conditions and rights of appeal as the Commission may appoint such a board,

* * * * *

but a Committee does not have jurisdiction to deal with or include in an award any provision or matter which the Commission, if the matter were before it, would not be empowered to include in its award or order, or which is not included in the direction or application, nor may a Committee determine annual salaries.

(2) The powers conferred on an official of a registered association by an award under subsection (1) (e) must not be exercised so as to hinder or obstruct an employee in carrying out any duty of employment.

(3) A Committee may, by an award, direct that preference must, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to such registered associations or members of registered associations as are specified in the award.

(4) Notwithstanding the terms of a direction under subsection (3)—

(a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where

all factors relevant to the circumstances of the particular case are otherwise equal;

and

(b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

(5) Where an application is made to a Committee for variation of an award, and all parties to the award are in agreement that the proposed variation should be made, the jurisdiction of the Committee is, in relation to that application, exercisable by the presiding officer of the Committee.

(6) Subject to subsection (7), an award of a Committee has, if it so provides, retrospective operation.

(7) An award cannot operate retrospectively as from a day antecedent to the day on which the application in respect of which the award is made was lodged with the Committee unless—

(a) there is some nexus between the award and—

(i) another award of the Committee;

(ii) another award of another Committee or of the Commission;

or

(iii) an award or agreement under the Commonwealth Act, and, in view of that nexus, it is desirable that there should be common dates of operation;

(b) the award gives effect to, in whole or in part and with or without modification, any principles, guidelines or conditions relating to remuneration enunciated or laid down in, or attached to, any relevant decision or declaration of the Commonwealth Commission;

or

(c) the day as from which the award is to operate is fixed with the consent of all parties to the proceedings.

Mediation by a Committee or its chairman.

69a. Where it appears to the presiding officer of a Committee that mediation in an industrial matter in relation to which the Committee has jurisdiction is desirable in the public interest, the presiding officer—

(a) may act as mediator in the matter and call a voluntary conference of the parties involved;

or

(b) may direct that the Committee act as mediator and for that purpose call a voluntary conference of the parties involved.

Oath to be taken by members.

70. (1) Each member of a Committee must, on being appointed, take an oath not to disclose at any time any matter or evidence before the Committee relating to—

(a) trade secrets;

(b) the profits or losses, or the receipts or outgoings, of any employer;

(c) the books of an employer or witness produced before the Committee;

or

(d) the financial position of any employer or witness,

but it is not necessary for a member of a Committee who has been reappointed to the same Committee to take a further oath.

(2) Any person who, having taken an oath in pursuance of subsection (1), violates the oath is guilty of an offence against this Act and liable to a penalty not exceeding \$2 000, and, on conviction, will cease to hold office as a member of the Committee.

(3) A person who has been appointed as a member of a Committee must, before first sitting as a member, take an oath in pursuance of subsection (1).

Penalty: \$100.

71. Where the President of the Commission is satisfied on a report from the presiding officer of a Committee that a member of that Committee—

Failure of member of Committee to attend meetings, etc.

(a) has, without leave of the presiding officer of the Committee, failed to attend two consecutive meetings of the Committee;

or

(b) being present at a meeting of the Committee, has failed to vote on any matter required to be voted on by members of the Committee,

the President of the Commission may, by order, remove that member from office and on the making of such an order the office of that member becomes vacant.

72. (1) A member of a Committee will, on making application in the prescribed form, be reimbursed such fares and out-of-pocket expenses incurred in attending a meeting of the Committee as are approved by the Minister.

Wages and expenses of members.

(2) An employer must not make any deductions from the remuneration of an employee in respect of any time for which the employee is necessarily absent from employment for the purpose of attending a meeting of a Committee of which the employee is a member.

Penalty: \$500.

DIVISION III—PROCEDURE OF COMMITTEE

73. (1) Except as provided in section 75, proceedings before a Committee are commenced by an application in the prescribed form made to the Committee, in accordance with subsection (2), by or on behalf of employers or employees in the industry for which the Committee is established.

Commencement of proceedings.

(2) An application to a Committee may be made—

(a) in relation to public employees—by the Commissioner for Public Employment;

(b) by an employer, or group of employers, employing not less than 20 employees in the industry for which the Committee is established or not less than 75 per cent of the employees in that industry (whichever is the less);

- (c) by not less than 20 employees in the industry for which the Committee is established or not less than 75 per cent of the employees in that industry (whichever is the less);
- (d) by a registered association of employers the members of which employ not less than 20 employees in the industry for which the Committee is established or not less than 75 per cent of the employees in that industry (whichever is the less);

or

- (e) by a registered association of employees the membership of which consists of, or includes, not less than 20 employees in the industry for which the Committee is established or not less than 75 per cent of the employees in that industry (whichever is the less).

(3) A Committee will meet at the times and places fixed by the presiding officer of the Committee (who must cause notice of those times and places to be given to each member) and the Committee must, in such manner as it thinks fit, expeditiously and carefully inquire into the matters before it and anything incidental to, or affecting the merits of, those matters.

(4) For the purpose of determining whether an application has been validly made in accordance with this section, a Committee may have regard to the records (if any) contained in the annual report of the Permanent Head or to a certificate from the Permanent Head as to the number of employees in a particular industry.

Quorum and
voting at meeting.

74. (1) Subject to this Act and any direction given by a Presidential Member of the Commission under subsection (2)—

- (a) at any meeting of a Committee composed of four members and the presiding officer, at least one of the members representative of employers and at least one of the members representative of employees may, at the discretion of the presiding officer, form a quorum of the Committee for the purposes of any of its meetings but if any matter is put to the vote the voting power of the employer and employee members will be taken to be equal;
- (b) at any meeting of a Committee composed of six members and the presiding officer, at least two of the members representative of employers and at least two of the members representative of employees may, at the discretion of the presiding officer, form a quorum of the Committee for the purposes of any of its meetings but if any matter is put to the vote, the voting power of the members representative of employers and employees will be taken to be equal;

and

- (c) at any meeting of a Committee composed of eight members and the presiding officer, at least three of the members representative of employers and at least three of the members representative of employees may, at the discretion of the presiding officer, form a quorum of the Committee for the purposes of any of its meetings but if any matter is put to the vote, the voting power of the employer and employee members will be taken to be equal.

(2) A Presidential Member of the Commission may direct—

- (a) that subsection (1) not apply to a Committee or in respect of specified meetings of a Committee;
- (b) that provisions specified in the direction apply to a Committee, or in respect of specified meetings of a Committee, instead of the provisions of subsection (1).

(3) At any meeting of a Committee, the presiding officer will preside and must endeavour to bring the members to agreement with respect to the matters referred to in the application or direction, and may make all such suggestions and do all such things as he or she thinks right and proper for inducing the members to come to a fair and amicable settlement of the matters within the ambit of the application or direction.

(4) If the presiding officer has been unable to bring the majority of the members of the Committee to an agreement with respect to any matter referred to in an application or direction to the Committee, the presiding officer will appoint a time and place for the hearing and determination of the matter and at that hearing the presiding officer has and may exercise all the powers and functions of the Commission as if the matters were within the jurisdiction of the Commission but, the presiding officer does not have, pursuant to this subsection, power to deal with any matter or thing that would not be within the jurisdiction of the Committee.

75. (1) If—

Provision for urgent matter.

- (a) a Committee, by reason of not being properly constituted, is not competent to act and an urgent matter has arisen which, in the opinion of the President of the Commission, should be dealt with pending the proper constitution of the Committee;

or

- (b) a Committee, its presiding officer, or not less than one-half of its members, reports to the President that the Committee is unable to exercise or discharge its powers and duties or some of its powers and duties,

the President may direct that the matter be dealt with or the powers and duties exercised by the Commission or the Committee, constituted as directed by the President, and the award of the Commission or Committee will have the force and effect of an award of the Committee.

(2) Where an award is made in pursuance of this section pending the reconstitution of a Committee, the award operates for a period, not exceeding six months, specified in the award.

DIVISION IV—PUBLICATION, DURATION AND APPLICATION OF AWARDS OF COMMITTEES

* * * * *

76. An award of a Committee—

Making of award.

- (a) must be signed by the presiding officer of the Committee and forwarded to the Registrar;
 - (b) must be forthwith published by the Registrar in the *Gazette*;
- and
- (c) is binding on all employers and employees in the industry specified in the award within—

(i) the area of the State prescribed by the award (which cannot extend beyond the area in relation to which the Committee is constituted);

or

(ii) if no area is specified in the award, the area for which the Committee has jurisdiction to make the award.

Period of
operation of
awards.

77. An award of a Committee, unless sooner cancelled or rescinded, continues in operation until—

(a) the expiration of the period of operation specified in the award (which must not exceed two years);

or

(b) a new award for the same industry made by the same or a subsequent Committee comes into force,

whichever is the later.

PART VI

GENERAL CONDITIONS OF EMPLOYMENT

* * * * *

Declaration as to
terms of contract.

79. (1) The Commission or a Committee may include in any award a provision that the contract of hiring of every person employed in a particular industry must be a hiring by the hour, day, week or any other period specified in the award.

(2) The contract of hiring of every person employed in an industry covered by an award but in which no provision has been made under subsection (1) is, in the absence of an express contract for some other specified period, a contract of hiring by the week.

(3) Wages accrue under a contract of hiring from day to day unless the hiring is by a period of less than one day, in which case wages accrue in respect of each such period.

Sick leave.

80. (1) Where—

(a) a full-time employee is unable to attend or remain at the employee's place of employment by reason of illness;

or

(b) a full-time employee is ill while on annual leave and the illness is such as would, if the employee were not on leave, have rendered the employee unfit for employment for a period of not less than three consecutive days,

the employee must, subject to compliance with the terms and conditions prescribed by the regulations, be granted paid sick leave by his or her employer not exceeding the sick leave credit of the employee.

(1a) Leave granted to an employee under subsection (1) (b) does not count as annual leave.

(2) For the purposes of this section, the sick leave credit of an employee with an employer is determined by adding to the accumulation of the leave, if any, of a kind prescribed by subsection (1) standing to the credit of that

employee with that employer, pursuant to any award or industrial agreement, immediately before the commencement of this Act, the amount of leave that the employee is entitled to be granted by the employer pursuant to this section, and deducting from the total so obtained the amount of that leave that has, pursuant to this section, been so granted by the employer.

(3) In respect of—

(a) the first year of service with an employer that follows the commencement of this Act, an employee is entitled to a grant of leave under this section by that employer at the rate of ten days on full pay per year;

and

(b) the succeeding years of continuous service with that employer, an employee is, on or after the commencement of each such year, entitled to a grant of leave under this section by that employer equal to ten days on full pay.

(4) For the purposes of calculating the amount of leave to which an employee is entitled pursuant to subsection (3) (a), the service of that employee with his or her employer will be regarded as the number of complete weeks service served by that employee with that employer.

(4a) Where, after the commencement of the Industrial Conciliation and Arbitration Act Amendment Act, 1986, a business is transmitted from an employer ("the transmitter") to another employer ("the transferee") and an employee who at the time of the transmission was an employee of the transmitter in that business becomes an employee of the transferee—

(a) the continuity of service of the employee will be taken not to have been broken by reason of the transmission;

and

(b) the period of service which the employee has had with the transmitter or any prior transmitter, including service before the commencement of the Industrial Conciliation and Arbitration Act Amendment Act, 1986, will be taken to be service of the employee with the transferee.

(4b) In subsection (4a)—

"business" includes a part of a business:

"transmission" includes transfer, conveyance, assignment or succession, whether by agreement or by operation of law; and "transmitted" has a corresponding meaning.

(5) Where an award or industrial agreement—

(a) does not provide for the grant of sick leave;

or

(b) provides for the grant of sick leave in terms or on conditions less favourable to employees than the terms and conditions provided by this section,

then, on the application of a party bound by the award or industrial agreement, that award or industrial agreement will be amended to provide for the grant of sick leave in terms and conditions no less favourable to the employees than the terms and conditions provided by this section.

(5a) Paid sick leave granted either under this section, or under an award or industrial agreement, must be debited against the sick leave credit of the employee to whom it is granted.

(6) This section does not apply to employees of a prescribed employer or to an employee who in the terms of his or her employment receives an allowance or loading in lieu of sick leave.

Granting of and
payment for
annual leave.

81. (1) Every full-time employee, other than an employee of a prescribed employer, whose wages or other conditions of employment are not governed by an award or industrial agreement or an award or agreement under the Commonwealth Act must, unless the employee receives an allowance or loading in lieu of annual leave, be granted by his or her employer such period of recreation leave for each year of continuous employment as is the general standard, determined for the purposes of this section by the Full Commission from time to time.

* * * * *

(2) Annual leave must be granted in accordance with the general standard.

(3) Where an employee's employment is terminated for any reason, the employee is entitled to payment in lieu of leave in accordance with the general standard.

(4) The Full Commission may, on the application of the Minister, determine a new general standard to replace one previously applying under this section.

(5) In determining the general standard for the purposes of this section, the Full Commission may—

(a) determine what constitutes continuous employment for the purposes of subsection (1);

(b) determine the circumstances giving rise to an entitlement to leave, or payment in lieu of leave, and the extent of that entitlement;

(c) determine the payments to be made in respect of leave, or in lieu of leave, and the manner and time of those payments;

and

(d) determine any other incidental or ancillary matters.

(6) The general standard determined by the Full Commission from time to time must be published by the Commission in the *Gazette*, and the production of the *Gazette* containing such a determination is proof of the standard.

Provisions
relating to
automation.

82. (1) Notwithstanding any other provisions of this Act, the Commission or a Committee may, on an appropriate application to it, insert in an award, whether by variation of an existing award or in a new award, provisions relating to the following matters:

(a) the obligations, duties and responsibilities of any employer on the introduction or proposed introduction by that employer of automation or other similar technological changes;

(b) the employees to whom notices of termination of service are to be given in consequence of the introduction of automation or other similar technological changes and the consequences of failure to give such notices;

(c) the notification to be given by the employer to the permanent head of the notices of termination of service;

and

(d) such other matters as the Commission or a Committee thinks relevant to or consequential on the matters referred to in paragraph (a), (b) or (c).

(2) Where a notice of termination of service is to be given in pursuance of a provision inserted in an award under this section, the period of the notice must be not less than three months, and that period will (whether or not notice is in fact given in accordance with the provision) count as service for the purposes of the Long Service Leave Act, 1967.

(3) Where a notice of termination of service is not given as required by a provision inserted in an award under this section, the employee is entitled (in addition to any other rights that may be acquired under the award) to payment in lieu of notice in respect of any period by which the period of the notice actually given falls short of the period of notice required by the award.

83. (1) Where an employee performs two or more classes of work and the remuneration for those classes of work has been fixed by an award or awards, the employer, if bound by the award or awards, must pay the employee in respect of the time occupied in each class of work remuneration at the rate fixed by the award or awards applicable to that class of work, but nothing contained in this subsection prevents the insertion, or the operation, of a clause in an award or order prescribing different rates of pay for an employee who performs different classes of work within the ambit of the award or order.

