



Industrial Relations Reform Act 1993

No. 98 of 1993

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Industrial Relations Reform Act 1993

No. 98 of 1993

**An Act to amend the *Industrial Relations Act 1988*, the
Trade Practices Act 1974 and certain other Acts, and for
related purposes**

[Assented to 22 December 1993]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations Reform Act 1993*.

Commencement

2.(1) Part 1 commences on the day on which this Act receives the Royal Assent.

(2) Division 1 of Part 7 commences on the day on which this Act receives the Royal Assent.

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(3) However, a proceeding cannot begin in the Industrial Relations Court of Australia before the commencement of Divisions 2, 3 and 4 of Part 7.

(4) Subject to subsection (5), Divisions 2, 3 and 4 of Part 7 commence on a day to be fixed by Proclamation.

(5) If those Divisions do not commence under subsection (4) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

(6) Subject to subsection (7), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(7) If a provision referred to in subsection (6) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

PART 2—OBJECTS

Principal Act

3. In this Part, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

4. Section 3 of the Principal Act is repealed and the following section is substituted:

Objects of Act

“3. The principal object of this Act is to provide a framework for the prevention and settlement of industrial disputes which promotes the economic prosperity and welfare of the people of Australia by:

- (a) encouraging and facilitating the making of agreements, between the parties involved in industrial relations, to determine matters pertaining to the relationship between employers and employees, particularly at the workplace or enterprise level; and
- (b) providing the means for:
 - (i) establishing and maintaining an effective framework for protecting wages and conditions of employment through awards; and
 - (ii) ensuring that labour standards meet Australia’s international obligations; and
- (c) providing a framework of rights and responsibilities for the parties involved in industrial relations which encourages fair and effective bargaining and ensures that those parties abide by agreements between them; and
- (d) enabling the Commission to prevent and settle industrial disputes:

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- (i) so far as possible, by conciliation; and
- (ii) where necessary, by arbitration; and
- (e) encouraging the organisation of representative bodies of employers and employees and their registration under this Act; and
- (f) encouraging and facilitating the development of organisations, particularly by reducing the number of organisations in an industry or enterprise; and
- (g) helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.”.

PART 3—THE AWARD SYSTEM

Principal Act

5. In this Part, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

Interpretation

6. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**paid rates award**” means an award specifying actual entitlements, rather than minimum entitlements, in respect of wages and conditions of employment;

“**State award**” means an award, order, decision or determination of a State industrial authority;”.

7. Before Division 1 of Part VI of the Principal Act the following Division is inserted:

“Division 1A—Objects of Part

Objects of Part

“88A. The objects of this Part are to ensure that:

- (a) employees are protected by awards that set fair and enforceable minimum wages and conditions of employment that are maintained at a relevant level; and
- (b) awards (other than paid rates awards) act as a safety net of minimum wages and conditions of employment underpinning direct bargaining; and
- (c) awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees’ interests are also properly taken into account; and

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- (d) regard is had, in connection with making, reviewing and varying awards, to stable and appropriate relativities based on skill, responsibility and the conditions under which work is performed, and on the need for skill-based career paths; and
- (e) the Commission's functions and powers in relation to making and varying awards are performed and exercised in a way that both:
 - (i) gives employees prompt access to fair and enforceable minimum wages and conditions of employment, so far as they do not already have them; and
 - (ii) encourages the prevention and settlement of industrial disputes by the making of agreements under Part VIB."

General functions of Commission

8. Section 89 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- "(a) to prevent and settle industrial disputes:
- (i) so far as possible, by conciliation; and
 - (ii) where necessary, by arbitration; and"

Commission to take into account the public interest

9. Section 90 of the Principal Act is amended by inserting in paragraph (1)(a) "and, in particular, the objects of this Part" after "Act".

10. After section 90 of the Principal Act the following section is inserted:

Performance of Commission's functions under this Part and Part VIC

"90AA.(1) The Commission must perform its functions under this Part and Part VIC in a way that furthers the objects of this Act and, in particular, the objects of this Part and Part VIC.

"(2) In performing those functions, the Commission must:

- (a) ensure, so far as it can, that the system of awards provides for secure, relevant and consistent wages and conditions of employment; and
- (b) have proper regard to the interests of the parties immediately concerned and of the Australian community as a whole.

"(3) Changes that are needed to maintain wages and conditions of employment at a relevant level:

- (a) may be implemented in stages, so that consistency is achieved over a period; and
- (b) may be made subject to compliance by relevant parties with principles established by the Commission.

"(4) Subsection (3) is enacted to avoid doubt."

11. Section 94 of the Principal Act is repealed and the following section is substituted:

Commission to take account of Family Responsibilities Convention

“93A. In performing its functions, the Commission must take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:

- (a) preventing discrimination against workers who have family responsibilities; or
- (b) helping workers to reconcile their employment and family responsibilities.”.

Particular powers of Commission

12. Section 111 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1AA) The Commission must not, in relation to an industrial dispute, dismiss or refrain as mentioned in paragraph (1)(g) because of subparagraph (1)(g) (i), (ii) or (iii) unless it has made a determination and findings under section 101 in relation to the dispute.”;

(b) by inserting after subsection (1C) the following subsections:

“(1D) The Commission must decide as quickly as it can whether to make an interim award if it considers that:

- (a) such an award may be necessary to protect for an interim period the wages and conditions of employment of the employees whom it would cover; or
- (b) making such an award will facilitate the certifying under Division 2 of Part VIB of an agreement covering employees who are not already covered by an award; or
- (c) making such an award will facilitate the approval under Division 3 of Part VIB of an agreement covering employees who are not already covered by an award.

“(1E) Subsection (1D) does not limit:

- (a) the cases where the Commission may decide to make an interim award; or
- (b) the matters to which the Commission may have regard in deciding whether to make such an award.

“(1F) Paragraph (1D)(b) does not affect the Commission’s duty to consider whether to dismiss or refrain, as mentioned in paragraph (1)(g), because of subparagraph (1)(g)(ii).

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“(1G) In determining an application for the Commission to dismiss or refrain as mentioned in paragraph (1)(g) because of subparagraph (1)(g)(ii) or (iii), the Commission must give particular weight to the benefits of not disturbing a particular employment agreement (as defined in subsection (1A)) if the application is made on the ground, or on grounds including the ground, that:

- (a) the matter or part, or the industrial dispute or part, concerns terms and conditions of employment of a particular kind and application; and
- (b) terms and conditions of that kind and application are regulated by the employment agreement; and
- (c) a State industrial authority could have prevented the employment agreement from coming into force if the authority had considered that:
 - (i) the agreement would result in the reduction of any entitlements or protections of employees under:
 - (A) a State award; or
 - (B) any law of the State that the authority thought relevant; and
 - (ii) in the context of those employees’ terms and conditions considered as a whole, the reduction would be contrary to the public interest.

“(1H) Subsection (1G) does not limit the matters to which the Commission may have regard in considering whether to dismiss or refrain as mentioned in paragraph (1)(g).”.

- (c) by inserting in subsection (2) “(except subsection (1AA))” after “section”.

Repeal of limitation on Commission’s power to remove sex discrimination

- 13. Subsection 113(2B) of the Principal Act is repealed.

Power to set aside or vary awards

14. Section 113 of the Principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) The Commission may refrain from hearing, further hearing, or determining, as the case requires, an application for variation of an award for so long as:

- (a) it considers that, in all the circumstances, the parties concerned should try to negotiate an agreement under Part VIB to deal with the subject matter of the proposed variation; and
- (b) it is not satisfied that there is no reasonable prospect of the parties making such an agreement.”.

15. After section 113 of the Principal Act the following sections are inserted:

Commission to include enterprise flexibility provisions in awards

“113A. So far as the Commission considers appropriate, an award must establish a process for agreements to be negotiated, at the enterprise or workplace level, about how the award (as it applies to the enterprise or workplace concerned) should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs.

Variation of award to give effect to agreement negotiated under enterprise flexibility provision

“113B.(1) This section applies if an application is made for variation of an award, as it applies to an enterprise or workplace, for the purpose of giving effect to an agreement made under a provision included in the award under section 113A.

“(2) The Commission does not have power to vary the award for that purpose unless it is satisfied that the variation would not, in relation to their terms and conditions of employment, disadvantage the employees who would be affected by the variation.

“(3) For the purposes of subsection (2), a variation of an award is taken to disadvantage employees in relation to their terms and conditions of employment only if:

- (a) it would result in the reduction of any entitlements or protections of those employees under:
 - (i) that or any other award; or
 - (ii) any other law of the Commonwealth or of a State or Territory that the Commission thinks relevant; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.

“(4) Each organisation of employees that is a party to the award is entitled to be heard on the application.

“(5) However, the Commission must not refuse to vary the award merely because an organisation refuses to agree or consent to the variation, if the Commission is satisfied that the refusal is unreasonable.”.

Making and publication of awards etc.

16. Section 143 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) The Commission must ensure that a decision or determination covered by subsection (1) or (2) (except a certified agreement or enterprise flexibility agreement):

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- (a) is expressed in plain English; and
- (b) is structured in a way that is as easy to understand as the subject matter allows.”.

17. After section 150 of the Principal Act the following section is inserted:

Commission to review awards

“150A.(1) Each award in force (other than a certified agreement or enterprise flexibility agreement) must be reviewed by the Commission for the purposes of this section:

- (a) if the award was in force at the commencement of this section—within 3 years after that commencement; and
- (b) otherwise—within 3 years after the award was made; and
- (c) in any case—within 3 years after the award was last reviewed for those purposes.

“(2) If, after reviewing an award for the purposes of this section, the Commission considers that the award is deficient in any of these respects:

- (a) the terms of the award are no longer appropriate having regard to the Commission’s duty under paragraph 90AA(2)(a) to ensure that the system of awards provides for secure, relevant and consistent wages and conditions of employment;
- (b) the award contains a provision which discriminates against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (c) the award contains obsolete provisions or provisions that need updating;
- (d) the award is not expressed in plain English;
- (e) the award is not structured in a way that is as easy to understand as the subject matter allows;
- (f) the award prescribes matters in unnecessary detail;

the Commission must, in order to remedy the deficiency, take the steps (if any) prescribed by the regulations.

“(3) The steps so prescribed may include varying the award after giving any party to the award who has a genuine interest in the matter an opportunity to be heard.”.

PART 4—MINIMUM ENTITLEMENTS OF EMPLOYEES

Principal Act

18. In this Part, “Principal Act”, means the *Industrial Relations Act 1988*¹.

Interpretation

19. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**Anti-Discrimination Conventions**’ means:

- (a) the Equal Remuneration Convention; and
- (b) the Convention on the Elimination of all Forms of Discrimination against Women, a copy of the English text of which is set out in the Schedule to the *Sex Discrimination Act 1984*; and
- (c) the Convention concerning Discrimination in respect of Employment and Occupation, a copy of the English text of which is set out in Schedule 1 to the *Human Rights and Equal Opportunity Commission Act 1986*; and
- (d) Articles 3 and 7 of the International Covenant on Economic, Social and Cultural Rights (a copy of the English text of the Preamble, and Parts II and III, of the Covenant is set out in Schedule 8);

‘**Equal Remuneration Convention**’ means the Equal Remuneration Convention, 1951, a copy of the English text of which is set out in Schedule 6;

‘**Family Responsibilities Convention**’ means the Workers with Family Responsibilities Convention, 1981, a copy of the English text of which is set out in Schedule 12;

‘**Minimum Wages Convention**’ means the Minimum Wage Fixing Convention, 1970, a copy of the English text of which is set out in Schedule 5;

‘**Termination of Employment Convention**’ means the Termination of Employment Convention, 1982, a copy of the English text of which is set out in Schedule 10;”.

