

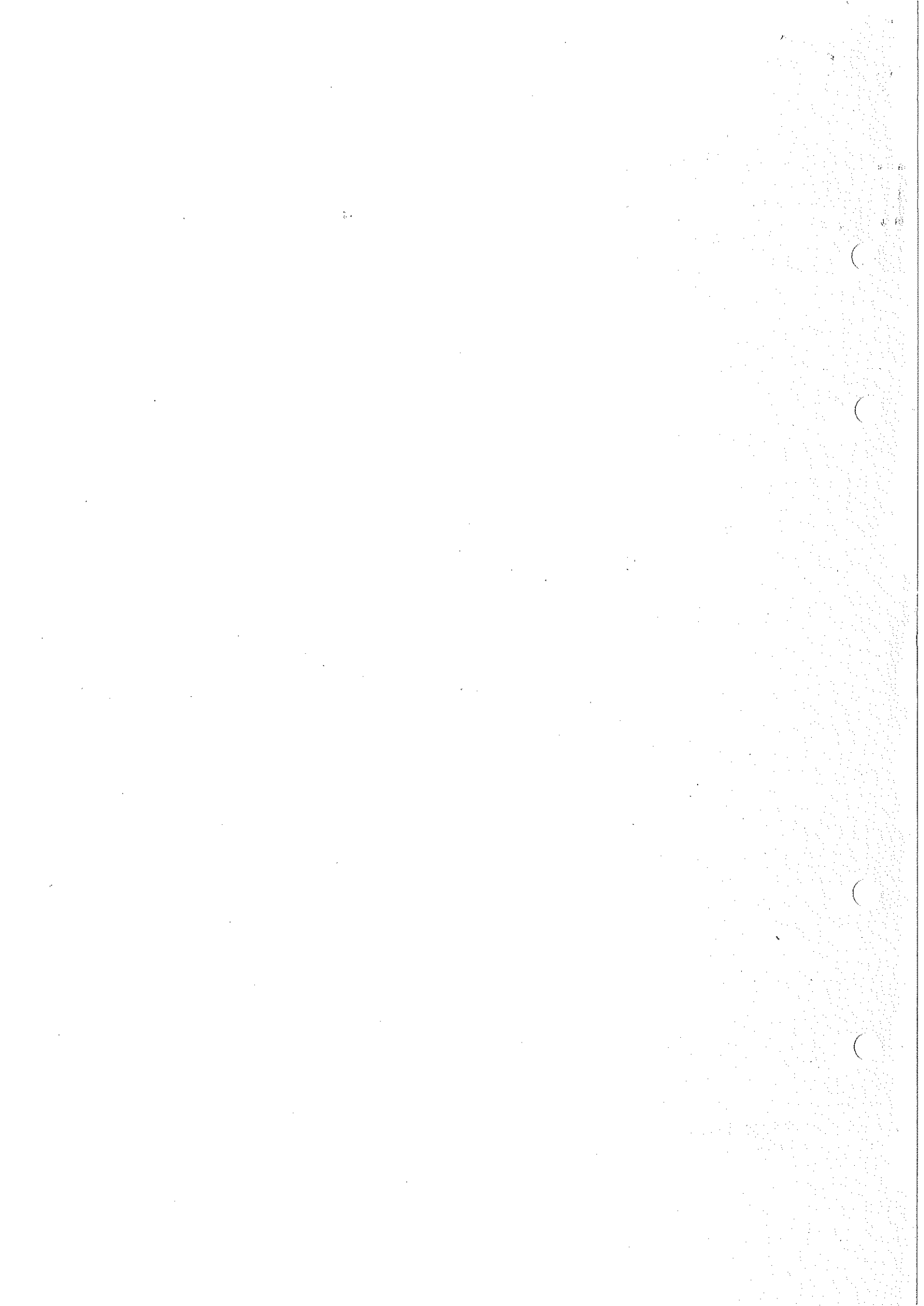
# **INDUSTRIAL RELATIONS ACT (S.A.) 1972**

Reprint No. 1—15.8.91

Reprint No. 2—1.7.92

Reprint No. 3—1.1.93

[Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force]



(Reprint No. 3)

**SOUTH AUSTRALIA**

**INDUSTRIAL RELATIONS ACT (S.A.) 1972**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 January 1993.*

*It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 30 November 1987.*

**SUMMARY OF PROVISIONS**

PART I

PRELIMINARY

- Section  
1. Short title  
3. Objects of Act  
6. Interpretation  
7. Outworkers

PART II

THE COURT

DIVISION I—CONSTITUTION OF THE COURT

8. Continuation of the Court  
9. President and Deputy President  
10. Absence from the office of President  
11. Remuneration of the President and Deputy Presidents of the Court  
12. Tenure of office  
13. Industrial magistrates  
14. Constitution of the Court

DIVISION II—JURISDICTION AND POWERS OF THE COURT

15. Jurisdiction of the Court  
16. Representation  
17. Powers of the Court  
19. Enforcement of orders for payment

PART III

THE COMMISSION

DIVISION I—CONSTITUTION OF THE COMMISSION

20. Continuation of the Commission  
22. Presidential members  
23. Commissioners  
23a. Concurrent appointments  
24. Composition of the Commission  
24a. Disclosure of interest by Commission members

DIVISION II—JURISDICTION AND POWERS OF THE COMMISSION

25. Jurisdiction of the Commission  
25a. Awards of general application  
25b. Advisory jurisdiction of the Commission  
26. Mediation  
27. Compulsory conference  
28. General powers of the Commission  
29. Further powers of the Commission  
29a. Power to grant preference to members of registered associations  
30. Applications to the Commission  
31. Unfair dismissal  
32. Form, operation and continuance of award  
33. Exercise of powers by the Commission  
34. Representation of parties

DIVISION III—ALTERATION OF AWARDS

36. Alteration of awards

DIVISION IV—RESOLUTION OF CONTRACT DISPUTES

37. Preliminary  
38. Conciliation conferences  
39. Review of harsh, unjust or unconscionable contracts

PART IV

PROCEEDINGS BEFORE THE COURT OR COMMISSION, ETC.

DIVISION I—PROCEEDINGS

40. President may make arrangements  
40a. Co-operation between industrial authorities  
40b. Reference of industrial matters to Commonwealth Commission  
40c. Commission may exercise powers vested by certain other Acts  
41. Proceedings may be in public or private  
42. Power to issue orders to take evidence

**Industrial Relations Act (S.A.) 1972**

iii

- 43. Special mode of service may be directed
- 44. Intervention
- 45. Decisions and adjournments
- 46. Summons and evidence, etc.
- 47. Protection of the Commission, etc.

## DIVISION II—OFFICERS

- 48. Industrial Registrar
- 48a. Ability of Commonwealth Registrars to act under this Act
- 49. Inspectors
- 50. Powers of Inspectors, etc.
- 50a. Powers relating to unpaid wages, etc.
- 51. Protection for Registrar, etc.
- 52. Inspector divulging contents of record

## PART VI

## GENERAL CONDITIONS OF EMPLOYMENT

- 79. Declaration as to terms of contract
- 80. Sick leave
- 81. Granting of and payment for annual leave
- 82. Provisions relating to automation
- 83. Application of certain awards
- 84. Experience of apprentice, etc., how calculated
- 86. Consolidation of awards
- 87. Effect on legal proceedings of amendment of award
- 88. Aged, slow, inexperienced or infirm workers
- 89. Non-application of certain awards
- 90. Declared organizations
- 91a. Rescission of obsolete awards

## PART VII

## APPEALS AND REFERENCES

## DIVISION I—THE COURT

- 92. The Full Court
- 93. Appeal to the Full Court
- 94. Appeal from Industrial Magistrate

## DIVISION II—THE COMMISSION

- 95. Decision to be final
- 96. Right of appeal
- 97. Entitlement to appeal
- 98. Notice of hearing, etc.
- 99. Stay of operation of award
- 100. Review on application by Minister
- 101. Reference of matters to the Full Commission
- 102. Reference of questions of law to the Court

## DIVISION III—THE REGISTRAR

- 103. Interpretation
- 104. Leave to appeal from decision of the Registrar
- 105. Appeals
- 105a. Cases stated

## PART VIII

## INDUSTRIAL AGREEMENTS

- 106. Parties to industrial agreements
- 107. Information to be provided by association
- 108. Term and form of agreement
- 108a. Approval of Commission in relation to industrial agreements
- 109. Adding of parties to agreements
- 110. Effect of industrial agreement
- 111. Rescinding or varying agreement
- 112. Continuance of agreement unless rescinded

## PART IX

## ASSOCIATIONS

## DIVISION I—APPLICATIONS AND OBJECTIONS

- 114. Application for registration
- 115. Objections

**Industrial Relations Act (S.A.) 1972**

DIVISION II—REGISTRATION AND INCORPORATION OF LOCALLY BASED ASSOCIATIONS

- 116. Eligibility for registration
- 117. Registration of associations
- 118. Rules
- 119. Orders to secure compliance with rules, etc.
- 120. Amalgamation
- 121. Financial records
- 122. De-registration of associations

DIVISION III—REGISTRATION OF FEDERALLY BASED ASSOCIATIONS

- 123. Eligibility for registration
- 124. Registration
- 125. De-registration

DIVISION IV—PROVISIONS GENERALLY APPLICABLE TO REGISTERED ASSOCIATIONS

- 126. Exercise of powers of the Commission
- 127. Federation
- 128. Register of members and officers of associations
- 129. Rules
- 130. Certificate of registration
- 131. Service
- 132. Saving of obligations

PART X

MISCELLANEOUS

DIVISION I—GENERAL

- 143. Purposes of association solely in restraint of trade not unlawful
- 143 a. Limitations of actions in tort
- 144. Conscientious objection
- 145. Notice of awards and decisions of the Commission
- 145 a. Annual report
- 145 b. Industry consultative councils

DIVISION IA—INDUSTRIAL AUTHORITIES TO PAY DUE REGARD TO CERTAIN GENERAL PRINCIPLES, ETC.

- 146 a. Interpretation
- 146 b. Due regard to be had to certain general principles

DIVISION III—OFFENCES

- 153. Manner in which employee is to be paid
- 154. Remedies and penalties for breach of award or agreement
- 155. Appropriation of penalties
- 156. Discrimination against employee for taking part in industrial proceedings
- 157. Employee not to be discriminated against on certain other grounds
- 157 a. Right of injured employee to compensation
- 158. Employee not to cease work for certain reasons
- 159. Employers to keep certain records
- 160. Penalty for false entries
- 161. Exhibition, etc., of relevant awards
- 162. No premium to be demanded for apprentices or juniors
- 163. Certain guarantees illegal
- 164. Contempt by witness
- 165. Penalty for wilful false statement
- 166. Punishment for contempt
- 167. Recovery of penalties and other sums
- 168. Recovery of penalty, etc., imposed on association
- 169. In default of association, penalty may be recovered from members
- 170. Defence available to employers
- 171. Person convicted may be ordered to make payments
- 172. Onus of proof in certain cases
- 173. Proof of awards, etc.
- 174. Summary procedure
- 174 a. Conduct by officers, directors, employees or agents

DIVISION IV—RULES

- 175. Rules and procedures

DIVISION V—REGULATIONS

- 176. Regulations

SCHEDULE

## INDUSTRIAL RELATIONS ACT (S.A.) 1972

being

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

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]<sup>2</sup>  
Industrial Conciliation and Arbitration Act Amendment Act, 1981, No. 60 of 1981 [Assented to 31 August 1981]<sup>3</sup>  
Industrial Conciliation and Arbitration Act Amendment Act (No. 2), 1981, No. 85 of 1981 [Assented to 3 December 1981]<sup>4</sup>  
Judicial Remuneration Act, 1982, No. 92 of 1982 [Assented to 14 October 1982]<sup>5</sup>  
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]<sup>6</sup>  
Industrial Conciliation and Arbitration Act Amendment Act, 1984, No. 19 of 1984 [Assented to 3 May 1984]<sup>7</sup>  
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]<sup>8</sup>  
Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]<sup>9</sup>  
Statutes Amendment (Courts) Act, 1985, No. 70 of 1985 [Assented to 6 June 1985]<sup>10</sup>  
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]<sup>11</sup>  
Industrial Conciliation and Arbitration Act Amendment (Statute Law Revision) Act, 1987, No. 55 of 1987 [Assented to 7 May 1987]<sup>12</sup>  
Industrial Conciliation and Arbitration Act Amendment Act, 1989, No. 34 of 1989 [Assented to 4 May 1989]<sup>13</sup>  
Industrial Conciliation and Arbitration Act Amendment Act (No. 2), 1989, No. 45 of 1989 [Assented to 31 August 1989]<sup>14</sup>

---

<sup>1</sup> Came into operation 4 January 1973: *Gaz.* 4 January 1973, p. 51.

<sup>2</sup> Came into operation 2 January 1979: s. 2.

<sup>3</sup> Came into operation 31 August 1981: *Gaz.* 31 August 1981, p. 801.

<sup>4</sup> Came into operation 4 February 1982: *Gaz.* 4 February 1982, p. 309.

<sup>5</sup> Came into operation 28 October 1982: *Gaz.* 28 October 1982, p. 1214.

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

<sup>7</sup> Came into operation 14 May 1984: *Gaz.* 10 May 1984, p. 1090.

<sup>8</sup> Came into operation 17 June 1985: *Gaz.* 13 June 1985, p. 2132.

<sup>9</sup> Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

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

<sup>11</sup> Came into operation (except ss. 3-6, 19-71 and Scheds. 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.

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

<sup>13</sup> Came into operation 1 June 1989: *Gaz.* 25 May 1989, p. 1395.

<sup>14</sup> Came into operation 1 March 1989: s. 2.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991 No. 34 of 1991 [Assented to 24 April 1991]<sup>1</sup>

Industrial Relations (Declared Organizations) Amendment Act 1992 No. 15 of 1992 [Assented to 23 April 1992]<sup>2</sup>

---

<sup>1</sup> Came into operation (except ss. 5(a), 5(j), 5(m), 41, 47, 55(1)-(8)) 1 July 1991: *Gaz.* 27 June 1991, p. 2059; ss. 5(a), 5(j), 5(m), 41, 55(1)-(8) came into operation 1 January 1993: *Gaz.* 3 December 1992, p. 1688; s. 47 had not been brought into operation at the date of, and the amendment effected by that provision has not been included in, this reprint.

<sup>2</sup> Came into operation 1 July 1992: *Gaz.* 25 June 1992, p. 1870.