Application of
certain awards.

(2) Where an employee is employed on the same day partly in a class or classes of work for which remuneration has been fixed by an award or awards binding on the employer and partly in work for which no remuneration has been fixed by such an award or awards, the employer must pay the employee for that day's work as follows:

(a) for the time occupied in each class of work for which remuneration has been fixed by any such award or awards, remuneration at the rate so fixed;

(b) for the time occupied in work in any industry for which no remuneration has been fixed by any such award or awards, remuneration at the rate fixed by the award applicable to the other portion of that day's work, or, if more than one such rate is so applicable, then at the higher or highest of the rates of remuneration fixed by the award or awards (but if an industrial agreement which is binding on the employer as regards the employee fixes remuneration for the work for which no remuneration has been fixed by such an award, the remuneration payable for the time occupied in that work will be fixed by the industrial agreement).

(3) Where an employee who works in the metropolitan area for an employer at work which is covered by an award limited to the metropolitan area performs, at the request of the employer, similar work outside the metropolitan area of a type covered by an award limited to areas outside the metropolitan area which is binding on the employer, the latter award applies to the work performed outside the metropolitan area if the employee

so works for a week or more on any one occasion, but if the work is for less than a week the award limited to the metropolitan area applies.

(4) Where an employee who works outside the metropolitan area for an employer at work which is covered by an award limited to areas outside the metropolitan area performs, at the request of the employer, similar work inside the metropolitan area of a type covered by an award limited to areas inside the metropolitan area which is binding on the employer, the latter award applies to the work performed inside the metropolitan area if the employee so works for a week or more on any one occasion, but if the work is for less than a week the other award applies.

Experience of
apprentice, etc.,
how calculated.

84. For the purposes of an award under which wages are to vary in accordance with experience, all the time during which an apprentice or junior has worked in the industry in which the apprentice or junior is for the time being employed will be reckoned in calculating his or her experience.

* * * * *

Consolidation of
awards.

86. (1) Where an award has been varied by one or more awards or orders and as so varied is in force, the Registrar may, at any time in the exercise of a personal initiative, or, if so directed by the Commission or the Committee concerned, must, consolidate the award, awards or orders and the consolidation will include any variations of the award made under this Act.

(2) In consolidating an award pursuant to subsection (1) the Registrar may correct any clerical or patent errors.

(3) The Registrar must publish in the *Gazette* any award so consolidated.

(4) A consolidated award of the Commission is binding on the persons and associations on whom or on which the awards so consolidated were binding, and any consolidated award of a Committee will be taken to have been made by that Committee.

Effect on legal
proceedings of
amendment of
award.

87. The alteration, variation or rescission of an award does not affect—

(a) legal proceedings previously commenced in relation to the award;

or

(b) rights existing at the time of the alteration, variation or rescission.

Aged, slow,
inexperienced or
infirm workers.

88. (1) The Commission may, on application by an aged, slow, inexperienced or infirm worker, grant that worker a licence to work at a wage less than that fixed by the award.

(1a) Where it appears to the Commission that a registered association may have an interest in an application under this section, it will give the association at least seven days notice of the time and place at which it intends to hear and determine the application, and the registered association is then entitled to appear and be heard on the application.

(2) The Commission will not grant a licence until satisfied that the worker is, by reason of age, slowness, inexperience or infirmity, unable to obtain employment at the wage fixed by the award.

(3) A licence—

(a) must specify the wage at which the worker is licensed to work;

(b) may be renewed;

and

(c) will be in force for a period specified in the licence not exceeding 12 months from the date of issue or renewal.

(4) Subject to subsection (5), the Registrar may, at the direction of the Commission, exercise any power, duty or function of the Commission in relation to matters arising from an application under this section.

(5) The Commission should not direct the Registrar to specify the wage at which an applicant under this section may be licensed to work.

(6) An employer must not, without the consent of the Commission, employ any number of licensed aged, slow, inexperienced or infirm workers exceeding one-fifth of the total number of persons employed by the employer in the particular industry at the wage fixed for adults or at piece-work rates.

(7) Notwithstanding subsection (6), an employer may employ one such licensed worker.

(8) A person must not pay or offer to pay any such aged, slow, inexperienced or infirm worker a wage lower than that specified in the licence.

Penalty: \$500.

89. (1) Notwithstanding any other provisions of this Act, no award applies to or in relation to work performed by a person being assisted or trained in—

Non-application of certain awards.

- (a) a sheltered workshop;
- (b) a charitable institution;
- or
- (c) an institution for the blind,

which has, for the time being, been declared by proclamation to be a workshop or institution to which this section applies.

(2) The Governor may, by proclamation—

- (a) declare a sheltered workshop, charitable institution or institution for the blind to be a workshop or institution to which this section applies;
- (b) vary or revoke any such declaration.

* * * * *

90. (1) Where the Minister is satisfied that—

Declared organizations.

(a) the objects of an organization are charitable, religious or non-profit making;

and

(b) it is in the public interest that the powers under this subsection be exercised,

the Minister may, by notice published in the *Gazette*, declare that organization, or specified activities of that organization, to be an organization, or activities, to which this section applies.

(1a) The Minister may, by notice published in the *Gazette*, vary or revoke a declaration under subsection (1).

(2) Notwithstanding any other provisions of this Act, no award operates—

(a) where the notice published in the *Gazette* under subsection (1) relates to an organization generally—in relation to that organization;

or

(b) where the notice relates to specified activities of an organization—in relation to those activities,

for so long as the notice remains in force.

* * * * *

Rescission of
obsolete awards.

91a. (1) The Commission may, on the application of the Registrar, rescind an award on the ground that it is obsolete.

(2) The Registrar must, at least 21 days before an application is to be heard by the Commission under this section, give notice of the time and place of the hearing and the names of the awards to which the application relates—

(a) in the *Gazette*;

and

(b) in a newspaper circulating generally throughout the State.

(3) Any interested person may appear and be heard by the Commission on an application under this section.

PART VII

APPEALS AND REFERENCES

DIVISION I—THE COURT

The Full Court.

92. (1) For the purposes of this Act, the Full Court is constituted of not less than two Judges.

(2) Where an appeal is made to the Full Court constituted of two Judges, the appeal cannot be allowed unless it is upheld by both Judges.

(3) No order, decision or proceedings of any kind of the Full Court can be challenged, appealed against, reviewed, quashed or called in question except in proceedings before the Full Court of the Supreme Court founded on an alleged excess or want of jurisdiction.

Appeal to the Full
Court.

93. (1) An appeal lies from any order or decision of the Court constituted of a single Judge to the Full Court and must be made in the manner and within the time prescribed in the Rules.

* * * * *

(3) On the hearing of an appeal the Full Court may—

(a) confirm, quash or vary the order or decision appealed against;

or

(b) refer the order or decision to the Court, constituted of a single Judge, with such directions as the Full Court thinks fit.

Appeal from
Industrial
Magistrate.

94. (1) An appeal lies from any decision or order of the Court constituted of an Industrial Magistrate to the Court constituted of a single Judge.

(2) On the hearing of an appeal the Court may—

(a) confirm, quash or vary the order or decision appealed against;

or

(b) refer the order or decision to the Court, constituted of an Industrial Magistrate, with such directions as the Court thinks fit.

(3) An appeal under subsection (1) must be commenced within 14 days of the day on which the order or decision appealed against was made or given.

DIVISION II—THE COMMISSION AND COMMITTEES

95. Except as is provided by section 96—

(a) every award, order or decision of the Commission or a Committee is final and no such award, order or decision can be removed to any other court;

Decision of tribunal to be final.

and

(b) no award, order or proceeding of any kind of the Commission or a Committee can be challenged, appealed against, reviewed, quashed or called in question except on the ground of excess or want of jurisdiction.

96. (1) An appeal lies—

Right of appeal.

(a) against the whole or part of an award or decision of the Commission constituted of a single member (including an order made by the Commission pursuant to section 110) or a Committee or the presiding officer of a Committee exercising the powers of the Commission;

(b) in respect of the failure or refusal of the Commission constituted of a single member or a Committee or the presiding officer of a Committee exercising the powers of the Commission to include in an award any matter which, if included, would have been within its or his or her jurisdiction;

(c) against the whole or part of an award of the Commission constituted of a single member or a Committee or the presiding officer of a Committee exercising the powers of the Commission, challenging or disputing the award, or part of the award, on the ground of illegality;

and

(d) against the whole or part of a decision or order made by the Commission pursuant to section 31.

(2) The appeal must be made to, and will be heard by, the Full Commission.

(3) For the purposes of hearing and determining an appeal against a decision or order of the Commission on an application under section 31, the Full Commission will be constituted of at least two Presidential Members.

97. An appeal under section 96 may be made—

Persons entitled to appeal.

(a) in the case of an appeal from a decision of a Committee, by the majority of the members representative of employers or the majority of the members representative of employees, on the Committee;

- (b) by an employer or group of employers employing not less than 20 employees subject to the award appealed against or not less than one-quarter of the total number of employees subject to that award, whichever is the less;
- (c) by not less than 20 employees subject to the award appealed against or not less than one-quarter of the total number of employees subject to that award, whichever is the less;
- (d) by a registered association which is, or some of the members of which are, subject to the award appealed against;
- (e) in the case of an award affecting employees of a prescribed employer—by the prescribed employer;
- (f) in the case of an appeal challenging or disputing the whole or a part of the award solely on the ground of illegality—by any interested person or association;

or

- (g) in the case of an appeal against a decision or order made by the Commission—
 - (i) in the exercise of the jurisdiction conferred on it by section 25(1)(b);
- or
- (ii) on an application made to it under section 31,
- by any of the parties concerned.

Notice, hearing of appeals, etc.

98. (1) Subject to subsection (1a), an appeal must be instituted in the prescribed manner and—

- (a) in the case of an appeal founded solely on the alleged illegality of a decision—the notice of appeal may be lodged at any time;
- (b) in any other case—
 - (i) the notice of appeal must be lodged within 21 days after publication of the award in the *Gazette*;
 - (ii) if the decision is not followed by publication of an award in the *Gazette*—the notice of appeal must be lodged within 42 days of the decision subject to the appeal.

(1a) Notice of an appeal under section 96(1) (d) must be lodged within 14 days of the decision or order subject to the appeal, but the Full Commission may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend the time within which the notice may be lodged (whether the application for an extension of time is made before or after the period of 14 days has elapsed).

(2) The notice of appeal must specify—

- (a) the part of the award or decision subject to the appeal;
 - (b) the grounds of the appeal;
- and
- (c) the relief sought.

(3) On the hearing of an appeal (except an appeal against a decision or order under section 31), the Full Commission may—

- (a) take fresh evidence;
- (b) confirm, quash or vary the whole or part of the award or decision under appeal;
- (c) direct a Commissioner to furnish a report with respect to a specified matter (and the Commissioner to whom the direction is given must, after making such investigation as is necessary, furnish a report accordingly);
- (d) refer the subject matter of the appeal, or any matter arising in the course of the appeal, back to the Commission constituted of a single member or the Committee, with such directions or suggestions as the Full Commission thinks fit;
- (e) make an award dealing with the matters under appeal (but no such award can include any provision which would be outside the powers of the Commission constituted of a single member or the Committee (as the case may be));
- (f) subject to this Act, fix a date as from which an award or variation of an award made by the Commission constituted of a single member or the Committee is to come, or will be taken to have come, into operation;

or

- (g) dismiss the appeal or any part of the appeal.

(3a) On the hearing of an appeal against a decision or order under section 31, the Full Commission may—

- (a) take fresh evidence;
- (b) direct a member of the Commission to furnish a report with respect to any aspect of the subject matter of the appeal;
- (c) confirm, quash or vary the whole or part of the decision or order under appeal;
- (d) make any decision or order that should have been made in the first instance in substitution for a decision or order that has been quashed under paragraph (c) or in addition to a decision or order that has been confirmed or varied under that paragraph;
- (e) remit the subject matter of the appeal to the Commission (whether constituted of the member of the Commission who heard the matter at first instance or of another member of the Commission) for further hearing or consideration or for rehearing or reconsideration (and the Full Commission may, in making the remission, give any direction or make any suggestion to the Commission that the Full Commission thinks fit);
- (f) dismiss the appeal or any part of the appeal.

(4) Where an award is altered or added to on appeal—

- (a) the alteration or addition, the date on or from which the alteration is to come into operation and the period of operation must be published in the *Gazette*;

or

(b) the award, consolidated so as to incorporate the alteration or addition, must be published in the *Gazette*.

* * * * *

(6) When an award of the Full Commission confirms or quashes the award of the Commission or a Committee, a notice of the confirmation or quashing must be published in the *Gazette*.

(7) Until the Full Commission has given its decision on an appeal, neither the Commission nor the Committee has power to alter or rescind the part of the award under appeal.

Stay of operation
of award.

99. (1) Subject to subsection (1a), when an appeal has been made against an award or part of an award, the Full Commission may, on such terms and conditions as it thinks fit, order that the operation of the whole or any specified part or parts of the award be stayed, pending the decision on the appeal or until further order of the Commission.

(1a) Where an appeal has been made against a decision or order of the Commission on an application under section 31, the Full Commission may only stay the operation of an order of the Commission for the payment of compensation.

(2) Where an award was in existence prior to the making of the award under appeal, the Full Commission may, on making the order referred to in subsection (1), restore the comparable provisions of that prior award and may, if it considers it necessary so to do, modify any of the provisions until the appeal has been determined, and if the appeal is dismissed, the provisions of the award under appeal operate retrospectively from the date from which they would have operated but for the stay.

(3) Where no award existed prior to the making of the award under appeal, or where no comparable provisions appeared in an award that was in existence prior to the making of the award under appeal, the Full Commission may, in addition to granting a stay, make such interim award in relation to the provisions under appeal as it thinks proper in the circumstances, and, if the appeal is dismissed, the provisions of the award under appeal operate retrospectively from the date from which they would have operated but for the stay.

(4) The powers conferred on the Full Commission by subsections (1), (2) and (3) may be exercised on behalf of the Full Commission by any of its members.

(5) If the appeal is allowed, either in whole or in part, the Full Commission may make such order as it thinks proper and the order operates retrospectively from the date from which the award would have operated but for the stay except where the appeal concerned the day from which the award was to operate.

Reference by
Minister to the
Commission.

100. (1) The Minister may refer any award of a Committee or any part of such an award for consideration by the Full Commission.

(2) Upon any such reference the Commission will deal with it in the same manner as if it were an appeal pursuant to section 96.

Reference of
matters to the
Full Commission.

101. (1) When the Commission, constituted of a single member, is exercising any jurisdiction under this Act, or when a Commissioner is dealing with a matter as the presiding officer of a Committee, the Commission or the Commissioner may, in the exercise of an independent initiative, and must, if so requested by a party, a member of the Committee or the Minister,

consult with the President of the Commission as to whether the matter should be dealt with by the Full Commission, and the President, after being so consulted, will determine whether or not the matter should be so dealt with and direct accordingly.