Appeals to Full Bench

20. Section 45 of the Principal Act is amended:

- (a) by inserting in paragraph (3)(a) “that is not against an order under Part VIA” after “paragraph (1)(b)”;
- (b) by inserting after paragraph (3)(a) the following paragraph:
 - “(aa) in the case of an appeal under paragraph (1)(b) against an order under Part VIA—by a person entitled under section 170JF to institute the appeal;”.

21. After Part VI of the Principal Act the following Part is inserted:

“PART VIA—MINIMUM ENTITLEMENTS OF EMPLOYEES

“Division 1—Minimum wages

Object

“170AA. The object of this Division is to give effect, or further effect, to the Minimum Wages Convention.

Meaning of expressions

“170AB. Expressions used in this Division that are also used in the Minimum Wages Convention have the same meanings as in the Convention.

Orders

“170AC. Subject to this Part, the Commission may make an order setting:

- (a) the same minimum wage for all employees in a group specified in the order; or
- (b) different minimum wages for different categories of employees in a group specified in the order.

Orders only on application

“170AD. The Commission must not make such an order unless it has received an application for the making of an order under this Division from an employee, or a trade union whose rules entitle it to represent the industrial interests of employees, included in the group to be covered by the order.

When Commission must make order

“170AE.(1) The Commission must make an order if, and must not make an order unless, it is satisfied:

- (a) that the terms of employment of the group of employees to be covered by the order are such that coverage by a system of minimum wages is appropriate; and
- (b) at least some of the employees in the group are not ineligible under subsection (3).

“(2) An order must specify, and exclude from the order’s operation, such of the employees in the group covered by the order as are ineligible under subsection (3) when the order is made.

“(3) For the purposes of subsections (1) and (2), an employee is ineligible if, and only if:

- (a) minimum wages for the employee, or for employees including him or her, can be set and adjusted from time to time by a State arbitrator; or
- (b) minimum wages for the employee, or for employees including him or her, are set by an award within the meaning of this Act; or

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- (c) there are proceedings under Part VI that relate to setting, or adjusting from time to time, minimum wages for the employee, or for employees including him or her; or
- (d) a State employment agreement sets minimum wages for the employee, or for employees including him or her.

“(4) Before deciding what group an order should cover, and whether it is satisfied as mentioned in paragraph (1)(a), the Commission must:

- (a) give:
 - (i) each trade union whose rules entitle it to represent the industrial interests of any of the employees concerned; and
 - (ii) each organisation or association representing employers of any of those employees;an opportunity to express their respective views to the Commission; and
- (b) take into account the views (if any) expressed to it by any of the bodies referred to in subparagraphs (a)(i) and (ii) of this subsection.

“(5) Before making an order, the Commission must give each of the following an opportunity, as prescribed, to be heard in relation to the making of the order:

- (a) the person who applied for the order;
- (b) each employer of employees to be covered by the order.

“(6) In this section:

‘compulsory arbitration’ means the power to set minimum wages by arbitration:

- (a) without the agreement of some or all of the employers and employees who would be affected by the arbitration (or their representative bodies); and
- (b) whether after exhausting alternative means of settlement or otherwise;

‘State arbitrator’ means a State industrial authority that has the power, or powers including the power, to set minimum wages by compulsory arbitration;

‘State employment agreement’ means an agreement that:

- (a) was entered into under a State law; and
- (b) sets minimum wages that, if the agreement had not been entered into, could have been set by a State arbitrator by compulsory arbitration; and
- (c) prevails over any inconsistent order, award, decision or determination of a State industrial authority; and

- (d) during a particular period, but only during that period, prevents those minimum wages from being set or adjusted by a State arbitrator by compulsory arbitration.

Matters relevant to the level of minimum wages

“170AF. In setting the level of minimum wages under this Division, the Commission must have regard to the principles it would apply in setting the level of those minimum wages in performing its functions under Part VI, but must also have regard, so far as possible and appropriate in relation to Australian practice and conditions, to:

- (a) the needs of workers and their families, taking into account the general level of wages in Australia, the cost of living, social security benefits and the relative living standards of other social groups; and
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Division not to limit other rights

“170AG. This Division is not intended to limit any right that a person or trade union may otherwise have to establish minimum wages.

Additional effect of Division

“170AH.(1) Because of this section, this Division has the effect it would have if section 170AA were repealed. That effect is additional to, and does not prejudice, the effect that this Division has otherwise than because of this section.

“(2) The Commission must determine by arbitration an application made under this Division as it has effect because of this section.

“(3) The Commission may make an order under this Division (as it so has effect) only if:

- (a) it considers that the order is necessary to prevent an industrial dispute about minimum wages for employees; and
- (b) it has given to each organisation or other person who, in its opinion, would be likely to be a party to the dispute an opportunity to be heard in relation to the making of the order.

“(4) An order so made must be expressed to bind only such of the following as the order specifies:

- (a) the organisations and other persons to whom the Commission has given, as required by subsection (3), an opportunity to be heard;
- (b) the respective members of those organisations.

“Division 2—Equal remuneration for work of equal value

Object

“170BA. The object of this Division is to give effect, or further effect, to:

- (a) the Anti-Discrimination Conventions; and
- (b) the Equal Remuneration Recommendation, 1951, which the General Conference of the International Labour Organisation adopted on 29 June 1951 and is also known as Recommendation No. 90, and a copy of the English text of which is set out in Schedule 7; and
- (c) the Discrimination (Employment and Occupation) Recommendation, 1958, which the General Conference of the International Labour Organisation adopted on 25 June 1958 and is also known as Recommendation No. 111, and a copy of the English text of which is set out in Schedule 9.

Equal remuneration for work of equal value

“170BB.(1) A reference in this Division to **equal remuneration for work of equal value** is a reference to equal remuneration for men and women workers for work of equal value.

“(2) An expression has in subsection (1) the same meaning as in the Equal Remuneration Convention.

Note: Article 1 of the Convention provides that the term ‘equal remuneration for men and women workers for work of equal value’ refers to rates of remuneration established without discrimination based on sex.

Orders requiring equal remuneration

“170BC.(1) Subject to this Division, the Commission may make such orders as it considers appropriate to ensure that, for employees covered by the orders, there will be equal remuneration for work of equal value.

“(2) Without limiting subsection (1), an order under this Division may provide for such increases in rates (including minimum rates) of remuneration (within the meaning of the Equal Remuneration Convention) as the Commission considers appropriate to ensure that, for employees covered by the order, there will be equal remuneration for work of equal value.

“(3) However, the Commission may make an order under this Division only if:

- (a) the Commission is satisfied that, for the employees to be covered by the order, there is not equal remuneration for work of equal value; and
- (b) the order can reasonably be regarded as appropriate and adapted to giving effect to:
 - (i) one or more of the Anti-Discrimination Conventions; or

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- (ii) the provisions of the Recommendation referred to in paragraph 170BA(b) or (c).

Orders only on application

“170BD. The Commission must only make such an order if it has received an application for the making of an order under this Division from:

- (a) an employee, or a trade union whose rules entitle it to represent the industrial interests of employees, to be covered by the order; or
- (b) the Sex Discrimination Commissioner.

No order if adequate alternative remedy exists

“170BE. The Commission must refrain from considering the application, or from determining it, if the Commission is satisfied that there is available to the applicant, or to the employees whom the applicant represents, an adequate alternative remedy that:

- (a) exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and
- (b) will ensure, for the employees concerned, equal remuneration for work of equal value.

Immediate or progressive introduction of equal remuneration

“170BF. The order may implement equal remuneration for work of equal value when the order takes effect. However, if it is not deemed feasible to implement it immediately, the order may implement it in stages (as provided in the order).

Employer not to reduce remuneration

“170BG.(1) An employer must not reduce an employee’s remuneration (within the meaning of the Equal Remuneration Convention) for the reason, or for reasons including the reason, that an application or order has been made under this Division.

“(2) If subsection (1) is contravened, the purported reduction is of no effect.

Division not to limit other rights

“170BH. This Division is not intended to limit any right that a person or trade union may otherwise have to secure equal remuneration for work of equal value.

Additional effect of Division

“170BI.(1) Because of this section, this Division has the effect it would have if section 170BA were repealed and paragraph 170BC(3)(b) were omitted. That effect is additional to, and does not prejudice, the effect that this Division has otherwise than because of this section.

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“(2) The Commission must determine by arbitration an application made under this Division as it has effect because of this section.

“(3) The Commission may make an order under this Division (as it so has effect) only if:

- (a) it considers that the order is necessary to prevent an industrial dispute about equal remuneration for work of equal value; and
- (b) it has given to each organisation or other person who, in its opinion, would be likely to be a party to the dispute an opportunity to be heard in relation to the making of the order.

“(4) An order so made must be expressed to bind only such of the following as the order specifies:

- (a) the organisations and other persons to whom the Commission has given, as required by subsection (3), an opportunity to be heard;
- (b) the respective members of those organisations.

“Division 3—Termination of employment

“Subdivision A—Object and interpretation

Object

“170CA.(1) The object of this Division is to give effect, or give further effect, to:

- (a) the Termination of Employment Convention; and
- (b) the Termination of Employment Recommendation, 1982, which the General Conference of the International Labour Organisation adopted on 22 June 1982 and is also known as Recommendation No. 166, and a copy of the English text of which is set out in Schedule 11.

“(2) Without limiting subsection (1), the references in paragraph 170DF(1)(f) to sexual preference, age and physical or mental disability, have been included in order to give effect, or further effect, to:

- (a) the Convention concerning Discrimination in respect of Employment and Occupation, a copy of the English text of which is set out in Schedule 1 to the *Human Rights and Equal Opportunity Commission Act 1986*; and
- (b) the Recommendation referred to in paragraph 170BA(c).

“(3) Without limiting subsection (1), the reference in paragraph 170DF(1)(g) to other parental leave has been included in order to give effect, or further effect, to the Family Responsibilities Convention and to the Recommendation referred to in paragraph 170KA(1)(b).

Interpretation

“170CB. An expression has the same meaning in this Division as in the Termination of Employment Convention.

Regulations may exclude employees as permitted by Convention

“170CC. The regulations may exclude specified employees from the operation of specified provisions of this Division. An exclusion has effect only if:

- (a) it is permitted by paragraph 2 of Article 2 of the Termination of Employment Convention; and
- (b) it is limited in such a way as to provide adequate safeguards as mentioned in paragraph 3 of that Article.

“Subdivision B—Requirements for lawful termination of employment

Commencement of Subdivision

“170DA.(1) Subject to subsection (2), this Subdivision (except this section) commences on a day, not earlier than 26 February 1994, to be fixed by Proclamation.

“(2) If this Subdivision (except this section) does not commence under subsection (1) within the period of 6 months beginning on the day on which the *Industrial Relations Reform Act 1993* received the Royal Assent, it commences on the first day after the end of that period.

Employee to be given notice of termination

“170DB.(1) An employer must not terminate an employee’s employment unless:

- (a) the employee has been given either the period of notice required by subsection (2), or compensation instead of notice; or
- (b) the employee is guilty of serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

“(2) The required period of notice is first worked out using this table:

Employee’s period of continuous service with the employer	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer.

“(3) The regulations may prescribe events or other matters that must be disregarded, or must in prescribed circumstances be disregarded, in ascertaining a period of continuous service for the purposes of subsection (2).