N.B. The amendments effected to this Act by the Statutes Amendment (Expiation of Offences) Act 1992 and the Industrial Relations (Miscellaneous Provisions) Amendment Act 1992 had not been brought into operation at the date of, and have not been included in, this reprint.

**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 Relations Act (S.A.) 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;
  - (f) to encourage the democratic control of associations so registered and the full participation by members in the affairs of the associations;
  - (g) to encourage and facilitate the amalgamation of associations;
- and
- (h) to encourage and facilitate the development of associations, particularly by reducing the number of associations that are in an industry or enterprise.

\* \* \* \* \*

\* \* \* \* \*

**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—

(a) an association, society or body formed to represent, protect or further the interests of employers or employees;

or

(b) an organization, or a branch of an organization, registered under the Commonwealth Act:

“award” means an award or order of the Commission 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:

\* \* \* \* \*

“the Commonwealth Act” means the *Industrial Relations Act 1988* of the Commonwealth, and includes any Act passed in substitution for that Act:

“the Commonwealth Commission” means the Australian Industrial Relations Commission, and includes any industrial authority of the Commonwealth created in substitution for that 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:

“demarcation dispute” includes—

(a) a dispute within a registered association or between registered associations as to the rights, status or functions of members of the association or associations in relation to the employment of those members;

(b) a dispute between employers and employees, or between members of different registered associations, as to the demarcation of functions of employees or classes of employees;

or

(c) a dispute about the representation under this Act of the industrial interests of employees by a registered association of employees:

“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;

(ca) subject to any condition, limitation or exclusion that may be prescribed by regulation—any person who performs work for remuneration as an outworker;

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), (c) or (ca), 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—

(i) where the employees are employed by a body or person (other than the Commissioner for Public Employment) declared by regulation to be a prescribed employer—the body or person so declared;

(ii) in any other case—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;

(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;

and

(e) in relation to a person referred to in paragraph (ca) of the definition of “employee”, means the person or body for which the work is performed:

“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 authority” means—

- (a) a commission, court, board, tribunal, or body having authority under the law of the Commonwealth or any State of the Commonwealth to exercise powers of conciliation or arbitration in relation to industrial matters;

or

- (b) a body declared by regulation to be an industrial authority for the purposes of this definition:

“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 relationship of employer and apprentice;
- (e) the employment of juniors and apprentices in an industry (including the number or proportion that may be employed);
- (f) the employment of any person, or of any class of persons, in addition to those referred to above, in an 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;
- (ja) a demarcation dispute;
- (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” includes—

- (a) any business, trade, manufacture, undertaking or calling of employers;
- (b) any calling, service, employment, handicraft, industrial occupation or vocation of employees;
- (c) any activity of government or local government in which employees are employed;
- (d) a branch of an industry or a group of industries:

“Inspector”— See 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:

“organization” means an organization registered under the Commonwealth Act:

“outworker” see section 7:

“peak council” means—

- (a) the United Trades and Labor Council;
- or
- (b) a prescribed body that represents employer associations:

“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) an employer of public employees declared by the regulations to be a prescribed employer;
  - (b) any council;
- or
- (c) in relation to public employees (except public employees employed by an employer declared to be a prescribed employer under paragraph (a))—the Commissioner for Public Employment:

“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:

“prime bank rate”, for a particular financial year, means the rate (expressed as a percentage per annum) fixed by the State Bank of South Australia as at the commencement of that financial year as its indicator lending rate:

“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—

- (a) an association registered under Division II of Part IX;
- or
- (b) an organization registered under Division III of Part IX or an organization of which a branch is registered under Division III of Part IX:

“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:

“State” includes a Territory of the Commonwealth:

\* \* \* \* \*  
\* \* \* \* \*

(1aa) For the purposes of this Act, the performance of work includes the provision of services.

(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.

\* \* \* \* \*

(2) The exercise by the Court, the Commission 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 Commissioner for Public Employment in pursuance of this Act, or an industrial agreement made by 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.

*Note: For definition of divisional penalties see Appendix 2.*

**Outworkers**

7. (1) Subject to this section, a person is an outworker if—

(a) the person is, for the purposes of a trade or business of another, engaged or employed to work on, process or pack articles or materials;

and

(b) the person performs that work—

(i) in or about a private residence;

or

(ii) in or about premises of a prescribed kind that are not business or commercial premises.

(2) Where—

(a) a body corporate is, for the purposes of a trade or business of another person, engaged to work on, process or pack articles or materials;

(b) one person (being an officer or employee of the body corporate) personally performs all or a substantial part of the work undertaken by the body corporate;

and

(c) that person performs that work—

(i) in or about a private residence;

or

- (ii) in or about premises of a prescribed kind that are not business or commercial premises,

the person referred to in paragraph (b) will be taken to be an outworker who is performing work for the other person referred to in paragraph (a).

(3) Where a person (not being the person for whom the work is performed)—

- (a) negotiates for, or arranges, the performance of any work by an outworker (or a body corporate to which subsection (2) applies);

or

- (b) is otherwise involved in any part of the process of distributing work to, or collecting work from, an outworker (or a body corporate to which subsection (2) applies),

the person will also be taken to be an outworker who is performing work for the person for whom the negotiations or arrangements are carried out or made, or for whom the work is distributed or collected.

(4) Part VI of this Act, and any award or industrial agreement made before the commencement of this section, will only apply to outworkers who are engaged (but not employed under a contract of employment) to perform work in an industry to such extent as may be determined by award or industrial agreement made after the commencement of this section.

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) 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 .....".

**Absence from the office of President**

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.

(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.

\* \* \* \* \*

**Remuneration of the President and Deputy Presidents of the Court**

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

(a) the President of the Court;

or

(b) a Deputy President 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.

**Tenure of office**

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.

(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;
- (c) to hear and determine jurisdictional or other questions as to the validity of awards or decisions of the Commission;

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 under this Act, an award, industrial agreement or a contract of employment;
  - (ii) a claim for a sum due to an employer or former employer from an employee or former employee under this Act, an award, industrial agreement or a contract of employment;
  - (iii) a claim by an employee or former employee for compensation from an employer or former employer for failure to make contributions (either before or after the enactment of this subparagraph) for the benefit of the claimant to a superannuation fund in accordance with this Act, an award, industrial agreement or a contract of employment;
  - (iv) a claim for payment of a benefit against the trustee of a superannuation fund to which contributions have been made in accordance with this Act, an award, industrial agreement or a contract of employment.

\* \* \* \* \*

(2) In subsection (1)(d) a reference to an award or industrial agreement extends to an award or industrial agreement made, certified or having effect under the Commonwealth Act.

(3) The following provisions govern a claim under subsection (1)(d) and the proceedings based on such a claim—

- (a) the claim must be made within six years after the sum claimed became payable unless the claim relates to non-payment of superannuation contributions; in which case there is no limitation on the time for making the claim;
- (b) the claim—
  - (i) 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;
  - (ii) if the claimant is a minor—may be made as if he or she had attained the age of majority;
  - (iii) if the claim relates to money that should have been paid to or for the benefit of a person who is now deceased—may be made by the personal representative, a beneficiary of the deceased's estate, or by a registered association on behalf of such a beneficiary;

- (c) the Court may not proceed to hear and determine the claim if it appears that proceedings based on the claim have been commenced in another court and those proceedings have not been withdrawn or struck out;
- (d) the Court is governed in its procedures and its adjudication of the claim by equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms, and the Court is not bound by the rules of evidence but may inform itself in any manner it thinks fit;
- (e) the Court may enter judgment in default of appearance by either party;
- (f) where the claim is for compensation for non-payment of contributions that should have been (but were not) made to a superannuation fund the Court may (subject to any relevant law of the Commonwealth) direct that the amount awarded be paid to the claimant or to a superannuation fund on the claimant's behalf;
- (g) if the Court is satisfied—
  - (i) that, prior to the commencement of the proceedings, an Inspector had advised the defendant that the claim was, in the Inspector's opinion, justified;
  - (ii) that the defendant had no reasonable ground on which to dispute the claim;
 and
  - (iii) that, in the circumstances, the defendant should have satisfied the claim without putting the claimant to the trouble of taking proceedings to establish the validity of the claim,
 the Court may add to the amount awarded by the Court a penalty of an amount determined by the Court (but the penalty cannot exceed the amount awarded on the claim);
- (h) where the Court orders the payment of a monetary sum, it may authorize or direct the payment of that sum by instalments;
- (i) the Court must not award costs except as follows:
  - (i) on the hearing of a claim for non-payment of superannuation contributions, the Court may award costs to cover reasonable expenses incurred by the claimant in establishing the present value of his or her loss;
  - (ii) on appeal, the Court may award costs (to be fixed by the Court, or taxed by the Registrar in accordance with a scale fixed by the Rules) against an unsuccessful appellant or an appellant who withdraws an appeal.

(4) If, in any proceedings in which a monetary claim is made against an employer, the Court is of the opinion that the employer is, or was at the relevant time, the agent, or under the effective control, of some other person, the Court may order that that other person be joined as a party to the proceedings and, in that event, orders may be made against the employer, that other person, or both.

\* \* \* \* \*

**Representation**

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

**Powers of the Court**

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—

- (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: Division 8 fine.

(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.

\* \* \* \* \*

**Enforcement of orders for payment**

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:

- (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.

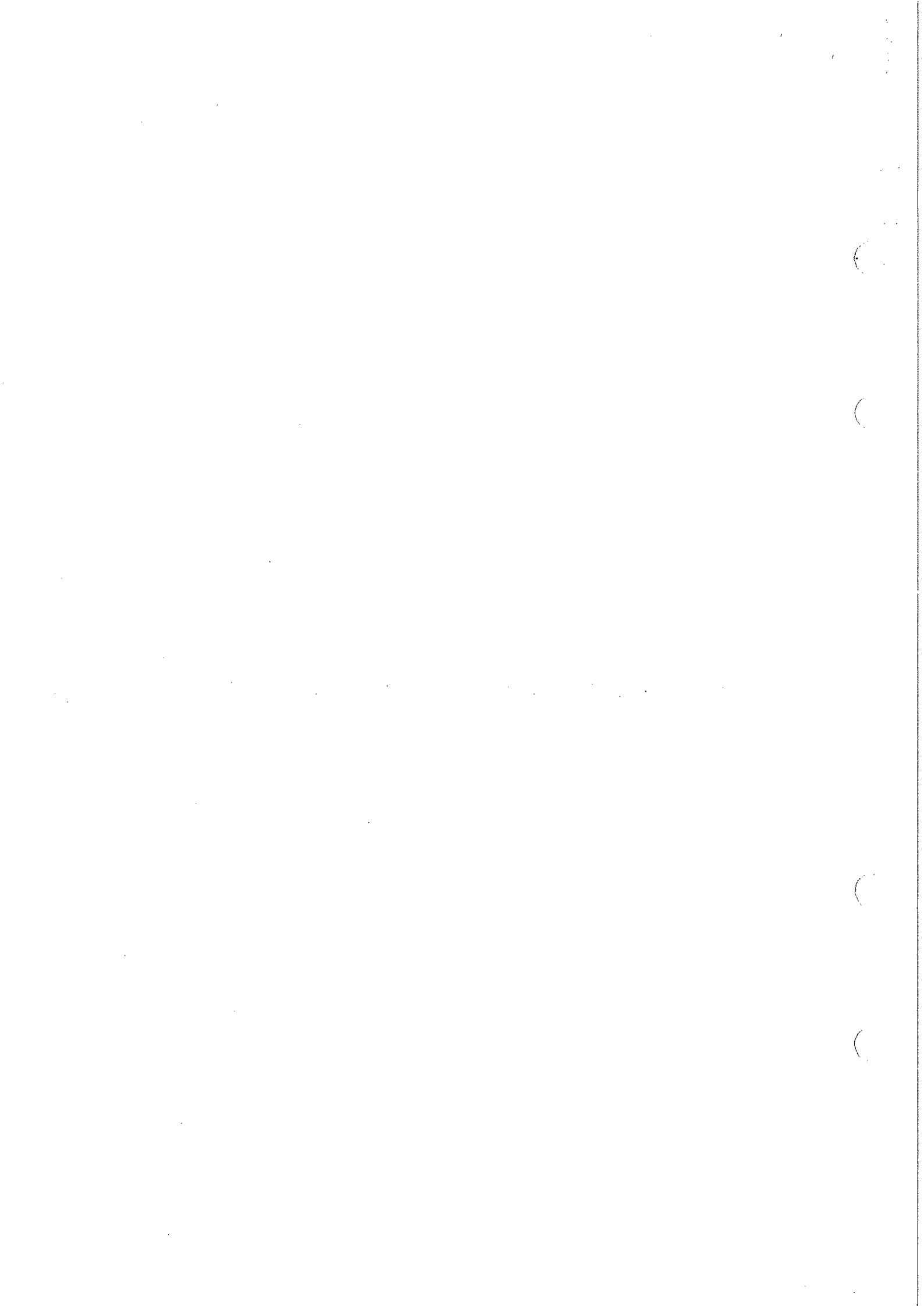
(4) The costs of and incidental to registering a certificate and of any proceedings under a certificate will be added to the amount payable under the certificate and payment of those costs will be enforceable accordingly.

(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.

**Commissioners**

- 23. (1) The Governor may appoint one or more Commissioners.
- (2) A Commissioner 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.
  - (2a) Subject to this section, a Commissioner is, unless lawfully removed, entitled to hold office until the age of 65 years, and will cease to hold office on attaining that age.
  - (2b) A Commissioner who has been appointed on an acting basis ceases to hold office on the expiration of the term of appointment.

(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 Governor may—

(a) appoint a Commissioner on a part-time basis;

or

(b) vary terms of appointment so that a Commissioner previously holding office on a full-time basis continues in office on a part-time basis or a Commissioner previously holding office on a part-time basis continues in office on a full-time basis (but such a variation in the terms of a Commissioner's appointment cannot be made without the Commissioner's consent).

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

(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 III 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.

(11) A Commissioner must not, without the consent of the Minister, engage in remunerative work outside the duties of his or her office.

(12) A Commissioner must not, while in office, be an officer of a registered association.

(13) The Governor may remove a Commissioner from office if—

(a) both Houses of Parliament present a petition for removal of the Commissioner on the ground of misconduct or mental or physical incapacity to carry out official duties;

(b) the Commissioner becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(c) the Commissioner is absent from duty, except for the purposes of leave, for 14 consecutive days or for 28 days in any 12 months;

or

- (d) the Commissioner engages in remunerative work outside the duties of office in contravention of subsection (11) or holds an office in contravention of subsection (12).

