



Industrial Relations (Consequential Provisions) Act 1988

No. 87 of 1988

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Industrial Relations (Consequential Provisions) Act 1988

No. 87 of 1988

An Act to enact certain transitional provisions, and to repeal certain Acts and amend certain Acts, in consequence of the enactment of the *Industrial Relations Act 1988*, and for other purposes

[Assented to 8 November 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations (Consequential Provisions) Act 1988*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on the commencement of section 8 of the *Industrial Relations Act 1988*.

Repeals

3. The Acts specified in Schedule 1 are repealed.

Interpretation

4. (1) Unless the contrary intention appears, expressions used in this Act that are also used in the *Industrial Relations Act 1988* have the same respective meanings as they have in that Act.

(2) In this Act, unless the contrary intention appears:

“commencement” means the commencement of section 8 of the Industrial Relations Act;

“Court” means the Federal Court of Australia;

“former Commission” means the Australian Conciliation and Arbitration Commission;

“former Industrial Registrar” means the Industrial Registrar, or a person acting as Industrial Registrar, under the previous Act;

“former Registrar” means a Registrar (including the former Industrial Registrar), or a person acting as such a Registrar, under the previous Act;

“Industrial Relations Act” means the *Industrial Relations Act 1988*, and includes the regulations made under that Act;

“new Commission” means the Australian Industrial Relations Commission;

“new Presidential Member” means the President or a Deputy President of the new Commission;

“previous Act” means the *Conciliation and Arbitration Act 1904*, and includes any other Act so far as the other Act affects the operation of that Act and the regulations made under that Act.

PART II—SAVINGS AND TRANSITIONAL PROVISIONS

Division 1—Organisations and awards

Organisations registered under previous Act

5. (1) An organisation that was, immediately before the commencement, registered under the previous Act:

(a) shall be taken to become registered under the Industrial Relations Act on the commencement; and

(b) shall be taken to be, and to have been at all times while registered under the previous Act, a body corporate.

(2) The rules of the organisation as in force immediately before the commencement continue in force after the commencement, but may be altered under the Industrial Relations Act.

Cancellation of registration under previous Act

6. Where the registration of an organisation was cancelled under the previous Act before the commencement, the provisions of the previous Act continue to apply in relation to the cancellation as if the previous Act had not been repealed.

Awards in force under previous Act

7. (1) An award or order in force under the previous Act immediately before the commencement continues in force after the commencement, subject to the Industrial Relations Act, as if it were an award made under the Industrial Relations Act.

(2) A decision in force under the previous Act immediately before the commencement continues in force after the commencement, subject to the Industrial Relations Act, as if it were a decision made under the Industrial Relations Act.

(3) An award of the Flight Crew Officers Industrial Tribunal continued in force by subsection (1) remains binding, subject to the Industrial Relations Act, on the persons who would have been bound by the award if the previous Act had not been repealed.

(4) An award made by the former Commission under:

- (a) Division 4 of Part IV of the *Australian National Railways Commission Act 1983*;
- (b) Division 7 of Part III of the *Commonwealth Teaching Service Act 1972*;
- (c) Division 8 of Part V of the *Postal Services Act 1975*; or
- (d) Division 8 of Part V of the *Telecommunications Act 1975*;

that was in force immediately before the commencement continues in force after the commencement, subject to the Industrial Relations Act, as if it were an award made under the Industrial Relations Act.

(5) Where, immediately before the commencement, there was in force:

- (a) an agreement under section 31 of the *Australian Federal Police Act 1979*; or
- (b) a determination by the Federal Police Arbitral Tribunal under Division 2 of Part V of that Act;

the agreement or determination continues in force after the commencement, subject to the Industrial Relations Act, as if it were an award made under the Industrial Relations Act.

(6) Where a determination within the meaning of section 43 of the *Conciliation and Arbitration Amendment Act (No. 2) 1983* was, immediately before the commencement, in effect in accordance with subsection (2) of that section, the determination shall, for the purposes of subsection (1) of this section, be taken to be an award in force under the previous Act immediately before the commencement.

Division 2—Proceedings pending in Federal Court

Certain proceedings to be dealt with under Industrial Relations Act

8. (1) Where, immediately before the commencement:

- (a) a proceeding in a matter arising under the previous Act was pending in the Court; and
- (b) the hearing of the proceeding (other than any interlocutory hearing) had not started;

Part III of the Industrial Relations Act as modified by subsection (2) applies in relation to the proceeding as if the proceeding had been instituted under the Industrial Relations Act.

(2) Part III of the Industrial Relations Act has effect for the purposes of subsection (1) as if:

- (a) the reference in paragraph 53 (2) (a) of that Act to questions referred to the Court under section 46 or 82 of that Act included a reference to questions referred to the Court under section 107 or 112 of the previous Act;
- (b) the reference in paragraph 53 (2) (b) of the Industrial Relations Act to matters in relation to which applications are made to the Court under section 153 of that Act included a reference to matters in relation to which the applications were made to the Court under section 108 of the previous Act;
- (c) the reference in paragraph 53 (2) (c) of the Industrial Relations Act to matters in relation to which applications are made to the Court under section 294 of that Act included a reference to matters in relation to which applications were made to the Court under section 143 of the previous Act;
- (d) the reference in section 55 of the Industrial Relations Act to a judgment given in an inquiry referred to in section 219 or 247 of that Act included a reference to a judgment given in:
 - (i) an inquiry in relation to which an application was lodged under section 159 of the previous Act; or
 - (ii) an inquiry into an amalgamation instituted under regulation 146ZA of the Conciliation and Arbitration Regulations;
- (e) the reference in paragraph 57 (3) (a) of the Industrial Relations Act to a matter arising under section 46, 51, 61 or 82 of that Act included a reference to a matter arising under section 107, 109, 110 or 112 of the previous Act;
- (f) the reference in paragraph 57 (3) (a) of the Industrial Relations Act to a matter arising under Part IX (other than Division 8) of that Act included a reference to a matter arising under Part VIII, VIIIA, VIIIAA or IX of the previous Act;
- (g) the reference in subsection 58 (8) of the Industrial Relations Act to proceedings under section 56 included a reference to proceedings under section 113 of the previous Act; and

(h) the reference in paragraph (a) of the definition of “relevant proceeding” in subsection 58 (10) of the Industrial Relations Act to proceedings under section 46, 51, 61, 82 or 153 of that Act included a reference to proceedings under section 107, 108, 109, 110 or 112 of the previous Act.

(3) This section has effect subject to Division 5.

Certain proceedings to be continued under previous Act

9. (1) Where, immediately before the commencement:

- (a) a proceeding in a matter arising under the previous Act was pending in the Court; and
- (b) the hearing of the proceeding (other than any interlocutory hearing) had started, but had not been completed;

the Court may complete the hearing and determination of the proceeding as if the previous Act had not been repealed.

(2) This section has effect subject to Division 5.

Appeals from Federal Court

10. An appeal lies, as if the previous Act had not been repealed, from a judgment of the Court given in a proceeding determined by the Court under section 9 of this Act, and the appeal shall be dealt with as provided by section 21 of this Act.

Division 3—Proceedings to be dealt with by new Commission

Uncompleted proceedings before former Commission etc.

11. (1) Where, immediately before the commencement, a proceeding before the former Commission or the Tribunal has not been completed, the proceeding shall be dealt with after the commencement by the new Commission.

(2) Where the new Commission is dealing with a proceeding under subsection (1):

- (a) all documents filed or lodged in the proceeding with a former Registrar shall be transmitted to the Industrial Registrar;
- (b) any money lodged in relation to the proceeding with a former Registrar shall be transferred to the Industrial Registrar and dealt with as if it had been lodged with the Industrial Registrar;
- (c) all things done in relation to the proceeding in the former Commission or the Tribunal shall be taken to have been done in relation to the proceeding in the new Commission; and
- (d) the new Commission shall have regard to the evidence given, the arguments adduced and any award, order or determination made in the proceeding before the commencement, to the extent that such evidence, argument, award, order or determination is relevant to the provisions under which the new Commission is dealing with the proceeding.

(3) In this section:

- “proceeding” includes a matter, or a question arising in a matter, referred to the former Commission under section 88E of the previous Act;
“Tribunal” means the Flight Crew Officers Industrial Tribunal.

Federal Police Arbitral Tribunal

12. (1) Where:

- (a) before the commencement, a matter was submitted to the Tribunal under section 46 of the *Australian Federal Police Act 1979*; and
- (b) immediately before the commencement, the hearing of the matter had not started;

the matter shall, after the commencement, be dealt with by the new Commission under the Industrial Relations Act as if it were an alleged industrial dispute that had been notified under section 99 of that Act.

(2) Where, immediately before the commencement, the hearing of a matter by the Tribunal had started but had not been completed, the matter shall, after the commencement, be dealt with by the new Commission under the Industrial Relations Act as if it were an industrial dispute within the meaning of that Act.

(3) Where the new Commission is dealing with a matter under subsection (2):

- (a) all things done in relation to the matter in the Tribunal shall be taken to have been done in relation to the matter in the new Commission; and
- (b) the new Commission shall have regard to the evidence given, the arguments adduced and any award or determination made in the matter before the commencement.

(4) The new Commission shall take possession of, and be entitled to the custody of, all documents that were in the possession or under the control of the Tribunal immediately before the commencement.

(5) In this section, “Tribunal” means the Federal Police Arbitral Tribunal.

References to proceedings and matters

13. (1) References in the Industrial Relations Act to proceedings or matters before the new Commission include references to proceedings or matters that, under this Part, are being dealt with after the commencement by the new Commission.

(2) References in section 34 of the Industrial Relations Act to the hearing of a matter having been commenced shall, in the case of a matter arising in a proceeding that, under this Part, is being dealt with after the commencement by the new Commission, be references to the hearing of the matter by the new Commission having been commenced.

Industrial disputes notified under previous Act

14. (1) Where:

- (a) before the commencement, an industrial dispute was notified under section 25 of the previous Act, or the relevant Presidential Member under that Act otherwise became aware of an industrial dispute as mentioned in subsection 25 (3) of that Act; and
- (b) immediately before the commencement, the industrial dispute had not been finally dealt with under that Act;

the industrial dispute shall, after the commencement, be dealt with, as provided by section 11 of this Act, in accordance with subsection (2) of this section.

(2) The industrial dispute shall be dealt with under the Industrial Relations Act as if:

- (a) it had been notified under section 99 of that Act or the relevant Presidential Member had otherwise become aware of it as mentioned in section 100 of that Act;
- (b) any reference of the industrial dispute under subsection 25 (4) of the previous Act had been done under subsection 100 (1) of the Industrial Relations Act;
- (c) any findings made under section 24 of the previous Act in relation to the industrial dispute had been made under section 101 of the Industrial Relations Act; and
- (d) any conciliation proceeding, conference or arbitration proceeding that took place under the previous Act had taken place under the Industrial Relations Act.