“(4) The amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee’s employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

“(5) That total must be worked out on the basis of:

- (a) the employee’s ordinary hours of work (even if they are not standard hours); and
- (b) the amounts payable to the employee in respect of those hours, including (for example) allowances, loadings and penalties; and
- (c) any other amounts payable under the employee’s contract of employment.

Employee to have opportunity to respond to allegations

“170DC. An employer must not terminate an employee’s employment for reasons related to the employee’s conduct or performance unless:

- (a) the employee has been given the opportunity to defend himself or herself against the allegations made; or
- (b) the employer could not reasonably be expected to give the employee that opportunity.

Employer to notify CES of proposed terminations in certain cases

“170DD.(1) This section applies if, on or after 26 February 1994, an employer decides to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons.

“(2) As soon as practicable after so deciding, the employer must give to the Commonwealth Employment Service a written notice of the intended terminations that sets out:

- (a) the reasons for the terminations; and
- (b) the number and categories of employees likely to be affected; and
- (c) the time when, or the period over which, the employer intends to carry out the terminations.

“(3) The employer must not terminate an employee’s employment pursuant to the decision unless the employer has complied with subsection (2).

Harsh, unjust or unreasonable termination

“170DE.(1) An employer must not terminate an employee’s employment unless there is a valid reason, or valid reasons, connected with the employee’s capacity or conduct or based on the operational requirements of the undertaking, establishment or service.

“(2) A reason is not valid if, having regard to the employee’s capacity and conduct and those operational requirements, the termination is harsh, unjust or unreasonable. This subsection does not limit the cases where a reason may be taken not to be valid.

Employer not to terminate on certain grounds

“170DF.(1) An employer must not terminate an employee’s employment for any one or more of the following reasons, or for reasons including any one or more of the following reasons:

- (a) temporary absence from work because of illness or injury;
- (b) union membership or participation in union activities outside working hours or, with the employer’s consent, during working hours;
- (c) non-membership of a union or of an association that has applied to be registered as a union under the provisions of this Act;
- (d) seeking office as, or acting or having acted in the capacity of, a representative of employees;
- (e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (g) absence from work during maternity leave or other parental leave.

“(2) Subsection (1) does not prevent a matter referred to in paragraph (1)(f) from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.

“(3) Subsection (1) does not prevent a matter referred to in paragraph (1)(f) from being a reason for terminating a person’s employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

Employer not to contravene Commission order about employment termination

“170DG. An employer must not terminate an employee’s employment in contravention of an order in force under section 170FA.

“Subdivision C—Remedies in respect of unlawful termination

Application to Court in respect of termination of employment

“170EA.(1) A person (**‘the employee’**) may apply to the Court for a remedy in respect of termination of his or her employment.

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“(2) A trade union whose rules entitle it to represent the industrial interests of a person (**‘the employee’**) may, on the employee’s behalf, apply to the Court for a remedy in respect of termination of the employee’s employment.

“(3) An application must be made:

- (a) within 14 days after the employee receives written notice of the termination; or
- (b) within such further period as the Court allows on an application made during or after those 14 days.

“(4) Unless the Court otherwise orders, the parties to an application are the employer, the employee and, if the application is made under subsection (2), the trade union.

Court must decline jurisdiction if adequate alternative remedy exists

“170EB. The Court must decline to consider or determine an application under section 170EA if satisfied that there is available to the employee by or on whose behalf the application was made an adequate alternative remedy, in respect of the termination, under existing machinery that satisfies the requirements of the Termination of Employment Convention.

Court to refer matter to Commission for conciliation

“170EC. The Court is not to consider the merits of an application under section 170EA unless:

- (a) the Court has referred the matter to the Commission for conciliation and the Commission has certified that it has been unable to settle the matter; or
- (b) the Court is satisfied that it is not appropriate so to refer the matter.

Commission to conciliate

“170ED.(1) When the Court refers to the Commission for conciliation a matter to which an application under section 170EA relates, the Commission must inquire into the matter and try to help the parties to the application agree on terms for settling the matter.

“(2) If the Commission decides that the matter cannot be settled by conciliation, or by further conciliation, within a reasonable period, the Commission must prepare a certificate that specifies the matter and states that the Commission has been unable to settle it by conciliation.

“(3) The Commission must give the certificate to the Registrar of the Court and a copy to each of the parties.

“(4) To avoid doubt, the Commission’s functions under this section are additional to its other functions, and are not subject to any implied limitations arising from the existence of any of its other functions.

Remedies the Court may grant

“170EE.(1) After considering the merits of an application under section 170EA, the Court, unless satisfied that the termination of the employee’s employment contravened no provision of this Division (other than section 170DD) may make such orders as it thinks appropriate in order to put the employee in the same position (as nearly as can be done) as if the employment had not been terminated.

“(2) The orders the Court may make include, for example:

- (a) an order declaring the termination to have contravened this Division;
- (b) an order requiring the employer to reinstate the employee;
- (c) an order that the employer pay compensation to the employee.

“(3) However, the Court is not to order the employer to reinstate the employee if the Court is satisfied that the termination contravened no provision of this Division (other than section 170DB or 170DD).

“(4) Nothing in section 170EC or in this section limits the Court’s power to make an interim or interlocutory order in relation to an application under section 170EA.

Penalty for contravening section 170DD

“170EF.(1) If the Court is satisfied that an employer has contravened subsection 170DD(2) in relation to a decision to terminate the employment of employees, the Court may do either or both of the following:

- (a) make an order imposing on the employer a penalty of not more than \$1,000;
- (b) order the employer not to terminate the employment of employees pursuant to the decision, except as permitted by the order.

“(2) An application for an order or orders under subsection (1) may be made by:

- (a) an inspector; or
- (b) an employee whose employment has been or is proposed to be terminated pursuant to the employer’s decision; or
- (c) an organisation whose members include such an employee; or
- (d) an officer or employee of such an organisation, if the organisation’s rules authorise the officer or employee to sue on the organisation’s behalf.

“(3) A proceeding under subsection (2) must begin within 6 years after the contravention of subsection 170DD(2).

Contravention of Subdivision B not an offence

“170EG. A contravention of Subdivision B is not an offence.

Injunction under section 431 not available

“170EH. Section 431 does not apply to a contravention or proposed contravention of Subdivision B.

“Subdivision D—Commission orders giving effect to Articles 12 and 13 of Convention

Employment termination orders creating rules of general application

“170FA.(1) Subject to this Part, the Commission may, at any time on or after 26 February 1994, make an order for the purpose of giving effect to the requirements of Article 12 (in so far as it relates to a severance allowance or other separation benefits) or 13 of the Termination of Employment Convention in relation to the termination of employment of employees.

“(2) In so far as an order is made for the purposes of Article 13 of that Convention, the Commission must limit the order’s application to cases where an employer decides to terminate the employment of a number of employees that is not less than a number (not less than 15) that is specified in the order.

Orders only on application

“170FB. The Commission must not make an order under section 170FA unless it has received an application for the making of the order from an employee, or a trade union whose rules entitle it to represent the industrial interests of employees, to be covered by the order.

No order if adequate alternative exists

“170FC. The Commission must refrain from considering the application, or from determining it, if the Commission is satisfied that there is an adequate alternative mechanism by which effect will be given to the requirements of the Articles referred to in section 170FA in relation to the employees concerned.

Powers and procedures of Commission for dealing with applications

“170FD. Division 2 of Part VI, and section 111, have the same operation in relation to an application for an order under section 170FA as they would have if the application were the notification of an industrial dispute.

Commission’s powers not limited by Subdivision E

“170FE. Nothing in Subdivision E limits the Commission’s powers under this Subdivision.

“Subdivision E—Commission orders after employer fails to consult trade union about terminations

Orders by Commission where employer fails to consult trade union about terminations

“170GA.(1) Subsection (2) applies if the Commission is satisfied that an employer has, on or after 26 February 1994, decided to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons, and that:

- (a) the employer did not, as soon as practicable after so deciding and in any event before terminating an employee’s employment pursuant to the decision, inform each trade union of which any of the employees was a member, and which represented the industrial interests of such of those employees as were members, about:
 - (i) the terminations and the reasons for them; and
 - (ii) the number and categories of employees likely to be affected; and
 - (iii) the time when, or the period over which, the employer intended to carry out the terminations; or
- (b) the employer did not, as soon as practicable after so deciding and in any event before terminating an employee’s employment pursuant to the decision, give each such trade union an opportunity to consult with the employer on:
 - (i) measures to avert the termination, or avert or minimise the terminations; and
 - (ii) measures (such as finding alternative employment) to mitigate the adverse effects of the termination or terminations.

“(2) The Commission may make whatever orders it thinks appropriate, in the public interest, in order to put the employees whose employment was terminated pursuant to the decision, and each such trade union, in the same position (as nearly as can be done) as if:

- (a) if paragraph (1)(a) applies—the employer had so informed the trade union; and
- (b) if paragraph (1)(b) applies—the employer had so given the trade union such an opportunity.

“(3) Subsections (1) and (2) do not apply in relation to a trade union if the employer could not reasonably be expected to have known at the time of the decision that one or more of the employees were members of the trade union.

Orders only on application

“170GB. The Commission must not make an order under section 170GA unless it has received an application for the making of the order from:

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- (a) an employee or trade union whose position is to be affected by the order as mentioned in subsection 170GA(2); or
- (b) a trade union whose rules entitle it to represent the industrial interests of such employees.

No order if adequate alternative remedy exists

“170GC. The Commission must refrain from considering an application, or from determining it, if the Commission is satisfied that there is available to the applicant, or to the employees whom the applicant represents, an adequate alternative remedy under machinery:

- (a) that exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and
- (b) by which effect will be given to the requirements of Article 13 of the Termination of Employment Convention in relation to the employees and trade unions concerned.

Powers and procedures of Commission for dealing with applications

“170GD. Division 2 of Part VI, and section 111, have the same operation in relation to an application for an order under section 170GA as they would have if the application were the notification of an industrial dispute.

“Subdivision F—Miscellaneous

Inconsistent awards and orders

“170HA. On and after 26 February 1994, when the Termination of Employment Convention takes effect, any award or order of the Commission that is inconsistent with the requirements of that Convention does not have effect to the extent of the inconsistency.

Division not to limit other rights

“170HB. This Division is not intended to limit any right that a person or trade union may otherwise have to appeal against termination of employment or to secure the making of awards or orders relating to the termination of employment.

“Division 4—Orders and proceedings

Orders to be in writing

“170JA. An order of the Commission under this Part must be in writing.

When orders take effect

“170JB. An order of the Commission under this Part takes effect from the date of the order or a later date specified in the order.

Compliance with orders

“170JC.(1) Part VIII has the same effect in relation to orders under this Part as it does in relation to awards.

“(2) For the purpose of applying Part VIII in that way, an order under this Part is, unless the order provides otherwise, taken to bind all employers and employees of the kind covered by the order (whether or not named or described in the order).

“(3) In addition to any other right that an employee covered by an order under this Part may have under Part VIII (as it applies in accordance with this section), the employee may apply to the Court to enforce the order by injunction or otherwise as the Court thinks fit.

Variation and revocation of orders

“170JD.(1) The Commission may vary or revoke an order under this Part on application by:

- (a) any employer, or representative of an employer, covered by the order (whether or not named or described in the order); or
- (b) any employee, or representative of any employee, covered by the order (whether or not named or described in the order).