### Concurrent appointments

23a. (1) A member of the Commission may, with the Minister's approval, be appointed as a member of an industrial authority constituted under the law of the Commonwealth or of some other State of the Commonwealth so as to hold both offices concurrently.

(2) If the Minister revokes an approval granted under subsection (1), the member must resign from office either as a member of the Commission or as a member of the other industrial authority.

(3) A member of an industrial authority constituted under the law of the Commonwealth or of some other State of the Commonwealth may be appointed as a member of the Commission so as to hold both offices concurrently and, where such an appointment is made, the provisions of this Act apply subject to the following qualifications:

- (a) the appointment will terminate if the member ceases for any reason to hold office as a member of the relevant industrial authority;
- (b) the member is not entitled to be remunerated as a member of the Commission but is entitled, in circumstances determined by the Governor, to allowances for expenses at rates fixed by the Governor.
- (4) A member who holds concurrent appointments may simultaneously exercise in relation to a particular matter powers deriving from both or all those appointments.
- (5) Where a member holds concurrent appointments, the following provisions apply:
- (a) if the member was appointed first to the Commission and subsequently to the other industrial authority, the extent to which the member performs the duties of a member of that other industrial authority will be determined by agreement between the President and the head of that other industrial authority;
- (b) if the member was appointed first to the other industrial authority and subsequently to the Commission, the extent to which the member performs the duties of a member of the Commission will be determined by agreement between the President and the head of that other industrial authority.

### 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.

**Disclosure of interest by Commission members**

24a. Where, for the purposes of a proceeding, the Commission is constituted of, or includes, a member of the Commission who has or acquires a pecuniary or other interest that could conflict with the proper performance of the member's functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding;
- and
- (b) the member must not take part in the proceeding or exercise any powers in relation to the proceeding—
  - (i) if the President directs the member to withdraw from the proceedings;
  - or
  - (ii) if any party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceeding.

**DIVISION II—JURISDICTION AND POWERS OF THE COMMISSION**

**Jurisdiction 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—

- (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.
- (2) In the exercise of its jurisdiction under this Act—
- (a) the Commission must 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;
  - and
  - (b) the Commission must have regard to the objects of this Act.
- (3) In performing its functions, the Commission must have due regard to the provisions of the *Equal Opportunity Act 1984* as to discrimination in relation to employment.
- (4) In dealing with a demarcation dispute, the Commission must consider whether it should consult with appropriate peak councils representing employer or employee associations and may consult with any such council.
- (5) The President may, on the application of a party to a demarcation dispute made before the commencement of any hearing of the dispute, direct that the Commission will, for the purposes of the hearing, be constituted as the Full Commission.

(6) Where the parties to an industrial dispute are bound by an award or industrial agreement that provides for procedures for preventing or settling industrial disputes between them, the Commission must, in considering whether or when it will exercise its powers in relation to the industrial dispute have regard to the extent to which the procedures (if applicable to the industrial dispute) have been complied with by the parties and the circumstances of any compliance or non-compliance with the procedures.

(7) After the settlement of an industrial dispute, the Commission may—

(a) invite the parties to the dispute to take part in discussions with a view to improving the process of conciliation and arbitration;

and

(b) where it appears practicable and appropriate, encourage the parties to agree on procedures for preventing and settling, by discussion and agreement, further disputes between the parties or any of them, with a view to the agreed procedures being included in an award or an industrial agreement.

**Awards of general application**

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

(2) An award made under this section is, subject to this section and any qualification or limitation 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—

\* \* \* \* \*

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

\* \* \* \* \*

(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—

(a) 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.

\* \* \* \* \*

(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: Division 7 fine.

(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 message sent by telex, facsimile machine or other similar means of telecommunication to the 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 or decisions, 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;

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: Division 8 fine.

(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 awards 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 a provisional or interim award) and, without being restricted to the specific relief claimed by the parties, may include in the award any provision 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.

#### **Power to grant preference to members of registered associations**

**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.

(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.

#### **Applications to the Commission**

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

(i) 20 employees in the industry concerned where the Commission is satisfied that there is no registered association to which the applicant or applicants belong, or could appropriately and conveniently belong, that could reasonably be expected to bring the application on behalf of the applicant or applicants;

or

- (ii) 200 employees in the industry concerned or 75 per cent of the employees in that industry (whichever is the less);

(c) by not less than—

- (i) 20 employees in the industry concerned where the Commission is satisfied that there is no registered association to which the applicant or applicants belong, or could appropriately and conveniently belong, that could reasonably be expected to bring the application on behalf of the applicant or applicants;

or

- (ii) 200 employees in the industry concerned or 75 per cent of the employees in the industry concerned (whichever is the less);

(d) by a registered association of employers;

(e) by a registered association of employees;

(f) by the United Trades and Labor Council;

or

(g) by the Chamber of Commerce and Industry, South Australia, Incorporated or the South Australian Employers' Federation Incorporated.

(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.

### 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.

(2a) An employee is not entitled to make an application for relief under this section unless—

- (a) the employee's remuneration is governed by an award or industrial agreement under this Act or the Commonwealth Act;

or

- (b) the employee's annual remuneration (excluding overtime payments) immediately before the date of dismissal was less than —

- (i) in the case of a dismissal taking effect in 1991—\$65 000;

- (ii) in the case of a dismissal taking effect in a subsequent calendar year—a sum arrived at by dividing the State average adult earnings as at 30 June in the preceding calendar year, by State average adult earnings as at 30 June, 1990 and multiplying the quotient by \$65 000.

(2b) For the purposes of subsection (2a)(b), the Commission will determine the value of any non-monetary benefits in the nature of remuneration and such a determination will be final and without appeal.

(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 an application under this section proceeds to hearing and the Commission is satisfied that a party to the proceedings clearly acted unreasonably in failing to discontinue or settle the matter before it reached the hearing, the Commission may make an order for costs against that party (including any costs incurred by the other party to the application in respect of representation by a legal practitioner or agent up to and including the hearing).

(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.

(7) Where the parties to an application are located in a remote area of the State, the President may authorize an industrial magistrate or any stipendiary magistrate to call and preside over a conference under subsection (6) on behalf of the Commission.

#### **Form, operation and continuance of award**

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

- (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) 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.

\* \* \* \* \*

**Representation of parties**

34. (1) Subject to subsection (1a), a party to, or intervener in, proceedings before the Commission may be represented by a legal practitioner or agent.

(1a) Leave is required for a party or intervener to be represented by a legal practitioner at—

- (a) a voluntary conference under this Act;
- (b) a compulsory conference under section 27 (the matter not having been referred to the Commission under section 27(9));

or

- (c) a conference under section 31(6).

(1b) Leave will be granted under subsection (1a) if (and only if)—

- (a) all of the parties consent to the application for leave;
- (b) (i) another party is to be represented by a legal practitioner (either by leave or pursuant to subsection (1c));

or

- (ii) another party is to be represented by a person who is legally qualified (not being a legal practitioner);

(c) (i) another party is a legal practitioner;

or

(ii) another party is legally qualified (not being a legal practitioner);

or

(d) the person presiding at the conference is satisfied—

(i) that the party or intervener would, if leave were not granted, be unfairly disadvantaged;

or

(ii) that there are special circumstances that make such a representation desirable.

(1c) Leave is not required under subsection (1a) if—

(a) the legal practitioner is an officer or employee of—

(i) an employer who is a party to the proceedings;

(ii) the United Trades and Labor Council;

or

(iii) any registered association;

or

(b) the legal practitioner is a representative of the Minister.

(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.

\* \* \* \* \*

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.

\* \* \* \* \*

**Industrial Relations Act (S.A.) 1972**

**DIVISION IV—RESOLUTION OF CONTRACT DISPUTES**

**Preliminary**

37. (1) A contract (not being a contract of employment) is a contract of carriage for the purposes of this Division if—

(a) a person (the contractor) is engaged to carry a load (not consisting of passengers) by motor vehicle for another (the principal) for the purposes of a trade or business carried on by the principal;

(b) the contractor does not simultaneously operate more than one motor vehicle for business purposes;

and

(c) the contractor is not a common carrier.

(2) A contract (not being a contract of employment or a contract of carriage) is a service contract for the purposes of this Division if—

(a) a person (the contractor) is engaged to perform work for another (the principal) for the purposes of a trade or business carried on by the principal;

and

(b) —

(i) in the case of a contractor who is a natural person—the contractor personally performs all or a substantial part of that work;

or

(ii) in the case of a contractor that is a body corporate—one person (being an officer or employee of the body corporate) personally performs all or a substantial part of the work undertaken by the body corporate.

(3) A reference in this Division to a contract of carriage or a service contract extends to a contract that is collateral to such a contract.

**Conciliation conferences**

38. (1) This section applies in relation to an existing, impending or threatened dispute relating to contracts of carriage or service contracts.

(2) Where a dispute to which this section applies arises, the Commission may, on its own initiative, or on the application of—

(a) the Minister;

(b) the United Trades and Labor Council;

(c) a registered association acting on behalf of persons who are parties to contracts of the relevant kind;

or

(d) with the leave of the Commission, any other association, being a body corporate, that can show an interest in the dispute,

call a conference of the parties to the dispute for the purpose of attempting to settle the dispute by conciliation and agreement.

(3) The Commission may at a conference under this section make recommendations for the settlement of the dispute.

(4) Where the dispute relates to contracts of carriage, the Commission may, if of the opinion that it is desirable to do so, proceed to hear and determine any matter or thing arising out of the conference as if it were acting under section 27(9).

(5) The provisions of this Act relating to compulsory conferences apply, with necessary modifications, to a conference under this section.

(6) The Commission may, at any time during a conference under this section, refrain from proceeding further with the conference if it appears that the subject matter of the dispute is trivial, or that in the public interest further involvement by the Commission is not necessary or desirable.

**Review of harsh, unjust or unconscionable contracts**

39. (1) If, on application under this section, the Commission is satisfied—

- (a) that a contract of carriage or a service contract operates harshly, unjustly or unconscionably;
  - (b) that the contract was entered into in circumstances where the parties to the contract were in unequal bargaining positions;
- and
- (c) in a case where the contractor would have been subject to an award of the Commission had he or she entered into a contract of employment to perform the work—that the contract appears to have been entered into to evade the overall provisions of that award,

the Commission may, according to what is fair in the circumstances of the particular case, by order—

- (d) avoid the contract (wholly or in part), or modify its terms, from the inception of the contract or from some later time;
- (e) give consequential directions for the payment of money, or in relation to any other matter affected by the contract;
- (f) prohibit the principal, or any person who is, in any way considered relevant by the Commission, associated with the principal, from entering into further contracts that would have the same or similar effect, or from inducing others to enter into such contracts.

(2) An application for an order under this section may be made by (and only by)—

- (a) a party to the relevant contract;
- (b) a registered association acting on behalf of a party to the relevant contract;
- (c) a registered association of employers whose members ordinarily engage persons in the industry to which the relevant contract relates;
- (d) a registered association of employees whose members work in the industry to which the relevant contract relates;
- (e) with the leave of the Commission, any other association, being a body corporate, that can show an interest in the matter;

or

- (f) the Minister.

PART IV

PROCEEDINGS BEFORE THE COURT OR COMMISSION, ETC.

DIVISION I—PROCEEDINGS

**President may make arrangements**

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, or the Commission.

(1a) The President may at any time, and must at least once in each year, convene a conference of all members of the Commission for the purpose of discussing means of preventing, and ensuring the fair and expeditious resolution of, industrial disputes.

(2) Subject to this section, the President may assign a member of the Commission, 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 member of the Commission will, so far as is practicable, deal with industrial disputes relating to that industry or that group of industries.

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

(4) The President may not assign or reassign a member of the Commission 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.

**Co-operation between industrial authorities**

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.

(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) The President must participate in, or nominate a representative to participate in, a meeting called by the President of the Commonwealth Commission, for the purpose of encouraging co-operation between industrial authorities, and the co-ordination of the various industrial relations systems, in Australia.

(4) The Registrar must participate in, or nominate a representative to participate in, a meeting called by the Registrar of the Commonwealth Commission, for the purpose of encouraging co-operation between the Registrars of industrial authorities, and the co-ordination of the various industrial relations systems, in Australia.

(5) The disclosure of information at a meeting of the kind referred to in subsection (3) or (4) will not be regarded as a breach of any duty of confidence.

**Reference of industrial matters to Commonwealth Commission**

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.

(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.

\* \* \* \* \*

**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**

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.

(1a) Where the interests of any of its affiliates are likely to be affected (either directly or indirectly) by the outcome of proceedings before the Court or Commission, the United Trades and Labor Council may, with the leave of the Court or Commission, intervene in those proceedings and make such representations and tender such evidence as it thinks fit.

(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.

**Decisions and adjournments**

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

(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.

**Summons and evidence, etc.**

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

(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.
- (1a) The Court or the Commission may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.
- (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 III 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.

\* \* \* \* \*

**Ability of Commonwealth Registrars to act under this Act**

48a. A Registrar appointed under the Commonwealth Act may, pursuant to an arrangement made between the Minister and the Minister responsible for the administration of the Commonwealth Act, and subject to such conditions or limitations as may be determined by the Minister, exercise the powers of a Registrar appointed under this Act.

**Inspectors**

49. (1) The following are Inspectors for the purposes of this Act:

(a) a person appointed by the Minister to be an Inspector;

or

(b) a person appointed as an Inspector under the Commonwealth Act who is, in accordance with the terms of an arrangement made between the Minister and the Minister responsible for the administration of the Commonwealth Act, authorized to exercise the powers of an Inspector under this Act.

(2) Each Inspector under this Act must be furnished by the Minister with an identity card.

(3) An Inspector must produce the identity card for inspection by any person who questions his or her authority to exercise the powers of an Inspector under this Act.

**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 identity card 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: Division 8 fine.

**Powers relating to unpaid wages, etc.**

**50a.** (1) If an Inspector has reason to believe that an employer has not paid an amount due to an employee in connection with his or her employment, the Inspector may, by notice in writing (setting out the reason for his or her belief), require the employer, within a period specified in the notice—

- (a) to calculate, or recalculate, the amount due to the employee;
  - (b) to provide a certificate signed by the employer or a person authorized to act on the employer's behalf showing—
    - (i) the basis on which the employee's monetary entitlement from the employer is calculated;and
    - (ii) the result of the calculation;
  - (c) to provide evidence to the satisfaction of the Inspector that any amount due to the employee has been paid;
- and
- (d) to provide the Inspector with any other information relevant to the employee's monetary entitlement from the employer that the Inspector may reasonably require.