References to industrial disputes

15. (1) This Act and the Industrial Relations Act have effect, in relation to matters that were before the former Commission before the commencement, as if references to an industrial dispute included references to:

- (a) an industrial dispute within the meaning of the previous Act;
- (b) an industrial question within the meaning of Division 1A, 2 or 4 of Part III of the previous Act;
- (c) an industrial question in relation to the Railway Service within the meaning of Division 4 of Part IV of the *Australian National Railways Commission Act 1983*;
- (d) an industrial question in relation to the Commonwealth Teaching Service within the meaning of Division 7 of Part III of the *Commonwealth Teaching Service Act 1972*;
- (e) an industrial question in relation to the Australian Postal Commission Service within the meaning of Division 8 of Part V of the *Postal Services Act 1975*;

- (f) an industrial question in relation to the Australian Telecommunications Commission Service within the meaning of Division 8 of Part V of the *Telecommunications Act 1975*;
- (g) an industrial dispute in the Northern Territory to which the previous Act applied under section 53 of the *Northern Territory (Self-Government) Act 1978*; and
- (h) an industrial dispute in the Australian Capital Territory to which the previous Act (other than Division 1A of Part III of that Act) applied under section 5 of the *Seat of Government (Administration) Act 1910*.

(2) This Act and the Industrial Relations Act have effect, in relation to matters that were before the Flight Crew Officers Industrial Tribunal before the commencement, as if references to an industrial dispute included references to an industrial question within the meaning of Part IIIA of the previous Act.

Presidential Member may refer certain matters to Registrar

16. (1) Where, under section 34, 45, 48, 58 or 66, a new Presidential Member is dealing with a matter that was, before the commencement, being dealt with by a former Registrar, the new Presidential Member may refer the matter to a Registrar to be dealt with as provided by the section concerned.

(2) Where a matter is referred to a Registrar by a new Presidential Member under subsection (1), the Registrar shall deal with the matter as if the Registrar were a Presidential Member, and the Industrial Relations Act applies in relation to a decision made by the Registrar in dealing with the matter as if the decision had been made by the new Presidential Member.

President may resolve difficulties

17. Where any difficulty arises in the application of this Division to a particular proceeding, the President may, subject to any order made by the Court under section 95, give directions not inconsistent with the Industrial Relations Act to resolve the difficulty.

Division 4—General provisions

References to persons or bodies appointed or established under Industrial Relations Act

18. Where, under this Act, a provision of the Industrial Relations Act has effect as if references in the provision to things done under that Act included references to things done under a provision of the previous Act, references in the provision of the Industrial Relations Act to a thing done by or in relation to the new Commission, a member of the new Commission, the Industrial Registrar or a Registrar shall, in relation to things done before the commencement, be read as references to things done by or in relation to the former Commission, a member of the former Commission, the former Industrial Registrar or a former Registrar, as the case may be.

Provisions of previous Act imposing obligations for specified periods etc.

19. Where:

- (a) under a provision of the previous Act, an obligation was imposed on a person or body to do an act or thing for a specified period or within a specified period; and
- (b) immediately before the commencement, that period had not expired;

the provision continues to operate in relation to the obligation as if the previous Act had not been repealed, but a contravention of the provision committed after the commencement shall be taken to be an offence against the Industrial Relations Act.

Continued operation of provisions of previous Act

20. (1) Where, under this Act, a provision of the previous Act continues to operate, or continues to operate in particular circumstances, after the commencement, any other provisions of the previous Act, and any provisions of the regulations made under that Act, that are necessary for the effectual operation of that first-mentioned provision also continue to operate.

(2) Where:

- (a) under this Act (including subsection (1)), a provision of the previous Act continues to operate, or continues to operate in particular circumstances, after the commencement; and
- (b) the provision imposes a penalty for a contravention of that or another provision;

any contravention committed after the commencement shall be taken to be an offence against the Industrial Relations Act.

Law to be applied in appeals

21. (1) Where, under this Act:

- (a) an appeal instituted before the commencement may be continued and completed after the commencement; or
- (b) an appeal may be instituted after the commencement against a decision made or judgment given:
 - (i) before the commencement; or
 - (ii) after the commencement in proceedings instituted before the commencement;

the law that is to be applied for the purposes of the appeal is the same as the law that would be applied, under this Act, in a relevant original proceeding that started before the commencement and was continued after the commencement.

(2) In this section, “relevant original proceeding”, in relation to an appeal, means a proceeding of the kind in which the decision or judgment appealed against was made.

Presidential Member dealing with applications under previous Act

22. Where, under this Act, a new Presidential Member is dealing with an application made to a former Registrar under the previous Act:

- (a) all things done in relation to the application before the commencement shall be taken to have been done for the purposes of the application being dealt with by the new Presidential Member; and
- (b) the new Presidential Member shall have regard to any evidence given or arguments presented in relation to the application before the commencement, to the extent that the evidence or argument is relevant to the provisions under which the new Presidential Member is dealing with the application.

Documents or money filed or lodged under previous Act

23. Any document or money filed or lodged with a former Registrar under the previous Act that is not expressly provided for in another provision of this Part shall, after the commencement, be transmitted or transferred to the Industrial Registrar and shall be dealt with as if it had been filed or lodged under the Industrial Relations Act.

Division 5—Operation of particular provisions of previous Act and Industrial Relations Act

Appeals to Full Bench of Commission

24. (1) An appeal lies to a Full Bench, with the leave of the Full Bench, against a relevant decision made within the period of 21 days immediately before the commencement.

(2) A Full Bench shall grant leave to appeal under subsection (1) if, in its opinion, the matter is of such importance that, in the public interest, leave should be granted.

(3) An appeal under this section may be instituted by a person who, under the previous Act or the *Australian Federal Police Act 1979*, could have instituted an appeal against the relevant decision before the commencement.

(4) Section 45 (other than subsections (1), (2) and (3)) of the Industrial Relations Act applies in relation to an appeal under this section in the same way as it applies in relation to appeals under section 45 of that Act.

(5) Where any difficulty arises in the application of this section in a particular case, the President may, subject to any order made by the Court under section 95, give directions not inconsistent with the Industrial Relations Act to resolve the difficulty.

(6) In this section, “relevant decision” means:

- (a) an award or decision referred to in paragraph 35 (2) (a), (b) or (c) of the previous Act;

- (b) the making of an order, or the refusal to make an order, referred to in paragraph 35 (2) (d) of the previous Act;
- (c) an award or decision of the Flight Crew Officers Industrial Tribunal referred to in paragraph 88ZG (2) (a), (b) or (c) of the previous Act; or
- (d) a determination or decision by the Federal Police Arbitral Tribunal referred to in paragraph 54 (2) (a) or (b) of the *Australian Federal Police Act 1979*.

Questions referred to Court by Commission

25. The references in subsections 46 (2) and (3) of the Industrial Relations Act to questions referred to the Court under section 46 of that Act include:

- (a) in the case of matters that were before the former Commission before the commencement—references to questions referred to the Court under section 107 of the previous Act; and
- (b) in the case of matters that were before a former Registrar before the commencement but are being dealt with after the commencement by a Presidential Member—references to questions referred to the Court under section 112 of the previous Act.

Register of organisations

26. The Register of Organisations kept by the Industrial Registrar under the previous Act shall be taken to be part of the register required to be kept under paragraph 63 (1) (a) of the Industrial Relations Act.

Questions referred to Commission

27. Section 79 of the Industrial Relations Act applies in relation to a matter or question being dealt with by the new Commission under section 11 of this Act as if the reference in subsection 79 (2) of the Industrial Relations Act to referring the matter or question back to the Registrar were a reference to referring the matter or question to the Registrar or Presidential Member who is, under this Act, dealing with the matter or the matter in connection with which the question arose, as the case may be.

Appeals from acts and decisions of Registrar under previous Act

28. (1) Where, immediately before the commencement, an application under section 88F of the previous Act for leave to appeal from an act or decision of a former Registrar had not been granted or refused, the application, and any appeal for which leave is granted, shall be dealt with by the new Commission under section 81 of the Industrial Relations Act in accordance with section 21 of this Act.

(2) The references in section 81 of the Industrial Relations Act to a decision or act of a Registrar in a matter arising under that Act include references to a decision or act of a Registrar made under the previous Act, within the period of 21 days immediately preceding the commencement, in relation to a matter as defined for the purposes of Division 6 of Part III of

the previous Act, not being a decision or act in relation to which an application for leave to appeal had been made under that Act before the commencement.

Questions referred to Court by Registrar

29. The reference in subsection 82 (2) of the Industrial Relations Act to a question referred to the Court under section 82 of that Act includes a reference to a question referred to the Court under section 112 of the previous Act, being a question arising in a matter that was before a former Registrar before the commencement and is being dealt with after the commencement by a Registrar.

Inspectors appointed under previous Act

30. An appointment of a person as an Inspector under subsection 125 (2) of the previous Act that was in force immediately before the commencement shall, after the commencement, be taken to have been made under subsection 84 (2) of the Industrial Relations Act.

Certain matters to be dealt with by Full Bench

31. Section 106 of the Industrial Relations Act has effect as if the reference in subsection (2) to determinations of, or principles determined by, a Full Bench included a reference to determinations of, or principles determined by, a Full Bench of the former Commission.

Review of certain awards and decisions

32. (1) Section 109 of the Industrial Relations Act has effect as if:

- (a) references in that section to an award included references to an award made by a member of the former Commission or by the Flight Crew Officers Industrial Tribunal, within the period of 21 days immediately before the commencement, not being an award in relation to which an application for review was made under the previous Act before the commencement; and
- (b) references in that section to a decision to certify an agreement under section 115 of the Industrial Relations Act included references to a decision to certify a memorandum under section 28 of the previous Act made not earlier than 21 days before the commencement, not being a decision in relation to which an application for review was made under the previous Act before the commencement.

(2) A review of an award or decision started on application under section 36A of the previous Act but not completed before the commencement shall, after the commencement, be dealt with under section 109 of the Industrial Relations Act as if the application had been made under that section.

Exercise of conciliation powers before commencement

33. The references in section 105 of the Industrial Relations Act to a member of the new Commission having exercised conciliation powers in relation to an industrial dispute include references to a member of the new Commission, in the capacity of member of the former Commission, having exercised, under the previous Act, powers in relation to conciliation in relation to the industrial dispute (other than powers of the kind referred to in subsection 105 (2) of the Industrial Relations Act).