(2) If the Commission is constituted of the President, the President may make a determination and give directions under subsection (1) either on receipt of a request of the kind contemplated by that subsection or in the exercise of a personal initiative.

(2a) Before giving a direction under subsection (1) or (2), the President should consult with all the parties in order to ascertain their views on the question of whether the matter should be dealt with by the Full Commission.

(3) The Full Commission may, for the purposes of this section, direct a Commissioner to furnish a report with respect to a specified matter, and the Commissioner to whom the direction is given must, after making such investigation or inspection as is necessary, furnish a report accordingly, and the Full Commission may act on such a report.

(4) Where an industrial matter being dealt with under this section was previously—

(a) before a member of the Commission, the Full Commission may, in addition to the powers elsewhere conferred on it, order the member of the Commission to deal with it in accordance with such directions or suggestions as the Full Commission thinks fit;

or

(b) before a Committee or a Commissioner pursuant to Part V, the Full Commission may, in addition to the powers elsewhere conferred on it, order the Committee or member of the Commission to deal with it in accordance with such directions or suggestions as the Full Commission thinks fit.

(5) The member of the Commission or the Committee referred to in subsection (4) must do all things necessary to give effect to any decision of the Full Commission pursuant to this section.

(6) In this section—

“matter” includes a part or aspect of a matter.

102. (1) Notwithstanding section 95, any question of law arising in proceedings before the Commission or a Committee under this Act may, in the discretion of the person presiding over those proceedings, be referred to the Court for determination.

Reference of questions of law to the Court.

(2) The Court will determine the question of law referred to it under subsection (1) and return the matter to the Commission or the Committee (as the case requires) with its opinion or direction, and the Commission or Committee must give effect to that opinion or direction accordingly.

DIVISION III—THE REGISTRAR

103. In this Division—

Interpretation.

“Full Commission” means the Commission constituted of two Presidential Members and one Commissioner:

“matter” does not include the settling by the Registrar of the minutes of an order or judgment of the Court or the taxation by the Registrar of the costs of proceedings before the Court.

Leave to appeal from decision of the Registrar.

104. The Full Commission may grant leave to appeal to the Full Commission from an act or decision of the Registrar in relation to a matter before the Registrar and the Full Commission may hear and determine an appeal in respect of which leave is so granted.

Appeals.

105. (1) Where leave to appeal has been granted under this Division, the Full Commission may, on such terms and conditions as it thinks fit, make an order that the operation of the act or decision of the Registrar be stayed pending the determination of the appeal or until further order of the Full Commission.

(2) The Full Commission may take further evidence for the purposes of an appeal under this Division.

(3) On the determination of an appeal under this Division by the Full Commission, the Full Commission will make such order as it thinks fit and may confirm, quash or vary a decision of the Registrar.

Cases stated.

105a. (1) The Registrar may state a case on a question of law for the opinion of the Court.

(2) The Court may determine any questions of law that arise on a case stated under this section and make or give any consequential or ancillary orders or directions that it thinks necessary or expedient.

PART VIII

INDUSTRIAL AGREEMENTS

Parties to industrial agreements.

106. Any association may make an industrial agreement under this Part with any other association, or with any person, in relation to an industrial matter.

Information to be provided by association.

107. An association which has made an industrial agreement must, whenever requested by the Registrar so to do, inform the Registrar whether a specified person is or is not a member of that association.

Term and form of agreement.

108. (1) Every industrial agreement must be—

(a) in writing;

(b) for a term to be specified in the agreement not exceeding (except in the case of an agreement relating solely to long service leave) two years from the date of the making of the agreement;

and

(c) in a form commencing as follows or in a similar form:

“This industrial agreement, made in pursuance of the
Industrial Conciliation and Arbitration Act, 1972, this
day of between .”

(and the matter agreed upon must be set out).

(2) A copy of every industrial agreement signed by the parties to the agreement must be filed in the office of the Registrar, and in the office of every association that is a party to the agreement, within 30 days of the day on which it is executed by the last party to execute it, and will be open to inspection as prescribed.

Approval of Commission in relation to industrial agreements.

108a. (1) An industrial agreement has no force or effect unless and until it has been approved by the Commission.

(2) The Commission must not approve an industrial agreement to which an unregistered association of employees is a party unless it is satisfied—

(a) that its terms are fair and reasonable;

and

(b) that the industrial agreement, when considered as a whole, does not provide conditions of employment that are inferior to those prescribed by a relevant award (if any) applying at the time that application is made for the approval of the agreement under this section.

(3) Where—

(a) an industrial agreement, if approved under this section, would affect remuneration or working conditions;

and

(b) principles, guidelines or conditions that are relevant to the question of whether the agreement should be approved have been enunciated or laid down in, or attached to, a decision or declaration of the Full Commission under section 146b,

the Commission must, before deciding whether to approve the agreement, have due regard to those principles, guidelines or conditions.

(4) Where an application is made for approval of an industrial agreement under this section, the Registrar must give to any registered association that has, in the Registrar's opinion, a proper interest in the matter notice of the time and place appointed for the hearing of the application.

(5) Subject to subsection (6), the Commission may, on the application of a party to an industrial agreement, rescind or vary the agreement but it cannot vary an industrial agreement unless the agreement, as varied, is such as would have been approved by the Commission under this section.

(6) For the purposes of subsection (5), subsection (2) (b) does not apply in relation to a variation of an industrial agreement where the agreement was entered into before any relevant award was made.

(7) In this section—

“relevant award”, in relation to an industrial agreement, means an award that, apart from the industrial agreement, governs the conditions of employment of the employees to whom the industrial agreement relates.

109. At any time while an industrial agreement is in force any association or employer may become a party to the agreement by filing in the office of the Registrar a notice in the prescribed form signifying concurrence in the agreement, together with the written consent of the original parties to the agreement, and thereafter that association or employer will be taken to be a party to the agreement.

Adding of parties to agreements.

110. (1) Every industrial agreement is, during its continuance, binding on—

Effect of industrial agreement.

(a) all parties to the agreement;

and

(b) all members for the time being of any association which is a party to the agreement.

(2) Subject to subsection (3) and to any term to the contrary in an industrial agreement, the agreement operates, as regards the employers and

employees subject to the agreement, to the exclusion of the provisions of any award that are inconsistent with the agreement.

(3) Where an industrial agreement was in force immediately before the commencement of the Industrial Conciliation and Arbitration Act Amendment Act, 1984—

(a) subsection (2) does not apply to the agreement as in force immediately before the commencement of that amending Act;

but

(b) where the agreement is varied after the commencement of that amending Act, any provision of the agreement then operates to the exclusion of inconsistent provisions of an award.

Rescinding or
varying
agreement.

111. An industrial agreement may be rescinded or varied by any other industrial agreement made between the parties for the time being to the agreement, or by an order of the Commission made pursuant to this Act.

Continuance of
agreement unless
rescinded.

112. (1) In default of any express provision of the agreement to the contrary, an industrial agreement, unless rescinded, (and subject to any variation made as provided by this Part) continues in force after the expiration of the term specified in the agreement in respect of all parties except those who retire from the agreement.

(2) At any time after, or not more than one month before, the expiry of the term of an industrial agreement, any party may file a notice in the office of the Registrar and serve a copy of the notice on each of the other parties to the agreement signifying the party's intention to retire from the agreement at the expiration of one month from the date of the filing, and the party will, on the expiration of that period, cease to be a party to the agreement.

(3) When an association of employees has so ceased to be a party, the agreement also ceases to be binding on employers as regards employees who are members of the association.

(4) Nothing in this section affects any right, obligation or liability which had arisen prior to a party ceasing to be a party.

* * * * *

PART IX

ASSOCIATIONS

DIVISION I—REGISTRATION

Interpretation.

114. (1) For the purposes of this Part, but subject to subsection (2)—

“employee” (without limiting the generality of the definition of “employee” in section 6) includes—

(a) a retired employee;

(b) a person who is undergoing a course of training to enable the person to be an employee;

(c) a person employed by the Government of the Commonwealth or an instrumentality or agency of that Government;

and

(d) a person or a person of a class prescribed as being an employee or a class of employees for the purposes of this Part.

(2) Nothing in this Act makes or purports to make an award or order binding on or applicable to any person referred to in paragraph (c) of the definition of "employee" in subsection (1), in his or her capacity as such.

(3) The President of the Court may, in relation to any application, matter or proceeding under this Part, direct a Judge of the Court, or an Industrial Magistrate, to exercise the powers and functions conferred on, or assigned to, the Registrar by any provision or provisions of this Part specified in the direction, and where such a direction has been given, a reference in the specified provision or provisions of this Part to the Registrar will, for the purposes of the application, matter or proceeding referred to in the direction, be construed as a reference to the Judge or Industrial Magistrate to whom the direction is addressed.

(4) The provisions of Division III of Part VII apply in relation to an act or decision of a Judge, or Industrial Magistrate, done or made in pursuance of a direction under subsection (3) in all respects as if the act or decision were an act or decision of the Registrar.

115. (1) Subject to the provisions of this Part, any association consisting—

Registration of associations.

(a) — in the case of employers—of two or more employers who employ, in aggregate, not less than 20 employees;

— in the case of employees—of not less than 20 employees,

together with—

(b) such other persons (if any), whether employers or employees or not, as have been appointed officers and admitted as members of the association,

may, on compliance with the prescribed conditions, be registered under this Part.

(2) For the purpose of determining whether the membership of an association of employees amounts to twenty or more, members of the following classes will not be counted:

(a) retired employees;

(b) persons undergoing courses of training to enable them to undertake employment;

(c) persons employed by the Government of the Commonwealth or an instrumentality or agency of that Government;

(d) persons of a prescribed class.

(2a) The fact that an association of employees has members of a class referred to in subsection (2) is not a ground on which the association may be refused registration.

(2b) An association—

(a) of which the purpose, or one of the purposes, is to protect, or further, the interests of employers;

and

- (b) of which the membership includes two or more employers who employ, in aggregate, not less than 20 employees,

is eligible for registration under this Part notwithstanding that its membership includes persons who are not employers.

(3) The Governor may, by regulation, prescribe model rules for associations, and the adoption of any such model rules by an association is sufficient compliance with such of the conditions prescribed as are dealt with by the adopted rules.

Method of dealing with application for registration.

116. (1) On receipt of an application by any association to be registered under this Part, the Registrar must—

- (a) publish notice of the application at least once in the *Gazette* and at least once in one or more daily newspapers circulating in the metropolitan area;

- (b) by notice in writing inform such registered associations as the Registrar considers may be affected by that application;

and

- (c) fix a day, not being earlier than 30 days after the receipt of the application, for the consideration by the Registrar of any objections, made in the manner prescribed by the Rules, on the ground that the association is not qualified to be registered or, in the case of an association of employees, on the ground mentioned in subsection (2), to the granting of the application.

(1a) The Registrar may, on the application of an association that has applied to be registered under this Part—

- (a) waive compliance with any one or more of the prescribed conditions;

- (b) amend the rules of the association so as to bring them into conformity with the prescribed conditions.

(2) The Registrar will, whether or not an objection has been made by any registered association, unless in all the circumstances it is, in the Registrar's opinion, undesirable to do so, refuse an application to register an association where, in the same locality and connected with the same industry, there exists a registered association to which, in the Registrar's opinion, the members of the association applying for registration (referred to in this section as "the applicant association") might conveniently belong, but if the registered association is registered under the Commonwealth Act or is a branch or forms part of an organization so registered and the applicant association is registered under the Commonwealth Act or is a branch or forms part of an organization so registered, the Registrar cannot refuse to register the applicant association merely on the ground that its members might conveniently belong to the other association.

(3) Subject to this section, the Registrar must, if satisfied that—

- (a) the association is eligible to be registered under this Part;

and

- (b) the prescribed conditions (insofar as compliance with them has not been waived) have been complied with,

register the association without fee and issue a certificate of registration.

(4) When any applicant association is registered under the Commonwealth Act or is a branch, or forms part, of any organization so registered, the Registrar may dispense with compliance by any such association with any condition relating to its rules.

(5) An association must not be registered—

(a) if its name is identical with that of any other registered association or of any organization registered under the Commonwealth Act or so nearly resembles any such name as to be likely to deceive members of any such registered association or the public;

(b) if any objection has not been finally dealt with;

or

(c) if, on appeal, the Full Commission has directed that it be not registered.

(6) An association aggrieved may, in the prescribed manner and within the prescribed time, object to the Registrar to the proposed registration of an association under this Part.

117. (1) A certificate of registration of a registered association is conclusive evidence of the fact and the validity of registration.

Effect of certificate of registration.

(2) In this section—

“certificate of registration” means—

(a) a certificate of registration issued under the Industrial Arbitration Acts, 1912 and 1915;

(b) a certificate of registration issued under Division VI of Part II of the Industrial Code, 1920;

(c) a certificate of registration issued under Part X of the Industrial Code, 1967;

or

(d) a certificate of registration issued under this Part.

118. The Registrar may at any time, and on such conditions as the Registrar thinks fit, adjourn an application to register an association to permit the rules or constitution of the association to be amended, and the Registrar may treat that application as adjourned as if it were the original application.

Adjournment of application for registration.

119. (1) Any registered association which has changed its name in the manner prescribed by its rules, or if it has no rules relating to change of name, pursuant to a resolution passed by a majority of the members present and voting at a meeting of the association specially called for the purpose (of which meeting not less than 14 days notice must have been given to all the members) may apply to the Registrar to register the change of name.

Registration of change of name of registered association.

(2) A change of name does not have effect until it has been registered.

(3) An application to register a change of name must be made by the secretary, director or some other prescribed officer of the association, and must be made in such form and accompanied by such evidence as is prescribed.

(4) On registering the change of name of an association, the Registrar will make an endorsement on the certificate of registration of the association

stating that the name of the association has been changed and specifying the new name, or may issue an amended certificate showing the new name and the former name.

(5) An association cannot change its name so that the name when changed is identical with that of any other registered association or an organization registered under the Commonwealth Act or so nearly resembles any such name as to be likely to deceive members of any such registered association or organization or the public.

Branch may be treated as distinct association.

120. (1) Any branch of an association may, in such circumstances as are prescribed, be treated as an association distinct from the association of which it is a branch for the purposes of this Part, and may be registered under this Part as an association.

(2) A branch cannot be registered as an association unless, in the opinion of the Registrar, it is a branch of sufficient importance to be registered separately.

Change to rules of associations.

121. (1) A registered association may apply to the Registrar for the registration of an addition to, or the revocation or variation of, any of its rules.

(2) No addition to, or revocation or variation of, the rules of a registered association has effect until registered.

(3) The Registrar may determine an application under this section forthwith or may, if of the opinion that it is necessary to do so—

- (a) publish notice of the application in the *Gazette* and in a daily newspaper circulating in the metropolitan area;
- (b) inform such registered associations as may, in the Registrar's opinion, be affected by the application;

and

- (c) fix a day (not being a day that falls before the expiration of 30 days from the date of the application) for the consideration of any objections to the application.