(2) An employer who receives a notice under subsection (1) may apply to the Court for—

- (a) a review of the reason why the Inspector believes that the employer has not paid an amount due to an employee;

(b) a review of the period within which the employer must comply with the notice;

or

(c) a review of any other requirement placed on the employer under the notice.

(3) An application under subsection (2) must be made within 14 days of the receipt of the notice by the employer.

(4) Pending the determination of an application for review, the operation of the notice to which the application relates is suspended.

(5) On an application for review, the Court must act according to equity, good conscience and the substantial merits of the case and without regard to technicalities.

(6) The Court may, on an application for review—

(a) confirm the notice to which the review relates;

(b) confirm the notice with such modifications as it thinks fit;

or

(c) cancel the notice.

(7) In addition to its powers under subsection (6), if the Court is satisfied on a review that the employer has not paid an amount due to an employee in connection with his or her employment, the Court may, if it thinks fit, order the employer to pay the outstanding amount to the employee (and any such order will have the same force and effect as an order on a claim under section 15(1)(d)).

(8) If an employer—

(a) fails to comply with a notice under subsection (1) (the employer not having made an application for review under subsection (2));

or

(b) having made an application for review under subsection (2), fails to comply with a notice confirmed by the Court within a period specified by the Court,

the employer is guilty of an offence.

Penalty: Division 8 fine.

#### **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: Division 6 fine.

(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: Division 6 fine.

(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: Division 6 fine.

\* \* \* \* \*

PART VI

GENERAL CONDITIONS OF EMPLOYMENT

\* \* \* \* \*

**Declaration as to terms of contract**

79. (1) The Commission 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 five-twenty-sixths of one day on full pay for each completed week of service;

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.

\* \* \* \* \*

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

(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 transmittor or any prior transmittor, 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 transmittee.

(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.

(4c) The provisions of this section do not prevent an award or industrial agreement providing for the grant of sick leave in terms or on conditions more favourable to employees than the terms and conditions provided by this section.

(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 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 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.

#### Application of certain awards

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.

(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, 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 is binding on the persons and associations on whom or on which the awards so consolidated were binding.

**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: Division 8 fine.

**Non-application of certain awards**

89. (1) This section applies to a person—

(a) with a disability that is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;

- (b) for whom competitive employment at ordinary rates of pay is unlikely;
- (c) who, because of his or her disability, needs substantial ongoing support to obtain or retain paid employment;

and

- (d) who is being assisted or trained in or by an organization or body that provides employment services to disabled workers declared by proclamation as being within the ambit of this section.

(2) Notwithstanding any other provision of this Act (but subject to this section), no award applies to or in relation to work performed by a person to whom this section applies.

(3) Subsection (2) does not apply to an award (if any) that makes specific provision in relation to persons (or classes of persons) to whom this section applies.

(4) The regulations may prescribe matters that cannot be the subject of an award under subsection (3).

(5) A regulation under subsection (4) may—

- (a) be of general or limited application;

and

- (b) make different provision according to prescribed circumstances.

(6) The Governor may, by proclamation—

- (a) declare an organization or body as being within the ambit of this section;

- (b) vary or revoke any such declaration.

(7) A declaration under this section—

- (a) may be limited in its operation to a period specified in the proclamation;

and

- (b) may provide that the declaration is made on such conditions as the Governor thinks fit and specifies in the proclamation.

### Declared organizations

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

- (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—

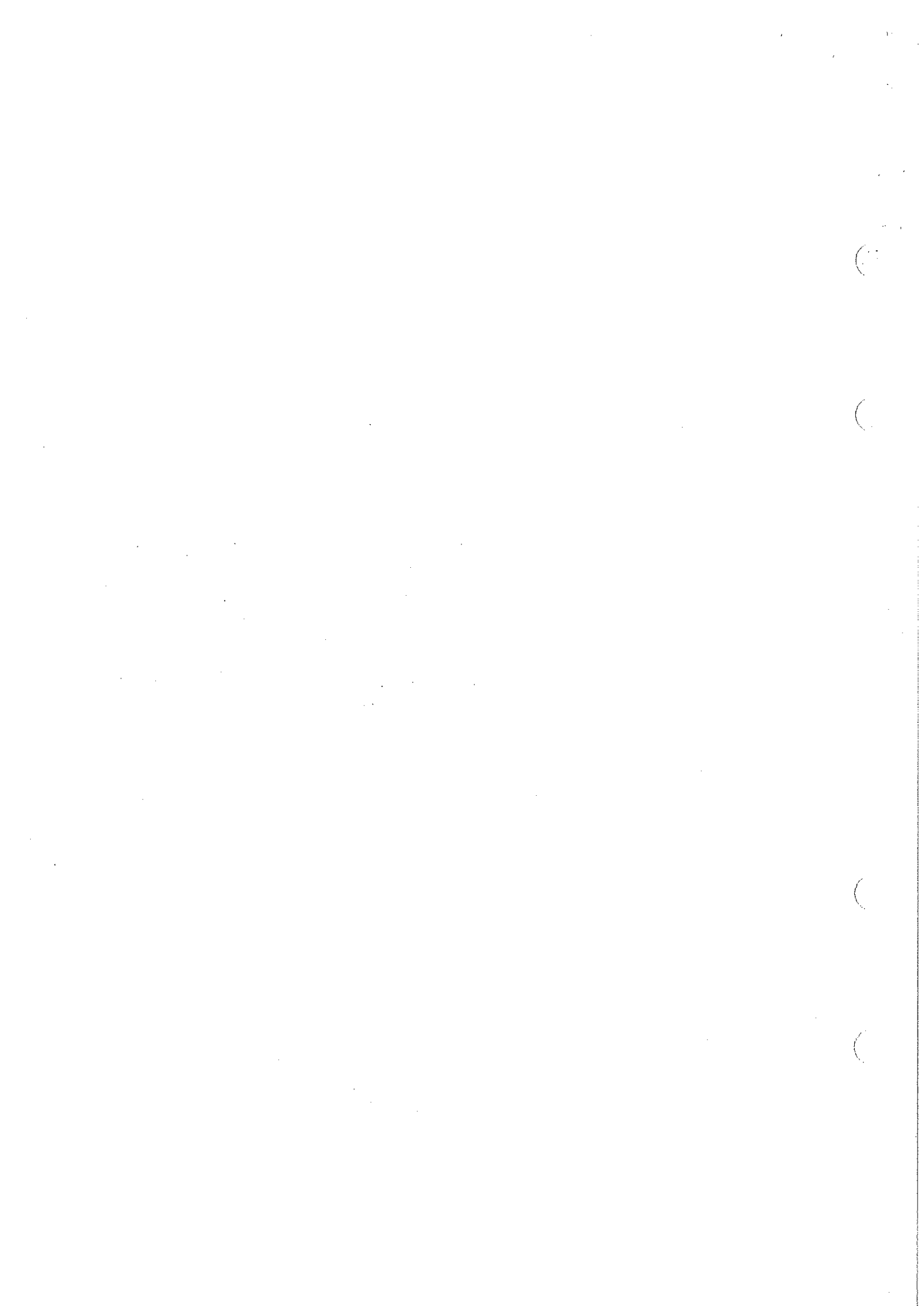
(a) in the *Gazette*;

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.

(4) The Registrar must ensure that each award is examined at least once every five years for the purpose of determining whether an application should be made under this section.



**Industrial Relations Act (S.A.) 1972**

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

**Decision to be final**

95. Except as is provided by this Act—

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

and

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

**Right of appeal**

96. (1) An appeal lies against the whole or part of an award or decision of the Commission constituted of a single member.

(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 an award or decision of the Commission on an application under section 31, the Full Commission will be constituted of at least two Presidential Members.

(4) The Full Commission may direct—

(a) that two or more appeals be joined and heard together;

or

(b) that an appeal be heard by the Commission jointly with appellate proceedings arising under the Commonwealth Act,

(but a party to one set of proceedings may only be heard in relation to other proceedings to which he or she is not a party by leave of the Full Commission).

**Entitlement to appeal**

97. An appeal against an award or decision of the Commission may be commenced by—

(a) a party to the proceedings in which the award or decision was made;

(b) a registered association that is affected by, or whose members are affected by, the award or decision;

or

(c) by leave of the Commission—any other person or group of persons by which an application to the Commission might be made (*See* section 30).

**Notice of hearing, etc.**

98. (1) An appeal is commenced by lodging a notice of appeal within the time allowed by the Rules or such further time as may be allowed by the Full Commission.

\* \* \* \* \*

(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 award or decision 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);

(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 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 an award or decision 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 award or decision under appeal;

(d) make any award or decision that should have been made in the first instance in substitution for an award or decision that has been quashed under paragraph (c) or in addition to an award or decision 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.

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

(7) Until the Full Commission gives its decision on an appeal, that part of the award or decision under appeal cannot be altered or rescinded.

**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 is brought against an award of the Commission under section 31, the Full Commission may stay the operation of the award.

(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.

**Review on application by Minister**

100. (1) Where it appears to the Minister that an award or decision of the Commission, or industrial agreement, is contrary to the public interest, the Minister may apply to the Full Commission for a review of the award, decision or agreement.

(2) On a review under this section, the Minister and the parties to the award, decision or industrial agreement are parties to the proceedings and entitled to notice of the hearing.

(3) The Full Commission must, if of opinion that, in the public interest, the award, decision, or industrial agreement should be reviewed, make such a review and confirm, vary or revoke the award, decision, or industrial agreement.

(4) The Full Commission may, on a review under this section, exercise any powers that the Commission has in relation to an appeal.

**Reference of matters to the Full Commission**

101. (1) When the Commission, constituted of a single member, is exercising any jurisdiction under this Act, the Commission may, in the exercise of an independent initiative, and must, if so requested by a party, 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.

\* \* \* \* \*

(5) The member of the Commission 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.

**Reference of questions of law to the Court**

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

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

**DIVISION III—THE REGISTRAR**

**Interpretation**

103. In this Division—

“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.

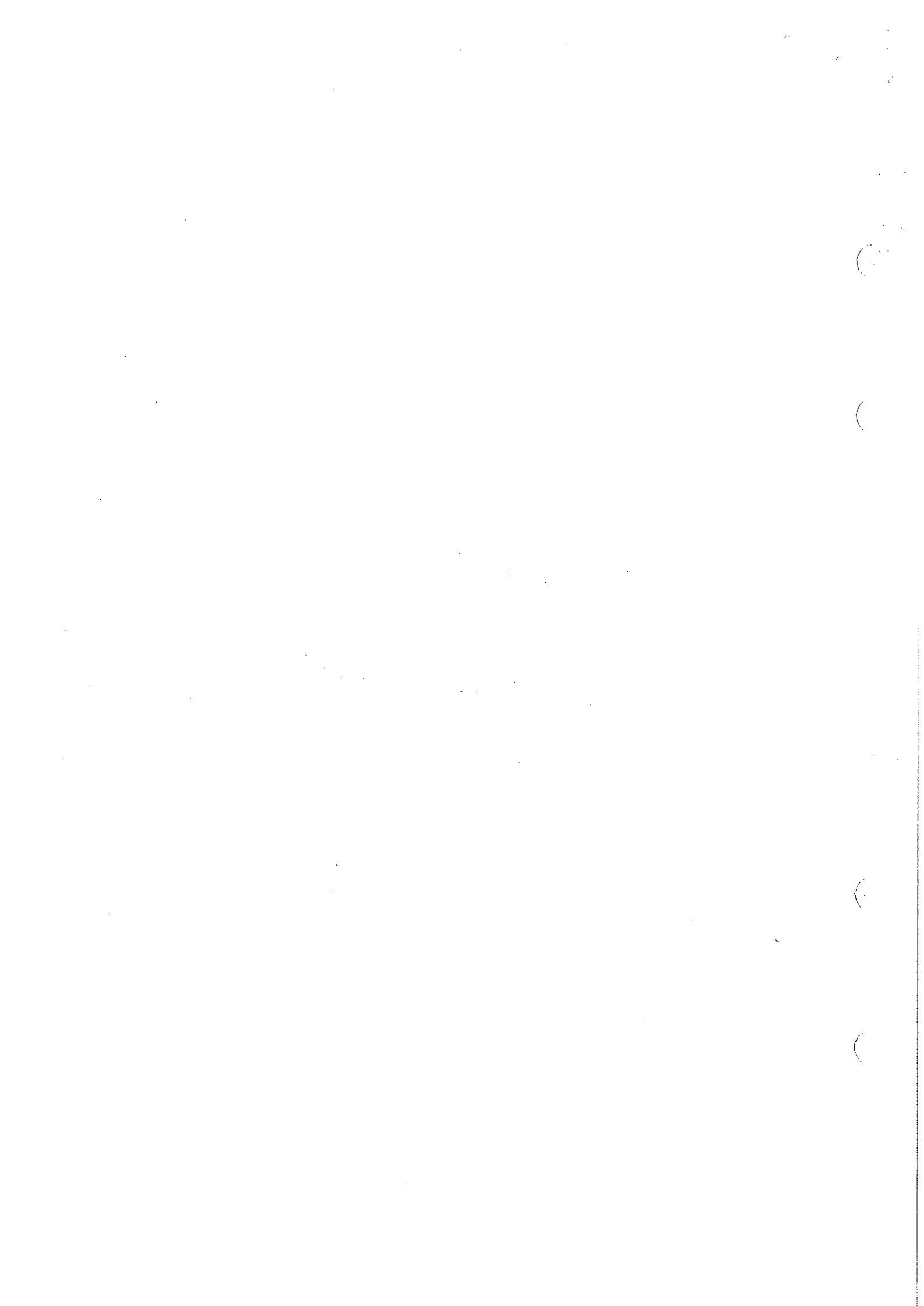
(2) The Full Commission may take further evidence for the purposes of an appeal under this Division.

(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 (and different terms may be specified for different parts 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.

(3a) The grounds upon which the Commission may decide not to approve an industrial agreement include—

- (a) that the industrial agreement is, in the opinion of the Commission, contrary to the objects of this Act;
- (b) in the case of an industrial agreement to which a registered association of employees is a party—that another registered association that represents employees who do work of the same or substantially the same kind as the employees to whom the agreement relates, and that has a proper interest in the matter, is not a party to the agreement.