Demarcation orders

34. (1) An application made under section 142A of the previous Act that had not been finally dealt with before the commencement shall, after the commencement, be dealt with by the new Commission under that section as if that Act had not been repealed.

(2) Subsection (1) applies as if references in the previous Act to the former Industrial Registrar were references to a designated Presidential Member.

Certified memorandums

35. A request made under subsection 28 (1) of the previous Act for the certification of a memorandum, being a request that had not been finally dealt with before the commencement, shall, after the commencement, be dealt with by the new Commission under section 28 of that Act as if that Act had not been repealed.

Stand-down applications

36. The references in section 126 of the Industrial Relations Act to a stand-down application include references to an application made under section 33A of the previous Act that had not been finally dealt with before the commencement.

References to Local Industrial Boards

37. Where:

- (a) before the commencement, the former Commission had referred an industrial dispute to a Local Industrial Board within the meaning of the previous Act for investigation and report under section 44 of that Act; and
- (b) the Local Industrial Board had not reported to the former Commission before the commencement;

the new Commission may, after the commencement:

- (c) at any time revoke the reference; or
- (d) rely on any report given to it by the Local Industrial Board as if it were a report received under section 130 of the Industrial Relations Act.

Inspection

38. The reference in subsection 134 (2) of the Industrial Relations Act to a power or function conferred by that Act includes a reference to a power or function conferred by this Act.

Ballots relating to industrial action

39. (1) An application made under subsection 45 (3A) of the previous Act that had not been finally dealt with before the commencement shall, after the commencement, be dealt with by the new Commission as if it had been made under subsection 136 (1) of the Industrial Relations Act.

(2) A secret ballot ordered under section 45 of the previous Act that had started, but had not been finished, before the commencement shall, after the commencement, be finished under that section as if that Act had not been repealed and a reference to the former Industrial Registrar were a reference to the Industrial Registrar.

(3) The Industrial Relations Act has effect as if:

- (a)** references in that Act to applications made under subsection 136 (1) of that Act included references to applications made under subsection 45 (3A) of the previous Act;
- (b)** the reference in subsection 136 (4) of the Industrial Relations Act to an application referred to the President under paragraph 136 (3) (e) of that Act included a reference to an application referred under subsection 45 (3E) or (3F) of the previous Act;
- (c)** the reference in paragraph 136 (8) (a) of the Industrial Relations Act to an order for a secret ballot under subsection 136 (2) or 135 (1) or (2) of that Act included a reference to an order for a secret ballot under section 45 of the previous Act;
- (d)** references in sections 135, 136, 138 and 139 of the Industrial Relations Act to an order under section 135 or 136 of that Act included references to an order under section 45 of the previous Act, unless the holding of the secret ballot had started before the commencement;
- (e)** references in section 138 of the Industrial Relations Act to an order under subsection 136 (2) of that Act included references to an order under subsection 45 (3D) of the previous Act;
- (f)** the reference in subsection 138 (5) of the Industrial Relations Act to the result of a ballot being communicated to the new Commission included a reference to the new Commission becoming aware of the result of a ballot held before the commencement, unless the former Industrial Registrar had, before the commencement, informed persons of the result of the ballot as mentioned in subsection 45A (4) of the previous Act; and
- (g)** the reference in subsection 140 (1) of the Industrial Relations Act to a notice under subsection 138 (5) of that Act included a reference to a notice under subsection 45A (4) of the previous Act.

Common rules

40. (1) A common rule in force under the previous Act immediately before the commencement remains in force after the commencement as if it had been declared under section 141 of the Industrial Relations Act, and section 142 of the Industrial Relations Act applies in relation to the common rule accordingly.

(2) A hearing started under section 49 or 70K of the previous Act, but not completed before the commencement, shall be continued and completed by the Commission after the commencement, and section 141 of the Industrial Relations Act applies for the purposes of the continuation and completion of the hearing.

(3) A hearing started under section 49A of the previous Act (including that section as it had effect under subsection 70K (3) of the previous Act), but not completed before the commencement, shall be continued and completed by the Commission after the commencement, and section 142 of the Industrial Relations Act applies for the purposes of the continuation and completion of the hearing.

Employers bound by awards

41. An employer who was, immediately before the commencement, bound by an award under paragraph 61 (d) of the previous Act remains bound by the award after the commencement, subject to the other provisions of the Industrial Relations Act, even though the employer would not after the commencement be bound by the award under paragraph 149 (d) of the Industrial Relations Act.

Disputes relating to boycotts

42. Where a proceeding in relation to a dispute to which Division 5A of Part III of the previous Act applied is, under section 11 of this Act, to be dealt with after the commencement by the new Commission, Division 7 of Part VI of the Industrial Relations Act applies in relation to the proceeding as if:

- (a) the dispute had been notified under section 157 of the Industrial Relations Act; and
- (b) action previously taken in and in relation to the proceeding had been taken under Division 7 of Part VI of the Industrial Relations Act.

Port Conciliators

43. A person who, immediately before the commencement, held office as a Port Conciliator under section 85A of the previous Act shall be taken to have been appointed as a Port Conciliator under section 168 of the Industrial Relations Act at the commencement.

Joint proceedings

44. Where a proceeding in relation to which section 22AA of the previous Act applied immediately before the commencement is, under section 11 of this Act, to be dealt with after the commencement by the new Commission, section 175 of the Industrial Relations Act applies in relation to the proceeding.

Registration of organisations

45. (1) An application for registration as an organisation that was made under section 132 of the previous Act before 28 April 1988, but had not been finally dealt with before the commencement, shall, after the commencement, be dealt with by the new Commission under that section as if that Act had not been repealed.

(2) Subsection (1) applies as if references in the previous Act to the former Industrial Registrar were references to a designated Presidential Member.

(3) An application for registration as an organisation that was made under section 132 of the previous Act on or after 28 April 1988 and before the commencement shall, after the commencement, be dealt with by a designated Presidential Member under Division 1 of Part IX of the Industrial Relations Act as if it were an application made under the Industrial Relations Act.

Certificates of registration

46. Subsection 191 (6) of the Industrial Relations Act has effect as if:

- (a) the reference to the certificate of registration issued under subsection (4) of that section included a reference to a certificate of registration issued under the previous Act; and
- (b) the reference to a certificate as amended under section 206 of the Industrial Relations Act included a reference to a certificate as amended under the previous Act.

Secret postal ballots

47. (1) An organisation that was exempted from the application of subsection 133AA (1) of the previous Act in relation to the last election held before the commencement is exempted from the application of subsection 198 (1) of the Industrial Relations Act for the period starting at the commencement and ending:

- (a) where an application under subsection (2) has been made within 3 months after the commencement—on the grant or refusal of the application; or
- (b) in any other case—3 months after the commencement.

(2) The Industrial Registrar may, on application by an organisation to which subsection (1) applies, grant to it an exemption from subsection 198 (1) of the Industrial Relations Act if the Industrial Registrar is satisfied:

- (a) that its rules provide for the conduct of elections of the kind referred to in that subsection by secret ballot other than postal ballot; and
- (b) that the conduct of elections under those rules:
 - (i) is likely to result in a fuller participation by members of the organisation in the ballot than would result from a postal ballot; and
 - (ii) will afford to members entitled to vote an adequate opportunity of voting without intimidation.

(3) An exemption granted under subsection (2) shall be taken to have been granted under subsection 198 (3) of the Industrial Relations Act.

(4) Subsection 81 (1) of the Industrial Relations Act does not apply to a decision of the Industrial Registrar under this section.

(5) Where, at the commencement, the rules of an organisation (other than an organisation to which subsection (1) applies) do not provide for the conduct of elections of the kind referred to in subsection 198 (1) of the Industrial Relations Act by secret postal ballot, any such election conducted after the commencement but before the rules provide for such elections to be conducted by secret postal ballot shall, unless the organisation has been granted an exemption under subsection 198 (3) of that Act, be conducted by secret postal ballot.

Change of name or alteration of eligibility rules

48. (1) Where an application for consent to a change in the name, or an alteration of the rules, of an organisation was made under subsection 139 (1) of the previous Act, but consent had not been granted or refused under section 139 of that Act, before the commencement, the application shall, after the commencement, be dealt with by a designated Presidential Member under section 204 and clause 3 of Schedule 4 of the Industrial Relations Act as if it had been made for the purposes of subsection 204 (1) of that Act.

(2) Section 206 of the Industrial Relations Act has effect as if the reference in that section to a change in the name of an organisation, or an alteration of the eligibility rules of an organisation, under that Act included a reference to a change or alteration under a provision of that Act, or of the previous Act, as applied under this Act.

Alteration of rules other than eligibility rules

49. Where particulars of an alteration of the rules of an organisation were filed as described in subsection 139 (4) of the previous Act, but the alteration had not been certified under that subsection or otherwise dealt with for the purposes of that subsection, before the commencement, the alteration shall, after the commencement, be dealt with under section 205 of the Industrial Relations Act as if particulars of that alteration had been lodged under that section.

Period within which rules must be made consistent with Industrial Relations Act

50. (1) The Industrial Registrar shall not exercise the power conferred by subsection 203 (1) of the Industrial Relations Act until 12 months after the commencement.

(2) A relevant application shall not be made to the Court for an order under section 208 of the Industrial Relations Act in relation to an organisation before the relevant day in relation to the organisation.

(3) In subsection (2):

“relevant application” means an application alleging that the whole or a part of a rule of an organisation contravenes section 196 of the Industrial Relations Act or that the rules of an organisation contravene that section in a particular respect, if the rule concerned or the rules did not, immediately before the commencement, contravene subsection 140 (1) of the previous Act or that subsection in the equivalent respect, as the case may be;

“relevant day”, in relation to an organisation, means:

- (a) the day 12 months after the commencement; or
- (b) the first day after the commencement on which an alteration of the rules of the organisation is made under the rules of the organisation;

whichever is earlier.

Orders in relation to rules

51. (1) An application for an order under subsection 140 (2) of the previous Act that had not been finally dealt with before the commencement shall, after the commencement, be dealt with, in spite of Division 2 of this Part, under the provisions of section 140 of the previous Act as modified by subsection (3).

(2) Where:

- (a) before the commencement the Court had made a declaration under section 140 of the previous Act; and
- (b) at the commencement, the period of 3 months referred to in paragraph 140 (7) (b) of that Act, or that period as extended under subsection 140 (9) of that Act, had not expired;

section 140 of that Act as modified by subsection (3) applies in relation to that declaration.