(4) The Registrar may at any time before determining an application under this section, with the approval of the registered association that has made the application (referred to in this section as "the applicant association"), adjourn the application for the purpose of enabling the applicant to amend the addition to, or the revocation or variation of, the rules to which the application relates (and on the amendment being made the Registrar may determine the application taking into account that amendment).

(5) The Registrar may refuse an application under this section—

- (a) if, in the Registrar's opinion, the addition to, or revocation or variation of, the rules would prejudicially affect the members of the applicant association or any other registered association;
- (b) for any reason for which an application by an association for registration could be refused;

or

- (c) if for any other reason it is, in the opinion of the Registrar, proper that the application should be refused.

(6) Notwithstanding subsection (5), the Registrar may register an addition to, or the revocation or variation of, the rules of an applicant association

although the addition, revocation or variation might prejudicially affect the members of the applicant association or any other registered association, if the applicant association is an organization registered under the Commonwealth Act or is a branch or forms part of an organization so registered and the effect of the addition, revocation or variation is to bring the rules of the applicant association into substantial conformity with the rules or constitution of that organization as registered under that Act.

122. (1) A registered association must, on application by a person who desires a copy of the rules of the association, accompanied by the fee (if any) fixed under subsection (2), furnish that person with a printed or typewritten copy of the rules, as in force for the time being.

Printed copies of rules to be supplied.

(2) A registered association may fix a fee (not exceeding the prescribed limit) for the purposes of subsection (1).

(3) In this section—

“prescribed limit” means \$1 or such other amount as may be prescribed by regulation.

123. In all proceedings affecting or taken by a registered association, the production of a copy of the rules of the association, certified under its seal and the signature of the secretary, director or other prescribed officer as a true copy of the rules, is, without proof of the making of the rules or of the affixing of the seal or of the signature of the secretary or officer, *prima facie* evidence of the rules of the association and of their validity.

Evidence of rules.

124. (1) In addition to its principal office, a registered association may have a branch office in any locality in which any of its members reside or are employed.

Principal office and branch office of association.

(2) On application by the association, under its seal and the signature of its president, chairman, secretary or director, specifying the address of the branch office, the Registrar must register the branch office.

(3) The address of the principal office or of any registered branch office may be changed from time to time in the prescribed manner.

(4) Every such change must be forthwith notified to the Registrar by the secretary or director of the association and thereupon registered by the Registrar.

125. A dispute between a registered association and any of its members will be decided in the manner directed by the rules of the association.

Disputes between association and members.

126. The Court may, on the application of any registered association or any member of a registered association made in the prescribed manner, order that any member of the association cease to be a member from a date to be specified in the order either absolutely or for a period specified in the order.

Court may order that persons cease to be members of registered association.

127. During the pendency of any proceedings for an offence under this Act against a registered association no resignation or discharge from membership of the association has effect.

No resignation while proceedings pending.

128. (1) In the month of January in every year a registered association must forward to the Registrar a list of the names of all officers (including trustees) of the association and inform the Registrar in writing of the number of members of the association as at the preceding thirty-first day of December.

Registered association to send half yearly list of officers to Registrar.

(2) In the month of July in every year a registered association must inform the Registrar in writing of the alterations which have taken place

during the six months ending on the preceding thirtieth day of June in the officers (including trustees) of the association.

(3) A registered association must keep an up-to-date register of the members of the association which the Registrar may inspect at any reasonable time, and every such association must, whenever requested by the Registrar, furnish the Registrar within 28 days of the request with a list of the names of all its members or of the number of its members as the case may require, and every such list must be verified by the statutory declaration of the president, chairman or secretary of the association.

(4) An association that fails to comply with a provision of this section is guilty of an offence and liable to a penalty, recoverable on the complaint of the Registrar, not exceeding \$100 in respect of every week during which the failure continues.

Registered association to send yearly financial statement to Registrar.

129. (1) The secretary or director of every registered association must, within one month after the completion of the yearly audit of the accounts of the association, deliver to the Registrar—

(a) a duly audited balance sheet of the assets and liabilities of the association made up to the date of the closing of the accounts;

and

(b) a duly audited statement of the receipts and payments, or income and expenditure of the association during the year in respect of which the audit was made,

and the balance sheet and statement must be in such form and contain such information as is prescribed and must be audited by a registered company auditor and accompanied by a certificate under the hand of the auditor as to whether, in the auditor's opinion, the balance sheet and statement exhibit a true and correct statement of the financial position of the association.

Penalty: \$200.

(2) Complaints for offences against this section must be made by the Registrar.

Information not to be divulged.

130. (1) The Registrar, or any officer of the Court or the Commission, must not, except by direction of the President, divulge to any person, other than an officer of a registered association—

(a) the name of any member of that association;

or

(b) the financial position of that association.

Penalty: \$200.

(2) Complaints for offences against this section must be made by an officer of the association.

Service of notices on registered association.

131. Service of any process, notice or document of any kind on a registered association may be effected—

(a) by leaving it at the registered office of the association;

(b) by posting it to that registered office by certified mail addressed to the association;

or

(c) in a manner ordered under section 43.

132. (1) If it appears to the Court on the application of the Registrar, or, subject to subsection (2), on the application of a registered association or a member or former member of such an association, that—

Cancellation of registration of association.

- (a) the rules of a registered association do not comply with the prescribed conditions, or have not been observed;
- (b) unreasonable restrictions or conditions are imposed on admission to, or continuation of, membership of a registered association;
- (ba) the rules of a registered association are, or their administration is, tyrannical or oppressive;
- (c) the proper authorities of a registered association wilfully neglect to levy and collect the subscriptions or levies prescribed by its rules;
- (d) the accounts of a registered association have not been audited in pursuance of its rules, or the accounts of a registered association or of its auditor do not disclose the true financial position of the association;
- (e) a registered association has wilfully neglected to obey any judgment or award of the Commission;
- (f) the number of the members of a registered association at the time of the application would not, having regard to section 115, entitle the association to registration;
- (g) a majority of the members of a registered association has, by ballot taken as prescribed, indicated a desire to have the registration of the association cancelled;

or

- (h) for any other reason the registration of an association ought to be cancelled,

the Court may order the registration of the association to be cancelled, and it thereupon ceases to be registered under this Act.

(2) A registered association may make an application under this section only as regards its own registration and a member or former member of an association may make an application only as regards the association of which he or she is a member or a former member.

(3) The cancellation of a registration in pursuance of this section does not relieve the association, or any member from the obligation to comply with any judgment, award or order of the Court or the Commission made, or from any penalty, liability or obligation incurred or created, prior to the cancellation.

(4) On making an order for cancellation, the Court may direct that the order be suspended for a specified period and that if a requisition stated in the direction is complied with by the association, to the satisfaction of the Court within that period, then the order will be annulled, but that if the requisition is not so complied with, then the order will have effect.

133. (1) The legal existence or registration of an association, the membership of any member or any person claiming to be a member of an association, the validity of the appointment or election of any officer of an association or of any action or decision of such an officer, or the validity of any resolution passed or decision made at any meeting of an association

Certain matters not to be challenged.

or of any committee of the association, cannot be challenged, impugned or in any way affected, nor can the compliance of any rule or rules of an association with the prescribed conditions, or the observance or validity of any such rule or rules or the operation of any award or order made under this Act, be challenged, impugned or in any way affected by reason only that—

- (a) the association is also registered as an organization pursuant to the Commonwealth Act, or is a branch or forms part of an organization so registered;
- (b) members of the association are also members of an organization registered under the Commonwealth Act, and no register of members separate and distinct from the register kept by the organization registered under the Commonwealth Act is kept by the association, or no application for membership or membership fee separate from the application or fee made and paid to the organization registered under that Commonwealth Act has been made or paid to the association by any member;
- (c) the association keeps and maintains no or insufficient books, accounts, records or rules which are separate and distinct from any books, accounts, records or rules kept and maintained by an organization registered under the Commonwealth Act, of which some or all of its members are members;
- (d) officers of the association have been elected or appointed by or are also officers of an organization registered under the Commonwealth Act;

or

- (e) any matter consequential upon or arising out of the matters referred to in paragraphs (a) to (d).

(2) This section operates both retrospectively and prospectively.

134. (1) A rule of a registered association—

- (a) must not be contrary to any provision of this Act or an award, or otherwise be contrary to law;
- (b) must not be such as to prevent or hinder members of the registered association from observing the law or the provisions of an award;

and

- (c) must not impose on applicants for membership, or members of the registered association, conditions, obligations or restrictions which, having regard to the objects of this Act and the purpose of the registration of associations under this Act, are oppressive, unreasonable or unjust.

(2) A member of a registered association may apply to the Court for an order declaring that the whole or a part of a rule of that registered association contravenes subsection (1).

(3) Subject to subsection (4), the Court has jurisdiction to hear and determine an application under subsection (2).

(4) A registered association in respect of which an application is made under this section must be given an opportunity of being heard by the Court.

(5) An order under this section may declare that the whole or a part of a rule contravenes subsection (1) and, where such an order is made, the rule, or that part of the rule, as the case may be, is void as from the date of the order or as from such earlier date as is specified in the order.

(6) The Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period, and on such terms and conditions as it thinks fit, for the purpose of giving the registered association an opportunity to alter its rules.

135. (1) The Court may, on complaint by any member, or any person who has been expelled from membership of a registered association, and after giving any person against whom an order is sought an opportunity of being heard, make an order giving directions for the performance or observance of any of the rules of the registered association by any person who is under an obligation to perform or observe those rules. Power to direct performance of rules.

(2) A person who fails to comply with a direction under subsection (1) is guilty of an offence.

Penalty: \$500.

136. (1) Subject to this section, the Registrar may register as an association a body that is comprised of an amalgamation of two or more registered associations. Amalgamation of registered associations.

(2) A registered association cannot amalgamate with any one or more registered associations except on a resolution passed in accordance with the rules of the association relating to the alteration of its rules.

(3) On application being made under and in accordance with the rules, the Registrar must register as a registered association the body comprised of the amalgamating associations and forthwith issue a certificate of registration as an association under this Part in respect of the body so registered.

(4) On the day of the issue of a certificate of registration under this Part—

(a) the amalgamating associations are amalgamated as one association;

(b) persons who were immediately before that day members of the amalgamating associations cease to be such members and become on and from that day members of the amalgamated association;

and

(c) the registration of each of the amalgamating associations is by force of this section cancelled.

(5) A resolution referred to in subsection (2) must expressly approve the proposed constitution and rules of the body comprising the amalgamating associations.

(6) The ambit of membership for which provision is made in the constitution of the amalgamated association must be such as would permit a person who would have been eligible for membership of any of the amalgamating associations to become a member of the association formed by the amalgamation.

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DIVISION II—INCORPORATION

138. A registered association is a body corporate.

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Status of a registered association.

140. (1) A registered association—

- (a) will have a common seal;
- (b) will have perpetual succession;
- (c) may in its corporate name and capacity sue and be sued; and
- (d) may make contracts in the same manner as an association incorporated pursuant to the Associations Incorporation Act, 1985.

Powers of a registered association.

(2) A registered association may purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property.

(3) Deeds and instruments to be executed by a registered association may be made and executed—

- (a) under the seal of the association and the signatures of the president or chairman and secretary or director of the association;
- or
- (b) in such other manner as the rules of the association prescribe.

Recovery of money owing.

141. All money payable to a registered association by any member under its rules may, insofar as it relates to any period of membership after the date of registration of the association, be recovered in a court of competent jurisdiction by the association in its registered name as a debt due to the association.

Effect of cancellation of registration.

142. The cancellation of the registration of an association dissolves the incorporation of the association on and from the day the cancellation takes effect.

PART X

MISCELLANEOUS

DIVISION I—GENERAL

Purposes of association solely in restraint of trade not unlawful.

143. The purposes of any association, whether registered or not registered, will not, by reason merely that they are in restraint of trade—

- (a) be regarded as unlawful so as to render any member of the association liable to criminal prosecution for conspiracy, or otherwise;
- (b) be unlawful so as to render void or voidable any agreement or trust;

or

(c) render the association unlawful or void.

Limitation upon actions in tort in respect of acts done in contemplation or furtherance of industrial disputes.

143a. (1) Subject to this section, no action in tort lies in respect of an act or omission done or made in contemplation or furtherance of an industrial dispute.

(2) This section does not prevent—

- (a) an action for the recovery of damages in respect of death or personal injury;
- (b) an action for the recovery of damages in respect of damage to property (not being economic damage);
- (c) an action for conversion or detinue;
- or
- (d) an action for defamation.

(3) Where—

- (a) an industrial dispute has been resolved by conciliation or arbitration under this Act;
- or
- (b) the Full Commission determines, on the application of any person, that—
 - (i) all means provided under this Act for resolving an industrial dispute by conciliation or arbitration have failed;
 - and
 - (ii) there is no immediate prospect of the resolution of the industrial dispute,

a person may bring an action in tort notwithstanding the provisions of subsection (1).

(4) The Full Commission must, in hearing and determining an application under subsection (3) (b), act as expeditiously as possible.

144. (1) Where the Registrar is satisfied that a person has, by reason of religious belief, a genuine conscientious objection to being or becoming a member of a registered association or of paying any fees to a registered association, the Registrar must, on payment of the prescribed fee and subject to this section, grant that person a certificate in the prescribed form.

Conscientious
objection.

(2) A certificate under this section remains in force for a period of 12 months or such lesser period as is specified in the certificate, but on the expiration of a certificate under this section the Registrar may, subject to subsection (1), grant a further certificate under this section.

(3) An employer who discriminates against an employee, or an applicant for employment, on the ground that the employee or applicant is the holder of a certificate under this section is guilty of an offence.

Penalty: \$500.

(4) In this section, the prescribed fee means an amount equal to the amount that would be paid by the person to whom the certificate is to be granted to the registered association if the person were a member of the association in respect of which the certificate is to be granted throughout the period during which the certificate is expressed to be in force.

(5) Amounts received by the Registrar by way of fees under this section will be paid into the General Revenue of the State.

145. (1) The Minister may publish an Industrial Gazette in such form and at such intervals as the Minister thinks fit.

Industrial
Gazette.

(2) It is sufficient compliance with a requirement of this Act that any matter or thing be published in the *Gazette* if that matter or thing is published in the Industrial Gazette, and the provisions of this Act relating to publication in, or production of a copy of, a *Gazette* will apply to and in relation to, the publication in, or the production of a copy of, an Industrial Gazette as if that Industrial Gazette were a *Gazette*.

* * * * *

Annual report.

145a. (1) The President must, before the thirty-first day of December in each year, prepare and forward to the Minister a report—

(a) on the work of the Court and the Commission;

and

(b) generally on the operation of this Act,

during the financial year that ended on the thirtieth day of June in that year.

(2) The Minister must, as soon as practicable after the receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

DIVISION IA—INDUSTRIAL AUTHORITIES TO PAY DUE REGARD TO CERTAIN GENERAL PRINCIPLES, ETC.