(4) Where an application is made for the approval of an industrial agreement under this section—

- (a) the Commission must give to any registered association that has, in the Commission's opinion, a proper interest in the matter written notice of the time and place appointed for the hearing of the application;

and

- (b) where it is proposed to extend the operation of an industrial agreement to other classes of employees (either by substituting the agreement with a fresh agreement or by varying the existing agreement)—the Commission may require the applicant to publish, in accordance with the Rules, a notice in a newspaper circulating generally throughout the State setting out the time and place appointed for the hearing of the application and a brief summary of the contents of the agreement.

(4a) In exercising its powers under this section (except in regard to an agreement that amends or is in substitution for an earlier agreement without altering the number or class of employees affected), the Commission—

- (a) must consider whether it should consult with appropriate peak councils representing employer or employee associations and may consult with any such council;

and

- (b) must have regard to the objective of achieving a coherent national framework of employee associations and to any awards, or decisions of the Commonwealth Commission directed at achieving that objective (and must give effect to the principles on which those awards or decisions are based so far as may be appropriate in the circumstances of the particular case).

(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.

(8) After the commencement of this subsection, an industrial agreement to which an unregistered association of employees is a party cannot be approved by the Commission unless—

(a) the membership of the association consists (wholly or substantially) of employees who cannot appropriately and conveniently belong to a registered association of employees;

or

(b) the agreement varies an industrial agreement previously approved by the Commission.

**Adding of parties to agreements**

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.

**Effect of industrial agreement**

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

(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 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.

\* \* \* \* \*

**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**

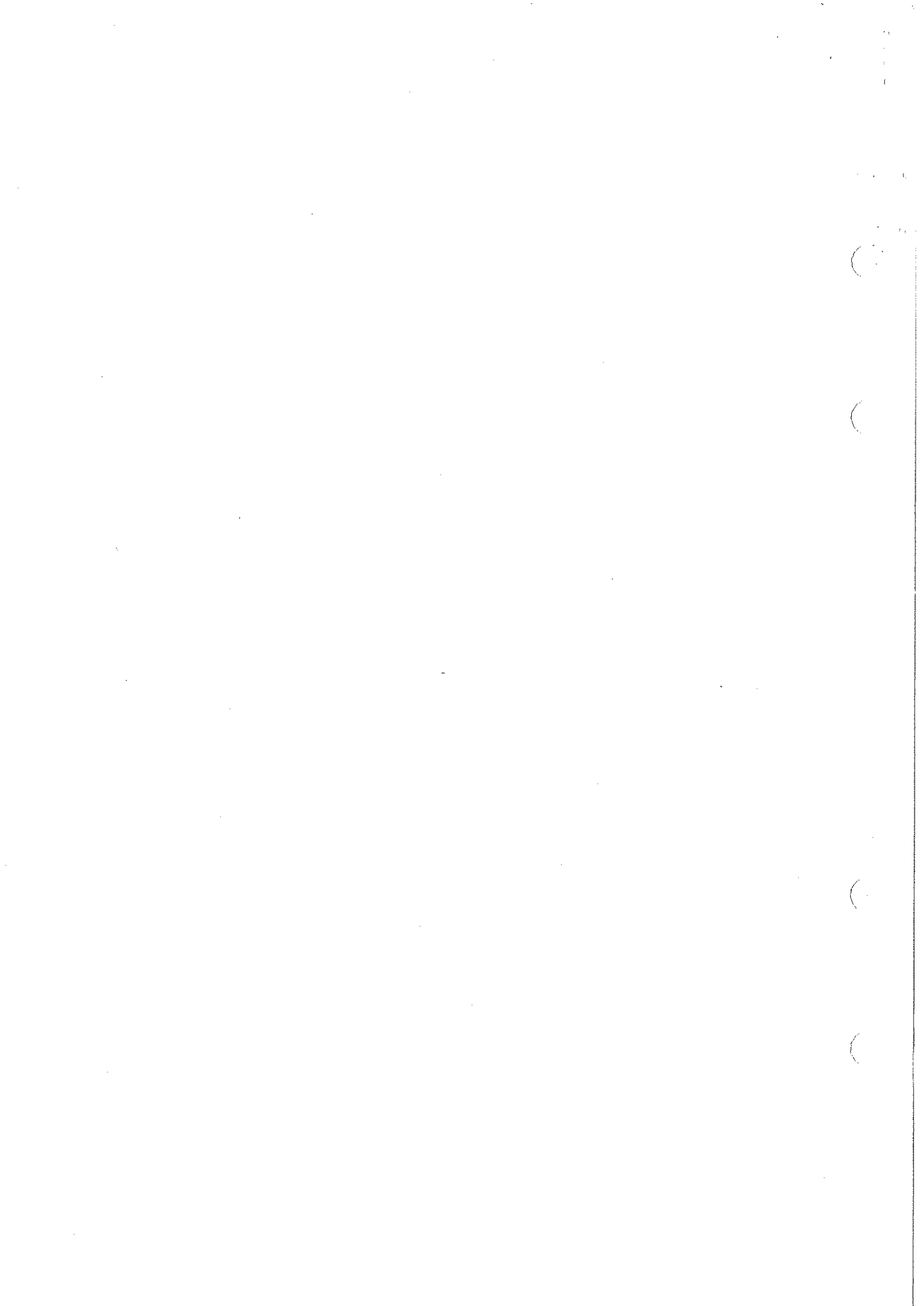
112. (1) In default of any express provision of the agreement to the contrary, an industrial agreement, unless rescinded, (and subject to any variation made as provided by this Part) continues in force after the expiration of the term specified in the agreement in respect of all parties except those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

**Application for registration**

114. (1) An association that is eligible for registration under this Part may apply to the Commission for registration.

(2) Where such an application is made the Registrar must—

(a) publish notice of the application in a newspaper circulating generally throughout the State;

(b) give notice of the application to the peak councils representing employer and employee associations;

and

(c) give notice of the application to any association registered under this Act that the Registrar considers to have a proper interest in the subject matter of the application.

(3) The notice must contain a statement of the right of interested persons to lodge objections in accordance with the Rules to the registration of the applicant association.

**Objections**

115. A person may, within the time allowed by the Rules, object to the registration of the association.

DIVISION II—REGISTRATION AND INCORPORATION OF LOCALLY BASED ASSOCIATIONS

**Eligibility for registration**

116. (1) Subject to this section, the following associations are eligible for registration under this Division:

(a) an association—

(i) formed to represent, protect or further the interests of employers;

and

(ii) consisting of two or more employers who employ, in aggregate, not less than 1 000 employees (whether or not the membership of the association includes persons who are not employers);

(b) an association—

(i) formed to represent, protect or further the interests of employees;

and

(ii) consisting of not less than 1 000 employees (whether or not the membership includes persons who are not employees).

(2) An organization, or a branch, section or part of an organization, registered under the Commonwealth Act is not eligible for registration under this Division.

**Registration of associations**

117. (1) The Commission may, after considering any objections to registration duly made in accordance with the Rules, register an association under this Division if satisfied—

- (a) that the association is eligible for registration under this Division;
- (b) that the rules of the association conform with the requirements of this Division;
- (c) that the prescribed conditions have been complied with;
- (d) that the registration of the association would be consistent with the provisions and objects of this Act;
- (e) that there is—
  - (i) in the case of an employer association—no other registered association to which the members of the applicant association might conveniently belong;
  - (ii) in the case of an employee association—no other registered association whose continued registration is, in the Commission's opinion, consistent with implementation of the objective of achieving a coherent national framework of employee associations, to which the members of the applicant association might conveniently belong;
- (f) that the name of the applicant association is not such as would cause confusion with the name of any other registered association or with the name of any organization registered under the Commonwealth Act.

(2) The Commission may, in an appropriate case, waive compliance with any of the prescribed conditions referred to in paragraph (c) above.

(3) For the purpose of deciding whether to register an association under this section, the Commission—

- (a) in the case of an employee association—
  - (i) must consider whether it should consult with the United Trades and Labor Council and may consult with that Council;
- and
- (ii) must have regard to the objective of achieving a coherent national framework of employee associations and to any awards or decisions of the Commonwealth Commission directed at achieving that objective (and must give effect to the principles on which those awards or decisions are based so far as may be appropriate in the circumstances of the particular case);
- (b) in the case of an employer association—must consider whether it should consult with appropriate peak councils representing employer associations and may consult with any such council.

(4) On registration of an association under this Division, the association becomes a body corporate—

- (a) under the name stated in its rules;
- (b) with power to acquire, hold, deal with and dispose of real and personal property;
- and
- (c) with such other powers as may be stated in its rules.

### Rules

118. (1) The rules of an association registered under this Division—

- (a) must state the association's name;
- (b) must conform with the prescribed conditions;

(c) must prescribe a procedure for resolution of disputes between the association and its members;

(d) must not impose on applicants for membership, or members, of the association conditions, obligations or restrictions that are oppressive, unreasonable or unjust.

(2) An association registered under this Division may resolve to alter its rules.

(3) The resolution must be passed in accordance with the relevant rules of the association unless the purpose of the proposed alteration is only to change the name of the association in which case a resolution passed by a majority of the members present and voting at an ordinary meeting of the association is sufficient provided that at least 14 days' notice of the time and place of the meeting was given to the members in accordance with the association's rules and the notice of meeting contained the proposed resolution for the change of name.

(4) An alteration of the rules of a registered association does not take effect unless and until registered by the Commission.

(5) Where an alteration of the rules of a registered association is of a kind that would or could affect the composition of the membership of the association, notice of an application for registration must be given, and objections may be made, in the same way, and on the same or similar grounds, as if the application were for registration of a new association.

(6) The Commission may register an alteration of rules if satisfied that—

(a) the alteration would be consistent with the provisions and objects of this Act;

(b) in the case of a change of name is not such as would cause confusion with the name of any other registered association or with the name of any organization registered under the Commonwealth Act.

(7) To the extent that the rules of an association conform with model rules promulgated by the regulations, no objection can be taken to the rules.

#### **Orders to secure compliance with rules, etc.**

119. (1) The Commission may, on the application of a member of an association registered under this Division or a person who has been expelled from membership of such an association, order the association or specified officers of the association—

(a) to carry out an obligation imposed by the rules of the association;

(b) to make good any contravention of, or failure to comply with, the rules of the association;

(c) to carry out any consequential or related directions that the Commission thinks necessary or desirable in the circumstance.

(2) An association or other person who fails to comply with an order of the Commission under this section is guilty of an offence.

Penalty: Division 8 fine.

(3) The Commission may, on the application of a member of an association registered under this Division or a person who has applied for membership of such an association, declare a rule of the association to be invalid on the ground that the rule is inconsistent with this Act.

(4) The Commission may, without limiting any other power of the Commission to adjourn proceedings, adjourn proceedings in relation to an application under subsection (3) for such period and on such terms and conditions as it thinks fit, for the purpose of giving the association an opportunity to alter its rules.

### Amalgamation

120. (1) An association registered under this Division may resolve to amalgamate with another association or other associations so registered.

(2) A resolution to amalgamate—

(a) must be passed—

(i) by the executive committee, or committee of management, of the association;

(ii) by the members of the association in the same way as a resolution for alteration of the rules of the association;

or

(iii) in any other manner provided by the rules;

and

(b) must approve the rules of the association to be formed by the amalgamation.

(3) Where a resolution to amalgamate is passed by the executive committee, or committee of management, of an association (and authority to pass the resolution is not conferred on the executive committee or committee of management by the rules), notice of the resolution must be given by post to all members of the association and, if within six weeks of the posting of the notices, the Registrar is requested by 200 members of the association or ten per cent of the total membership (whichever is the lesser) to conduct a ballot, a ballot of the members of the association must be conducted and unless the resolution is supported by a majority of the members voting at the ballot, the resolution will lapse.

(4) The rules of the association to be formed by the amalgamation may provide for persons holding office in the amalgamating associations to hold office in the new association for up to four years before an election is held in relation to the relevant office.

(5) A registered association may use its financial and other resources in support of a proposed amalgamation if at least 14 days' notice of its intention to do so has been given to its members (but this section does not limit any other power that the association may have under its rules to support a proposed amalgamation).

(6) Where two or more associations have resolved to amalgamate, an application for registration of the association to be formed by the amalgamation must be made and dealt with in accordance with this Part.

(7) On registration of the new association—

(a) the amalgamating associations are dissolved;

and

(b) all property, rights and liabilities of the amalgamating associations are vested in the new association.

(8) The Registrar may recover the cost of conducting a ballot under subsection (3) from the association as a debt.

### Financial records

121. (1) An association registered under this Division must keep proper accounting records of all its financial transactions.

(2) An association registered under this Division must prepare annually the following accounts:

- (a) a balance sheet giving a true and fair view of the assets and liabilities of the association as at the end of the relevant accounting period;
- (b) a statement of receipts and payments over the relevant accounting period.

(3) The association must have the accounts prepared under subsection (2) audited by a registered company auditor.

(4) The accounts and accounting records to be kept and prepared under this section must conform with the requirements of the Rules.

(5) An association that fails to comply with a requirement of this section is guilty of an offence.

Penalty: Division 9 fine.

### De-registration of associations

122. (1) The Commission may de-register an association registered under this Division if—

- (a) the association applies for de-registration;
- (b) the association contravenes or fails to comply with a provision of this Act or its rules as to the manner in which its affairs are to be conducted;
- (c) the association acts oppressively towards any member or class of members;
- (d) the association, or a substantial number of the members of the association, has wilfully contravened, or failed to comply with, an award of the Commission;

or

- (e) there is some other substantial reason for de-registration of the association.

(2) An application for de-registration of an association may be made by—

- (a) the association itself;
- (b) the Minister;
- (c) a member or former member of the association;

or

- (d) the Registrar.

(3) The Commission may, on making an order for de-registration of an association, direct that the order be suspended and that if a stated requirement is complied with to the Commission's satisfaction within a stated period, the order will lapse but, otherwise will take effect at the end of the stated period.

(4) Where the Commission finds that grounds for de-registering an association exist and that those grounds arise wholly or mainly from the conduct of a particular class or section of the members of the association, the Commission may, instead of de-registering the association, alter the rules of the association so as to exclude from membership persons belonging to the relevant class or section.