(3) Section 140 of the previous Act has effect for the purposes of subsections (1) and (2) of this section as if:

- (a) the reference in paragraph 140 (7) (b) of the previous Act to the former Industrial Registrar were a reference to the Industrial Registrar; and
- (b) subsection 140 (8) of the previous Act were omitted.

(4) An alteration of the rules of an organisation determined under section 140 of the previous Act as it has effect under this section takes effect on the date of the instrument by which the alteration is determined.

Order directing performance of rules

52. (1) An application for an order under section 141 of the previous Act that has not been finally dealt with before the commencement shall, after the commencement, be dealt with, in spite of Division 2 of this Part, as if it had been made under section 209 of the Industrial Relations Act.

(2) Section 209 of the Industrial Relations Act has effect in relation to an application referred to in subsection (1) of this section as if the reference in subsection 209 (5) of the Industrial Relations Act to an order under subsection 209 (4) of that Act included a reference to an order under subsection 141 (2) of the previous Act.

Elections under previous Act

53. An election:

- (a) for which nominations had been called before the commencement; or
- (b) in relation to which arrangements had been made with the Electoral Commissioner under section 165A or 170 of the previous Act before the commencement;

that had not been finished before the commencement shall be continued and finished after the commencement as if the previous Act had not been repealed.

Elections after commencement

54. (1) Sections 210 and 214 of the Industrial Relations Act do not apply in relation to an election for an office in an organisation that is started within the relevant period after the commencement.

(2) Sections 170, 170A and 171 of the previous Act, and regulations 139 and 140 of the Conciliation and Arbitration Regulations, apply in relation to an election for an office in an organisation that is started within the relevant period after the commencement as if:

- (a) the previous Act had not been repealed; and
- (b) references in those sections to former Registrars were references to Registrars.

(3) For the purposes of this section, an election shall be taken to start on the day on which nominations open.

(4) In this section, “relevant period”, in relation to an organisation, means:

- (a) if, within the period of 12 months after the commencement, the organisation lodges an application under subsection 211 (1) of the Industrial Relations Act—the period starting at the commencement and ending:

- (i) when the application is granted or refused; or
 - (ii) 12 months after the commencement;
- whichever is later; or
- (b) where paragraph (a) does not apply—the period of 12 months after the commencement.

Inquiries into elections

55. (1) Where:

- (a) an application for an inquiry into an election was lodged under section 159 of the previous Act before the commencement; and
- (b) at the commencement, the inquiry had not been instituted, but the application had not been refused under section 160 of the previous Act;

the Industrial Registrar shall, as soon as practicable after the commencement, refer the application to the Court, which shall deal with the application as if it had been lodged with the Court under section 218 of the Industrial Relations Act.

(2) An inquiry into an election instituted before the commencement shall be dealt with after the commencement as if the application for the inquiry had been made under section 218 of the Industrial Relations Act.

(3) Section 218 of the Industrial Relations Act applies in relation to an election held before the commencement in relation to which an application was not made under section 159 of the previous Act.

Prescribed offences

56. Section 227 of the Industrial Relations Act has effect as if the following paragraph were inserted before paragraph (a) of the definition of “prescribed offence” in subsection (1):

- “(aa) an offence against section 46, 158M, 160, 166, 169, 169A, 170A or 171 of the previous Act or an offence against regulation 146AS of the Conciliation and Arbitration Regulations;”.

Disqualifications from office

57. Section 228 of the Industrial Relations Act applies in relation to a person who was convicted of a prescribed offence before the commencement as if there were inserted before paragraph (1) (a) the following paragraph:

- “(aa) on an application made under section 132C or 132D of the previous Act in relation to the conviction of the person for the prescribed offence:
- (i) the person was granted leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organisation or to continue to hold an office within an organisation; or
 - (ii) the person was refused leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organisation or to continue to hold an office within an organisation but:

- (A) under paragraph 132C (2) (b) or 132D (2) (b) of the previous Act, the Federal Court specified a period for the purposes of subsection 132B (1) of the previous Act; and
- (B) that period has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison;”.

Amalgamations

58. (1) Where a scheme for a proposed amalgamation was submitted under subsection 158F (1) of the previous Act before the commencement but, before the commencement, the amalgamation had neither taken effect nor been rejected by the members of the organisations concerned, then, subject to subsections (2) and (4), the proposed amalgamation shall continue to be dealt with, and may take effect, as if the Industrial Relations Act had not been enacted and as if the previous Act had not been repealed.

(2) Where, immediately before the commencement, none of the ballots in relation to a proposed amalgamation had been started, sections 243 to 253 (inclusive) of the Industrial Relations Act apply in relation to the proposed amalgamation as if:

- (a) the submission of the proposed amalgamation to ballot had been approved by a designated Presidential Member under section 240 or 242 of that Act;
- (b) the reference in subsection 243 (5) to the scheme for the amalgamation having been amended under Division 7 of Part IX of the Industrial Relations Act included a reference to the scheme having been amended under the previous Act;
- (c) the reference in paragraph 246 (1) (a) to a declaration having been made under section 239 of the Industrial Relations Act included a reference to a declaration having been made under section 158FA of the previous Act; and
- (d) anything else done under the previous Act in relation to the proposed amalgamation had been done under the corresponding provision of Division 7 of Part IX of the Industrial Relations Act.

(3) For the purposes of subsection (2), a ballot shall be taken to have been started when notice of the ballot was published in the *Gazette* under subsection 158L (1) of the previous Act.

(4) A proposed amalgamation in relation to which a scheme was submitted to the former Industrial Registrar under section 158F of the previous Act, and that has not taken effect before the commencement, may

be withdrawn by the bodies that submitted the scheme at any time before it takes effect.

(5) Subsection (1) applies as if references in the previous Act to the former Industrial Registrar included references to a designated Presidential Member.

Validating provisions

59. An application made before the commencement under section 171C, 171D, 171E or 171G of the previous Act that had not been finally dealt with before the commencement shall, after the commencement, be dealt with, in spite of Division 2 of this Part, as if it had been made under section 258, 259, 260 or 257, as the case may be, of the Industrial Relations Act.

Entitlement to membership of organisations

60. An application made under subsection 144 (5) of the previous Act that had not been finally dealt with before the commencement shall, after the commencement, be dealt with, in spite of Division 2 of this Part, as if it had been made under subsection 261 (7) of the Industrial Relations Act.

Resignation from organisation before commencement

61. Where, before the commencement, a person resigned his or her membership of an organisation in accordance with section 145 of the previous Act but, at the commencement, the resignation had not taken effect, the resignation takes effect on the day on which it would have taken effect if the previous Act had not been repealed.

Certificate of conscientious beliefs

62. (1) A certificate issued to a person under section 144A of the previous Act that was in force immediately before the commencement shall, for the remaining period for which that certificate would have continued in force if the previous Act had not been repealed, be taken to be a certificate issued to the person under subsection 267 (1) of the Industrial Relations Act.

(2) An application made to a former Registrar under section 144A of the previous Act that, immediately before the commencement, had not been granted or refused shall, after the commencement, be dealt with by a Registrar as if it had been made under section 267 of the Industrial Relations Act.

Records to be kept etc. by organisations

63. (1) The register of members kept by an organisation under subsection 152 (1) of the previous Act shall be taken to be part of the register of members required to be kept by the organisation under subsection 268 (1) of the Industrial Relations Act.

(2) Where an organisation had been granted permission under subsection 152 (9B) of the previous Act to keep records referred to in subsection

152 (1) of the previous Act at specified premises and, immediately before the commencement, the permission had not been revoked, the permission shall, after the commencement, be taken to have been granted under subsection 268 (8) of the Industrial Relations Act in relation to the same premises and in relation to the records referred to in subsection 268 (1) of the Industrial Relations Act.

Accounts and audit

64. In relation to an organisation that was, immediately before the commencement, registered under the previous Act:

- (a) Division 11 of Part IX of the Industrial Relations Act does not apply in relation to a financial year of the organisation that started before the commencement; and
- (b) Part VIII A of the previous Act continues to apply, as if the previous Act had not been repealed, in relation to a financial year referred to in paragraph (a).

Disputes referred to Local Industrial Boards

65. Section 174 of the Industrial Relations Act has effect, in relation to an industrial dispute that was referred to a Local Industrial Board under subsection 44B (1) of the previous Act and that had not been settled by the Local Industrial Board before the commencement, as if:

- (a) references in section 174 of the Industrial Relations Act to an industrial dispute referred under subsection (1) of that section included references to the industrial dispute referred under subsection 44B (1) of the previous Act; and
- (b) references in section 174 of the Industrial Relations Act to a State authority included references to the Local Industrial Board to which the industrial dispute was referred.

Cancellation of registration

66. (1) An application for an order under section 143 of the previous Act that had not been finally dealt with immediately before the commencement shall, after the commencement, be dealt with, in spite of Division 2 of this Part, under the provisions of section 143 of the previous Act as modified by subsections (2) and (3).

(2) Section 143 of the previous Act has effect for the purposes of subsection (1) of this section as if:

- (a) references to the previous Act were references to the Industrial Relations Act; and
- (b) subsections 143 (4) to (6) (inclusive) were omitted.

(3) Where a former Registrar has, before the commencement, commenced to consider whether the registration of an organisation should be cancelled under subsection 143 (3G) of the previous Act, the registration of the organisation may be cancelled under that subsection as if the previous Act had not been repealed.

(4) Where the registration of an organisation is cancelled under section 143 of the previous Act as it has effect under this section, the registration of the organisation under the Industrial Relations Act shall be taken to be cancelled.

(5) Subsections (1) and (3) apply as if references in the previous Act to a former Registrar included references to a designated Presidential Member.

(6) Sections 297 and 298 of the Industrial Relations Act apply in relation to the cancellation of the registration of an organisation under section 143 of the previous Act as it has effect under this section.

Enforcement of awards

67. (1) A proceeding under section 119 of the previous Act that, before the commencement, had not been completed shall, after the commencement, be dealt with, in spite of Division 2 of this Part, as if the previous Act had not been repealed.

(2) Where a proceeding referred to in subsection (1) was instituted by a former Registrar or an Inspector under the previous Act, a Registrar or inspector under the Industrial Relations Act shall, at the commencement, take the place of the former Registrar or the Inspector, as the case may be, and the proceeding shall continue accordingly.

Enforcement of judgments

68. (1) Where, before the commencement, a former Registrar had given a certificate under section 121 of the previous Act, the certificate may be enforced under that section after the commencement as if the previous Act had not been repealed.