Interpretation.

146a. (1) In this Division—

* * * * *

“determination” includes decision, award and order:

* * * * *

“industrial authority” means—

(a) the Commission;

(b) a Committee;

(c) the Teachers Salaries Board;

(ca) the Remuneration Tribunal;

(d) the Commissioner for Public Employment;

(e) the Public Service Arbitrator;

(f) the Local Government Officers Classification Board;

or

(g) any person, or body of persons, declared by proclamation under subsection (2) to be an industrial authority for the purposes of this Division:

“remuneration” includes—

(a) wages or salary;

(b) amounts payable by way of piece-work or contract rates in respect of employment or service in an industry;

(c) amounts payable by way of penalty rates or shift premiums;

(d) amounts payable as compensation for lost time;

(e) amounts payable for overtime and special work;

and

(f) allowances:

“working conditions” means conditions of employment or service.

(2) The Governor may, by proclamation, declare any person or body of persons that has, pursuant to an Act or law, power to determine remuneration or working conditions to be an industrial authority for the purposes of this Division.

(3) The Governor may, by proclamation, vary or revoke a declaration under subsection (2).

146b. (1) Notwithstanding any other provisions of this Act, in arriving at a determination affecting remuneration or working conditions the Full Commission must have due regard to, and may apply and give effect to in whole or in part and with or without modification, any principles, guidelines or conditions enunciated or laid down in, or attached to, any relevant decision or declaration of the Commonwealth Commission.

Due regard to be had to certain general principles.

(2) The Full Commission may, on its own initiative, or on the application of the Minister, make a declaration adopting in whole or in part and with or without modification any principles, guidelines or conditions referred to in subsection (1).

(3) Notwithstanding any Act or law, in arriving at a determination affecting remuneration or working conditions, each industrial authority must have due regard to and may apply and give effect to any principles, guidelines or conditions enunciated or laid down in, or attached to, any relevant decision or declaration of the Full Commission authorized in whole or in part by subsection (1) or (2).

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DIVISION III—OFFENCES

153. (1) Subject to this section, where an employee does any work the wages or other payments for which are fixed by an award or industrial agreement, the employer of that employee must pay to that employee, in full in money without any deduction, the wages or other payments so fixed.

Manner in which employee is to be paid.

(2) For the purposes of this section a payment is a payment in money if it is made—

(a) in cash;

or

(b) with the authority in writing of the person employed—

(i) by cheque (duly met on presentation at the bank on which it is drawn), postal order or money order payable to the person;

or

(ii) into a bank account specified in the authority.

(3) From money payable to an employee under subsection (1), an employer may deduct and pay on behalf of the employee—

(a) any amount that the employer is authorized, in writing, by the employee to deduct and pay on behalf of the employee;

and

(b) any amount that the employer is authorized to deduct and pay on behalf of the employee under the provisions of the award or industrial agreement.

(4) Where the employee withdraws in writing—

(a) the authority given pursuant to subsection (2) (b) and no authority is given in writing for payment in any of the other ways mentioned in that paragraph, the employer must pay the employee in cash;

or

(b) the authority given pursuant to subsection (3) with respect to a deduction and payment which was authorized by the employee, the employer must cease to make that deduction and payment.

(5) This section does not apply to or in relation to any deduction that is pursuant to any Act or law, whether of this State or the Commonwealth, authorized or required to be made from the remuneration of any employee.

(6) Notwithstanding anything in subsections (1) to (5), any payment required to be made by the Crown to an employee (whether payable under subsection (1) or pursuant to an award, order or decision of any other tribunal created by or under any other Act) may be made by cheque or by payment into a bank account specified by the employee, but there must be no deduction from the amount payable because the payment is made by cheque.

Remedies and penalties for breach of award or agreement.

154. (1) If any person or association commits a breach or non-observance of an award or industrial agreement or fails to comply with an order of the Court or Commission (which breach, non-observance or failure to comply is not an offence under any other section of this Act), the association or person is guilty of an offence against this Act and liable on conviction to a fine not exceeding \$500.

(2) Any person who, or any association which, contravenes a provision of this Act, whether by commission or omission, is guilty of an offence against this Act and, except where some other penalty or punishment is specifically provided, liable to a fine not exceeding \$500.

(3) When any person or association is convicted of an offence under subsection (1), the court by which the conviction is recorded, if it is of the opinion that the defendant wilfully committed the offence, may, on motion or without motion, and in addition to any penalty imposed, issue an injunction (including a mandatory injunction) to restrain the defendant from committing, or to compel the defendant to cease committing, any further or other breach or non-observance of the award, agreement or order.

(4) A person or association must not disobey an injunction issued under subsection (3).

Penalty: \$2 000.

Appropriation of penalties.

155. Where in any proceedings under this Act a registered association is a complainant, or an official of a registered association is in an official capacity a complainant, any fine imposed in respect of those proceedings will be paid to the registered association.

156. (1) An employer must not dismiss an employee from, or injure an employee in, his or her employment in consequence of—

Employee not to be dismissed from, or injured in, his employment for taking part in industrial proceedings.

- (a) the employee becoming or acting in the capacity of a member of any Committee;
- (b) anything done by the employee as or in the capacity of a member of a Committee, or arising out of or consequent on the employee being or acting in that capacity;
- (c) the employee becoming a party to any proceedings before the Commission or a Committee;
- (d) the employee taking part or being involved in any industrial dispute;

or

- (e) any evidence given or anything said or done or omitted to be said or done by the employee before the Commission or a Committee.

Penalty: \$500.

(2) If, in any proceedings for an offence against this section, it is proved that an employee was dismissed from, or injured in, his or her employment with the defendant within two months after any of the acts or matters mentioned in subsection (1), the burden of proving that the dismissal or injury was not in consequence of that act or matter lies on the defendant.

(3) Proceedings for an offence against this section may be commenced and prosecuted either by the employee alleged to have been dismissed from, or injured in, his or her employment, or by an Inspector.

* * * * *

157. (1) An employer must not dismiss an employee from, or injure an employee in, his or her employment by reason only of the fact that the employee—

Employer not to discriminate against employee on certain grounds.

- (a) is or is not a member or officer of an association;

* * * * *

or

- (c) is entitled to the benefit of an award or industrial agreement.

Penalty: \$500.

(2) Where it is established in proceedings for an offence against subsection (1) that an employer has dismissed an employee from, or injured an employee in, his or her employment, the onus is on the employer to establish—

- (a) that the employer did not act for a reason referred to in subsection (1);

and

- (b) that the employer did not act in a manner that was harsh, unjust or unreasonable.

157a. (1) A court by which an employer has been convicted of an offence against section 156 or 157 may, on the application of the employee against whom the offence was committed—

Right of injured employee to compensation.

(a) award compensation to the applicant for loss resulting from the commission of the offence;

and

(b) if the applicant has been dismissed from employment—order the employer to re-employ the applicant on conditions determined by the court.

(2) An order for the payment of compensation under subsection (1) may be enforced in the same way as an order for the payment of a fine.

(3) This section does not derogate from any right under this Act or any other law of a person against whom an offence has been committed under section 156 or 157.

Employee not to
cease work for
certain reasons.

158. (1) An employee must not cease work in the service of an employer by reason only of the fact that the employer—

(a) is a member or officer of an association;

(b) is not a member of an association;

or

(c) is entitled to the benefit of an award or industrial agreement.

Penalty: \$200.

(2) In any proceedings for an offence under subsection (1), if the employee is proved to have ceased work in the service of an employer while the employer was an officer or member of an association or while the employer was not such a member, or while the employer was entitled to the benefit of an award, the burden of proving that the employee ceased so to work for some reason other than a reason mentioned in that subsection lies on the employee.

Employers to
keep certain
records.

159. (1) Subject to subsection (6), an employer who is bound by an award must, in respect of employees to whom the award applies, keep, or cause to be kept—

(a) a record of the names and addresses of employees employed by the employer and of the date of birth of any such employee who is under 21 years of age;

(b) a record in which are entered as far as practicable—

(i) each employee's times of beginning and ending work on each day (including a note of time allowed for meals and other breaks);

and

(ii) the wages paid to each employee and the date of each payment of wages;

and

(c) a record of annual leave, sick leave and long service leave granted to each employee.

Penalty: \$500.

(2) The record referred to in subsection (1) (b) must, wherever practicable, be verified by signature of the employee—

(a) in the case of an employee in the building industry, in relation to time worked—on each day on which the employee works in the industry;

(b) in any other case—on, or as soon as possible after, each pay day,

and the record, as so verified, constitutes evidence of the correctness of the entries made in it.

(3) Subject to this section, an employer must retain any record kept under this section for three years after the date of the last entry made in it.

Penalty: \$500.

(4) An employer must, at the request of an Inspector—

(a) produce for inspection a record that is to be kept under this section;

and

(b) permit the Inspector to take copies of, or extracts from, the record.

Penalty: \$500.

(5) When a business, or part of a business, is transferred or assigned, the transferor or assignor must transmit to the transferee or assignee all records referred to in this section which relate to employees who become employees of the transferee or assignee in consequence of the transfer or assignment.

Penalty: \$200.

(6) An award may, if the parties agree, direct that, in relation to some or all of the persons bound by the award, a time book need not be kept.

160. A person must not—

(a) wilfully make a false entry in a book, notice, certificate, list or document required by this Act to be kept, served or sent;

(b) wilfully make or sign a false declaration under this Act;

or

(c) make use of any such entry or declaration, knowing it to be false.

Penalty: \$500.

161. (1) Every employer bound by an award must affix and keep affixed in legible characters in some conspicuous place at the employer's principal place of business and at every branch or depot where twenty or more employees are required to work or report, and so as to be easily read by the employees, a copy of the award or awards for the time being in force in respect of the employees.

Penalty for false entries.

Exhibition, etc., of relevant awards.

(2) An employer who is bound by an award must, at the request of an employee—

(a) produce a copy of the award and afford the employee a reasonable opportunity to peruse it;

and

(b) produce a copy of this Act or the Workers Rehabilitation and Compensation Act, 1986, and afford the employee a reasonable opportunity to peruse it.

Penalty: \$200.

No premium to be demanded for apprentices or juniors.

162. (1) A person must not either directly or indirectly, or by any pretence or device—

(a) require or permit any person to pay or give;

or

(b) receive from any person,

any consideration, premium or bonus for engaging or employing a person as an apprentice or junior.

Penalty: \$500.

(2) A person who pays or gives any such consideration, premium or bonus may recover it as a debt with costs in a court of competent jurisdiction from the person who received it.

Certain guarantees illegal.

163. (1) Except with the consent in writing of the Minister, a person must not require or permit any person—

(a) to pay a sum of money;

or

(b) to enter into or make a guarantee or promise to pay a sum of money,

in the event of the behaviour, attendance or obedience of an apprentice or employee not being satisfactory to the employer.

Penalty: \$200.

(2) Any such guarantee or promise, or a guarantee or promise to similar effect, entered into or made without the consent of the Minister is void.

(3) Any sum which is paid in contravention of this section is, unless repaid on demand, recoverable as a debt with costs in a court of competent jurisdiction.

Contempt by witness.

164. (1) A person who has been duly served with a summons to appear and give evidence before the Court, the Commission, the Registrar or any person or body empowered by or under this Act to take evidence, and to whom payment or tender has been made of a reasonable sum for the costs and expenses of attendance, must not, without good and sufficient cause, (proof of which lies on the person) fail duly to appear in answer to the summons.

Penalty: \$500.

(2) A person must not, without good and sufficient cause, proof of which lies on the person—

(a) refuse to be sworn or make affirmation or declaration as a witness;

(b) refuse to answer any question which he or she is required by the Court, the Commission, the Registrar or the person or body referred to in subsection (1) to answer;

or

(c) refuse to produce any book, paper or document which he or she is required by the Court, the Commission, the Registrar or the person or body to produce.

Penalty: \$500.

(3) Proceedings in respect of offences under this section may be heard and determined by the Court.

165. A person who wilfully makes on oath, or by affirmation or declaration in any proceedings of any kind under this Act, any false statement knowing it to be false, is guilty of perjury and may be proceeded against and punished accordingly.

Penalty for wilful false statement.

166. (1) A person must not—

Punishment for contempt of Court or Commission.

(a) wilfully insult the President, a Deputy President, a Commissioner, an Industrial Magistrate or the Registrar, or any other officer of the Court or the Commission, during any sitting or attendance in the Court or the Commission or in going to or returning from the Court or the Commission;

(b) wilfully disturb or interrupt the proceedings of the Court or the Commission;

or

(c) otherwise misbehave in the Court or before the Commission, or be guilty, in any manner, of contempt of the Court or the Commission.

Penalty: \$500.

(2) Proceedings in respect of offences under this section may be heard and determined by the Court, but where the offence was committed in the presence of the Court the Court may forthwith convict the offender and impose a penalty for the offence.

167. (1) Where the Court, the Commission or the Registrar makes an order for the payment of a monetary sum and no other provision is made in this Part or the rules for its recovery, the Registrar may issue a certificate, in the form prescribed by the rules, under the seal of the Court or the Commission, certifying the amount payable and the persons by whom and to whom it is to be paid.

Recovery of penalties and other sums.

(2) The certificate may be filed in a court that has civil jurisdiction up to, or exceeding, the amount of the certificate and it will then be enforceable as a judgment of that court.

168. Where a penalty is imposed on an association under this Act, or an association is ordered under this Act to pay any sum, then, for the recovery of that penalty or sum, process may be issued and executed against the property of the association, or any property in which the association has a beneficial interest in the same manner as if the association were the absolute owner of the property or interest.

Recovery of penalty, etc., imposed on association.

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169. Where a penalty is imposed on an association under this Act, or an association is ordered, under this Act, to pay any sum, and the penalty or sum is not fully paid within one month after the date on which it was imposed or ordered, all persons who were members of the association at the time when the penalty was imposed or the order was made are jointly and severally liable to pay the penalty or sum in the same manner as if the conviction or order had been made against them personally, and all proceedings in pursuance of the conviction or order may be taken against them,

In default of association, penalty may be recovered from members.

or any of them, accordingly, but no person is liable under this section for a larger sum than ten dollars in respect of any one conviction or order.

Defence available to employers.

170. In any proceedings for an offence under this Act against an employer as such it is a defence for a defendant employer to show—

(a) that another person was responsible for the act or omission that constituted the offence;

(b) that the defendant employer had used all due diligence to prevent the commission of the offence;

and

(c) that the offence was committed without the knowledge of the defendant employer and in contravention of his or her orders,

and on such a defence being made out that other person may be charged and convicted of the offence as if the person were the employer.

Person convicted may be ordered to pay arrears of wages, etc.

171. (1) The court by which any person is convicted of any offence against this Act may, on application, in addition to imposing a fine or penalty or other punishment for the offence, order that the defendant pay to any person in respect of whom the offence was committed, and who is or has been in the employment of the defendant, any sum which, to the satisfaction of the court, is shown to be due from the defendant to the person in connection with that employment and which first became payable within three years immediately prior to the commencement of proceedings in respect of that offence, less any deductions made in pursuance of any provision of this Act.