### DIVISION III—REGISTRATION OF FEDERALLY BASED ASSOCIATIONS

#### Eligibility for registration

123. (1) Subject to subsection (2), an organization is eligible for registration under this Division.

(2) Where the rules of the organization provide for a South Australian branch, the rules must confer on the branch a reasonable degree of autonomy in the administration and control of South Australian assets and in the determination of questions affecting solely or principally members resident in this State.

(3) A branch of an organization is eligible for registration under this Division if the rules of the organization confer on the branch a reasonable degree of autonomy in the administration and control of South Australian assets and in the determination of questions affecting solely or principally members resident in this State.

### Registration

124. (1) The Commission may, after considering any objections to registration duly made in accordance with the rules, register an organization, or a branch of an organization, under this Division if satisfied—

- (a) that the organization or branch is eligible for registration under this Division;
- (b) that the registration of the organization or branch would be consistent with the provisions and objects of this Act;
- (c) that there is—

- (i) in the case of an organization, or branch of an organization, representative of employers—no other association registered under this Act to which members of the applicant organization or branch might conveniently belong;

or

- (ii) in the case of an organization or branch of an organization, representative of employees—no other association registered under this Act, whose continued registration is, in the Commission's opinion, consistent with implementation of the objective of achieving a coherent national framework of employee associations, to which members of the applicant organization or branch might conveniently belong.

(2) In exercising its powers under this section, the Commission—

- (a) must consider whether it should consult with appropriate peak councils representing employer or employee associations and may consult with any such council;

and

- (b) must have regard to the objective of achieving a coherent national framework of employee associations and to any awards or decisions of the Commonwealth Commission directed at achieving that objective (and must give effect to the principles on which those awards or decisions are based so far as may be appropriate in the circumstances of the particular case).

(3) Subsections (1)(c) and (2) do not apply where the application arises from an amalgamation between an association registered under Division II and an organization.

### De-registration

125. (1) The Commission may de-register an organization or branch registered under this Division if—

- (a) the organization or branch applies for de-registration;
- (b) the organization or branch contravenes or fails to comply with a provision of this Act or its rules as to the manner in which its affairs are to be conducted;

**Industrial Relations Act (S.A.) 1972**

---

- (c) the organization or branch wilfully contravenes or fails to comply with an award of the Commission;
- (d) the organization or branch is being administered in a manner that is oppressive or unfair to members resident in this State;
- (e) the organization abolishes its South Australian branch or its rules cease to confer on the South Australian branch a reasonable degree of autonomy in the administration and control of South Australian assets or in the determination of questions affecting solely or principally the members resident in this State;

or

- (f) there is some other substantial reason for de-registration of the organization or branch.

(2) An application for de-registration of an organization or branch may be made by—

- (a) the organization or branch itself;
- (b) the Minister;
- (c) a member or former member of the organization or branch;

or

- (d) the Registrar.

(3) In deciding whether to de-register an organization or branch under this section, the Commission—

- (a) in the case of an organization, or branch of an organization, representative of employees—

- (i) must consider whether it should consult with the United Trades and Labor Council and may consult with that Council;

and

- (ii) must have regard to the objective of achieving a coherent national framework of employee associations and to any awards to decisions of the Commonwealth Commission directed at achieving that objective (and must give effect to the principles on which those awards or decisions are based so far as may be appropriate in the circumstances of the particular case);

- (b) in the case of an organization, or branch of an organization, representative of employers—must consider whether it should consult with appropriate peak councils representing employer associations and may consult with any such council.

(4) The Commission may, on making an order for de-registration of an organization or branch, direct that the order be suspended and that if a stated requirement is complied with to the Commission's satisfaction within a stated period, the order will lapse but, otherwise will take effect at the end of the stated period.

(5) If an organization registered under this Division ceases to be an organization registered under the Commonwealth Act, its registration under this Division automatically terminates.

(6) Where a branch is registered under this Division and the organization ceases to be an organization registered under the Commonwealth Act, registration of the branch under this Division automatically terminates.

DIVISION IV—PROVISIONS GENERALLY APPLICABLE TO REGISTERED ASSOCIATIONS

**Exercise of powers of the Commission**

126. (1) Subject to any contrary direction by the President, the powers of the Commission under this Part will be exercised by the Registrar.

(2) If the President so directs, the powers of the Commission under this Part will be exercised by—

(a) a Presidential Member or Industrial Magistrate nominated by the President;

or

(b) the Full Commission.

**Federation**

127. (1) Where—

(a) a federation of organizations is recognised under the Commonwealth Act;

and

(b) one or more of its constituent members are registered under Division III,

the federation may, subject to subsection (2) and the regulations, act under this Act as the representative of the constituent members that are registered under Division III.

(2) Nothing in this section limits the right of an organization that is a constituent member of a federation to represent itself or its members.

**Register of members and officers of associations**

128. (1) A registered association must keep—

(a) a register of its officers;

and

(b) a register of its members.

(2) The registers must be kept available for inspection by the Registrar or any member of the association at the association's registered office.

(3) A registered association must in the month of July in each year furnish the Registrar with—

(a) a list of the association's officers;

and

(b) a notice of any changes in the officers of the association that have occurred since a list was last furnished under this section.

(4) A registered association must, at the request of the Registrar, furnish the Registrar with an up-to-date list of the members or officers of the association.

(5) If a registered association fails to comply with this section, or a requirement made under this section, the association is guilty of an offence.

Penalty: Division 9 fine.

(6) A person employed in duties connected with the administration of this Act who divulges information as to the membership of a registered association except in the performance of official duties or as may be authorized by the association or the President is guilty of an offence.

Penalty: Division 9 fine.

(7) Where a registered association is an organization registered under the Commonwealth Act, a reference to the members of the association in this section will be construed as a reference to members resident in this State.

### Rules

129. (1) A registered association must, at the request of any person, furnish that person with a printed or typewritten copy of its rules as in force for the time being.

Penalty: Division 9 fine.

(2) The association may charge a fee (not exceeding a limit fixed by the regulations) for supplying a copy of its rules under this section.

(3) A document apparently certified by the secretary or some other officer of a registered association to be a copy of the rules of the association will be accepted in any legal proceedings as evidence of the rules and of their validity.

### Certificate of registration

130. (1) On registration of an association, the Registrar will issue a certificate of registration to the association.

(2) The registration of an association may be proved, in the absence of evidence that the association has ceased to be registered, by production of a certificate of registration issued under this Act or a corresponding previous enactment in relation to the association.

### Service

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

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

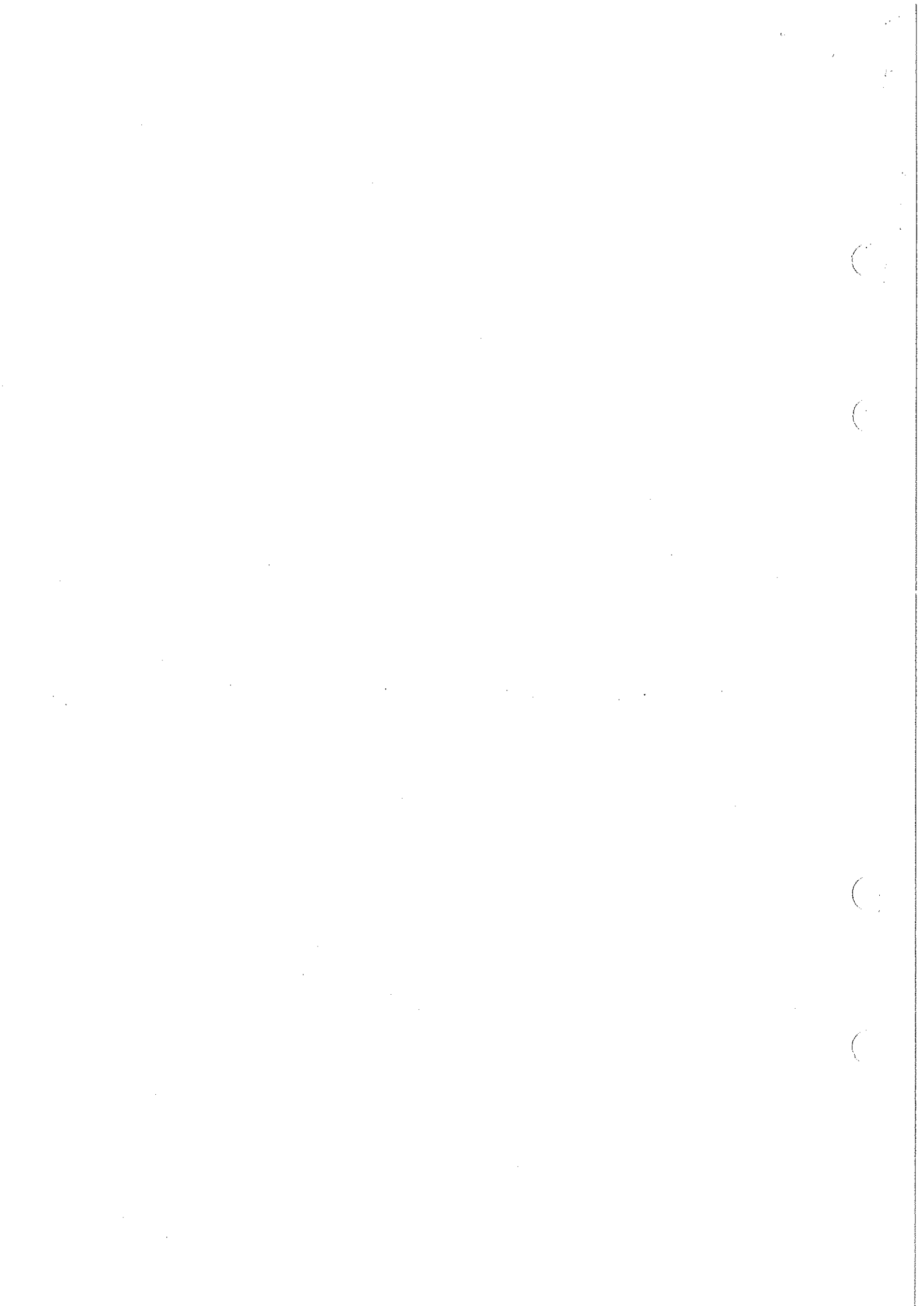
(b) by sending it by certified mail addressed to the association at its registered address;

or

(c) in any other manner directed by the Court or the Commission.

### Saving of obligations

132. The de-registration of an association does not relieve the association or any member of the association from any penalty, liability or obligation imposed or arising prior to the de-registration.



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.

**Limitations of actions in tort**

**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) —

- (i) an industrial dispute has been resolved by conciliation or arbitration under this Act;

and

- (ii) the Full Commission determines on application under this section that in the circumstances of the particular case the industrial dispute arose or was prolonged by unreasonable conduct on the part of the person against whom the action is to be brought;

or

(b) the Full Commission determines on application under this section 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.

### Conscientious objection

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.

(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: Division 8 fine.

(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.

### Notice of awards and decisions of the Commission

145. (1) Notice of an award or decision of the Commission (unless of an interlocutory nature or made under section 31) must be published, in accordance with the Rules, in a newspaper circulating generally throughout the State.

(2) Copies of all awards and decisions of the Commission (except those of an interlocutory nature) must be kept available for public inspection at the office of the Registrar.

### 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.

### Industry consultative councils

145b. (1) A Commissioner may, with the President's consent, assist in the formation or operation of a consultative council for a particular industry.

(2) Before granting consent under subsection (1), the President must be satisfied that the consultative council is properly representative of associations of employers and employees in the industry.

Industrial Relations Act (S.A.) 1972

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;

\* \* \* \* \*

(ca) the Remuneration Tribunal;

(d) the Commissioner for Public Employment;

\* \* \* \* \*

(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).

Due regard to be had to certain general principles

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, conditions, practices or procedures enunciated or laid down in, or attached to, any relevant decision or declaration of the Commonwealth Commission.

(2) The Full Commission may, on its own initiative, or on the application of—

(a) the Minister;

(b) the United Trades and Labor Council;

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

or

(d) the South Australian Employers' Federation Incorporated,

make a declaration adopting in whole or in part and with or without modification any principles, guidelines, conditions, practices or procedures 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, conditions, practices or procedures 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).

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

DIVISION III—OFFENCES

**Manner in which employee is to be paid**

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.

(2) For the purposes of this section a payment is a payment in money if it is made—

(a) in cash;

or

(b) on authorization under subsection (2a)—

(i) by cheque (duly met on presentation at the bank on which it is drawn), postal order or money order payable to the employee;

or

(ii) into a specified account with a financial institution.

(2a) An authorization may be given for the purposes of subsection (2)—

(a) by the employee himself or herself giving the authorization in writing;

or

(b) by a registered association of employees whose membership covers persons who do the kind of work undertaken by the employee agreeing to the authorization in an award or industrial agreement.

(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 authorization given pursuant to subsection (2a)(a) (no other authorization having been given under subsection (2a)(a) or (b)), 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 an account with a financial institution 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 a division 8 fine.

(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 a division 8 fine.

(3) Where a person or association is convicted of an offence under subsection (1), the court may, either on application or on its own initiative, and in addition to any penalty it may impose—

(a) order the defendant to take such steps as are specified in the order, within the time specified in the order, to remedy his or her default;

(b) if the court is of the opinion that the defendant wilfully committed the offence—issue an injunction (including a mandatory injunction) to restrain the defendant from committing any further default or to compel the defendant to take specified action to remedy the default;

and

(c) if the offence arises out of a failure to comply with an order made in the exercise of the jurisdiction of the Court or Commission under section 15(1)(d) or 31—order the defendant to pay to the person who was the other party to the particular proceedings penalty interest on any amount payable by the defendant to that person as a result of those proceedings, the interest being payable at a rate (not exceeding twice the prime bank rate applying at the particular time), and as from a date, determined by the court.

(4) A person or association must not disobey or fail to comply with an injunction or order under subsection (3).

Penalty: Division 6 fine.

### 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.

**Discrimination against employee for taking part in industrial proceedings**

156. (1) An employer must not—

- (a) dismiss an employee from, or threaten to dismiss an employee from, his or her employment;
  - (b) injure an employee in, or threaten to injure an employee in, his or her employment;
- or
- (c) alter detrimentally the position of an employee in, or threaten to alter detrimentally the position of an employee in, his or her employment,

in consequence of—

- \* \* \* \* \*
- (f) the employee becoming a party to any proceedings before the Court, or the Commission;
  - (g) the employee taking part or being involved in an industrial dispute;
- or
- (h) any evidence given or anything said or done or omitted to be said or done by the employee before the Court, or the Commission.