“(2) If the Commission is satisfied, on an application under this section, that an order under Division 2 should be varied or revoked because of a change in circumstances, the Commission must vary or revoke the order accordingly.

“(3) Subsection (2) does not limit the Commission’s powers under subsection (1).

Application of sections 109, 110, 111, 128 and 129 to orders and proceedings under this Part

“170JE.(1) Section 109 applies to an order under this Part as if it were an order in relation to an industrial dispute.

“(2) A reference in section 110, subsection 111(2) or section 128 or 129 to a proceeding before the Commission includes a reference to a proceeding under this Part. This subsection is to avoid doubt and does not limit the generality of those provisions.

“(3) Paragraph 111(1)(g) does not apply to a proceeding under this Part, despite subsection 111(2) and subsection (2) of this section.

Appeals to Full Bench

“170JF. An appeal to a Full Bench under section 45 may be instituted by any person who is entitled under section 170JD to apply for the variation or revocation of an order under this Part.

Inconsistency with awards or other orders of Commission

“170JG. Any award or order of the Commission that is inconsistent with an order under this Part does not have effect to the extent of the inconsistency.

Validity of State laws, awards etc.

“170JH. Sections 152 and 153 have the same effect in relation to orders of the Commission under this Part as they have in relation to awards of the Commission.

“Division 5—Parental leave

Effect of Division

“170KA.(1) The object of this Division and Schedule 14 is to give effect, or further effect, to:

- (a) the Family Responsibilities Convention; and
- (b) the Workers with Family Responsibilities Recommendation, 1981, which the General Conference of the International Labour Organisation adopted on 23 June 1981 and is also known as Recommendation No. 165, and a copy of the English text of which is set out in Schedule 13;

by providing for a system of unpaid parental leave, and a system of unpaid adoption leave, that will help men and women workers who have responsibilities in relation to their dependent children:

- (c) to prepare for, enter, participate in or advance in economic activity; and
- (d) to reconcile their employment and family responsibilities.

“(2) In particular, Schedule 14 gives effect, or further effect, to the Convention and the Recommendation by enabling either parent of a dependent child to obtain leave of absence (parental leave), without relinquishing employment, and with rights resulting from employment being safeguarded. Schedule 14 refers to parental leave granted to the child’s mother and her spouse as maternity leave and paternity leave, respectively.

“(3) The child’s mother is entitled to maternity leave, and her spouse is entitled to paternity leave, totalling up to 52 weeks following the birth of the child. Except for a period of one week at the time of the birth, maternity leave and paternity leave cannot overlap, since their main purpose is to enable the parent who is on leave to be the child’s primary care-giver. The purpose of the one-week overlapping period of leave is to enable both parents to care for the child, and to enable the mother’s spouse to give care and support to the mother, during the period immediately following the birth.

“(4) Schedule 14 establishes minimum entitlements and so is intended to supplement, and not to override, entitlements under other Commonwealth, State and Territory legislation and awards.

“(5) The regulations will provide for an analogous system of unpaid adoption leave.

Application of Schedule 14

“170KB. The provisions of Schedule 14 have the force of law, in the same way as if they were set out in this Division.

Regulations may prescribe adoption leave

“170KC. The regulations may provide for or in relation to giving effect to the Family Responsibilities Convention, and the Recommendation referred to in paragraph 170KA(1)(b), by providing for the granting by employers to employees of unpaid adoption leave.

“Division 6—Leave to care for immediate family

Commission to consider and make recommendations about carer’s leave

“170KAA.(1) This section applies unless an application is made by 1 March 1994 to the Commission for a test case to establish entitlements for employees to leave of absence to provide care or support for a member of the employee’s immediate family who is ill.

“(2) As soon as practicable after 1 March 1994, the Commission must conduct a hearing to determine the circumstances in which such leave should be granted, the persons to whom it should be granted and the entitlements which should be provided in relation to such leave to give effect, or further effect, to the Family Responsibilities Convention and the Workers with Family Responsibilities Recommendation.

“(3) The Commission must after making such a determination provide the Minister, as soon as practicable, with recommendations for legislation to give effect to the determination.”.

Application of penalty

22. Section 356 of the Principal Act is amended by inserting “170EF,” before “178”.

Enforcement of penalties etc.

23. Section 357 of the Principal Act is amended by inserting before paragraph (1)(a) the following paragraph:

“(aa) imposed a penalty under section 170EF for a contravention of subsection 170DD(2);”.

Schedules

24. The Principal Act is amended by adding at the end the Schedules set out in Schedule 1 to this Act.

PART 5—PROMOTING BARGAINING AND FACILITATING AGREEMENTS

Principal Act

25. In this Part, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

Interpretation

26. Section 4 of the Principal Act is amended:

- (a) by omitting “3A of Part VI” from the definition of “certified agreement” in subsection (1) and substituting “2 of Part VIB”;
- (b) by omitting from subsection (1) the definitions of “award” and “employer” and substituting the following definitions:

“**award**” means:

- (a) an award or order that has been reduced to writing under subsection 143(1); or
- (b) a certified agreement; or
- (c) an enterprise flexibility agreement;

“**employer**” includes:

- (a) in any case:
 - (i) a person who is usually an employer; and
 - (ii) an unincorporated club; and
- (b) in relation to an agreement under Division 3 of Part VIB—a constitutional corporation that is a successor, assignee or transmittee (whether immediate or not) to or of the whole, or any relevant part or parts, of the business of the employer that made the agreement, including such a corporation that has acquired or taken over the whole, or any relevant part or parts, of that business;”;

- (c) by inserting in subsection (1) the following definitions:

“**agreement**” has a meaning affected by section 170NA;

“**constitutional corporation**” means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a financial corporation formed within the limits of the Commonwealth; or
- (c) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a trading corporation formed within the limits of the Commonwealth; or
- (d) a body corporate that is incorporated in a Territory; or
- (e) a Commonwealth authority;

‘enterprise flexibility agreement’ means an agreement whose implementation has been approved under Division 3 of Part VIB;

‘industrial situation’ means a situation that, if preventive action is not taken, may give rise to:

(a) an industrial dispute of the kind referred to in paragraph (a) of the definition of ‘industrial dispute’; or

(b) a demarcation dispute of the kind referred to in that definition;

‘paid rates dispute’ has the meaning given by paragraph 170TA(1)(b);

‘paid rates functions and powers’ has the meaning given by subsection 170TA(1);

‘party’, in relation to an industrial situation, means:

(a) an organisation of employees that is affected by the situation; or

(b) an organisation of employers that is affected by the situation, or members of which are so affected; or

(c) an employer who is affected by the situation;”.

27. Section 95 of the Principal Act is repealed and the following section is substituted:

No automatic flow-on of terms of certain awards and agreements

“95.(1) The Commission does not have power:

(a) to include terms in an award that are based on the terms of a certified agreement or of an enterprise flexibility agreement; or

(b) to include terms in an award that are based on the terms of a paid rates award;

unless the Commission is satisfied that including the terms in the award:

(c) would not be inconsistent with principles established by a Full Bench that apply in relation to determining wages and conditions of employment; and

(d) would not be otherwise contrary to the public interest.

“(2) In this section:

‘award’ does not include a certified agreement or an enterprise flexibility agreement.”.

Power to grant preference to members of organisations etc.

28. Section 122 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) If:

(a) the Commission has directed under subsection (1) that preference is to be given to members of an organisation of employees or to persons who have applied to become members of such an organisation; or

(b) a certified agreement or enterprise flexibility agreement provides for preference to be so given;

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an employer is not required, because of the award, order or agreement, to give preference over a person in relation to whom a certificate under section 267 is in force.”.

29. Section 145 of the Principal Act is repealed and the following section is substituted:

Date of awards

“145. The date of an award is:

- (a) in the case of a certified agreement—the day when the agreement was certified under Division 2 of Part VIB; or
- (b) in the case of an enterprise flexibility agreement—the day when the implementation of the agreement was approved under Division 3 of Part VIB; or
- (c) otherwise—the day when the award was signed under subsection 143(1).”.

Persons bound by awards

30. Section 149 of the Principal Act is amended by adding at the end the following subsections:

“(4) An award that is constituted by an enterprise flexibility agreement is binding on:

- (a) a constitutional corporation that is:
 - (i) the employer that applied for approval of implementation of the agreement; or
 - (ii) a successor, assignee or transmittee (whether immediate or not) to or of the whole, or any relevant part or parts, of that employer’s business, including such a corporation that has acquired or taken over the whole, or any relevant part or parts, of that business; and
- (b) each employee of such a corporation who is covered by the agreement, even if he or she was not such an employee when the agreement was made; and
- (c) an organisation of employees, as provided by section 170NP; and
- (d) all members of an organisation on which the agreement is binding because of paragraph (c).

“(5) Subsection (4) has effect subject to an order under subsection 170NN(7) or 170NO(3).”.

31. Before Part VII of the Principal Act the following Part is inserted:

“PART VIB—PROMOTING BARGAINING AND FACILITATING AGREEMENTS

“Division 1—Objects and interpretation

Objects

“170LA.(1) The objects of this Part are:

- (a) to facilitate:
 - (i) the making and certifying of agreements under Division 2; and
 - (ii) the making, and approval of the implementation of, agreements under Division 3; and
- (b) to encourage the use of agreements, particularly at the workplace or enterprise level.

“(2) The Commission must, as far as practicable, perform its functions under this Part in a way that furthers the objects of this Act and, in particular, the objects of this Part.

“(3) Sections 90 and 106 do not apply to the performance of functions of the Commission under this Part.

“(4) In performing its functions under this Part, the Commission may not act under paragraph 111(1)(g) on the grounds specified in subparagraphs (i) and (iii) of that paragraph.

Definitions

“170LB. In this Part, unless the contrary intention appears:

‘eligible union’, in relation to an agreement that applies to an enterprise carried on by an employer, means an organisation of employees:

- (a) that is a party to an award that binds the employer in respect of work performed in that enterprise; and
- (b) of which one or more employees whom the employer employs to perform work in that enterprise are members;

‘enterprise’ has the meaning given by section 170LC;

‘part’, in relation to a single business, includes, for example:

- (a) a geographically distinct part of the single business; or
- (b) a distinct operational or organisational unit within the single business;

‘party’, in relation to an agreement, includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the business of a party, including a corporation that has acquired or taken over the whole or part of the business of the party;

‘single business’ means:

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- (a) a business that is carried on by a single employer; or
- (b) a business that is carried on by 2 or more employers as a joint venture or common enterprise; or
- (c) a single project or undertaking; or
- (d) activities carried on by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
 - (iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.

Meaning of ‘enterprise’

“170LC.(1) For the purposes of this Part, each of the following is an enterprise:

- (a) a business that is carried on by a single employer; or
- (b) a geographically distinct part of such a business; or
- (c) 2 or more geographically distinct parts of the same business carried on by a single employer.

“(2) If, on an application under Division 3 to approve implementation of an agreement, the Commission decides that it is satisfied that:

- (a) the agreement applies only to a part of a business, or to 2 or more parts of the same business, carried on by a single employer; and
- (b) it is appropriate to regard that part, or each of those parts, as a geographically distinct part of that business;

that part is taken to be such a part and to have been such a part when the agreement was made.

“(3) If a business is made up of 2 or more geographically distinct parts, the Commission may approve under Division 3 implementation of:

- (a) an agreement that applies to an enterprise constituted by the whole of the business; or
- (b) one or more agreements each relating to an enterprise constituted by one or more of those distinct parts.