(2) Where:

- (a) a penalty was imposed, or an order made for the payment of an amount or of any costs or expenses, under the previous Act; and
- (b) section 121 of the previous Act applied in relation to the penalty or order immediately before the commencement;

section 357 of the Industrial Relations Act has effect in relation to the penalty or order as if:

- (c) the reference in paragraph (1) (a) to section 178 were a reference to subsection 119 (1) of the previous Act;
- (d) the reference in paragraph (1) (b) to subsection 178 (6) were a reference to subsection 119 (3) of the previous Act; and
- (e) the reference in paragraph (1) (c) to section 311 were a reference to section 122 of the previous Act.

Recovery of wages etc.

69. A proceeding under section 123 of the previous Act that, before the commencement, had not been completed shall, after the commencement, be dealt with, in spite of Division 2 of this Part, as if the previous Act had not been repealed.

Unclaimed money

70. (1) Section 180 of the Industrial Relations Act applies in relation to an employee who left the employment of an employer before the commencement if, before the commencement, no payment had been made to the Commonwealth under subsection 124 (1) of the previous Act.

(2) Subsection 180 (2) of the Industrial Relations Act applies in relation to amounts that, immediately before the commencement, were held under subsection 124 (2) of the previous Act.

Cancellation etc. of award

71. (1) An application under section 62 of the previous Act that had not been finally dealt with before the commencement shall, after the commencement, be dealt with by a Full Bench of the new Commission under section 62 of the previous Act.

(2) Subsections 62 (2) and (3) of the previous Act apply in relation to any suspension or cancellation of an award under subsection 62 (1) of that Act as applied by subsection (1) of this section.

(3) Where an application referred to in subsection (1) was made by a former Registrar, a Registrar shall, at the commencement, take the place of the former Registrar as the applicant and the proceeding shall continue accordingly.

(4) The powers conferred by section 187 of the Industrial Relations Act may be exercised in reliance on conduct engaged in before the commencement, and, for that purpose, the reference in paragraph (4) (a) to the Industrial Relations Act includes a reference to the previous Act.

Offences relating to members of organisations

72. Section 334 of the Industrial Relations Act has effect as if the references in paragraphs (1) (e), (2) (e) and (4) (b) of that section to an award included references to an industrial agreement continued in force by section 77 of this Act.

Offences by organisations in relation to industrial action

73. Section 335 of the Industrial Relations Act has effect as if:

- (a) the reference in paragraph (1) (g) to a member having refused or failed to join in industrial action included a reference to a member having refused or failed, before the commencement, to join in industrial action within the meaning of the previous Act;
- (b) the reference in paragraph (1) (j) to an application for an order under section 136 of the Industrial Relations Act included a reference to an application for an order under subsection 45 (3D) of the previous Act; and
- (c) the reference in paragraph (1) (j) to a secret ballot ordered under section 135 or 136 of the Industrial Relations Act included a

reference to a secret ballot ordered under section 45 of the previous Act.

Bans clauses

74. (1) Sections 33 and 119 of the previous Act as modified by subsection (2) continue to have effect, in relation to terms of awards of the kind referred to in paragraph 32 (1) (a) of that Act, as if that Act had not been repealed.

(2) Sections 33 and 119 of the previous Act have effect for the purposes of subsection (1) of this section as if:

- (a)** references in those sections to a former Registrar included references to the Industrial Registrar;
- (b)** references in those sections to a former Presidential Member included references to a new Presidential Member designated by the President of the new Commission for the purposes of this paragraph;
- (c)** the reference in subsection 33 (3) of the previous Act to the powers of the former Commission, including powers with respect to conciliation but not including powers that are exercisable only by a Full Bench, included a reference to the powers of the new Commission, including conciliation powers but not including powers that are exercisable only by a Full Bench of the new Commission;
- (d)** the reference in subsection 33 (6) of the previous Act to the objects of that Act were a reference to the objects of the Industrial Relations Act;
- (e)** the reference in paragraph 119 (2) (a) of the previous Act to a former Registrar included a reference to a Registrar; and
- (f)** the reference in paragraph 119 (2) (aa) of the previous Act to an Inspector included a reference to an inspector under the Industrial Relations Act.

Financial assistance

75. The provisions of the previous Act relating to the granting of financial assistance in connection with proceedings under that Act continue to have effect, as if that Act had not been repealed, in relation to all proceedings started under that Act before the commencement.

Certificates etc. as to membership, members, rules etc. of organisations

76. (1) A certificate of a kind referred to in section 155 of the previous Act given before the commencement shall, after the commencement, be *prima facie* evidence, in all courts and proceedings, that the facts are as stated.

(2) A list of the members and officers of an organisation or association, or of a branch of an organisation or association, filed before the commencement with a former Registrar, or a copy of any such list certified before the commencement by a former Registrar, as described in section 156 of the previous Act shall, after the commencement, be evidence that the

persons named in the list were, at the date when the list was filed, members of the organisation, association or branch, and that those officers were duly appointed.

(3) A copy of the rules of an organisation certified before the commencement as described in section 157 of the previous Act shall, after the commencement, be *prima facie* evidence of the rules of the organisation.

Industrial agreements

77. (1) An industrial agreement under Part X of the previous Act that had been executed by all the parties to the industrial agreement before the commencement and that was in force immediately before the commencement shall, after the commencement, continue to have the same effect as it would have had if the previous Act had not been repealed.

(2) Part X of the previous Act has effect in relation to an industrial agreement to which subsection (1) applies as if:

- (a) references in that Part to the former Industrial Registrar, or the former Registrar, were references to the Industrial Registrar, or to a Registrar, as the case may be;
- (b) subsection 177 (2) of the previous Act were omitted and the following subsection were substituted:

“(2) Such penalties may be proceeded for and recovered in the same manner as penalties for breach of an award under the *Industrial Relations Act 1988*.”;

- (c) section 178 of the previous Act were omitted;
- (d) the reference in section 179 of the previous Act to employment to which Division 1A of Part III of that Act applies were a reference to public sector employment; and
- (e) the first reference in section 179 of the previous Act to the former Commission were a reference to the new Commission and the second reference in that section to the former Commission included a reference to the new Commission.

Regulations

78. In section 359 of the Industrial Relations Act, references to applications and proceedings under that Act include references to applications and proceedings that are to be dealt with or completed under that Act by virtue of this Act.

Division 6—Miscellaneous

Australian Industrial Court remains in existence

79. In spite of the repeal of the *Conciliation and Arbitration Act 1904*, the Australian Industrial Court continues in existence as if Part V of that Act had not been repealed.

Certain Deputy Presidents may hold office until age 70 etc.

80. (1) A person appointed as a Deputy President under the Industrial Relations Act:

- (a) who was, immediately before the commencement, a Deputy President under the previous Act; and
- (b) who could, under section 60 of the *Conciliation and Arbitration Act 1972*, have remained a Deputy President until attaining the age of 70 years;

holds office, subject to the provisions of the Industrial Relations Act other than subsection 16 (1), as a Deputy President under the Industrial Relations Act until attaining the age of 70 years.

(2) A person who is a new Presidential Member and was, immediately before the commencement, a person referred to in paragraph 7 (5) (a) of the previous Act is entitled to elect to have the same designation as a Judge of the Court.

Former Presidential Members entitled to pension

81. Subject to subsection 5 (1) of the *Judges' Pensions Act 1968*, a person:

- (a) who, immediately before the commencement, was a Presidential Member of the former Commission;
- (b) to whom subsection 6 (1) of the *Judges' Pensions Act 1968* would have applied if, immediately before the commencement, that person had attained the age of 60 years and retired; and
- (c) who, immediately after the commencement, does not hold an office of Presidential Member of the new Commission;

shall be entitled to a pension under subsection 6 (1) of the *Judges' Pensions Act 1968* as if the person had retired and attained the age of 60 years immediately before the commencement.

Continuation of exemption from qualifications for membership of organisation

82. (1) If a person was, immediately before the commencement, an exempted member of an organisation, the person may, after the commencement, continue to be a member of the organisation even though the person would not, except for this subsection, be qualified to be a member of the organisation after the commencement.

(2) In subsection (1), "exempted member", in relation to an organisation, means a person:

- (a) who was, under paragraph 132 (1) (b) or (c) of the *Conciliation and Arbitration Act 1904* as in force immediately before the commencement of the *Conciliation and Arbitration Amendment Act (No. 3) 1977*, a member of the organisation; and
- (b) to whom the amendments of the *Conciliation and Arbitration Amendment Act (No. 3) 1977* did not apply in relation to the

person's membership of the organisation, under subsection 132 (5) of the previous Act.

Powers of inspectors to institute proceedings

83. (1) In addition to the powers conferred on inspectors as mentioned in subsection 84 (4) of the Industrial Relations Act, an inspector may institute any proceeding in relation to an offence against the previous Act that may, by virtue of the *Acts Interpretation Act 1901* or this Act, be instituted after the commencement.

(2) The power of an inspector under section 178 of the Industrial Relations Act to institute a proceeding in relation to a breach of a term of an award or order extends to a breach that occurred before the commencement.

Commission to take possession of certain documents

84. (1) The new Commission shall take possession of, and be entitled to the custody of, all documents that were in the possession or under the control of the former Commission or the Flight Crew Officers Industrial Tribunal immediately before the commencement.

(2) Where:

(a) a document that was in the possession of the former Commission or the Flight Crew Officers Industrial Tribunal immediately before the commencement would, for the purposes of the application of section 6 of the *Freedom of Information Act 1982* before the commencement, have been regarded as a document that relates to matters of an administrative nature; and

(b) under subsection (1) of this section, the new Commission has taken possession of the document;

the document shall continue, for the purposes of that section of that Act, to be regarded as a document that relates to matters of an administrative nature.

(3) In this section, "document" has the same meaning as in the *Freedom of Information Act 1982*.

Commission to take possession of Federal Police Arbitral Tribunal documents

85. The new Commission shall take possession of, and be entitled to the custody of, all documents that were in the possession or under the control of the Federal Police Arbitral Tribunal immediately before the commencement.

PART III—AMENDMENTS AND APPLICATION OF OTHER ACTS

Amendments of other Acts

86. The Acts specified in Schedule 2 are amended as set out in the Schedule.

Certain decisions under Australian Federal Police Act continue to be final decisions

87. Where, immediately before the commencement, section 57 of the *Australian Federal Police Act 1979* applied in relation to:

- (a) a determination of, or thing done by, the Federal Police Arbitral Tribunal; or
- (b) a thing done by the former Commission;

that section continues to apply in relation to the determination or thing done as if that section had not been repealed.

Coal Industry Act

88. (1) The *Coal Industry Act 1946* has effect after the commencement as if:

- (a) a reference to the former Commission included a reference to the new Commission;
- (b) a reference to the Federation were a reference to the Australasian Coal and Shale Employees Federation, an organisation within the meaning of the Industrial Relations Act; and
- (c) a reference to the Principal Registry or a District Registry established under the previous Act were a reference to a registry established under the Industrial Relations Act.