(1a) In proceedings in respect of an application under subsection (1) for an order that the defendant pay to a person an amount alleged to be due in connection with the person's employment by the defendant, a certificate of an Inspector certifying as to any matter relating to such employment (including the amount alleged to be due) will, in the absence of proof to the contrary, be accepted as proof of the matters stated in the certificate.

(2) Any sum ordered to be paid under this section may be recovered by a person referred to in subsection (1), by any other person authorized in writing, or by an Inspector on his or her behalf, in the same manner as a penalty imposed for an offence, and where a fine or penalty is imposed, such a sum will, for the purposes of its recovery, be treated as part of the fine or penalty.

Onus of proof in certain cases.

172. In proceedings for an offence against this Act—

(a) an allegation in the complaint that a provision of an award with regard to the number of apprentices or juniors that may be employed has not been complied with;

(b) an allegation in the complaint that a person named in the complaint was, on a date or over a period stated in the complaint, employed by the defendant or employed in a specified capacity;

or

(c) an allegation in the complaint that specified premises are, or a specified place is, within a specified locality or area,

will, in the absence of proof to the contrary, be accepted as proved.

Proof of awards, etc.

173. (1) A copy of any award, determination, decision, direction, appointment, reference, order or other act of the Court, the Commission or

a Committee purporting to be sealed with the seal of the Court or the Commission and certified to be true under the hand of the Registrar, is admissible in all courts and tribunals and before all persons as evidence of the award, determination, decision, direction, appointment, reference, order or other act, without proof of the seal of the Court or the Commission or of the signature of the Registrar, and it will not be necessary to prove any condition precedent entitling the Court, the Commission or the Committee to make the award, determination, decision, direction, appointment, reference, order or other act, and the production of such a copy of an award is, except in proceedings pursuant to section 96, conclusive evidence of the making and existence of the award and of its contents.

(2) A copy of the *Gazette* purporting to contain a copy of any award, determination, decision, direction, appointment, reference, order or other act of the Court, the Commission or a Committee has, without further proof, the same effect as a copy under subsection (1).

174. (1) Proceedings in respect of offences against this Act must except where otherwise provided, be heard and determined summarily before an Industrial Magistrate. Summary procedure.

(2) Proceedings in respect of an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.

DIVISION IV—RULES

175. (1) The President may make Rules not inconsistent with this Act— Rules and procedure.
- (a) regulating the practice and procedure and forms to be followed and used in, or in connection with, or for the purposes of proceedings before the Court (including the Full Court), the Commission, the Registrar or Committees, and in, or in connection with, or for the purpose of enforcing judgments, convictions, decisions, awards, orders and other acts given, made and done by the Court, the Commission, Committees or the Registrar;
 - (b) as to the publication of the awards, orders, decisions, and other acts of the Court, the Commission or Committees and the effect of publication;
 - (c) for recovering penalties imposed, and enforcing orders for attachment, and orders for the payment of money made under this Act;
 - (d) prescribing the fees and expenses to be paid to witnesses;
 - (e) prescribing what (if any) fees must be paid in respect of any proceedings in the Court or the Commission and the party by whom such fees must be paid;
 - (f) prescribing the powers and duties of the Registrar and other officers in relation to matters within the jurisdiction of the Court, the Commission or Committees;
 - (g) prescribing the manner of execution of an industrial agreement, and the officers or other persons by whom an industrial agreement may be executed, by reference to rules of the association concerned or otherwise;
 - (h) prescribing in what circumstances a document will, for the purposes of Part IX, be taken to be rules of an association, and

any other matters which may be necessary or convenient for giving effect to the objects of Part IX;

and

(i) necessary or convenient for the full and effective exercise of the jurisdiction, duties, powers and functions of the Court, the President, the Commission, a Committee or the Registrar.

(2) Subject to this Act and the Rules, the practice and procedure of the Court, the Commission and the Committees will be as directed by the President.

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DIVISION V—REGULATIONS

Regulations.

176. The Governor may make such regulations as may be necessary or convenient for carrying into effect the provisions and objects of this Act.

SCHEDULE

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The Industrial Magistracy

Part I—Preliminary

1. In this schedule, unless the contrary intention appears—

Interpretation.

“the Chief Justice” means the Chief Justice of the Supreme Court and includes an acting Chief Justice of the Supreme Court:

“industrial magistrate” or “magistrate” means a person holding office as an industrial magistrate under this Act:

“the President” means the President of the Industrial Court of South Australia and includes a Deputy President of that Court while acting in the office of the President:

“stipendiary magistrate” means an industrial magistrate remunerated by salary in respect of magisterial office:

“the Supervising Industrial Magistrate” means the person holding or acting in the office of the Supervising Industrial Magistrate under this schedule:

“working day”, in relation to a stipendiary magistrate, means a day on which the magistrate would ordinarily be required to work (assuming that the magistrate were not on leave).

* * * * *

Part II—Appointment and Administration of Magistracy

3. (1) The Governor may, on the recommendation of the Minister, appoint such magistrates as appear necessary or desirable for the exercise of the jurisdiction and powers conferred under the law of the State on industrial magistrates.

Appointment of magistrates.

(2) A magistrate appointed under this section is, if the instrument of appointment so provides, a stipendiary magistrate.

(3) A magistrate appointed under this section is, if the instrument of appointment so provides, an acting magistrate and, in that case, the appointment is for a term (not exceeding three months) specified in the instrument of appointment.

(4) The Minister must not make a recommendation for the appointment of a magistrate unless the Minister has consulted with the President in relation to the proposed appointment.

(5) A person is not eligible for appointment as a magistrate unless the person is a legal practitioner of at least five years standing.

4. (1) There shall be a Supervising Industrial Magistrate.

The Supervising Industrial Magistrate.

(2) The Supervising Industrial Magistrate will be appointed by the Governor on the nomination of the Minister.

(3) No person except a stipendiary magistrate is eligible for appointment as the Supervising Industrial Magistrate.

(4) An appointment made under this section is, subject to subsection (5), effective for so long as the appointee remains a stipendiary magistrate.

(5) Subsection (4) is subject to the following qualifications:

- (a) a person holding office as Supervising Industrial Magistrate may resign that office without simultaneously resigning from office as a stipendiary magistrate;
- (b) if a person holding office as Supervising Industrial Magistrate is suspended from office as a magistrate, the suspension extends and operates in relation to the office of Supervising Industrial Magistrate.

(6) Notice of a magistrate's intention to resign from the office of Supervising Industrial Magistrate must be given to the Minister at least one month before the resignation is to take effect.

(7) If the office of Supervising Industrial Magistrate is vacant, or the Supervising Industrial Magistrate is absent or unavailable to carry out official duties, a stipendiary magistrate nominated by the President will act in the office of Supervising Industrial Magistrate.

(8) In the exercise of powers and functions under this schedule, the Supervising Industrial Magistrate is subject to direction and control by the President.

Responsibility for administration and control of the magistracy.

5. (1) The President is responsible for the administration of the industrial magistracy.

(2) The President may (without derogation from the President's own powers) delegate to the Supervising Industrial Magistrate any administrative power or function.

(3) A delegation under subsection (2) may be absolute or conditional and is revocable at will.

Responsibility of magistrates to the President.

6. (1) A magistrate (being a stipendiary magistrate or an acting magistrate) is responsible to the President in relation to administrative matters and, in particular, is subject to direction by the President as to the duties to be performed by the magistrate and the times and places at which those duties are to be performed.

(2) A magistrate (other than a stipendiary magistrate or an acting magistrate) is responsible to the President in relation to administrative matters related to the performance of magisterial functions that the magistrate has consented to perform and, in particular, is subject to direction by the President as to the duties to be performed by the magistrate in connection with those functions and the times and places at which those duties are to be performed.

Part III—Tenure of Office

Tenure of office.

7. (1) A person ceases to hold office as a magistrate if that person—

- (a) resigns the office;
- (b) having attained the age of 55 years, retires from the office;
- (c) attains the age of 65 years;
- (d) in the case of an acting magistrate—completes a term of office;
- (e) is removed from office by the Governor.

(2) Notice of a magistrate's intention to resign, or retire from, office must be given to the Minister at least one month before the resignation or retirement is to take effect.

(3) A stipendiary magistrate may, with the consent of the Minister, resign from office as a stipendiary magistrate without ceasing to hold office as a magistrate.

(4) A person who ceases to hold office as a magistrate (except by reason of removal from office) may, with the approval of the President, sit to hear and determine part-heard proceedings and, for the purposes of those proceedings, will be taken to continue as a magistrate.

8. (1) The Governor may, on the advice of the Chief Justice, suspend a magistrate from office.

Suspension of
magistrate from
office.

(2) Where a magistrate is suspended from office under this section, notice of the suspension must be served on the magistrate.

(3) A magistrate cannot be suspended from office unless—

(a) there are, in the opinion of the Chief Justice, reasonable grounds to suspect that the magistrate is guilty of an indictable offence;

or

(b) an investigation or inquiry has been commenced for the purpose of determining whether proper cause exists for removing the magistrate from office.

(4) Except as otherwise determined by the Chief Justice, a stipendiary magistrate is entitled to remuneration in respect of a period of suspension from office.

(5) A suspension imposed under this section must, if the Chief Justice so recommends, be revoked.

(6) The Chief Justice will not give any advice, or make any recommendation or determination under this section, without having first consulted with the President in relation to the proposed advice, determination or recommendation.

9. (1) The Minister may, in the exercise of a personal initiative, and must, at the request of the Chief Justice made after consultation with the President, conduct an investigation in order to determine whether proper cause exists for removing a magistrate from office.

Removal of
magistrate from
office.

(2) When an investigation under subsection (1) is completed, the Minister must cause a written report upon the investigation to be prepared and copies of the report to be forwarded to the Chief Justice and the President.

(3) Where it appears to the Minister or the Chief Justice (whether from the results of an investigation conducted under this section or otherwise) that there should be a judicial inquiry to determine whether proper cause exists for removing a magistrate from office, the Minister must apply to the Supreme Court for such an inquiry.

(4) An inquiry under this section will be conducted by a single Judge of the Supreme Court.

(5) Where—

(a) a magistrate is convicted of an indictable offence;

or

(b) it appears from the findings made upon a judicial inquiry under this section that proper cause exists for removing a magistrate from office,

the Minister must apply to the Full Court for a determination of whether the magistrate should be removed from office.

(6) Where the Full Court determines, on an application under subsection (5), that a magistrate should be removed from office, the Governor may remove the magistrate from office.

(7) In proceedings before the Supreme Court under this section, the Minister and the magistrate to whom the proceedings relate are entitled to appear and be heard.

(8) Proper cause for removing a magistrate from office exists if—

(a) the magistrate is mentally or physically incapable of carrying out official duties satisfactorily;

(b) the magistrate is convicted of an indictable offence;

(c) the magistrate is incompetent, or guilty of neglect of duty;

or

(d) the magistrate is guilty of unlawful or improper conduct in the performance of official duties.

10. Except as provided in this schedule, a magistrate cannot be removed or suspended from office.

Magistrate not to be removed, etc., except as provided by this schedule.

Part IV—Remuneration

11. (1) Subject to this section, the remuneration of—

(a) the Supervising Industrial Magistrate;

and

(b) the stipendiary magistrates,

will be at rates determined by the Remuneration Tribunal, in relation to the respective offices.

(2) A magistrate (not being a stipendiary magistrate) is entitled to such remuneration (if any) as may be determined by the Remuneration Tribunal.

(3) A rate of salary determined under this section cannot be reduced by subsequent determination.

(4) The remuneration payable under this section will be paid out of the General Revenue of the State which is appropriated to the necessary extent.

(5) In this section—

“remuneration” means—

(a) in relation to a stipendiary magistrate—salary, or salary and allowances;

(b) in relation to a magistrate who is not a stipendiary magistrate—fees or fees and allowances.

Part V—Other Conditions of Office

Superannuation.

12. A stipendiary magistrate is an “employee” within the meaning, and for the purposes, of the Superannuation Act, 1974.

Recreation leave.

13. (1) A stipendiary magistrate is entitled to 20 working days recreation leave in respect of each completed year of service.

(2) A proportionate entitlement to recreation leave accrues in respect of each completed month of service.

(3) Subject to this section, recreation leave must be taken at such times as the Supervising Industrial Magistrate may approve or direct.

(4) The taking of recreation leave must not be deferred for more than one year after completion of the year of service in respect of which the entitlement arose unless the Supervising Industrial Magistrate is satisfied that there are special reasons justifying the deferral and approves the deferral.

(5) The Supervising Industrial Magistrate cannot, by the exercise of the power of approval under subsection (4), extend a period within which recreation leave must be taken by more than one year.

(6) A stipendiary magistrate must, unless the Supervising Industrial Magistrate otherwise directs, take recreation leave on every day (not being a Saturday or a public holiday) falling between Christmas Day of each year and New Year's Day of each following year.

(7) Where a stipendiary magistrate fails to take recreation leave to which the magistrate is entitled at or within a time required or approved by or pursuant to this section, the magistrate ceases to be entitled to the leave.

(8) Where a person ceases for any reason to be a stipendiary magistrate before taking recreation leave to which he or she is entitled under this section, the person is entitled, in lieu of that leave, to the monetary equivalent of that leave standing to his or her credit on the date on which the person ceased to be a stipendiary magistrate.

14. (1) A stipendiary magistrate is entitled to 12 working days sick leave in respect of each completed year of service. Sick leave.

(2) A proportionate entitlement to sick leave accrues in respect of each completed month of service.

(3) In the case of illness or other pressing necessity, the Supervising Industrial Magistrate may approve the taking of sick leave by a stipendiary magistrate for a period not exceeding the period of sick leave currently credited to the stipendiary magistrate and, in that event, the period credited will be reduced by the period of that leave.

15. (1) A stipendiary magistrate is entitled to long service leave calculated as follows: Long service leave.

(a) in respect of the first 10 years of service—90 days leave;

(b) in respect of each subsequent year of service up to and including the fifteenth year of service—9 days leave;

(c) in respect of each subsequent year of service thereafter—15 days leave.

(2) A stipendiary magistrate may choose to take long service leave at half pay and, in that event, is entitled to twice the number of days of leave.

(3) Long service leave to which a magistrate is entitled must be taken at such times and in such periods as the Supervising Industrial Magistrate may approve or direct.

(4) Every day falling on or after the commencement of a period of long service leave will be counted as a day of that leave until the period for which the leave was granted is exhausted.