“(4) However, an enterprise flexibility agreement that applies to the whole of a business cannot be in force at the same time as an enterprise flexibility agreement that applies to one or more parts of that business.

“Division 2—Certified agreements

Certified agreements

“170MA.(1) If the parties to an industrial dispute, or any of them, agree on terms for:

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- (a) the settlement of all or any of the matters in dispute; or
 - (b) the prevention of further industrial disputes between them;
- they may make a memorandum of the terms agreed on.

“(2) If the parties to an industrial situation, or any of them, agree on terms for preventing the situation from giving rise to an industrial dispute between them, they may make a memorandum of the terms agreed on.

“(3) A single memorandum may deal with 2 or more disputes or situations.

“(4) All or any of the parties to the agreement may apply to the Commission to certify the agreement.

Organisations entitled to be heard

“170MB.(1) On an application to the Commission:

- (a) to certify an agreement that applies only to a single business, part of a single business, or a single place of work; or
- (b) to approve an extension or variation of a certified agreement that so applies;

an organisation of employees is entitled to be heard if:

- (c) the organisation is entitled to represent the industrial interests of members of the organisation who are employed, by an employer who is a party to the agreement, to perform work in that business, part of a business or place of work; or
- (d) the organisation:
 - (i) is bound by an award that binds such an employer in respect of work performed in that business, part of a business or place of work; and
 - (ii) can show that it has a genuine interest in the application.

“(2) This section does not affect any other right of an organisation of employees, or of any other person or body, to intervene or be heard, or to apply to intervene or be heard, on an application.

Certification of agreements

“170MC.(1) The Commission must certify an agreement if, and must not certify an agreement unless, it is satisfied that:

- (a) wages and conditions of employment of the employees covered by the agreement are regulated by one or more awards (as defined in subsection (6)) that bind their employer, or their respective employers; and
- (b) the agreement does not, in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement; and

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- (c) the agreement includes procedures for preventing and settling disputes between the employers and employees covered by the agreement about matters arising under the agreement; and
- (d) either:
 - (i) the agreement establishes a process for the parties to the agreement to consult each other about matters involving changes to the organisation or performance of work in any place of work to which the agreement relates; or
 - (ii) the parties have agreed that it is not appropriate for the agreement to provide as mentioned in subparagraph (i); and
- (e) subject to subsection (3), during the negotiations for the agreement, reasonable steps were taken to consult the employees who are covered by the agreement about the agreement; and
- (f) subject to subsection (3), before the application for certification was made, reasonable steps were taken:
 - (i) to inform the employees who are covered by the agreement about the terms of the agreement; and
 - (ii) to explain to those employees the effect of those terms; and
 - (iii) in particular, to explain to those employees the procedures referred to in paragraph (c); and
 - (iv) to inform those employees of the intention to apply to the Commission to certify the agreement, and about the consequences of certification; and
- (g) if the agreement applies only to a single business, part of a single business or a single place of work:
 - (i) subject to subsections (4) and (5), the parties to the agreement include each organisation of employees that is a party to the award, or to one or more of the awards, referred to in paragraph (1)(a); and
 - (ii) the agreement has been negotiated, on the one hand, by each employer concerned or a representative of the employer, and, on the other hand, by a single person or group of persons representing all the other parties to the agreement; and
- (h) the agreement specifies the period of operation of the agreement.

“(2) For the purposes of paragraph (1)(b), an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if:

- (a) certification of the agreement would result in the reduction of any entitlements or protections of those employees under:
 - (i) an award (as defined in subsection (6)); or
 - (ii) any other law of the Commonwealth or of a State or Territory that the Commission thinks relevant; and

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- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.

“(3) Paragraphs (1)(e) and (f) do not apply if the Commission is satisfied that:

- (a) the agreement applies only to a new business, project or undertaking; and
- (b) when the application for certification was made, no-one had yet been employed in connection with the business, project or undertaking.

“(4) Subparagraph (1)(g)(i) does not apply if the Commission is satisfied that:

- (a) each organisation of employees referred to in that subparagraph has been given the opportunity to be a party to the agreement; and
- (b) at least one of those organisations is a party to the agreement; and
- (c) the agreement is in the interests of the employees whose employment is covered by the agreement.

“(5) Subparagraph (1)(g)(i) does not apply to an organisation of employees if none of its members is employed in the business, part of a business or place of work concerned.

“(6) In this section:

‘award’ includes a State award but does not include:

- (a) an order under Part VIA; or
- (b) a certified agreement; or
- (c) an enterprise flexibility agreement.

When Commission to refuse to certify agreements

“170MD.(1) Despite section 170MC, the Commission may refuse to certify an agreement if:

- (a) in the case of any agreement—the Commission thinks that any of the terms is one that the Commission would not have power to include in an award (disregarding section 95); or
- (b) except in the case of an agreement that applies only to a single business, a part of a single business or a single place of work—the Commission thinks that certifying the agreement would be contrary to the public interest.

“(2) Despite section 170MC, the Commission must refuse to certify an agreement if the Commission thinks that a provision of the agreement is inconsistent with:

- (a) a provision of Part VIA; or
- (b) an order by the Commission under that Part; or

- (c) an injunction granted, or any other order made, by the Court under that Part.

“(3) Despite section 170MC, the Commission must refuse to certify an agreement if satisfied that:

- (a) an employer who is a party to the agreement has, in connection with negotiating the agreement, contravened section 170RA, 320 or 334; or
- (b) such an employer has caused a person or body to engage, in or in connection with negotiations for the agreement, in conduct that, had the employer engaged in it, would be a contravention by the employer of section 170RA, 320 or 334; or
- (c) a person or body has, on behalf of such an employer:
 - (i) so engaged in such conduct; or
 - (ii) caused another person or body so to engage in such conduct.

“(4) Subsection (3) does not apply if the Commission is satisfied that the contravention or conduct, and its effects, have been fully remedied.

“(5) Despite section 170MC, the Commission must refuse to certify an agreement if it thinks that a provision of the agreement discriminates against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

“(6) Subsection (5) does not apply in so far as a provision:

- (a) discriminates, in respect of particular employment, based on the inherent requirements of that employment; or
- (b) discriminates:
 - (i) in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and
 - (ii) in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

“(7) Despite section 170MC, the Commission may refuse to certify an agreement if:

- (a) the agreement applies only to a part of a single business that is neither of the following:
 - (i) a geographically distinct part of the single business; or
 - (ii) a distinct operational or organisational unit within the single business; and
- (b) the Commission considers that:

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- (i) the agreement defines that part in a way that results in the agreement not covering employees whom it would be reasonable for the agreement to cover, having regard to:
 - (A) the nature of the work performed by the employees whom the agreement does cover; and
 - (B) the organisational and operational relationships between that part and the rest of the single business; and
- (ii) it is unfair for the agreement not to cover those employees.

How agreement may provide for its variation

“170ME.(1) If an agreement provides for any of its terms to be varied by a later agreement, the Commission must refuse to certify the agreement unless it is satisfied that:

- (a) the agreement so provides in order to maintain and make effective the settlement or prevention referred to in paragraph 170MA(1)(a) or (b), as the case requires; and
- (b) the agreement specifies the terms that can be so varied, and the circumstances in which, and the ways in which, they can be so varied; and
- (c) the agreement provides that a variation has effect only if:
 - (i) it is agreed to by all the parties who are bound by the agreement when the variation is made; and
 - (ii) it is approved by the Commission under section 170ML.

“(2) To avoid doubt, subsection (1) does not apply to an agreement in so far as the obligations under the agreement can change, because of the terms of the agreement, without the need for a later agreement between the parties.

Other options open to Commission instead of refusing to certify agreement

“170MF.(1) If, under section 170MC, 170MD or 170ME, the Commission has grounds to refuse to certify an agreement:

- (a) the Commission may accept an undertaking from one or more of the parties in relation to the operation of the agreement and, if satisfied that the undertaking meets the Commission’s concerns, certify the agreement; and
- (b) in any case, before refusing to certify the agreement, the Commission must give the parties an opportunity to amend it or to take any other action that may be necessary to make the agreement certifiable.

“(2) If an undertaking is not observed, the Commission may terminate the agreement after giving the parties an opportunity to be heard.

Commission to protect interests of certain employees

“170MG.(1) The Commission must comply with this section in performing its functions and exercising its powers in relation to an application to certify an agreement.

“(2) The Commission must identify the employees (**‘relevant employees’**), if any, who are covered by the agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement. Examples of employees whose interests may not have been so taken into account are:

- (a) women;
- (b) persons whose first language is not English;
- (c) young persons.

“(3) For the purposes of deciding whether it is satisfied as mentioned in paragraphs 170MC(1)(e) and (f), the Commission must do whatever is necessary to find out:

- (a) whether:
 - (i) the relevant employees were consulted about the agreement, and informed about the matters referred to in subparagraphs 170MC(1)(f)(i) and (iv); and
 - (ii) the matters referred to in subparagraphs 170MC(1)(f)(ii) and (iii) were explained to the relevant employees; in ways that were appropriate having regard to their particular circumstances and needs; and
- (b) whether the effects on the relevant employees of the terms of the agreement were properly explained to those employees.

“(4) If it considers that there has been a failure to consult or explain as mentioned in subsection (3), the Commission must make whatever orders it thinks necessary to remedy the failure and its effects.

Procedures for preventing and settling disputes

“170MH. Procedures in an agreement for preventing and settling disputes between employers and employees covered by the agreement may, if the Commission so approves, empower the Commission to do either or both of the following:

- (a) to settle disputes over the application of the agreement;
- (b) to appoint a board of reference as described in section 131 for the purpose of settling such disputes.

Operation of certified agreements

“170MI.(1) A certified agreement comes into force when it is certified and, during the period of the agreement and for 3 months after that period, it remains in force unless:

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- (a) the Commission terminates it under subsection 170MF(2); or
- (b) because of one or more orders or declarations under section 170MJ, 170MM or 170MN:
 - (i) the agreement is terminated; or
 - (ii) all the remaining parties to the agreement are organisations of employees; or
 - (iii) all the remaining parties to the agreement are employers or organisations of employers; or
- (c) the period of the agreement has ended and the agreement is replaced by a new certified agreement or by an enterprise flexibility agreement.

“(2) During the period of the agreement and for 3 months after that period, subsections 148(1) and (3) do not apply to the agreement, but subsection 148(2) does so apply.

“(3) If the agreement remains in force until the end of the 3 months after the period of the agreement, then, at the end of those 3 months:

- (a) section 148 applies to the agreement; and
- (b) the agreement continues in force accordingly.

“(4) In the application of section 148 to the agreement in accordance with this section, a reference in that section to the period specified in the award as the period for which the award is to continue in force is taken to be a reference to the period of the agreement.

“(5) In this section:

‘period of the agreement’ means the period of operation of the agreement specified in the agreement, or that period as extended or further extended under section 170MJ.

Extension of certified agreements

“170MJ.(1) Subject to this section, the parties to a certified agreement may extend the period of operation of the agreement.

“(2) An extension has no effect unless:

- (a) the parties agree to the extension; and
- (b) before the end of the period of operation of the agreement or that period as last extended under this section:
 - (i) if the agreement applies only to a single business, part of a single business or a single place of work—one or more of the parties apply to the Commission to approve the extension; or
 - (ii) otherwise—one or more of the parties notify the Commission in writing of the extension.

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“(3) If an application is made in accordance with subparagraph (2)(b)(i), the extension has effect at least until the application is determined, even if that happens after the period referred to in paragraph (2)(b).