(2) Division 2 of Part VIII of the Industrial Relations Act applies (by virtue of section 36 of the *Coal Industry Act 1946*) in relation to awards and orders made by the Coal Industry Tribunal as if references to a Presidential Member or a Registrar were references to that Tribunal.

(3) An agreement that, before the commencement, had been filed, under subsection 36 (2) of the *Coal Industry Act 1946*, in the Principal Registry or a District Registry established under the previous Act shall, for the purposes of that subsection as in force after the commencement, be taken to have been filed in a registry established under the Industrial Relations Act.

Pathology Services Advisory Committee

89. (1) If the person who held office as Chairperson of the Pathology Services Advisory Committee under the *Health Insurance Act 1973* immediately before the commencement is, at the commencement, appointed as a new Presidential Member, the person continues to hold that office of Chairperson, subject to sections 78F and 78H of the *Health Insurance Act 1973*, until the expiration of the term specified in the instrument of the person's appointment as Chairperson.

(2) If the person who held office as Chairperson of the Pathology Services Advisory Committee under the *Health Insurance Act 1973* immediately before the commencement is not, at the commencement, appointed as a new Presidential Member, the person continues to hold that office of Chairperson, subject to section 78F and subsection 78H (4) of the

Health Insurance Act 1973, until the expiration of the term specified in the instrument of the person's appointment as Chairperson.

(3) Subject to the *Remuneration Tribunal Act 1973*, a person who holds office as the Chairperson of the Pathology Services Advisory Committee under subsection (2) shall be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

(4) Subsections 78E (1) and 78H (1) of the *Health Insurance Act 1973* do not apply in relation to a person who holds office as Chairperson of the Pathology Services Advisory Committee under subsection (2).

Pharmaceutical Benefits Remuneration Tribunal

90. (1) If the person who held office as Chairperson of the Pharmaceutical Benefits Remuneration Tribunal under the *National Health Act 1953* immediately before the commencement is, at the commencement, appointed as a new Presidential Member, the person continues to hold that office of Chairperson, subject to subsection 99A (2) and section 99C of the *National Health Act 1953*, until the expiration of the term specified in the instrument of the person's appointment as Chairperson.

(2) If the person who held office as Chairperson of the Pharmaceutical Benefits Remuneration Tribunal under the *National Health Act 1953* immediately before the commencement is not, at the commencement, appointed as a new Presidential Member, the person continues to hold that office of Chairperson, subject to section 99C of the *National Health Act 1953*, until the expiration of the term specified in the instrument of the person's appointment as Chairperson.

(3) Subject to the *Remuneration Tribunal Act 1973*, a person who holds office as the Chairperson of the Pharmaceutical Benefits Remuneration Tribunal under subsection (2) shall be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

(4) Subsections 99A (2) and 99B (1) of the *National Health Act 1953* do not apply in relation to a person who holds office as Chairperson of the Pharmaceutical Benefits Remuneration Tribunal under subsection (2).

Reports of Academic Salaries Tribunal in relation to Vice-Chancellors etc.

91. (1) The Remuneration Tribunal may, in exercising its powers in relation to an executive education office, take into account any report in relation to the office made by the Academic Salaries Tribunal to the Minister before the commencement.

(2) In this section, "executive education office" has the same meaning as in the *Remuneration Tribunal Act 1973*.

Determinations of Academic Salaries Tribunal in relation to certain academic staff

92. A determination under the *Remuneration Tribunal Act 1973* in relation to academic staff at a Commonwealth institution of tertiary education, being a determination that was in force immediately before the commencement, remains in force after the commencement, subject to the Industrial Relations Act, as if it were an award made under the Industrial Relations Act.

Report by Academic Salaries Tribunal

93. The Minister:

- (a) shall, as soon as practicable after the commencement, cause to be prepared a report of the operations of the Academic Salaries Tribunal during the period that started at the end of the last period in relation to which a report of the operations of the Tribunal was furnished to the Minister and ended immediately before the commencement; and
- (b) shall cause a copy of the first-mentioned report to be laid before each House of the Parliament as soon as practicable after the first-mentioned report is prepared.

Remuneration Tribunal to take possession of certain documents

94. The Remuneration Tribunal shall take possession of, and be entitled to the custody of, all documents that were in the possession or under the control of the Academic Salaries Tribunal immediately before the commencement.

PART IV—COURT MAY RESOLVE DIFFICULTIES

Court may resolve difficulties

95. (1) Where any difficulty arises in:

- (a) the application of this Act in relation to a particular matter; or
 - (b) the application, in relation to a particular matter, of a provision of the Industrial Relations Act because of the operation of this Act;
- the Court may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect in spite of anything contained in this Act, in the *Industrial Relations Act 1988* or in any Act in force immediately before the commencement.

(3) The Court has jurisdiction with respect to matters arising under this Act in relation to which applications may be made to it under subsection (1).

SCHEDULE 1

Section 3

REPEAL OF ACTS

Commonwealth Conciliation and Arbitration Act 1904
Commonwealth Conciliation and Arbitration Act 1909
Commonwealth Conciliation and Arbitration Act 1910
Commonwealth Conciliation and Arbitration Act 1911
Commonwealth Conciliation and Arbitration Act 1914
Commonwealth Conciliation and Arbitration Act (No. 2) 1914
Commonwealth Conciliation and Arbitration Act 1915
Commonwealth Conciliation and Arbitration Act 1918
Commonwealth Conciliation and Arbitration Act 1920
Commonwealth Conciliation and Arbitration Act 1921
Commonwealth Conciliation and Arbitration Act 1926
Commonwealth Conciliation and Arbitration Act 1927
Commonwealth Conciliation and Arbitration Act 1928
Commonwealth Conciliation and Arbitration Act 1930
Commonwealth Conciliation and Arbitration Act 1934
Commonwealth Conciliation and Arbitration Act 1946
Commonwealth Conciliation and Arbitration Act (No. 2) 1946
Commonwealth Conciliation and Arbitration Act 1947
Commonwealth Conciliation and Arbitration Act 1948
Commonwealth Conciliation and Arbitration Act 1949
Commonwealth Conciliation and Arbitration Act (No. 2) 1949
Conciliation and Arbitration Act (No. 2) 1951
Conciliation and Arbitration Act (No. 3) 1951
Conciliation and Arbitration Act 1952
Conciliation and Arbitration Act 1955
Conciliation and Arbitration Act 1956
Conciliation and Arbitration Act (No. 2) 1956
Conciliation and Arbitration Act 1958
Conciliation and Arbitration Act 1959
Conciliation and Arbitration Act 1960
Conciliation and Arbitration Act 1961
Conciliation and Arbitration Act 1964
Conciliation and Arbitration Act 1965
Conciliation and Arbitration Act 1966
Conciliation and Arbitration Act 1967
Conciliation and Arbitration Act 1968
Conciliation and Arbitration Act 1969
Conciliation and Arbitration Act (No. 2) 1969
Conciliation and Arbitration Act 1970
Conciliation and Arbitration Act 1972
Conciliation and Arbitration Act 1973
Conciliation and Arbitration (Organizations) Act 1974
Conciliation and Arbitration Act 1975

SCHEDULE 1—continued

Conciliation and Arbitration Act 1976
Conciliation and Arbitration Amendment Act 1976
Conciliation and Arbitration Amendment Act (No. 2) 1976
Conciliation and Arbitration Amendment Act (No. 3) 1976
Conciliation and Arbitration Amendment Act 1977
Conciliation and Arbitration Amendment Act (No. 2) 1977
Conciliation and Arbitration Amendment Act (No. 3) 1977
Conciliation and Arbitration Amendment (Federal Court of Australia) Act 1978
Conciliation and Arbitration Amendment Act 1979
Conciliation and Arbitration Amendment Act 1980
Conciliation and Arbitration Amendment Act (No. 2) 1980
Conciliation and Arbitration (Boycotts) Amendment Act 1980
Conciliation and Arbitration Amendment Act 1981
Conciliation and Arbitration (Management of Organizations) Amendment Act 1982
Conciliation and Arbitration Amendment Act 1983
Conciliation and Arbitration Amendment Act (No. 2) 1983
Conciliation and Arbitration Amendment Act 1984

SCHEDULE 2

Section 86

AMENDMENTS OF OTHER ACTS

Administrative Decisions (Judicial Review) Act 1977

Paragraph (a) of Schedule 1:

Omit “, other than decisions of the Director of the Industrial Relations Bureau made on behalf of the Bureau;”, substitute “or the *Industrial Relations Act 1988*”.

Paragraph (b) of Schedule 1:

Omit the paragraph.

Affirmative Action (Equal Employment Opportunity for Women) Act 1986

Subsection 3 (1) (paragraph (a) of the definition of “trade union”):

Omit the paragraph, substitute the following paragraph:

“(a) an association of employees that is an organisation within the meaning of the *Industrial Relations Act 1988*; or”.

SCHEDULE 2—continued

Audit Act 1901

Subparagraph 48B (4) (a) (iii):

Omit “Commonwealth Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

Subparagraph 48B (4) (a) (iv):

Omit the subparagraph.

Australian Broadcasting Corporation Act 1983

Section 3 (definition of “award”):

Omit “means—”, substitute “means an award within the meaning of the *Industrial Relations Act 1988*, and includes:

- (aa) a certified agreement that is taken to be an award under that Act;”.

Subsections 41 (12), 57 (13) and 66 (14):

Omit “an organization registered under the *Conciliation and Arbitration Act 1904*”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988*”.

Australian Federal Police Act 1979

Subsection 26A (5):

Omit the subsection.

Heading to Division 1 of Part V:

Omit the heading.

Subsection 29 (1) (definitions of “agreement”, “association”, “Commission”, “determination” and “Tribunal”):

Omit the definitions.

Subsection 29 (2):

Omit the subsection.

Section 30:

Add at the end “and may vary or rescind any such determination”.

Sections 31 and 32:

Repeal the sections.

Subsection 34 (5):

Omit “formed in accordance with regulations made under paragraph 40 (1) (a)”, substitute “of members that is an organisation within the meaning of the *Industrial Relations Act 1988*”.

SCHEDULE 2—continued

Paragraph 40 (1) (a):

Omit the paragraph.

Divisions 2 and 3 of Part V:

Repeal the Divisions.

Section 74:

Repeal the section.

Australian National Railways Commission Act 1983

Division 4 of Part IV:

Repeal the Division.