(5) Where a person ceases for any reason to be a stipendiary magistrate before taking accrued long service leave, that person is entitled, in lieu of that leave, to a sum ascertained in accordance with the following formula:

$$P = SD + \left[S \times \frac{AM}{12} \right]$$

Where—

P is the amount payable;

S is an amount arrived at by dividing the annual remuneration of the stipendiary magistrate immediately before the cessation of service by 365;

D is the number of days long service leave on full pay to which the stipendiary magistrate would have been entitled in respect of completed years of service if the long service leave had commenced on the date of cessation of service;

A is the number of additional days long service leave to which the stipendiary magistrate would have been entitled if a further year of service had been completed;

M is—

(a) where the period of the stipendiary magistrate's service is not divisible exactly into complete years—the number of complete months (if any) in the remainder;

(b) where the period of the stipendiary magistrate's service is divisible into complete years with no remainder or a remainder of less than 1 month—zero.

(6) Where a person ceases to be a stipendiary magistrate after completing not less than 7 years service but before becoming entitled to long service leave, that person is entitled to a sum representing *pro rata* long service leave, ascertained in accordance with the following formula:

$$P = 9SD + \left[9S \times \frac{M}{12} \right]$$

Where—

P is the amount payable;

S is an amount arrived at by dividing the annual remuneration of the stipendiary magistrate immediately before the cessation of service by 365;

D is the number of complete years in the period of the stipendiary magistrate's service;

M is—

(a) where the period of the stipendiary magistrate's service is not divisible exactly into complete years—the number of complete months (if any) in the remainder;

(b) where the period of the stipendiary magistrate's service is divisible into complete years with no remainder or a remainder of less than 1 month—zero.

Special leave.

16. (1) The Supervising Industrial Magistrate may grant special leave to a stipendiary magistrate for any reason that, in the opinion of the Supervising Industrial Magistrate, justifies the grant of such leave.

(2) Subject to subsection (3), special leave may be granted with or without remuneration, and for any period that the Supervising Industrial Magistrate thinks fit.

(3) A stipendiary magistrate is not entitled to more than three working days remunerated special leave in any financial year unless the Governor has consented to the grant of the leave.

(4) Special leave without remuneration counts as service for the purposes of this schedule only to such extent (if any) and for such purposes (if any) as may be determined by the Governor.

17. (1) Where a person is appointed as a stipendiary magistrate under this schedule, the Governor may determine—

Determination of rights on transition from other employment.

(a) that rights to recreation leave, sick leave and long service leave that had accrued to the appointee in previous employment should be treated as if they had accrued under this schedule;

and

(b) that service by the appointee in previous employment should be treated in a manner and to an extent determined by the Governor as service under this schedule for the purpose of determining the rights of the appointee to recreation leave, sick leave or long service leave, or in respect of superannuation.

(2) A determination under subsection (1) has effect in accordance with its terms.

(3) A determination under subsection (1) may be made upon such conditions as the Governor thinks fit.

18. (1) Where a stipendiary magistrate dies without having taken all accrued recreation leave and long service leave, the monetary equivalent of such leave standing to the stipendiary magistrate's credit on the date of death is payable as if it were a debt that had become payable to the magistrate immediately before death.

Payment of monetary equivalent of leave to personal representative, etc.

(2) Where a stipendiary magistrate dies before becoming entitled to long service leave, but after completing seven or more years service, the monetary sum representing *pro rata* long service leave to which the magistrate would have been entitled if the magistrate had resigned on the date of death is payable as if it were a debt that had become payable to the magistrate immediately before death.

(3) The Minister has a discretion to direct that the whole or a part of an amount payable under subsection (1) or (2) be paid to a dependant of the deceased magistrate or divided between dependants of the deceased magistrate.

(4) The Minister may refuse to give a direction under subsection (3) unless such indemnities or undertakings as the Minister thinks necessary are given.

(5) No action lies against the Crown, the Minister or any other person representing the Crown in respect of a payment made pursuant to subsection (3).

(6) Nothing in this section relieves a person receiving money paid pursuant to subsection (3) from any liability to account for or apply such money in accordance with law.

(7) In this section—

“dependant” means a person who is wholly or in part dependent upon the earnings of the stipendiary magistrate immediately before the magistrate’s death.

Industrial awards,
etc., not to affect
stipendiary
magistrates.

19. No award or industrial agreement affecting the remuneration or conditions of service of stipendiary magistrates can be made under this Act.

APPENDIX

Legislative History

The Industrial Conciliation and Arbitration Act, 1972, repealed the following Acts:

- The Trade Union Act, 1876
- So much of the second schedule to the Statute Law Revision Act, 1935, as relates to an amendment to The Trade Union Act, 1876
- The Masters and Servants Act, 1878
- So much of the second schedule to the Statute Law Revision Act, 1935, as relates to an amendment to The Masters and Servants Act, 1878
- Part XXV of the schedule to the Age of Majority (Reduction) Act, 1971.

The Industrial Conciliation and Arbitration Act Amendment Act, 1983, repealed the Industrial Commission Jurisdiction (Temporary Provisions) Act, 1975.

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 51.

- Section 2: repealed by 55, 1987, s. 3(1) (Sched.)
- Section 3: amended by 60, 1981, s. 3; 33, 1983, s. 2; substituted by 19, 1984, s. 3
- Section 4: amended by 108, 1983, s. 3(a); repealed by 55, 1987, s. 3(1) (Sched.)
- Section 5: repealed by 55, 1987, s. 3(1) (Sched.)
- Section 6(1): definition of "allowances" substituted by 55, 1987, s. 3(1) (Sched.)
definition of "apprentice" substituted by 55, 1987, s. 3(1) (Sched.)
definition of "award" amended by 55, 1987, s. 3(1) (Sched.)
definition of "club" repealed by 55, 1987, s. 3(1) (Sched.)
definition of "the Commonwealth Act" inserted by 55, 1987, s. 3(1) (Sched.)
definition of "the Commonwealth Commission" inserted by 55, 1987, s. 3(1) (Sched.)
definition of "council" amended by 55, 1987, s. 3(1) (Sched.)
definition of "decision" inserted by 55, 1987, s. 3(1) (Sched.)
definition of "employee" amended by 55, 1987, s. 3(1) (Sched.)
definition of "employer" amended by 55, 1987, s. 3(1) (Sched.);
paragraph (b) repealed by 55, 1987, s. 3(1) (Sched.)
definition of "the Full Court" substituted by 55, 1987, s. 3(1) (Sched.)
definition of "improver" repealed by 55, 1987, s. 3(1) (Sched.)
definition of "industrial agreement" substituted by 55, 1987, s. 3(1) (Sched.)
definition of "industrial dispute" amended by 55, 1987, s. 3(1) (Sched.)
definition of "industrial matter" amended by 52, 1985, s. 3; 55, 1987, s. 3(1) (Sched.)
definition of "juvenile" repealed and definition of "junior" inserted in its place by 55, 1987, s. 3(1) (Sched.)
definition of "legal practitioner" amended by 55, 1987, s. 3(1) (Sched.)
definition of "lock-out" repealed by 19, 1984, s. 4(a)
definition of "metropolitan area" substituted by 55, 1987, s. 3(1) (Sched.)
definition of "prescribed employer" substituted by 55, 1987, s. 3(1) (Sched.)
definition of "public employee" inserted by 55, 1987, s. 3(1) (Sched.)
definition of "Public Service Board" repealed by 55, 1987, s. 3(1) (Sched.)
definition of "public service employee" repealed by 55, 1987, s. 3(1) (Sched.)
definition of "railway employee" repealed by 55, 1987, s. 3(1) (Sched.)
definition of "registered association" amended by 55, 1987, s. 3(1) (Sched.)
definition of "Rules" amended by 55, 1987, s. 3(1) (Sched.)
definition of "strike" repealed by 19, 1984, s. 4(b)
definition of "the Conciliation and Arbitration Act 1904-1972 of the Commonwealth" repealed by 55, 1987, s. 3(1) (Sched.)
- Section 6(1a) and (1b): inserted by 55, 1987, s. 3(1) (Sched.)
- Section 6(2): amended by 55, 1987, s. 3(1) (Sched.)
- Section 6(3): inserted by 19, 1984, s. 4(c); amended by 55, 1987, s. 3(1) (Sched.)
- Section 7: repealed by 55, 1987, s. 3(1) (Sched.)
- Section 8(1): substituted by 55, 1987, s. 3(1) (Sched.)
- Section 9(1): substituted by 19, 1984, s. 5(a)
- Section 9(2): substituted by 19, 1984, s. 5(a); amended by 55, 1987, s. 3(1) (Sched.)
- Section 9(2a): inserted by 19, 1984, s. 5(a); amended by 55, 1987, s. 3(1) (Sched.)
- Section 9(2b): inserted by 70, 1985, s. 15
- Section 9(3): amended by 55, 1987, s. 3(1) (Sched.)
- Section 9(4): substituted by 19, 1984, s. 5(b)
- Section 10(1): substituted by 95, 1983, s. 2(a); amended by 55, 1987, s. 3(1) (Sched.)
- Section 10(1a): inserted by 95, 1983, s. 2(a); amended by 55, 1987, s. 3(1) (Sched.)
- Section 10(1b): inserted by 95, 1983, s. 2(a)
- Section 10(2): amended by 55, 1987, s. 3(1) (Sched.)
- Section 10(3): amended by 95, 1983, s. 2(b), (c); repealed by 19, 1984, s. 6
- Section 11: substituted by 92, 1982, s. 4(1)
- Section 11(1): amended by 59, 1985, s. 9(a)
- Section 12(1): amended by 19, 1984, s. 7(a), (b); 55, 1987, s. 3(1) (Sched.)
- Section 12(1a): inserted by 19, 1984, s. 7(c); amended by 55, 1987, s. 3(1) (Sched.)
- Section 12(2): amended by 19, 1984, s. 7(d); 55, 1987, s. 3(1) (Sched.)
- Section 12(3) and (4): amended by 55, 1987, s. 3(1) (Sched.)

Section 13:	substituted by 108, 1983, s. 3(b)
Section 14(3):	inserted by 108, 1983, s. 3(c)
Section 15(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 15(1)(e):	repealed by 19, 1984, s. 8(a)
Section 15(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 15(3) and (4):	inserted by 19, 1984, s. 8(b); substituted by 55, 1987, s. 3(1) (Sched.)
Section 15(5) - (7):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 16:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 17(1):	amended by 19, 1984, s. 9(a), (b)
Section 17(1)(c):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 17(1a):	inserted by 19, 1984, s. 9(c)
Section 17(1b):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 17(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 17(3):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 17(4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 18:	amended by 19, 1984, s. 10; repealed by 55, 1987, s. 3(1) (Sched.)
Section 19(1) - (3) and (5):	amended by 55, 1987, s. 3(1) (Sched.)
Section 19(7):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 19(8) and (9):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 20(1):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 21:	repealed by 55, 1987, s. 3(1) (Sched.)
Section 22(3):	inserted by 19, 1984, s. 11; substituted by 55, 1987, s. 3(1) (Sched.)
Section 22(4) and (5):	inserted by 19, 1984, s. 11; amended by 55, 1987, s. 3(1) (Sched.)
Section 22(6):	inserted by 19, 1984, s. 11
Section 22(7):	inserted by 19, 1984, s. 11; amended by 55, 1987, s. 3(1) (Sched.)
Section 23(3):	substituted by 19, 1984, s. 12(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 23(5):	substituted by 19, 1984, s. 12(b)
Section 23(7):	substituted by 59, 1985, s. 9(b); amended by 55, 1987, s. 3(1) (Sched.)
Section 23(8) - (10):	amended by 55, 1987, s. 3(1) (Sched.)
Section 24(2):	amended by 19, 1984, s. 13(a)
Section 24(3a):	inserted by 19, 1984, s. 13(b)
Section 24(4):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 25(3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 25a:	inserted by 19, 1984, s. 14
Section 25a(4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 25b:	inserted by 19, 1984, s. 14
Section 26(1):	substituted by 19, 1984, s. 15(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 26(1a):	inserted by 19, 1984, s. 15(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 26(2):	amended by 19, 1984, s. 15(b); 55, 1987, s. 3(1) (Sched.)
Section 27(1):	substituted by 19, 1984, s. 16(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 27(1a):	inserted by 19, 1984, s. 16(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 27(1b):	inserted by 19, 1984, s. 16(a)
Section 27(2):	substituted by 19, 1984, s. 16(a)
Section 27(3):	amended by 19, 1984, s. 16(b); 55, 1987, s. 3(1) (Sched.)
Section 27(4):	amended by 19, 1984, s. 16(b)
Section 27(5):	amended by 19, 1984, s. 16(b); 55, 1987, s. 3(1) (Sched.)
Section 27(6):	amended by 19, 1984, ss. 16(b), 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 27(7) and (8):	amended by 55, 1987, s. 3(1) (Sched.)
Section 27(9):	amended by 19, 1984, s. 16(b)-(d); 55, 1987, s. 3(1) (Sched.)
Section 27(9a):	inserted by 19, 1984, s. 16(e)
Section 28(1):	amended by 19, 1984, s. 17(a), (b)
Section 28(1)(c):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 28(1a) and (1b):	inserted by 19, 1984, s. 17(c)
Section 28(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 28(3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 28(4):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 28(5):	amended by 55, 1987, s. 3(1) (Sched.)
Section 29(1):	amended by 19, 1984, s. 18(a)-(c)
Section 29(1)(d):	repealed by 19, 1984, s. 18(a)
Section 29(1)(g):	repealed by 19, 1984, s. 18(c)
Section 29(2) and (3):	substituted by 19, 1984, s. 18(d)
Section 29(4):	inserted by 19, 1984, s. 18(d); amended by 55, 1987, s. 3(1) (Sched.)
Section 29(5):	inserted by 19, 1984, s. 18(d)
Section 29(6):	inserted by 19, 1984, s. 18(d); amended by 55, 1987, s. 3(1) (Sched.)
Section 29(7):	inserted by 19, 1984, s. 18(d)
Section 29(8):	inserted by 19, 1984, s. 18(d); amended by 55, 1987, s. 3(1) (Sched.)
Section 29a:	inserted by 19, 1984, s. 19
Section 30(1):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 30(3):	inserted by 19, 1984, s. 20
Section 31:	inserted by 19, 1984, s. 21
Section 31(1):	amended by 52, 1985, s. 4(a)
Section 31(2):	amended by 52, 1985, s. 4(b)
Section 31(3):	substituted by 52, 1985, s. 4(c)
Section 31(4):	substituted by 52, 1985, s. 4(d)
Section 32(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 33(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 34(3):	inserted by 19, 1984, s. 22
Section 35:	repealed by 55, 1987, s. 3(1) (Sched.)
Section 36(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 36(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 36(3):	repealed by 55, 1987, s. 3(1) (Sched.)