“(4) On an application, the Commission must approve the extension unless an organisation of employees that is entitled under section 170MB to be heard satisfies the Commission that the extension would not be in the interests of the employees covered by the agreement. If that happens, the Commission must refuse to approve the extension.

Effect of certified agreements

“170MK.(1) While a certified agreement is in force:

- (a) subject to paragraph (b), the terms of the agreement prevail over the terms of an award or order of the Commission; and
- (b) the agreement has no effect in so far as it is inconsistent with an enterprise flexibility agreement whose implementation was approved before the first-mentioned agreement was certified; and
- (c) a term of the agreement can be set aside or varied by the parties, but only as provided in subsection 113(2C) or section 170ML or 170MM; and
- (d) the agreement or a term of the agreement is not to be set aside under subsection 113(1) or cancelled or suspended under section 187; and
- (e) the agreement may only be varied under subsection 113(2) for the purpose of:
 - (i) removing ambiguity or uncertainty; or
 - (ii) including, omitting or varying a bans clause; or
 - (iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; and
- (f) the Commission may take action in relation to the agreement under subsection 113(2A); and
- (g) except as provided by this Division, the Commission is not to exercise arbitration powers to vary the agreement.

“(2) The agreement may, by express provision, exclude or limit the operation of subparagraphs (1)(e)(ii) and (iii).

“(3) While it continues in force because of subsection 170MI(3), the agreement cannot be varied under subsection 113(2) except:

- (a) for the purpose of:
 - (i) removing ambiguity or uncertainty; or
 - (ii) including, omitting or varying a bans clause; or
 - (iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; or

- (b) in a case where, on application by a party to the agreement, the Commission is satisfied that:
- (i) since the end of the period of the agreement, or of that period as last extended under section 170MJ, the party applying for the variation has tried in good faith to negotiate a new agreement under this Part to replace the certified agreement; and
 - (ii) there is no reasonable prospect of such a new agreement being made; and
 - (iii) the variation would be in the public interest.

“(4) The operation of subparagraphs (3)(a)(ii) and (iii) is excluded or limited to the same extent as the agreement excludes or limits the operation of subparagraphs (1)(e)(ii) and (iii).

Variation of certified agreement as provided in the agreement

“170ML.(1) If a certified agreement provides for any of its terms to be varied by a later agreement, such a variation takes effect only if approved by the Commission on application by the parties bound by the agreement when the variation is made.

“(2) The Commission must approve the variation if, and must not approve it unless, the Commission is satisfied that:

- (a) the variation was made in accordance with the agreement; and
- (b) the variation has been agreed to by all parties bound by the agreement when the variation was made; and
- (c) if:
 - (i) the application for approval were an application to the Commission to certify the agreement as varied; and
 - (ii) the agreement as in force before the variation takes effect were not in force;

the Commission would have no grounds under paragraph 170MC(1)(b) or section 170MD to refuse to certify the agreement as varied.

“(3) If the Commission has grounds to refuse to approve the variation:

- (a) the Commission may accept an undertaking from one or more of the parties in relation to the operation of the agreement as varied and, if satisfied that the undertaking meets the Commission’s concerns, may approve the variation; and
- (b) in any case, before refusing to approve the variation, the Commission must give the parties an opportunity to do whatever is needed for the Commission to be able to approve the variation.

“(4) If an undertaking is not observed, the Commission may set aside the variation after giving the parties an opportunity to be heard.

Certified agreements may be varied or terminated by Full Bench

“170MM.(1) At any time while a certified agreement is in force, a Full Bench may review the operation of the agreement after giving the parties to the agreement an opportunity to be heard.

“(2) The Full Bench may act under subsection (1) only:

- (a) on its own initiative; or
- (b) on application by an organisation or person bound by the agreement.

“(3) A Full Bench must, within 3 years of the date on which a certified agreement continues in force because of subsection 170MI(3), and within each subsequent period of 3 years, review the operation of the agreement after giving the parties to the agreement an opportunity to be heard.

“(4) If the Full Bench finds:

- (a) in the case of any agreement—that the continued operation of the agreement would be unfair to the employees covered by the agreement; or
- (b) in the case of an agreement that does not apply only to a single business, part of a single business or a single place of work—that the continued operation of the agreement would be contrary to the public interest;

it may do any of the following things:

- (c) by order, terminate the agreement;
- (d) accept an undertaking from all or any of the parties in relation to the operation of the agreement;
- (e) permit the parties to vary the agreement.

“(5) If an undertaking is not observed, the Full Bench may, by order, terminate the agreement after giving the parties an opportunity to be heard.

“(6) If a party to a certified agreement engages in industrial action in relation to a matter dealt with in the agreement, another party who is affected by the industrial action may apply to the Commission for a declaration that the party so applying is no longer bound by the agreement.

“(7) On such an application, the Commission may, by order, declare that the applicant is no longer bound by the agreement if the Commission is satisfied that it is in the public interest to make the declaration.

Certified agreements may be terminated by parties

“170MN.(1) A party to a certified agreement may, with the consent of all the relevant parties, give the Commission written notice stating that the party does not want to remain bound by the agreement.

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“(2) All the parties to a certified agreement may jointly give the Commission written notice stating that they want the agreement to be terminated.

“(3) On receipt of such a notice, if the Commission is satisfied that it would be in the public interest for the party to be no longer bound or for the agreement to be terminated, as the case may be, the Commission may, by order, make a declaration to that effect.

“(4) In this section:

‘**relevant party**’, in relation to an agreement, means:

- (a) in relation to a party to the agreement that is an employer or an organisation of employers—a party that is an organisation of employees; or
- (b) in relation to a party to the agreement that is an organisation of employees—a party that is an employer or an organisation of employers.

“Division 3—Enterprise flexibility agreements

When employer may apply for approval of implementation of agreement

“170NA.(1) An employer that is a constitutional corporation and carries on an enterprise may prepare an instrument that:

- (a) applies to the enterprise; and
- (b) is about matters pertaining to the relationship between employers and employees.

“(2) If an instrument is prepared under subsection (1):

- (a) it is taken for the purposes of this Act to be an agreement and to have been made when the instrument was prepared; and
- (b) the employer may apply to the Commission to approve implementation of the agreement.

Note: It is expected that an employer will apply to the Commission under subsection (2) only if the agreement reflects the outcome of negotiations by the employer with:

- employees covered by the agreement; and
- any eligible unions (as defined in section 170LB) that choose to take part.

This is because approval of implementation of the agreement:

- depends on a majority of the employees covered by the agreement genuinely agreeing to be bound by it (see paragraph 170NC(1)(i)); and
- may be refused if the employer failed to notify eligible unions about the negotiations or to give them a reasonable opportunity to take part (see subsection 170ND(7)).

Organisations entitled to be heard

“170NB.(1) On an application to the Commission:

- (a) to approve implementation of an agreement; or

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(b) to extend an enterprise flexibility agreement's period of operation; an organisation of employees is entitled to be heard if it is bound by an award that binds the employer in respect of work performed in the enterprise.

“(2) As soon as practicable after the application is made, the Commission must publish a notice, as prescribed, that the application has been made.

“(3) This section does not affect any other right of an organisation of employees, or of any other person or body, to intervene or be heard, or to apply to intervene or be heard, on an application to the Commission.

Approval of implementation of agreement

“170NC.(1) On an application to the Commission to approve implementation of an agreement, the Commission must do so if, and must not do so unless, it is satisfied that:

- (a) the agreement applies only to the enterprise referred to in section 170NA and is only about matters pertaining to the relationship between employers and employees; and
- (b) wages and conditions of employment of the employees covered by the agreement are regulated by one or more awards (as defined in subsection (3)) that bind the employer; and
- (c) the agreement covers all of the employees:
 - (i) in respect of whom wages and conditions of employment are regulated by one or more awards (as defined in subsection (3)) that bind the employer; and
 - (ii) whom the employer employs to perform work in that enterprise; and
- (d) the agreement does not, in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement; and
- (e) the agreement includes procedures for preventing and settling disputes between the persons bound by the agreement about matters arising under the agreement; and
- (f) either:
 - (i) the agreement establishes a process for the persons bound by the agreement to consult each other about matters involving changes to the organisation or performance of work in the enterprise; or
 - (ii) the agreement states that it is not appropriate for the agreement to provide as mentioned in subparagraph (i); and
- (g) during the negotiations for the agreement, reasonable steps were taken to consult employees who are covered by the agreement about the agreement; and

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- (h) before the application for approval was made, reasonable steps were taken:
 - (i) to inform the employees who are covered by the agreement about the terms of the agreement; and
 - (ii) to explain to those employees the effect of those terms; and
 - (iii) in particular, to explain to those employees the procedures referred to in paragraph (e); and
 - (iv) to inform those employees of the intention to apply to the Commission to approve implementation of the agreement, and about the consequences of approval; and
- (i) a majority of the persons who, as at the end of a day that is specified in the application and is not more than 7 days before the day when the application was made, were employees covered by the agreement have, on or before the specified day, genuinely agreed to be bound by the agreement, even if they so agreed at different times; and
- (j) the agreement specifies its period of operation.

“(2) For the purposes of paragraph (1)(d), an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if:

- (a) approval of implementation of the agreement would result in the reduction of any entitlements or protections of those employees under:
 - (i) an award (as defined in subsection (3)); or
 - (ii) any other law of the Commonwealth or of a State or Territory that the Commission thinks relevant; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.

“(3) In this section:

‘award’ does not include:

- (a) an order under Part VIA; or
- (b) a certified agreement; or
- (c) an enterprise flexibility agreement.

When Commission to refuse to approve implementation of agreements

“170ND.(1) Despite section 170NC, the Commission may refuse to approve implementation of an agreement if the Commission thinks that the agreement includes a term that a provision of this Act (except section 95) or of any other Act would prohibit the Commission from including in an award.

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“(2) Despite section 170NC, the Commission must refuse to approve implementation of an agreement if the Commission thinks that a provision of the agreement is inconsistent with:

- (a) a provision of Part VIA; or
- (b) an order by the Commission under that part; or
- (c) an injunction granted, or any other order made, by the Court under that Part.

“(3) Despite section 170NC, the Commission may refuse to approve implementation of an agreement if satisfied that, because of exceptional circumstances, approving implementation of the agreement would be contrary to the public interest.

“(4) Approving implementation of an agreement is not contrary to the public interest merely because the agreement is inconsistent with principles established by a Full Bench that apply in relation to determining wages and conditions of employment by awards made under Part VI.

“(5) Despite section 170NC, the Commission must refuse to approve implementation of an agreement if satisfied that:

- (a) the employer has, in or in connection with negotiating the agreement, contravened section 170RA, 170RB, 320 or 334; or
- (b) the employer has caused a person or body to engage, in or in connection with negotiations for the agreement, in conduct that, if the employer had engaged in it, would be a contravention by the employer of section 170RA, 170RB, 320 or 334; or
- (c) a person or body has, on behalf of the employer:
 - (i) so engaged in such conduct; or
 - (ii) caused another person or body so to engage in such conduct.

“(6) Subsection (5) does not apply if the Commission is satisfied that the contravention or conduct, and its effects, have been fully remedied.

“(7) Despite section 170NC, the Commission may refuse to approve implementation of an agreement, or may adjourn an application to approve such implementation, if satisfied that the employer:

- (a) did not, before or as soon as practicable after the time when negotiations for the agreement began, notify each organisation that was at that time an eligible union about the negotiations; or
- (b) did not give each such organisation a reasonable opportunity to take part in the negotiations and to agree, before the application for approval was made, to be bound by the agreement.