Penalty: Division 8 fine.

(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, or that his or her employment with the defendant was altered detrimentally, within six 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) A prosecution for an offence against this section may be commenced by—

- (a) the employee against whom the offence is alleged to have been committed;
- or
- (b) an Inspector.

\* \* \* \* \*

**Employee not to be discriminated against on certain other grounds**

157. (1) An employer must not—

- (a) dismiss an employee from, or threaten to dismiss an employee from, his or her employment;
  - (b) injure an employee in, or threaten to injure an employee in, his or her employment;
- or
- (c) alter detrimentally the position of an employee in, or threaten to alter detrimentally the position of an employee in, his or her employment,

because the employee—

- (d) is or has been entitled to the benefit of an award or industrial agreement;
- (e) (i) is or has been a member, officer or delegate of an association;
- (ii) is not a member, officer or delegate of an association;

- (f) (i) proposes to become a member, officer or delegate of an association;  
 (ii) proposes to cease to be a member, officer or delegate of an association;  
 (g) after making reasonable application for time off work, has been absent from work for a reasonable period or periods for the purpose of performing his or her duties as a member, officer or delegate of an association;  
 or  
 (h) takes, proposes to take, or has taken, lawful action for the purpose of furthering or protecting the interests of an association, or of the members of an association, of which the employee is a member, officer or delegate.

Penalty: Division 8 fine.

(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, or that an employee's employment has been altered detrimentally, 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.

#### **Right of injured employee to compensation**

**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—

- (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 because the employer—

- (a) is entitled to the benefit of an award or industrial agreement;  
 (b) (i) is a member, officer or delegate of an association;  
 (ii) is not a member, officer or delegate of an association;  
 or  
 (c) (i) proposes to become a member, officer or delegate of an association;  
 (ii) proposes to cease to be a member, officer or delegate of an association.

Penalty: Division 9 fine.

(2) Where it is established in proceedings for an offence against subsection (1) that an employee has ceased work in the service of an employer, the onus is on the employee to establish that the employee did not act for a reason referred to in subsection (1).

**Employers to keep certain records**

159. (1) Subject to subsection (6), an employer who is bound by an award or industrial agreement must, in respect of employees to whom the award or industrial agreement 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: Division 8 fine.

(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 six years after the date of the last entry made in it.

Penalty: Division 8 fine.

(4) An employer must—

(a)—

(i) at the reasonable request of an employee—produce for inspection a record relating to the employee that is to be kept under this section;

or

(ii) at the reasonable request of an Inspector—produce for inspection a record relating to any employee that is to be kept under this section;

and

(b) permit the employee or Inspector to take copies of, or extracts from, the record.

Penalty: Division 8 fine.

(4a) The right of an employee to inspect records under subsection (4)(a)(i) does not derogate from the operation of any relevant award or industrial agreement.

(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: Division 9 fine.

(6) An award or industrial agreement may, if the parties agree, direct that, in relation to some or all of the persons bound by the award or industrial agreement, a time book need not be kept.

(7) Unless otherwise provided by an award or industrial agreement, where an employee is paid on an hourly basis, or on some other basis where the rate of pay varies according to the time worked, the employer must, at the time that the employer makes a payment of wages, provide the employee with a written record showing the following information:

(a) the number of hours worked by the employee during the period to which the payment relates (distinguishing between ordinary time and overtime);

and

(b) the rate of pay that has been applied in relation to the payment of the wages.

Penalty: Division 10 fine.

#### Penalty for false entries

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: Division 8 fine.

#### Exhibition, etc., of relevant awards

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.

(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: Division 10 fine.

#### 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: Division 8 fine.

(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: Division 9 fine.

(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: Division 8 fine.

(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: Division 8 fine.

(3) Proceedings in respect of offences under this section may be heard and determined by the Court.

**Penalty for wilful false statement**

**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.

**Punishment for contempt**

**166.** (1) A person must not—

(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: Division 8 fine.

(2) Where an offence against subsection (1) is committed in the face of the Court or the Commission, it may proceed forthwith (without the necessity of laying a charge or other formality) to convict and fine the offender.

(3) Where—

(a) a party to proceedings before the Court or the Commission contravenes or fails to comply with an order in the nature of an interlocutory order or an order (not being an order for payment of money) to do, or refrain from a particular act;

and

(b) makes no reasonable and adequate excuse to the Court or the Commission for the contravention or non-compliance,

the Court or Commission may (without limiting its powers to deal with the matter in any other way) order that that party be not heard, or further heard, in the proceedings, or impose such other procedural disability or civil penalty as the Court or Commission considers appropriate to the circumstances of the case.

(4) The Court or Commission must not proceed to act under subsection (3) without first giving the relevant party an opportunity to be heard in relation to the matter.

**Recovery of penalties and other sums**

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.

(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.

**Recovery of penalty, etc., imposed on association**

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.

\* \* \* \* \*

**In default of association, penalty may be recovered from members**

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, 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 make payments**

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 six 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, or the Commission 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, or the Commission 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.

\* \* \* \* \*

**Summary procedure**

174. (1) Proceedings in respect of offences against this Act must except where otherwise provided, be heard and determined summarily before an Industrial Magistrate.

(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.

**Conduct by officers, directors, employees or agents**

174a. (1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to a particular conduct, it is sufficient to show—

(a) that the conduct was engaged in by an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority;

and

(b) that the officer, director, employee or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by—

(a) an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority;

or

(b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, director, employee or agent,

is, for the purposes of this Act, conduct engaged in also by the body corporate.

(3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

**DIVISION IV—RULES****Rules and procedure**

175. (1) The President may make Rules not inconsistent with this Act—

(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, or the Registrar, 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, or the Registrar;

- (b) as to the publication of the awards, orders, decisions, and other acts of the Court, or the Commission 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, or the Commission;
- (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 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:

\* \* \* \* \*

### 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.

## Industrial Relations Act (S.A.) 1972

81

## SCHEDULE

\* \* \* \* \*

*The Industrial Magistracy**Part I—Preliminary*

1. In this schedule, unless the contrary intention appears—

“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.

(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.

(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.

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.

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*

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.
- (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.
- (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.

*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.

## Industrial Relations Act (S.A.) 1972

(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*

12. A stipendiary magistrate is an “employee” within the meaning, and for the purposes, of the *Superannuation Act, 1974*.

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.

(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:

(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.

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—

(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.

(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.

19. No award or industrial agreement affecting the remuneration or conditions of service of stipendiary magistrates can be made under this Act.

## APPENDIX 1

## LEGISLATIVE HISTORY

## Repeals

- 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*.
- The *Industrial Conciliation and Arbitration Act Amendment Act, 1989*, repealed the *Industrial Code, 1967*.
- The *Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991* repealed the *Public Service Arbitration Act 1968*.

## Transitional Provisions

*Transitional provisions from Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991, s. 55*

55. (1) An association registered (or purportedly registered) under Part IX of the principal Act immediately before the repeal and re-enactment of that Part takes effect will, on the commencement of the re-enacted Part, be taken to be—

- (a) in the case of an association that is also an organization—an organization registered under Division III of Part IX;
- (b) in any other case—an association registered under Division II of Part IX.

(2) During the transitional period no objection of the kind referred to in section 133 of the principal Act (as in force before the re-enactment of Part IX) can be taken to the registration of an affiliated association under Division II of Part IX nor can any objection to registration of such an association be taken under section 116(2) of the principal Act.

(3) The transitional period is the period of four years from the date on which the repeal and re-enactment of Part IX takes effect.

(4) Subject to subsection (5), on the expiration of the transitional period—

- (a) each affiliated association ceases to have a separate legal identity and its property, rights and liabilities vest in or attach to the organization with which it is affiliated;
  - (b) the rules of the association formerly registered under the principal Act are revoked;
- and
- (c) if the rules of the organization with which it is affiliated provide for a South Australian branch and confer on the branch a reasonable degree of autonomy in the administration and control of South Australian assets and in the determination of questions affecting solely or principally members resident in this State—
    - (i) if the organization has so nominated in accordance with the Rules—the organization will thereafter be considered to be registered under Division III of Part IX;
    - (ii) otherwise—the affiliated association will thereafter be considered to be registered as a branch of the organization under Division III of Part IX (with rules as registered for the organization under the Commonwealth Act).

(5) If—

- (a) the rules of an affiliated association differ from the rules of the organization with which it is affiliated (as registered under the Commonwealth Act) so that a member of the affiliated association would not necessarily be eligible for membership in accordance with the latter;
- (b) the organization takes reasonable steps to change its rules so as to allow all persons who are eligible for membership of the affiliated association to become members of the organization, but fails;
- (c) the affiliated association, before the expiration of the transitional period, applies to the President under this subsection;

and

(d) the President is satisfied that the application has been duly made,

the President must, by notice in the *Gazette*, exempt the affiliated association from the operation of subsection (4).

(6) Where an exemption is granted under subsection (5)—

- (a) the affiliated association will (subject to de-registration) continue to be registered under Division II of Part IX;
- and

(b) no objection of the kind referred to in section 133 of the principal Act (as in force before the re-enactment of Part IX) can be taken to the registration of the association under Division II of Part IX nor can any objection to registration of such an association be taken under section 116(2) of the principal Act.

(7) A reference in this section to an affiliated association is a reference to an association declared by regulation to be affiliated with a specified organization.

(8) The Commission must, on the application of the United Trades and Labor Council, register the United Trades and Labor Council as an association under Division II of Part IX.

(9) The following provisions apply in relation to the repeal of Part V of the principal Act:

(a) an award or decision of a conciliation committee in force immediately before that repeal will, after that repeal, be taken to be an award of the Commission and will, subject to the principal Act, continue to have the same operation;

and

(b) any proceedings before a conciliation committee at the time of that repeal will, after that repeal, continue before the Commissioner who is the presiding officer of the conciliation committee at the time of that repeal as if the proceedings had been commenced before the Commission.

(10) The following provisions apply in relation to the repeal of the *Public Service Arbitration Act 1968*:

(a) a determination or decision of a Public Service Arbitrator in force immediately before that repeal will, after that repeal, be taken to be an award of the Commission and will, subject to the principal Act, continue to have the same operation;

and

(b) any proceedings before the Public Service Arbitrator at the time of that repeal will, subject to such directions as the President thinks fit, be transferred to the Commission where they may proceed as if they had been commenced before the Commission.

(11) The following provisions apply in relation to the amendment of the *Education Act 1972* and the *Technical and Further Education Act 1976*:

(a) an award of the Teachers' Salaries Board in force immediately before those amendments will, after those amendments, be taken to be an award of the Commission and will, subject to the principal Act, continue to have the same operation;

and

(b) any proceedings before the Teachers' Salaries Board at the time of those amendments may continue before the Teachers' Salaries Board as if those amendments had not been effected.

(12) The person hearing any proceedings continued or transferred under subsection (9) or (10) may:

(a) receive in evidence any transcript of evidence in proceedings before the tribunal before which the proceedings were commenced, and draw any conclusions of fact from that evidence that appear proper;

and

(b) adopt any findings or determinations of that tribunal that may be relevant to the proceedings.

Legislative History

- 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.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 30 November 1987. A schedule of these alterations was laid before Parliament on 3 November 1987.
- Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint) is as follows:

Section 1:	substituted by 34, 1991, s. 3
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; amended by 34, 1991, s. 4
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.) <b>definition of "association" substituted by 34, 1991, s. 5(a)</b> definition of "award" amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 5(b) definition of "club" repealed by 55, 1987, s. 3(1) (Sched.) definition of "Committee" repealed by 34, 1991, s. 5(c) definition of "the Commonwealth Act" inserted by 55, 1987, s. 3(1) (Sched.); substituted by 45, 1989, s. 3 definition of "the Commonwealth Commission" inserted by 55, 1987, s. 3(1) (Sched.); substituted by 45, 1989, s. 3 definition of "council" amended by 55, 1987, s. 3(1) (Sched.) definition of "decision" inserted by 55, 1987, s. 3(1) (Sched.) definition of "demarcation dispute" inserted by 34, 1991, s. 5(d) definition of "employee" amended by 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 3(a), (b) definition of "employer" amended by 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 3(c), (d); 34, 1991, s. 5(e); 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 authority" inserted by 34, 1991, s. 5(f) 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.); 34, 1989, s. 3(e); 34, 1991, s. 5(g) definition of "industry" substituted by 34, 1991, s. 5(h)

	definition of "Inspector" substituted by 34, 1991, s. 5(i)
	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.)
	<b>definition of "organization" inserted by 34, 1991, s. 5(j)</b>
	definition of "outworker" inserted by 34, 1989, s. 3(g)
	definition of "peak council" inserted by 34, 1991, s. 5(k)
	definition of "prescribed employer" substituted by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 5(l)
	definition of "prime bank rate" inserted by 34, 1989, s. 3(f)
	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.); <b>substituted by 34, 1991, s. 5(m)</b>
	definition of "Rules" amended by 55, 1987, s. 3(1) (Sched.)
	definition of "State" inserted by 34, 1991, s. 5(n)
	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(1aa):	inserted by 34, 1989, s. 6(h)
Section 6(1a):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 6(1b):	inserted by 55, 1987, s. 3(1) (Sched.); repealed by 34, 1991, s. 5(o)
Section 6(2):	amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 5(p)
Section 6(3):	inserted by 19, 1984, s. 4(c); amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 5(q)
Section 7:	repealed by 55, 1987, s. 3(1) (Sched.); inserted by 34, 1989, s. 4
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. 2(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.); 34, 1991, s. 6(a)-(c)
Section 15(1)(e):	repealed by 19, 1984, s. 8(a)
Section 15(2):	substituted by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 6(d)
Section 15(3):	inserted by 19, 1984, s. 8(b); substituted by 55, 1987, s. 3(1) (Sched.); amended by 34, 1989, s. 5(a); substituted by 34, 1991, s. 6(d)
Section 15(4):	inserted by 19, 1984, s. 8(b); substituted by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 6(d)
Section 15(4a):	inserted by 34, 1989, s. 5(b); repealed by 34, 1991, s. 6(d)
Section 15(5) - (7):	inserted by 55, 1987, s. 3(1) (Sched.); repealed by 34, 1991, s. 6(d)
Section 16:	substituted by 55, 1987, s. 3(1) (Sched.); amended by 34, 1989, s. 6
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.); 34, 1989, s. 32 (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(2):	substituted by 34, 1991, s. 7(a)
Section 23(2a) and (2b):	inserted by 34, 1991, s. 7(a)
Section 23(3):	substituted by 19, 1984, s. 12(a); amended by 55, 1987, s. 3(1) (Sched.)
Section 23(4):	substituted by 34, 1991, s. 7(b)
Section 23(5):	substituted by 19, 1984, s. 12(b); 34, 1991, s. 7(b)
Section 23(7):	substituted by 59, 1985, s. 9(b); amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 7(c)
Section 23(8) - (10):	amended by 55, 1987, s. 3(1) (Sched.)
Section 23(11) - (13):	inserted by 34, 1991, s. 7(d)
Section 23a:	inserted by 34, 1991, s. 8