***Builders Labourers' Federation (Cancellation of Registration—
Consequential Provisions) Act 1986***

Section 3 (definition of “award”):

Omit the definition, substitute the following definition:

“ ‘award’ means:

- (a) an award made under, or a certified agreement that is taken to be an award made under, the Industrial Relations Act; or
- (b) an award made under the Conciliation and Arbitration Act, an order made by the Australian Conciliation and Arbitration Commission under that Act or a memorandum certified in accordance with section 28 of that Act;”.

Section 3 (definition of “Commission”):

Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

Section 3 (definition of “industrial dispute”):

Omit “Conciliation and Arbitration Act”, substitute “Industrial Relations Act”.

After the definition of “industrial dispute” in section 3:

Insert the following definition:

“ ‘Industrial Relations Act’ means the *Industrial Relations Act 1988*;”.

Section 3 (subparagraph (b) (i) of the definition of “non-registered association”):

Omit “registered under the Conciliation and Arbitration Act”, substitute “an organisation within the meaning of the Industrial Relations Act”.

Section 3 (definition of “Registrar”):

Omit the definition.

SCHEDULE 2—continued

Subsection 4 (1):

Add at the end “in spite of the repeal of that Act”.

Subsection 4 (4):

Omit “Conciliation and Arbitration Act” (first occurring), substitute “Industrial Relations Act”.

Subparagraph 4 (4) (a) (ii):

Omit “section 4 of the Conciliation and Arbitration Act”, substitute “subsection 4 (1) of the Industrial Relations Act”.

Paragraph 4 (4) (b):

Omit the paragraph, substitute the following paragraph:

“(b) an industrial issue within the meaning of section 5 of the Industrial Relations Act, so far as that industrial issue relates to a claim made by a non-registered association or by persons who are members of a non-registered association.”.

Subsection 4 (5):

- (a) Omit “Conciliation and Arbitration Act”, substitute “Industrial Relations Act”.
- (b) Omit “organization of employees registered under that Act”, substitute “association of employees that is an organisation within the meaning of that Act”.

Subsection 4 (6):

- (a) Omit “before the Commission or the Registrar”, substitute “under this Act or the Industrial Relations Act”.
- (b) Omit “section 132 of the Conciliation and Arbitration Act”, substitute “Division 1 of Part IX of the Industrial Relations Act”.

Subsection 5 (1):

- (a) Omit “section 132 of the Conciliation and Arbitration Act”, substitute “Division 1 of Part IX of the Industrial Relations Act”.
- (b) Omit “that section”, substitute “that Division”.

Subparagraph 5 (1) (b) (i):

Omit “that section”, substitute “that Division”.

Subparagraph 5 (1) (b) (ii):

Omit “Conciliation and Arbitration Act”, substitute “Industrial Relations Act”.

Paragraph 5 (1) (c):

- (a) Omit “Conciliation and Arbitration Act”, substitute “Industrial Relations Act”.
- (b) Omit “section 132”, substitute “Division 1 of Part IX”.

SCHEDULE 2—continued

Subsection 5 (2):

Omit the subsection.

Subsection 6 (1):

Omit the subsection, substitute the following subsection:

“(1) The powers of the Commission under or by virtue of this Act are exercisable by a Full Bench of the Commission established under subsection 30 (2) of the Industrial Relations Act.”.

Subsection 6 (2):

Omit “Conciliation and Arbitration Act”, substitute “Industrial Relations Act”.

Subsection 7 (2):

Omit “organization of employees that is registered under the Conciliation and Arbitration Act”, substitute “association of employees that is an organisation within the meaning of the Industrial Relations Act”.

Subsection 7 (3):

- (a) Omit “organization of employees that is registered under the Conciliation and Arbitration Act”, substitute “association of employees that is an organisation within the meaning of the Industrial Relations Act”.
- (b) Omit “to which the Registrar has consented under section 139”, substitute “which has been consented to under section 234”.

Subsection 7 (4):

Omit “Conciliation and Arbitration Act”, substitute “Industrial Relations Act”.

Commonwealth Electoral Act 1918

Section 5 (definition of “electoral matters”):

Insert “or the *Industrial Relations Act 1988*” after “*Conciliation and Arbitration Act 1904*”.

Commonwealth Teaching Service Act 1972

Division 7 of Part III:

Repeal the Division.

Subsection 43Y (3):

Omit “*Conciliation and Arbitration Act 1904*”, substitute “*Industrial Relations Act 1988*”.

SCHEDULE 2—continued

Compensation (Commonwealth Government Employees) Act 1971

Before paragraph 103 (1) (a):

Insert the following paragraph:

“(aa) an award, or an order of the Australian Industrial Relations Commission, made under the *Industrial Relations Act 1988*”.

Defence Act 1903

Section 58F (definition of “Commission”):

Omit the definition, substitute the following definition:

“‘Commission’ means the Australian Industrial Relations Commission established by section 8 of the *Industrial Relations Act 1988*”.

Section 58F (definition of “presidential member of the Commission”):

Omit “section 6 of the *Conciliation and Arbitration Act 1904*”, substitute “section 9 of the *Industrial Relations Act 1988*”.

Evidence Act 1905

Paragraph 4 (1) (a):

Insert “or of the Australian Industrial Relations Commission” after “Commission”.

Paragraph 4 (1) (b):

Omit “or of the Commonwealth Conciliation and Arbitration Commission”, substitute “, of the Commonwealth Conciliation and Arbitration Commission or of the Australian Industrial Relations Commission”.

Freedom of Information Act 1982

Schedule 1:

- (a) Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.
- (b) Omit “Flight Crew Officers Industrial Tribunal”.
- (c) Omit “Public Service Arbitrators and Deputy Public Service Arbitrators”.

Health Insurance Act 1973

Subsections 78D (2), 78E (1) and 78H (1):

Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

SCHEDULE 2—continued

Income Tax Assessment Act 1936

Subsection 27A (1) and section 116E (paragraph (c) of the definition of “registered organization” in each provision):

Omit “registered as an organization under the *Conciliation and Arbitration Act 1904*”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988*”.

Insurance Act 1973

Subsection 3 (1) (paragraph (e) of the definition of “insurance business”):

Omit “registered as an organization under the *Conciliation and Arbitration Act 1904*”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988*”.

Insurance (Deposits) Act 1932

Subsection 3 (1) (paragraph (e) of the definition of “Insurance business”):

Omit “registered as an organization under the *Conciliation and Arbitration Act 1904-1972*”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988*”.

Judicial and Statutory Officers (Remuneration and Allowances) Act 1984

Subsection 3 (2):

Insert “or the Australian Industrial Relations Commission” after “Commission”.

After paragraph (a) of the definition of “headquarters” in subsection 6 (1):

Insert the following paragraph:

“(aa) if that office is an office of President or Deputy President of the Australian Industrial Relations Commission, and the sole or principal place of residence of the person is situated in a locality in which there is a registry of the Australian Industrial Registry—that locality; or”.

Subsection 6 (1) (paragraph (b) of the definition of “headquarters”):

Insert “or (aa)” after “(a)”.

Subsection 6 (1) (paragraphs (b) and (c) of the definition of “office to which this section applies”):

Omit the paragraphs, substitute the following word and paragraph:

“; or (b) President or Deputy President of the Australian Industrial Relations Commission.”.

SCHEDULE 2—continued

Judiciary Act 1903

Paragraph 39B (2) (a):

Omit “*Conciliation and Arbitration Act 1904*”, substitute “*Industrial Relations Act 1988*”.

Jurisdiction of Courts (Cross-vesting) Act 1987

Subsection 4 (4):

Insert “*Industrial Relations Act 1988*, the” before “*Conciliation and Arbitration Act 1904*”.

Jury Exemption Act 1965

Schedule:

Omit “Commonwealth Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

Life Insurance Act 1945

Subsection 4 (1) (paragraph (aa) of the definition of “life insurance business”):

Omit “registered as an organization under the *Conciliation and Arbitration Act 1904*”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988*”.

Long Service Leave (Commonwealth Employees) Act 1976

Paragraph 12 (11) (a):

Omit the paragraph, substitute the following paragraph:

“(a) the employee is an officer or employee, within the meaning of the *Industrial Relations Act 1988*, of an organisation within the meaning of that Act; or”.

Paragraph 15 (1) (a):

Omit “and” (last occurring).

After paragraph 15 (1) (b):

Insert the following word and paragraph:

“; and (c) does not prevent the making of an award, or the certification of an agreement, under the *Industrial Relations Act 1988* in relation to long service leave for maritime employees included in a prescribed class of maritime employees, or affect the operation of such an award or agreement.”.

Subsection 15 (1):

Omit all the words from and including “and subsection 41A (2)”.

SCHEDULE 2—continued

Subsection 15 (4):

Omit the subsection, substitute the following subsection:

“(4) In this section:

‘maritime employee’ has the same meaning as in the *Industrial Relations Act 1988*;

‘seamen’ has the same meaning as in Division 2 of Part III of the *Conciliation and Arbitration Act 1904*.”.

Maritime College Act 1978

Section 29:

Repeal the section.

Merit Protection (Australian Government Employees) Act 1984

Paragraphs 40 (b) and 48 (b):

Omit “an organization that is registered under the *Conciliation and Arbitration Act 1904* and”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988* that”.

National Crime Authority Act 1984

Subsection 19A (8) (definition of “prescribed agency”):

Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

Schedule:

(a) Omit “*Conciliation and Arbitration Act 1904*, section 186”.

(b) Insert “*Industrial Relations Act 1988*, section 330” after “*Human Rights Commission Act 1981*, section 34”.

National Health Act 1953

Subsections 98A (4), 98B (5), 99A (2), 99B (1) and 99D (1) and (10):

Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

Naval Defence Act 1910

Subsection 42A (7):

Omit “*Conciliation and Arbitration Act 1904*”, substitute “*Industrial Relations Act 1988*”.

Navigation Act 1912

Subsection 45B (1):

Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

SCHEDULE 2—continued

Section 135:

Repeal the section, substitute the following section:

Application of Division

“135. This Division applies subject to any award in force under the *Industrial Relations Act 1988* that was made:

- (a) in relation to an industrial issue referred to in paragraph 5 (3) (b) of that Act; or
- (b) under Division 2 of Part III of the *Conciliation and Arbitration Act 1904*.”.

Subsection 138 (6):

Omit “or an organization of seamen registered under the *Conciliation and Arbitration Act 1904-1952*”, substitute “, or an association of seamen that is an organisation within the meaning of the *Industrial Relations Act 1988*,”.

Section 292:

Omit “under the *Conciliation and Arbitration Act 1904-1956*”, substitute “within the meaning of the *Industrial Relations Act 1988*”.