“(8) Subsection (7) does not apply in relation to an organisation if the employer could not reasonably be expected to have known at, or within a reasonable period after the time when negotiations for the agreement began, that the organisation was an eligible union at that time.

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“(9) In deciding what action (if any) to take under subsection (7), the Commission must consider:

- (a) whether it thinks the failure was intentional; and
- (b) any other relevant circumstances.

“(10) Despite section 170NC, the Commission must refuse to approve implementation of an agreement if it thinks that a provision of the agreement discriminates against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

“(11) Subsection (10) does not apply in so far as a provision:

- (a) discriminates, in respect of particular employment, based on the inherent requirements of that employment; or
- (b) discriminates:
 - (i) in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and
 - (ii) in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

How agreement may provide for its variation

“170NE.(1) If an agreement (**‘the main agreement’**) provides for any of its terms to be varied by a later enterprise flexibility agreement applying to the same enterprise, the Commission must refuse to approve implementation of the main agreement unless satisfied that the main agreement specifies the terms that can be so varied, and the circumstances in which, and the ways in which, they can be so varied.

“(2) To avoid doubt, subsection (1) does not apply to an agreement in so far as the obligations under the agreement can change because of the terms of the agreement itself.

Other options open to Commission

“170NF.(1) This section applies if, under section 170NC, 170ND or 170NE, the Commission has grounds to refuse to approve implementation of an agreement.

“(2) The Commission may accept an undertaking, about the agreement’s operation, from one or more persons:

- (a) who would be bound by the agreement; and
- (b) whom the Commission considers to be the appropriate person or persons to give the undertaking.

The Commission may approve implementation of the agreement if satisfied that the undertaking meets its concerns.

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“(3) Whether or not it accepts an undertaking, the Commission must, before refusing to approve implementation of the agreement:

- (a) give the employer an opportunity to vary the agreement by an instrument made with the approval, obtained as directed by the Commission, of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement; or
- (b) give the persons who would be bound by the agreement an opportunity to do whatever else is needed for the Commission to be able to approve implementation of the agreement.

“(4) If an undertaking under this section is not complied with, the Commission may terminate the agreement after giving the persons bound by it an opportunity to be heard.

Commission to protect interests of certain employees

“170NG.(1) The Commission must comply with this section in performing its functions and exercising its powers in relation to an application to approve implementation of an agreement.

“(2) The Commission must identify the employees (**‘relevant employees’**), if any, who are covered by the agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement. Examples of employees whose interests may not have been so taken into account are:

- (a) women;
- (b) persons whose first language is not English;
- (c) young persons.

“(3) For the purposes of deciding whether it is satisfied as mentioned in paragraphs 170NC(1)(g) and (h), the Commission must do whatever is necessary to find out:

- (a) whether:
 - (i) the relevant employees were consulted about the agreement, and informed about the matters referred to in subparagraphs 170NC(1)(h)(i) and (iv); and
 - (ii) the matters referred to in subparagraphs 170NC(1)(h)(ii) and (iii) were explained to the relevant employees; in ways that were appropriate having regard to their particular circumstances and needs; and
- (b) whether the effects on the relevant employees of the terms of the agreement were properly explained to those employees.

“(4) If it considers that there has been a failure to consult or explain as mentioned in subsection (3), the Commission must make whatever orders it thinks necessary to remedy the failure and its effects.

Commission to determine how enterprise flexibility agreements to be published

“170NH.(1) As soon as practicable after approving the implementation of an agreement, the Commission must determine how the agreement should be published in order to ensure that the agreement’s contents are:

- (a) easily available to employees covered by the agreement; and
- (b) easy for those employees to understand.

“(2) The Industrial Registrar must ensure that the agreement is published in accordance with the determination.

Procedures for preventing and settling disputes

“170NI. Procedures in an agreement for preventing and settling disputes between the persons bound by the agreement may, if the Commission so approves, empower the Commission to do either or both of the following:

- (a) to settle disputes over the application of the agreement;
- (b) to appoint a board of reference as described in section 131 for the purpose of settling such disputes.

Operation of enterprise flexibility agreements

“170NJ.(1) An enterprise flexibility agreement comes into force when its implementation is approved and, during the period of the agreement and for 3 months after that period, it remains in force unless:

- (a) the Commission terminates it under subsection 170NF(4); or
- (b) because of one or more orders or declarations under section 170NN or 170NO:
 - (i) the agreement is terminated; or
 - (ii) no employer is bound by the agreement; or
 - (iii) no employee or organisation of employees is bound by the agreement; or
- (c) the period of the agreement has ended and the agreement is replaced by a new enterprise flexibility agreement or by a certified agreement.

“(2) During the period of the agreement and the 3 months after that period, subsections 148(1) and (3) do not apply to the agreement, but subsection 148(2) does so apply.

“(3) If the agreement remains in force until the end of the 3 months after the period of the agreement, then, at the end of those 3 months:

- (a) section 148 applies to the agreement; and
- (b) the agreement continues in force accordingly.

“(4) In the application of section 148 to the agreement in accordance with this section, a reference in that section to the period specified in the award as the period for which the award is to continue in force is taken to be a reference to the period of the agreement.

“(5) In this section:
‘period of the agreement’ means the period of operation of the agreement specified in the agreement, or that period as extended or further extended under section 170NK.

Extension of enterprise flexibility agreements

“170NK.(1) Subject to this section, the Commission must extend an enterprise flexibility agreement’s period of operation, in accordance with an application by the employer, if the Commission is satisfied that a majority of the persons who, as at the end of a day that is specified in the application and is not more than 7 days before the day when the application was made, were employees covered by the agreement have, on or before the specified day, genuinely agreed to the proposed extension, even if they so agreed at different times.

“(2) However, the Commission must not extend the period of operation if:

- (a) that period, or that period as last extended under this section, has ended; or
- (b) an organisation of employees that is entitled under section 170NB to be heard on the application satisfies the Commission that the extension would not be in the interests of the employees covered by the agreement.

“(3) If it appears to the Commission that the period of operation, or that period as last extended under this section, will end before the application is determined, the Commission may by order extend that period until the application is determined. The Commission may revoke an order extending that period.

Effect of enterprise flexibility agreements

“170NL.(1) While an enterprise flexibility agreement is in force:

- (a) subject to paragraph (b), the terms of the agreement prevail over the terms of an award or order of the Commission; and
- (b) the agreement has no effect in so far as it is inconsistent with a certified agreement that was certified before implementation of the first-mentioned agreement was approved; and
- (c) a term of the agreement can be set aside or varied by the employer as provided in subsection 113(2D) or section 170NM or 170NN, but not otherwise; and
- (d) the agreement or a term of the agreement is not to be set aside under subsection 113(1) or cancelled or suspended under section 187; and
- (e) the agreement may only be varied under subsection 113(2) for the purpose of:

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- (i) removing ambiguity or uncertainty; or
 - (ii) including, omitting or varying a bans clause; or
 - (iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; and
- (f) the Commission may take action in relation to the agreement under subsection 113(2A); and
- (g) except as provided by this Division, the Commission is not to exercise any powers to vary the agreement.

“(2) The agreement may, by express provision, exclude or limit the operation of subparagraphs (1)(e)(ii) and (iii).

“(3) While it continues in force because of subsection 170NJ(3), the agreement cannot be varied under subsection 113(2) except:

- (a) for the purpose of:
 - (i) removing ambiguity or uncertainty; or
 - (ii) including, omitting or varying a bans clause; or
 - (iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; or
- (b) in a case where the Commission is satisfied that:
 - (i) since the end of the period of the agreement, or of that period as last extended under section 170NK, the person applying for the variation has tried in good faith to negotiate a new agreement under this Part to replace the first-mentioned agreement; and
 - (ii) there is no reasonable prospect of such a new agreement being made; and
 - (iii) the variation would be in the public interest.

“(4) The operation of subparagraphs (3)(a)(ii) and (iii) is excluded or limited to the same extent as the agreement excludes or limits the operation of subparagraphs (1)(e)(ii) and (iii).

Variation of enterprise flexibility agreement as provided in the agreement

“170NM.(1) This section applies for the purposes of an application to the Commission to approve implementation of an agreement (**‘the variation’**) varying an enterprise flexibility agreement (**‘the main agreement’**) that provides for any of its terms to be varied by a later enterprise flexibility agreement.

“(2) Subject to subsection (3), the Commission must deal with the application as if:

- (a) it were an application to the Commission to approve implementation of the main agreement as varied; and

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(b) the main agreement as in force before the variation takes effect were not in force.

“(3) The Commission may approve implementation of the variation only if satisfied that:

- (a) the variation was made in accordance with the main agreement; and
- (b) the enterprise to which the variation applies is the same as the one to which the main agreement applies; and
- (c) the variation provides only for varying the main agreement and for matters incidental to varying it.

Enterprise flexibility agreements may be varied or terminated by Full Bench

“170NN.(1) At any time while an enterprise flexibility agreement is in force, a Full Bench may review the agreement’s operation after giving the persons bound by the agreement an opportunity to be heard.

“(2) The Full Bench may act under subsection (1) only:

- (a) on its own initiative; or
- (b) on application by a person bound by the agreement.

“(3) A Full Bench must, within 3 years of the date on which an enterprise flexibility agreement continues in force because of subsection 170NJ(3), and within each subsequent period of 3 years, review the operation of the agreement after giving the parties to the agreement an opportunity to be heard.

“(4) If the Full Bench finds that the continued operation of the agreement would be unfair to the employees covered by the agreement, it may do any of the following:

- (a) by order, terminate the agreement;
- (b) accept an undertaking in relation to the agreement’s operation;
- (c) permit the employer to vary the agreement by an instrument made with the approval, obtained as directed by the Commission, of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement.

“(5) If an undertaking is not observed, the Full Bench may, by order, terminate the agreement after giving the persons bound by it an opportunity to be heard.

“(6) If a person bound by an enterprise flexibility agreement engages in industrial action in relation to a matter dealt with in the agreement, another person who is bound by the agreement and is affected by the industrial action may apply to the Commission for a declaration that the person is no longer bound by the agreement.

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“(7) On such an application, the Commission may, by order, declare that the applicant is no longer bound by the agreement, if the Commission is satisfied that it is in the public interest to make the declaration.

Enterprise flexibility agreements may be terminated by consent

“170NO.(1) A person bound by an enterprise flexibility agreement may, with the consent of all other persons bound by the agreement, give the Commission written notice stating that the person does not want to remain bound by the agreement.

“(2) All the persons bound by an enterprise flexibility agreement may jointly give the Commission written notice stating that they want the agreement to be terminated.

“(3) On receipt of such a notice, if the Commission is satisfied that it would be in the public interest for the person to be no longer bound, or for the agreement to be terminated, as the case may be, the Commission may, by order, make a declaration to that effect.

Eligible union may agree to be bound by enterprise flexibility agreement

“170NP.(1) If:

- (a) an employer has made an agreement under this Division; and
- (b) the Commission has not yet approved implementation of the agreement (whether or not an application for approval has been made);

an eligible union may, by written notice given to the employer, agree to be bound by the agreement if and when the Commission approves its implementation.

“(2) If:

- (a) a variation of an agreement made under this Division is proposed; or
- (b) an agreement made under this Division has been varied but the variation has not yet taken effect;

an eligible union may, by written notice given to the employer:

- (c) if the union is already bound by the agreement—agree to be bound by the variation if and when it takes effect; or
- (d) otherwise—agree to be bound by the agreement as varied if and when the variation takes effect.