Section 40(2):	amended by 19, 1984, s. 23(a), (b)
Section 40(3):	inserted by 19, 1984, s. 23(c)
Section 40(4):	inserted by 19, 1984, s. 23(c); amended by 55, 1987, s. 3(1) (Sched.)
Section 40a:	inserted by 19, 1984, s. 24
Section 40a(1) and (2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 40b:	inserted by 19, 1984, s. 24
Section 40b(1) - (4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 40b(6):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 40c:	inserted by 19, 1984, s. 24
Section 40c(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 41(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 43:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 44(1):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 45(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 45(3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 46:	redesignated as s. 46(1) by 55, 1987, s. 3(1) (Sched.)
Section 46(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 46(2) and (3):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 48(4):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 49(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 49(2a):	inserted by 19, 1984, s. 25; amended by 55, 1987, s. 3(1) (Sched.)
Section 49(3):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 50(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 50(1a):	inserted by 19, 1984, s. 26(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 50(2):	amended by 19, 1984, s. 26(b)
Section 50(2a):	inserted by 19, 1984, s. 26(c)
Section 50(2b):	inserted by 19, 1984, s. 26(c); amended by 55, 1987, s. 3(1) (Sched.)
Section 50(3):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 50(5):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 51:	amended by 55, 1987, s. 3(1) (Sched.)
Section 52(1):	amended by 19, 1984, s. 63 (Sched.); substituted by 55, 1987, s. 3(1) (Sched.)
Section 52(1a):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 52(2):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Heading preceding section 53:	amended by 55, 1987, s. 3(1) (Sched.)
Section 53:	definition of "industry" amended by 55, 1987, s. 3(1) (Sched.)
Section 54(1):	amended by 19, 1984, s. 27(a), (b); substituted by 55, 1987, s. 3(1) (Sched.)
Section 54(2):	amended by 19, 1984, s. 27(c); 55, 1987, s. 3(1) (Sched.)
Section 54(3):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 55:	amended by 19, 1984, s. 28; substituted by 55, 1987, s. 3(1) (Sched.)
Section 56:	substituted by 19, 1984, s. 29
Section 57:	repealed by 19, 1984, s. 29
Section 58(1):	amended by 19, 1984, s. 30; 52, 1985, s. 5; 55, 1987, s. 3(1) (Sched.)
Section 59:	substituted by 19, 1984, s. 31; 52, 1985, s. 6
Section 59(1) - (4):	amended by 55, 1987, s. 3(1) (Sched.)
Sections 60 - 68:	repealed by 19, 1984, s. 31
Section 69(1):	amended by 19, 1984, s. 32(a)-(c)
Section 69(1)(c):	repealed by 19, 1984, s. 32(a)
Section 69(1)(g):	repealed by 19, 1984, s. 32(c)
Section 69(2):	inserted by 19, 1984, s. 32(d); amended by 55, 1987, s. 3(1) (Sched.)
Section 69(3) and (4):	inserted by 19, 1984, s. 32(d)
Section 69(5):	inserted by 19, 1984, s. 32(d); amended by 55, 1987, s. 3(1) (Sched.)
Section 69(6):	inserted by 19, 1984, s. 32(d)
Section 69(7):	inserted by 19, 1984, s. 32(d); amended by 55, 1987, s. 3(1) (Sched.)
Section 69a:	inserted by 19, 1984, s. 33; amended by 55, 1987, s. 3(1) (Sched.)
Section 70(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 70(2) and (3):	amended by 19, 1984, s. 63 (Sched.)
Section 71:	amended by 55, 1987, s. 3(1) (Sched.)
Section 72(2):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Heading preceding section 73:	amended by 55, 1987, s. 3(1) (Sched.)
Section 73(1) and (2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 73(3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 73(4):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 74(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 74(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 74(3) and (4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 75:	redesignated as s. 75(1) by 55, 1987, s. 3(1) (Sched.)
Section 75(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 75(2):	inserted by 55, 1987, s. 3(1) (Sched.)
Heading preceding section 76:	amended by 55, 1987, s. 3(1) (Sched.)
Section 76(1):	repealed by 19, 1984, s. 34(a)
Section 76(2):	amended by 19, 1984, s. 34(b), (c); 55, 1987, s. 3(1) (Sched.)
Section 76(2):	redesignated as s. 76 in pursuance of the Acts Republication Act, 1967
Section 77:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 79(3):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 80(1):	substituted by 85, 1981, s. 3(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 80(1a):	inserted by 85, 1981, s. 3(a)
Section 80(4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 80(4a) and (4b):	inserted by 10, 1986, s. 2

Section 80(5a):	inserted by 85, 1981, s. 3(b)
Section 81(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 81(1a):	inserted by 19, 1984, s. 35(a); repealed by 55, 1987, s. 3(1) (Sched.)
Section 81(2):	amended by 19, 1984, s. 35(b); substituted by 55, 1987, s. 3(1) (Sched.)
Section 81(3) and (4):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 81(5):	amended by 19, 1984, s. 35(c); substituted by 55, 1987, s. 3(1) (Sched.)
Section 81(6):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 82:	redesignated as s. 82(1) by 55, 1987, s. 3(1) (Sched.)
Section 82(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 82(2) and (3):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 83(1) - (4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 84:	amended by 55, 1987, s. 3(1) (Sched.)
Section 85:	repealed by 19, 1984, s. 36
Section 86(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 88(1):	amended by 19, 1984, s. 37(a)
Section 88(1a):	inserted by 19, 1984, s. 37(b)
Section 88(2):	amended by 19, 1984, s. 37(c)
Section 88(4) and (5):	substituted by 19, 1984, s. 37(d)
Section 88(6):	amended by 55, 1987, s. 3(1) (Sched.)
Section 88(8):	amended by 19, 1984, s. 63 (Sched.)
Section 89(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 89(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 89(3):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 90(1):	amended by 19, 1984, s. 38(a); 55, 1987, s. 3(1) (Sched.)
Section 90(1a):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 90(2):	substituted by 19, 1984, s. 38(b); amended by 55, 1987, s. 3(1) (Sched.)
Section 91:	repealed by 55, 1987, s. 3(1) (Sched.)
Section 91a:	inserted by 19, 1984, s. 39
Section 92(1) - (3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 93(1):	amended by 19, 1984, s. 40(a)
Section 93(2):	repealed by 19, 1984, s. 40(b)
Section 93(3):	amended by 19, 1984, s. 40(c)
Section 94(2):	amended by 19, 1984, s. 41
Section 96(1):	amended by 52, 1985, s. 7; substituted by 55, 1987, s. 3(1) (Sched.)
Section 96(3):	inserted by 19, 1984, s. 42; amended by 55, 1987, s. 3(1) (Sched.)
Section 97:	amended by 52, 1985, s. 8; 55, 1987, s. 3(1) (Sched.)
Section 98(1):	amended by 52, 1985, s. 9(a); substituted by 55, 1987, s. 3(1) (Sched.)
Section 98(1a):	inserted by 52, 1985, s. 9(b)
Section 98(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 98(3):	amended by 52, 1985, s. 9(c); 55, 1987, s. 3(1) (Sched.)
Section 98(3a):	inserted by 52, 1985, s. 9(d)
Section 98(4):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 98(5):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 99(1):	amended by 52, 1985, s. 10(a)
Section 99(1a):	inserted by 52, 1985, s. 10(b); amended by 55, 1987, s. 3(1) (Sched.)
Section 101(1):	amended by 60, 1981, s. 4; 55, 1987, s. 3(1) (Sched.)
Section 101(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 101(2a):	inserted by 19, 1984, s. 43(a)
Section 101(6):	inserted by 19, 1984, s. 43(b)
Section 104:	amended by 55, 1987, s. 3(1) (Sched.)
Section 105(3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 105a:	inserted by 19, 1984, s. 44
Section 106:	amended by 55, 1987, s. 3(1) (Sched.)
Section 108(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 108a:	inserted by 19, 1984, s. 45
Section 108a(4) and (7):	amended by 55, 1987, s. 3(1) (Sched.)
Section 109:	amended by 55, 1987, s. 3(1) (Sched.)
Section 110(2):	substituted by 19, 1984, s. 46
Section 110(3):	inserted by 19, 1984, s. 46
Section 111:	amended by 52, 1985, s. 11
Section 112(1) and (2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 113:	repealed by 55, 1987, s. 3(1) (Sched.)
Section 114(1):	definition of "employee" amended by 55, 1987, s. 3(1) (Sched.)
Section 114(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 114(3) and (4):	inserted by 73, 1978, s. 2
Section 115(2):	substituted by 19, 1984, s. 47
Section 115(2a) and (2b):	inserted by 19, 1984, s. 47
Section 116(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 116(1a):	inserted by 19, 1984, s. 48(a)
Section 116(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 116(3):	substituted by 19, 1984, s. 48(b)
Section 116(4) and (5):	amended by 55, 1987, s. 3(1) (Sched.)
Section 117(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 118:	amended by 55, 1987, s. 3(1) (Sched.)
Section 119(1) and (5):	amended by 55, 1987, s. 3(1) (Sched.)
Section 121:	substituted by 19, 1984, s. 49
Section 121(3) - (6):	amended by 55, 1987, s. 3(1) (Sched.)
Section 122:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 124(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 128(3):	amended by 55, 1987, s. 3(1) (Sched.)

Section 128(4):	amended by 19, 1984, s. 63 (Sched.); substituted by 55, 1987, s. 3(1) (Sched.)
Section 129(1):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 129(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 130(1):	amended by 19, 1984, s. 63 (Sched.)
Section 130(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 131:	amended by 55, 1987, s. 3(1) (Sched.)
Section 132(1) - (4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 133(1):	amended by 52, 1985, s. 12(a); 55, 1987, s. 3(1) (Sched.)
Section 133(2):	amended by 10, 1979, s. 3; 33, 1983, s. 3; substituted by 52, 1985, s. 12(b)
Section 135(2):	amended by 19, 1984, s. 63 (Sched.)
Section 136(5):	amended by 55, 1987, s. 3(1) (Sched.)
Section 136(6):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 137:	repealed by 55, 1987, s. 3(1) (Sched.)
Section 138:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 139:	repealed by 55, 1987, s. 3(1) (Sched.)
Section 140(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 143a:	inserted by 19, 1984, s. 50
Section 144(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 144(3):	substituted by 19, 1984, s. 51(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 144(4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 144(5):	substituted by 19, 1984, s. 51(b)
Section 145(1) and (2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 145(3):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 145a:	inserted by 19, 1984, s. 52
Section 145a(2):	amended by 55, 1987, s. 3(1) (Sched.)
	Division IA comprising sections 146a - 146c and heading inserted by 60, 1981, s. 5
Heading preceding section 146a:	inserted by 60, 1981, s. 5; amended by 33, 1983, s. 4
Section 146a:	inserted by 60, 1981, s. 5
Section 146a(1):	definition of "the Commonwealth Commission" repealed by 55, 1987, s. 3(1) (Sched.)
	definition of "determination affecting remuneration or working conditions" repealed by 33, 1983, s. 5(a)
	definition of "industrial authority" amended by 33, 1983, s. 5(b),(c); 19, 1984, s. 53; 59, 1985, s. 9(c); 55, 1987, s. 3(1) (Sched.)
Section 146a(2) and (3):	inserted by 33, 1983, s. 5(d)
Section 146b:	inserted by 60, 1981, s. 5; substituted by 33, 1983, s. 6
Section 146b(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 146b(4):	repealed by 19, 1984, s. 54
Section 146c:	inserted by 60, 1981, s. 5; amended by 33, 1983, s. 7; repealed by 55, 1987, s. 3(1) (Sched.)
	Division II comprising ss. 146 - 152 and heading repealed by 19, 1984, s. 55
Section 153(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 153(3):	substituted by 19, 1984, s. 56; amended by 55, 1987, s. 3(1) (Sched.)
Section 153(6):	amended by 55, 1987, s. 3(1) (Sched.)
Section 154(1) and (2):	amended by 19, 1984, s. 63 (Sched.)
Section 154(3):	amended by 55, 1987, s. 3(1) (Sched.)
Section 154(4):	amended by 19, 1984, s. 63 (Sched.)
Section 155:	amended by 55, 1987, s. 3(1) (Sched.)
Section 156(1):	amended by 19, 1984, ss. 57(a), 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 156(2) and (3):	amended by 19, 1984, s. 57(b)-(d); 55, 1987, s. 3(1) (Sched.)
Section 156(4):	repealed by 19, 1984, s. 57(e)
Section 157:	substituted by 19, 1984, s. 58
Section 157(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 157(1)(b):	repealed by 125, 1986, s. 71(1) (3rd Sched.)
Section 157(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 157a:	inserted by 19, 1984, s. 59
Section 157a(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 158(1):	amended by 19, 1984, s. 63 (Sched.)
Section 158(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 159:	amended by 19, 1984, ss. 60, 63 (Sched.); substituted by 55, 1987, s. 3(1) (Sched.)
Section 160:	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 161:	redesignated as s. 161(1) by 19, 1984, s. 61
Section 161(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 161(2):	inserted by 19, 1984, s. 61; substituted by 55, 1987, s. 3(1) (Sched.)
Section 162(1):	amended by 19, 1984, s. 63 (Sched.)
Section 163(1):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 163(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 164(1) and (2):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 166(1):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.)
Section 166(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 167:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 168(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 168(2):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 169:	amended by 55, 1987, s. 3(1) (Sched.)
Section 170:	amended by 55, 1987, s. 3(1) (Sched.)

Section 171(1):	amended by 33, 1983, s. 8(a)
Section 171(1a):	inserted by 33, 1983, s. 8(b)
Section 171(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 172:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 174:	amended by 19, 1984, s. 62; redesignated as s. 174(1) by 55, 1987, s. 3(1) (Sched.)
Section 174(2):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 175(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 175(3):	repealed by 55, 1987, s. 3(1) (Sched.)
Heading to the first schedule:	substituted by 108, 1983, s. 3(d); 55, 1987, s. 3(1) (Sched.)
First schedule:	repealed by 55, 1987, s. 3(1) (Sched.)
Heading to the second schedule:	repealed by 55, 1987, s. 3(1) (Sched.)
Second schedule:	inserted by 108, 1983, s. 3(e)
Section 1:	definition of "magistrate" repealed and definition of "industrial magistrate" inserted in its place by 55, 1987, s. 3(1) (Sched.) definition of "stipendiary magistrate" amended by 55, 1987, s. 3(1) (Sched.) definition of "working day" amended by 55, 1987, s. 3(1) (Sched.)
Section 2:	amended by 37, 1984, s. 2; repealed by 55, 1987, s. 3(1) (Sched.)
Section 3(1) - (5):	amended by 55, 1987, s. 3(1) (Sched.)
Section 4(3):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 4(5) - (8):	amended by 55, 1987, s. 3(1) (Sched.)
Section 5(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 6(1) and (2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 7(1):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 7(2) - (4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 8(2), (3) and (6):	amended by 55, 1987, s. 3(1) (Sched.)
Section 9(1), (6) and (8):	amended by 55, 1987, s. 3(1) (Sched.)
Section 11(1) and (2):	amended by 59, 1985, s. 9(d)
Section 13(5), (7) and (8):	amended by 55, 1987, s. 3(1) (Sched.)
Section 15(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 15(5) and (6):	amended by 55, 1987, s. 3(1) (Sched.)
Section 18(1) - (4) and (7):	amended by 55, 1987, s. 3(1) (Sched.)
Section 19:	amended by 55, 1987, s. 3(1) (Sched.)