Northern Territory (Self-Government) Act 1978

Section 53:

Repeal the section, substitute the following section:

Application of Industrial Relations Act

“53. (1) The *Industrial Relations Act 1988* applies in relation to industrial disputes in the Territory as if paragraph (a) of the definition of ‘industrial dispute’ in subsection 4 (1) were omitted and the following paragraph substituted:

- ‘(a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or’.

“(2) For the purposes of the application of the *Industrial Relations Act 1988* under subsection (1), an industrial dispute in relation to the employment of persons employed for the performance of work wholly or mainly in the Territory shall be taken to be an industrial dispute in the Territory.

“(3) Until provision to the contrary is made by an Act, the powers of the Australian Industrial Relations Commission do not extend to employment in respect of which a tribunal established by an enactment before 1 July 1978 has power to hear and determine disputes, claims or matters relating to the terms and conditions of the employment.

“(4) Provision may be made by enactment for a member of the Australian Industrial Relations Commission to constitute, or to be a member of, a tribunal established by an enactment before 1 July 1978, and nothing in this

SCHEDULE 2—continued

section or the *Industrial Relations Act 1988* prevents a member of the Commission from accepting appointment or performing duties as, or as a member of, such a tribunal.

“(5) The power of the Legislative Assembly conferred by section 6 in relation to the making of laws does not extend to the making of a law conferring on any court, tribunal, board, body, person or other authority any power in relation to the hearing and determining of disputes, claims or matters relating to terms and conditions of employment.

“(6) Subsection (5) does not prevent the making of:

- (a) a law conferring the power to make determinations by way of the ascertainment of rights or obligations conferred or imposed on persons by law; or
- (b) a law conferring power on the Public Service Commissioner of the Territory, on a body established by enactment, or on the holder of an office established by enactment, to make determinations by way of the fixing of terms and conditions of employment of persons employed in the Public Service of the Territory or employed by that body or by the holder of that office, as the case may be.

“(7) Where an enactment, or a determination referred to in paragraph (6) (b), that came or comes into operation on or after 1 July 1978 is inconsistent with:

- (a) an award or order made under the *Industrial Relations Act 1988*;
or
 - (b) an award or order made, whether before or after the commencement of this section, under the *Conciliation and Arbitration Act 1904*;
- the award or order prevails and the enactment or determination is, to the extent of the inconsistency, invalid.”.

Postal Services Act 1975

Division 8 of Part V:

Repeal the Division.

Public Service Act 1922

Before paragraph (b) of the definition of “industrial award” in subsection 7 (1):

Insert the following paragraph:

“(a) an award under the *Industrial Relations Act 1988*.”.

Subsection 7 (1) (paragraph (a) of the definition of “relevant staff organization”):

Omit “registered under the *Conciliation and Arbitration Act 1904*”, substitute “an organisation within the meaning of the *Industrial Relations Act 1988*”.

SCHEDULE 2—continued

Subsection 9 (3A):

Omit the subsection.

Paragraph 61 (3) (a):

Omit the paragraph, substitute the following paragraph:

“(a) to an organisation specified by the officer, being an organisation within the meaning of the *Industrial Relations Act 1988*; or”.

Remuneration Tribunals Act 1973

Title:

Omit all the words after “establish”, substitute “a tribunal in relation to the remuneration and allowances of the holders of certain public and other offices, and for related purposes”.

Short title:

Omit “*Tribunals*”, substitute “*Tribunal*”.

Subsection 3 (1):

Insert the following definitions:

“‘Commonwealth higher education institution’ means a higher education institution established by or under a law of the Commonwealth or of a Territory (other than the Northern Territory);

‘executive education office’ means an office of:

- (a) the Vice-Chancellor, or Deputy Vice-Chancellor, of the Australian National University;
- (b) the Principal, or Deputy Principal, of the Canberra College of Advanced Education; or
- (c) the Principal, or Deputy Principal, of the Australian Maritime College;

‘higher education institution’ means an institution that is a higher education institution within the meaning of the *Employment, Education and Training Act 1988* (other than an institution declared by the regulations not to be a higher education institution for the purposes of this Act), and includes any other institution declared by the regulations to be a higher education institution for the purposes of this Act;”.

Subsection 3 (1) (definition of “institution of tertiary education”):

Omit the definition.

Paragraph 3 (4) (fa):

Omit “or”.

After paragraph 3 (4) (fa):

Insert the following paragraph:

“(fb) an executive education office; or ”.

SCHEDULE 2—continued

Paragraph 3 (4) (q):

Omit “an institution of tertiary education”, substitute “a higher education institution (other than an executive education office)”.

Subsection 5 (2):

Omit “Australian Conciliation and Arbitration Commission” (wherever occurring), substitute “Australian Industrial Relations Commission”.

After subsection 6 (2):

Insert the following subsection:

“(2A) The Tribunal shall, from time to time as provided by this Part, inquire into, and report to the Minister on, the rates of salaries, in relation to Vice-Chancellors, Principals, Chief Executive Officers and Deputy Chief Executive Officers, of higher education institutions (other than Commonwealth higher education institutions), that should be used as a basis for making grants in relation to recurrent expenditure in connection with those institutions, and the dates as from which those rates of salaries should be so used.”.

Subsection 6 (3):

Omit “or (2)”, substitute “, (2) or (2A)”.

Paragraph 7 (9) (ac):

Omit “and”.

After paragraph 7 (9) (ac):

Insert the following paragraph:

“(ad) in the case of remuneration or allowances payable to a person who holds an executive education office in a Commonwealth higher education institution, where the institution has funds under its control that are lawfully available to pay the remuneration or allowances—be paid in accordance with the determination out of those funds; and”.

Paragraph 8 (1) (a):

Omit “and (2)”, substitute “, (2) and (2A)”.

Part III:

Repeal the Part.

Seat of Government (Administration) Act 1910

Section 5:

Repeal the section, substitute the following section:

Application of Industrial Relations Act

“5. (1) The *Industrial Relations Act 1988* applies in relation to industrial disputes in the Territory as if paragraph (a) of the definition of ‘industrial

SCHEDULE 2—continued

dispute' in subsection 4 (1) were omitted and the following paragraph substituted:

'(a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or'

“(2) For the purposes of the application of the *Industrial Relations Act 1988* under subsection (1), an industrial dispute in relation to the employment of persons employed for the performance of work wholly or mainly in the Territory shall be taken to be an industrial dispute in the Territory.

“(3) The powers of the Australian Industrial Relations Commission (other than powers in relation to industrial issues referred to in paragraph 5 (3) (d) of the *Industrial Relations Act 1988*) do not extend to employment in relation to which a tribunal established by an Ordinance in force under this Act, whether made before or after the commencement of this section, has power to hear and determine disputes, claims or matters relating to the terms and conditions of the employment.

“(4) An Ordinance under this Act may make provision for a member of the Australian Industrial Relations Commission to constitute, or be a member of, a tribunal of the kind referred to in subsection (3), and nothing in this section or the *Industrial Relations Act 1988* prevents a member of the Commission from accepting appointment or performing duties as, or as a member of, such a tribunal.

“(5) Nothing in this section affects the operation of the *Industrial Relations Act 1988* in relation to industrial issues referred to in paragraph 5 (3) (d) of that Act.”

Sex Discrimination Act 1984

Subsection 4 (1) (definition of “registered organization”):

Omit “organization registered pursuant to the *Conciliation and Arbitration Act 1904*”, substitute “organisation within the meaning of the *Industrial Relations Act 1988*”.

Section 109:

Omit “subsection 41A (1) of the *Conciliation and Arbitration Act 1904*”, substitute “section 121 of the *Industrial Relations Act 1988*”.

States Grants (Tertiary Education Assistance) Act 1984

Subsection 3 (1) (paragraph (b) of the definition of “prescribed staff”):

Add at the end of the paragraph “, or those officers of the university or college whose rates of salaries are the subject of an inquiry and report under subsection 6 (2A) of the *Remuneration Tribunal Act 1973*”.

Sub-subparagraph 53 (d) (i) (A):

Insert “, or the Remuneration Tribunal,” after “Academic Salaries Tribunal”.

SCHEDULE 2—continued

Sub-subparagraph 53 (d) (i) (B):

Insert “, or the Australian Industrial Relations Commission established under the *Industrial Relations Act 1988*,” after “Conciliation and Arbitration Commission”.

Stevedoring Industry Finance Committee Act 1977

Subsection 8 (4):

Insert “or of the Australian Industrial Relations Commission” after “Commission”.

Section 13:

Omit “section 85A of the *Conciliation and Arbitration Act 1904*”, substitute “section 168 of the *Industrial Relations Act 1988*”.

Supply and Development Act 1939

Subsection 10 (6):

Omit “*Conciliation and Arbitration Act 1904*”, substitute “*Industrial Relations Act 1988*”.

Telecommunications Act 1975

Division 8 of Part V:

Repeal the Division.

Trade Practices Act 1974

Subsection 80AA (1):

Omit “Division 5A of Part III of the *Conciliation and Arbitration Act 1904*”, substitute “Division 7 of Part VI of the *Industrial Relations Act 1988*”.

Paragraph 80AA (1) (b):

Omit “Australian Conciliation and Arbitration Commission under Division 5A of Part III of the *Conciliation and Arbitration Act 1904*”, substitute “Division 7 of Part VI of the *Industrial Relations Act 1988*”.

Subsection 80AA (4):

Omit “Australian Conciliation and Arbitration Commission under section 88DC of the *Conciliation and Arbitration Act 1904*”, substitute “Australian Industrial Relations Commission under section 158 of the *Industrial Relations Act 1988*”.

SCHEDULE 2—continued

Trade Union Training Authority Act 1975

Section 8DA:

Omit “Australian Conciliation and Arbitration Commission”, substitute “Australian Industrial Relations Commission”.

United States Naval Communication Station (Civilian Employees) Act 1968

Paragraph 4 (b):

Omit all the words from and including “organization” to and including “Western Australia”, substitute “organisation within the meaning of the *Industrial Relations Act 1988* or any trade union or other body registered, or deemed to be registered, under the *Industrial Relations Act 1979* of Western Australia”.

United States Naval Communication Station (Civilian Employees) Act 1971

Paragraph 10 (b):

Omit all the words from and including “organization” to and including “Western Australia”, substitute “organisation within the meaning of the *Industrial Relations Act 1988* or any trade union or other body registered, or deemed to be registered, under the *Industrial Relations Act 1979* of Western Australia”.

NOTE

On the day on which section 86 of this Act comes into operation the heading to section 19 of the *Sex Discrimination Act 1984* is altered by omitting “Conciliation and Arbitration Act” and substituting “Industrial Relations Act”.

[*Minister's second reading speech made in—
House of Representatives on 28 April 1988
Senate on 24 May 1988*]