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 24a:	inserted by 34, 1991, s. 9
Section 25(1):	amended by 34, 1991, s. 10(a)
Section 25(2):	substituted by 34, 1989, s. 7
Section 25(3):	amended by 55, 1987, s. 3(1) (Sched.); substituted by 34, 1991, s. 10(b)
Section 25(4) - (7):	inserted by 34, 1991, s. 10(b)
Section 25a:	inserted by 19, 1984, s. 14
Section 25a(2):	amended by 34, 1989, s. 8
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.); 34, 1991, s. 11(a)
Section 26(1)(a):	repealed by 34, 1991, s. 11(a)
Section 26(1a):	inserted by 19, 1984, s. 15(a); amended by 55, 1987, s. 3(1) (Sched.); repealed by 34, 1991, s. 11(b)
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.); 34, 1991, s. 12(a)
Section 27(1)(b):	repealed by 34, 1991, s. 12(b)
Section 27(1a):	inserted by 19, 1984, s. 16(a); amended by 55, 1987, s. 3(1) (Sched.); repealed by 34, 1991, s. 12(c)
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.); 34, 1989, s. 32 (Sched.)
Section 27(7):	amended by 55, 1987, s. 3(1) (Sched.)
Section 27(8):	amended by 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 9
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); 34, 1991, s. 13(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.); 34, 1989, s. 32 (Sched.)
Section 28(5):	amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 13(c)
Section 29(1):	amended by 19, 1984, s. 18(a)-(c); 34, 1991, s. 14
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.); amended by 34, 1991, s. 15
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(2a) and (2b):	inserted by 34, 1991, s. 16
Section 31(3):	substituted by 52, 1985, s. 4(c)
Section 31(4):	substituted by 52, 1985, s. 4(d)
Section 31(5):	substituted by 34, 1989, s. 10(a)
Section 31(7):	inserted by 34, 1989, s. 10(b)
Section 32(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 33(1):	amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 17(a)
Section 33(2):	repealed by 34, 1991, s. 17(b)
Section 34(1):	substituted by 34, 1989, s. 11(a)
Section 34(1a) and (1b):	inserted by 34, 1989, s. 11(a)
Section 34(1c):	inserted by 34, 1989, s. 11(a); substituted by 34, 1991, s. 18
Section 34(3):	inserted by 19, 1984, s. 22; repealed by 34, 1989, s. 11(b)
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.)

Division IV of Part III comprising ss. 37 - 39 and heading inserted by 34, 1989, s. 12

Section 40(1):	amended by 34, 1991, s. 19(a)
Section 40(1a):	inserted by 34, 1991, s. 19(b)
Section 40(2):	amended by 19, 1984, s. 23(a), (b); 34, 1991, s. 19(c)
Section 40(3):	inserted by 19, 1984, s. 23(c); amended by 34, 1991, s. 19(c)
Section 40(4):	inserted by 19, 1984, s. 23(c); amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 19(c)
Section 40a:	inserted by 19, 1984, s. 24
Section 40a(1) and (2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 40a(3):	substituted by 34, 1991, s. 20
Section 40a(4) and (5):	inserted by 34, 1991, s. 20
Section 40b:	inserted by 19, 1984, s. 24
Section 40b(1) - (4):	amended by 55, 1987, s. 3(1) (Sched.)

## Industrial Relations Act (S.A.) 1972

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 44(1a):	inserted by 34, 1989, s. 13
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(1a):	inserted by 34, 1991, s. 21
Section 46(2) and (3):	inserted by 55, 1987, s. 3(1) (Sched.)
Section 48(2):	amended by 34, 1989, s. 14
Section 48(4):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 48a:	inserted by 34, 1991, s. 22
Section 49:	amended by 19, 1984, s. 25; 55, 1987, s. 3(1) (Sched.); substituted by 34, 1991, s. 23
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.); 34, 1991, s. 24
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.); 34, 1989, s. 32 (Sched.)
Section 50a:	inserted by 34, 1989, s. 15
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.); amended by 34, 1989, s. 32 (Sched.)
Section 52(1a):	inserted by 55, 1987, s. 3(1) (Sched.); amended by 34, 1989, s. 32 (Sched.)
Section 52(2):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 32 (Sched.)
	Part V comprising ss. 53 - 77 and headings amended by 19, 1984, ss. 27-34, 63 (Sched.); 52, 1985, ss. 5, 6; 55, 1987, s. 3(1) (Sched.); 34, 1989, ss. 16, 17, 32 (Sched.); repealed by 34, 1991, s. 25
Section 79(1):	amended by 34, 1991, s. 26
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(3):	amended by 34, 1989, s. 18(a)
Section 80(4):	amended by 55, 1987, s. 3(1) (Sched.); repealed by 34, 1989, s. 18(b)
Section 80(4a) and (4b):	inserted by 10, 1986, s. 2
Section 80(4c):	inserted by 34, 1989, s. 18(c)
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.); 34, 1991, s. 27
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.); 34, 1991, s. 28(a)
Section 86(4):	substituted by 34, 1991, s. 28(b)
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.); 34, 1989, s. 32 (Sched.)
Section 89:	amended by 55, 1987, s. 3(1) (Sched.); substituted by 15, 1992, s. 3
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 91a(4):	inserted by 34, 1991, s. 29
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
Heading preceding section 95:	amended by 34, 1991, s. 30
Section 95:	amended by 34, 1991, s. 31
Section 96(1):	amended by 52, 1985, s. 7; substituted by 55, 1987, s. 3(1) (Sched.); amended by 34, 1989, s. 19; substituted by 34, 1991, s. 32(a)
Section 96(3):	inserted by 19, 1984, s. 42; amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 32(b)
Section 96(4):	inserted by 34, 1991, s. 32(c)
Section 97:	amended by 52, 1985, s. 8; 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 20; substituted by 34, 1991, s. 33

Section 98(1):	amended by 52, 1985, s. 9(a); substituted by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 34(a)
Section 98(1a):	inserted by 52, 1985, s. 9(b); repealed by 34, 1991, s. 34(a)
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.); 34, 1991, s. 34(b)-(d)
Section 98(3a):	inserted by 52, 1985, s. 9(d); amended by 34, 1991, s. 34(e)
Section 98(4):	substituted by 55, 1987, s. 3(1) (Sched.); repealed by 34, 1991, s. 34(f)
Section 98(5):	repealed by 55, 1987, s. 3(1) (Sched.)
Section 98(6):	repealed by 34, 1991, s. 34(f)
Section 98(7):	substituted by 34, 1991, s. 34(g)
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.); substituted by 34, 1991, s. 35
Section 100:	substituted by 34, 1991, s. 36
Section 101(1):	amended by 60, 1981, s. 4; 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 37(a)
Section 101(2):	substituted by 55, 1987, s. 3(1) (Sched.)
Section 101(2a):	inserted by 19, 1984, s. 43(a)
Section 101(4):	amended by 34, 1991, s. 37(b)
Section 101(4)(b):	repealed by 34, 1991, s. 37(b)
Section 101(5):	amended by 34, 1991, s. 37(c)
Section 101(6):	inserted by 19, 1984, s. 43(b)
Section 102(1):	amended by 34, 1991, s. 38(a)
Section 102(2):	amended by 34, 1991, s. 38(b), (c)
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(1):	amended by 34, 1989, s. 21
Section 108(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 108a:	inserted by 19, 1984, s. 45
Section 108a(3a):	inserted by 34, 1989, s. 22(a)
Section 108a(4):	amended by 55, 1987, s. 3(1) (Sched.); substituted by 34, 1989, s. 22(b)
Section 108a(4a):	inserted by 34, 1991, s. 39(a)
Section 108a(7):	amended by 55, 1987, s. 3(1) (Sched.)
Section 108a(8):	inserted by 34, 1991, s. 39(b)
Section 109:	amended by 55, 1987, s. 3(1) (Sched.)
Section 110(2):	substituted by 19, 1984, s. 46; amended by 34, 1991, s. 40(a)
Section 110(3):	inserted by 19, 1984, s. 46; repealed by 34, 1991, s. 40(b)
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.)

**Part IX comprising ss. 114 - 142 and headings amended by 73, 1978, s. 2; 10, 1979, s. 3; 33, 1983, s. 3; 19, 1984, ss. 47 - 49 and 63 (Sched); 52, 1985, s. 12; 55, 1987, s. 3(1) (Sched); 34, 1989, s. 32 (Sched); repealed and ss. 114 - 132 and headings inserted in its place by 34, 1991, s. 41**

Section 143a:	inserted by 19, 1984, s. 50
Section 143a(3):	substituted by 34, 1991, s. 42
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.); 34, 1989, s. 32 (Sched.)
Section 144(4):	amended by 55, 1987, s. 3(1) (Sched.)
Section 144(5):	substituted by 19, 1984, s. 51(b)
Section 145:	amended by 55, 1987, s. 3(1) (Sched.); substituted by 34, 1991, s. 43
Section 145a:	inserted by 19, 1984, s. 52
Section 145a(2):	amended by 55, 1987, s. 3(1) (Sched.)
Section 145b:	inserted by 34, 1991, s. 44

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.); paragraphs (b), (c) and (e) repealed by 34, 1991, s. 45
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(1):	amended by 34, 1989, s. 23(a)
Section 146b(2):	amended by 55, 1987, s. 3(1) (Sched.); substituted by 34, 1989, s. 23(b)
Section 146b(3):	amended by 34, 1989, s. 23(c)
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.); substituted by 34, 1989, s. 24(a)
Section 153(2a):	inserted by 34, 1989, s. 24(a)
Section 153(3):	substituted by 19, 1984, s. 56; amended by 55, 1987, s. 3(1) (Sched.)
Section 153(4):	amended by 34, 1989, s. 24(b)
Section 153(6):	amended by 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 24(c)
Section 154(1) and (2):	amended by 19, 1984, s. 63 (Sched.); 34, 1989, s. 32 (Sched.)
Section 154(3):	amended by 55, 1987, s. 3(1) (Sched.); substituted by 34, 1989, s. 25

## Industrial Relations Act (S.A.) 1972

91

Section 154(4):	amended by 19, 1984, s. 63 (Sched.); substituted by 34, 1989, s. 25
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.); substituted by 34, 1989, s. 26(a); amended by 34, 1991, s. 46(b)
Section 156(1)(d) and (e):	repealed by 34, 1991, s. 46(a)
Section 156(2):	amended by 19, 1984, s. 57(b),(c); 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 26(b)
Section 156(3):	amended by 19, 1984, s. 57(d); 55, 1987, s. 3(1) (Sched.); substituted by 34, 1989, s. 26(c)
Section 156(4):	repealed by 19, 1984, s. 57(e)
Section 157:	substituted by 19, 1984, s. 58
Section 157(1):	amended by 125, 1986, s. 71(1) (3rd Sched.); 55, 1987, s. 3(1) (Sched.); substituted by 34, 1989, s. 27(a)
Section 157(2):	substituted by 55, 1987, s. 3(1) (Sched.); amended by 34, 1989, s. 27(b)
Section 157a:	inserted by 19, 1984, s. 59
Section 157a(1):	amended by 55, 1987, s. 3(1) (Sched.)
Section 158:	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.); substituted by 34, 1989, s. 28
Section 159:	amended by 19, 1984, ss. 60, 63 (Sched.); substituted by 55, 1987, s. 3(1) (Sched.)
Section 159(1):	amended by 34, 1989, ss. 29(a), 32 (Sched.)
Section 159(3):	amended by 34, 1989, ss. 29(b), 32 (Sched.)
Section 159(4):	substituted by 34, 1989, s. 29(c)
Section 159(4a):	inserted by 34, 1989, s. 29(c)
Section 159(5):	amended by 34, 1989, s. 32 (Sched.)
Section 159(6):	amended by 34, 1989, s. 29(d)
Section 159(7):	inserted by 34, 1989, s. 29(e)
Section 160:	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 32 (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.); amended by 34, 1989, s. 32 (Sched.)
Section 162(1):	amended by 19, 1984, s. 63 (Sched.); 34, 1989, s. 32 (Sched.)
Section 163(1):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 32 (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.); 34, 1989, s. 32 (Sched.)
Section 166(1):	amended by 19, 1984, s. 63 (Sched.); 55, 1987, s. 3(1) (Sched.); 34, 1989, s. 32 (Sched.)
Section 166(2):	amended by 55, 1987, s. 3(1) (Sched.); substituted by 34, 1991, s. 48
Section 166(3) and (4):	inserted by 34, 1991, s. 48
Section 167:	substituted by 55, 1987, s. 3(1) (Sched.)
Section 168(1):	amended by 55, 1987, s. 3(1) (Sched.); redesignated as s. 168 in pursuance of the <i>Acts Republication Act 1967</i>
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); 34, 1989, s. 30
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 173(1):	amended by 34, 1991, s. 49(a), (b)
Section 173(2):	repealed by 34, 1991, s. 49(c)
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 174a:	inserted by 34, 1991, s. 50
Section 175(1):	amended by 55, 1987, s. 3(1) (Sched.); 34, 1991, s. 51
Section 175(3):	repealed by 55, 1987, s. 3(1) (Sched.)
Heading to the first schedule:	substituted by 108, 1983, s. 3(d); 57, 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.)
Section 2:	definition of "stipendiary magistrate" amended by 55, 1987, s. 3(1) (Sched.)
Section 3(1) - (5):	definition of "working day" amended by 55, 1987, s. 3(1) (Sched.)
Section 4(3):	amended by 37, 1984, s. 2; repealed by 55, 1987, s. 3(1) (Sched.)
Section 4(5) - (8):	amended by 55, 1987, s. 3(1) (Sched.)
Section 5(2):	substituted 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.)

**APPENDIX 2**

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

*Note: This appendix is provided for convenience of reference only.*