This subsection applies whether or not a previous variation of the agreement has taken effect.

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“(3) While an enterprise flexibility agreement is in force because of subsection 170NJ(3), an eligible union may, by written notice given to the employer, agree to be bound by the agreement on and after a day specified in the notice. This subsection applies whether or not a variation of the agreement has taken effect.

“(4) A notice under subsection (1), (2) or (3) cannot be revoked.

“(5) An eligible union that has agreed as mentioned in subsection (1), paragraph (2)(d) or subsection (3) is bound accordingly.

“(6) However, after a variation (however made) of the agreement takes effect, or a further such variation takes effect, as the case requires, the union:

- (a) is no longer bound by the agreement as in force before the variation or further variation took effect; and
- (b) is not bound by the agreement as varied unless, before the variation or further variation took effect, the union agreed under subsection (2) to be bound by the variation or further variation.

“(7) Subsection (6) does not apply to a variation made under subsection 113(2) or (2A). If, immediately before such a variation of the agreement takes effect, the union is still bound by the agreement, the union is bound by the agreement as varied.

“Division 4—Immunity from civil liability

Object of Division

“170PA.(1) The object of this Division is to give effect, in particular situations, to Australia’s international obligation to provide for a right to strike. This obligation arises under:

- (a) Article 8 of the International Covenant on Economic, Social and Cultural Rights (a copy of the English text of the Preamble, and Parts II and III, of the Covenant is set out in Schedule 8); and
- (b) the Freedom of Association and Protection of the Right to Organise Convention, 1948 (a copy of the English text of the Preamble, and Parts I and II, of the Convention is set out in Schedule 15); and
- (c) the Right to Organise and Collective Bargaining Convention, 1949 (a copy of the English text of the Preamble, and Articles 1 to 6, of the Convention is set out in Schedule 16); and
- (d) the Constitution of the International Labour Organisation; and
- (e) customary international law relating to freedom of association and the right to strike.

Note: The Schedule to the *International Labour Organisation Act 1947* sets out a copy of the English text of the Constitution of the International Labour Organisation as in force when that Act was enacted. The Schedules to the *International Labour Organisation Act 1973* set out the English texts of various instruments of amendment of that Constitution. As

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at the enactment of this Act, the amendments made by the instruments set out in Schedules 3, 4 and 5 of the 1973 Act had not yet come into force.

“(2) The Parliament considers that it is necessary to provide specific legislative protection for the right to strike, subject to limitations compatible with the existence of the right, in situations where:

- (a) there exists an industrial dispute involving an employer and one or more organisations members of which:
 - (i) are employed by the employer to perform work in a single business, part of a single business or a single place of work; and
 - (ii) are covered by an award; and
- (b) the employer and one or more of those organisations are negotiating an agreement under Division 2.

“(3) In addition to the effect that this Division has under subsections (1) and (2), it has such effect as it would have, apart from those subsections, under the powers conferred on the Parliament by paragraph 51(xxxv) of the Constitution.

Joint employers

“170PB. A reference in this Division to an employer includes a reference to 2 or more employers carrying on a business as a joint venture or common enterprise.

Application of Division

“170PC. This Division applies if:

- (a) the Commission has found that an industrial dispute exists; and
- (b) the dispute involves a particular employer and a particular organisation or organisations of employees; and
- (c) wages and conditions of employment of employees who:
 - (i) are employed by the employer; and
 - (ii) are members of the organisation or one of the organisations; are regulated by one or more awards (as defined in subsection 170MC(6)) that bind the employer; and
- (d) all or some of those employees are employed by the employer in a single business or a part of a single business or at a single place of work.

Initiation of bargaining period

“170PD.(1) Subject to paragraph 170PP(7)(c), if the employer, or the organisation or one of the organisations of employees, wants to negotiate an agreement under Division 2 in relation to employees (the ‘**relevant employees**’) that are employed in the single business or the part of the single business, or at the single place of work, as the case may be, referred to in

paragraph 170PC(c), the employer or organisation (the **‘initiating party’**) may initiate a period (the **‘bargaining period’**) for negotiating the proposed agreement.

“(2) The bargaining period is initiated by the initiating party giving written notice to the other proposed party or the other proposed parties to the agreement, and to the Commission, stating that the initiating party intends to try, or to continue to try:

- (a) to reach an agreement under Division 2 with that party or those parties in settlement of the industrial dispute in so far as it involves the relevant employees; and
- (b) to have any agreement so reached certified under Division 2.

“(3) In this Division, the initiating party and the other proposed party or the other proposed parties are called **‘negotiating parties’**.”

Particulars to accompany notice

“170PE. The notice is to be accompanied by particulars of:

- (a) the single business or part of the single business, or the single place of work, to be covered by the proposed agreement; and
- (b) the proposed party or proposed parties to the agreement; and
- (c) the matters that the initiating party proposes should be dealt with by the agreement; and
- (d) the industrial dispute to which the proposed agreement relates; and
- (e) the proposed period of the agreement; and
- (f) any other matters prescribed by the regulations.

When bargaining period begins

“170PF. The bargaining period begins at the end of 7 days after:

- (a) the day on which the notice was given; or
- (b) if the notice was given to different persons on different days—the later or latest of those days.

Protected action

“170PG.(1) This section identifies certain action (**‘protected action’**) to which the provisions set out in section 170PM are to apply.

“(2) During the bargaining period, an organisation of employees that is a negotiating party, a member of such an organisation who is employed by the employer, or an officer or employee of such an organisation acting in that capacity, is entitled, for the purpose of supporting or advancing claims made by the organisation that are the subject of the industrial dispute, to organise or engage in industrial action directly against that employer and, if the organisation, member, officer or employee does so, the organising of, or engaging in, that industrial action is protected action.

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“(3) Subject to subsection (6), during the bargaining period, the employer is entitled, for the purpose of:

(a) supporting or advancing claims made by the employer that are the subject of the industrial dispute; or

(b) responding to industrial action by any of the relevant employees; or for both of those purposes, to lock out all or any of the relevant employees from their employment and, if the employer does so, the lockout is protected action.

“(4) The reference in subsection (3) to the employer locking out employees from their employment is a reference to the employer preventing employees from performing work under their contracts of employment without terminating those contracts.

“(5) If the employer locks out employees from their employment in accordance with subsection (3), the employer is entitled to refuse to pay any remuneration to the employees in respect of the period of the lockout.

“(6) The employer is not entitled to lock out employees from their employment under subsection (3) unless the continuity of the employees’ employment for such purposes as are prescribed by the regulations is not affected by the lockout.

“(7) This section has effect subject to the following provisions of this Division.

72 hours’ notice of action to be given

“170PH.(1) Any action taken as mentioned in subsection 170PG(2) by an organisation of employees, a member of such an organisation, or an officer or employee of such an organisation acting in that capacity, is not protected action unless at least 72 hours’ written notice of the intention to take the action has been given by the organisation to the other negotiating party or each of the other negotiating parties.

“(2) Any action taken as mentioned in subsection 170PG(3) by the employer to lock out employees from their employment:

(a) is not protected action unless at least 72 hours’ written notice of the intended lockout has been given by the employer to the other negotiating party or each of the other negotiating parties; and

(b) is not protected action in so far as it relates to a particular employee unless, at least 72 hours before the lockout begins, the employer has given written notice to the employee, or has taken other reasonable steps to notify the employee, of the intended lockout.

“(3) A written notice or other notification under this section must state the nature of the intended action and the day when it will begin.

“(4) A written notice or other notification under this section may be given before the start of the bargaining period.

Negotiation must precede industrial action or lockout

“170PI.(1) The engaging in industrial action by a person who is a member of an organisation of employees is not protected action unless the organisation has, before the person begins to engage in the industrial action:

- (a) tried to reach agreement with the employer; and
- (b) if the Commission has made an order as mentioned in section 170QK in relation to the negotiations—complied with the order in so far as it applies to the organisation.

“(2) A lockout of employees by an employer is not protected action unless the employer has, before the employer begins the lockout:

- (a) tried to reach agreement with the organisation or organisations of which the employees are members; and
- (b) if the Commission has made an order as mentioned in section 170QK in relation to the negotiations—complied with the order in so far as it applies to the employer.

What happens if Commission orders a ballot

“170PJ. If, under section 135, the Commission has ordered that a vote of members of an industrial organisation be taken by secret ballot in relation to the subject matter of the industrial dispute, the organising of, or engaging in, industrial action by the organisation, by a member of the organisation, or by an officer or employee of the organisation acting in that capacity, after the making of the order is not protected action unless:

- (a) such a ballot has been taken; and
- (b) the industrial action has been approved by a majority of the valid votes cast in the ballot.

Industrial action must be duly authorised

“170PK.(1) The engaging in industrial action by members of an organisation of employees is not protected action unless, before the industrial action begins:

- (a) in any case—the industrial action is duly authorised by a committee of management of the organisation or by someone authorised by such a committee to authorise the industrial action; and
- (b) if the rules of the organisation provide for how the industrial action is to be authorised—the industrial action is duly authorised under those rules; and
- (c) written notice of the giving of the authorisation is given to a Registrar.

“(2) Industrial action is taken for the purposes of this section to be duly authorised under the rules of an organisation of employees even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

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“(3) Examples of a technical breach in authorising industrial action are as follows:

- (a) a contravention of the rules of the organisation;
- (b) an error or omission in complying with the requirements of this Act;
- (c) the taking part in the making of a decision by a committee of management, or in the making of the decision by members, of the organisation by a person who was not eligible to take part in the making of the decision.

“(4) Industrial action is taken to have been duly authorised under the rules of an organisation of employees, and to have been so authorised before the industrial action began, unless the Court has, in a proceeding brought in the Court within 6 months after the giving of a notification in relation to that industrial action to a Registrar under paragraph (1)(c), declared that the industrial action was not duly authorised under those rules.

“(5) In so far as the rules of an organisation of employees provide for how industrial action that section 170PG entitles the organisation to organise or engage in is to be authorised, the rules do not contravene section 196 unless the manner provided for contravenes that section.

What happens if application to certify agreement is not made within 21 days

“170PL. Unless an application to the Commission to certify an agreement is made within 21 days after the day when a memorandum of the terms of the agreement is made, nothing that was done by a party to the agreement during the bargaining period is protected action.

Immunity provisions

“170PM.(1) An order made by the Commission under section 127 does not apply to protected action.

“(2) A bans clause does not apply to protected action.

“(3) Subject to subsection (4), an action does not lie under any law (whether written or unwritten) in force in a State or Territory in respect of any industrial action that is protected action unless the industrial action has involved or is likely to involve:

- (a) personal injury; or
- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

“(4) Subsection (3) does not prevent an action for defamation being brought in respect of anything that occurred in the course of industrial action.

When bargaining period ends

“170PN. The bargaining period ends:

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- (a) if a written agreement under Division 2 is entered into between the employer and any one or more of the other negotiating parties; or
 - (b) if the initiating party tells the other negotiating party or each of the other negotiating parties in writing that the initiating party no longer wants to reach an agreement under Division 2 with that other party or those other parties in settlement of the relevant industrial dispute; or
 - (c) if the Commission terminates the bargaining period;
- whichever first happens.

Power of Commission to suspend or terminate bargaining period

“170PO.(1) Subject to subsection (2), the Commission may, by order, suspend or terminate the bargaining period if, after giving the negotiating parties an opportunity to be heard, it is satisfied that:

- (a) a negotiating party that has organised or is organising, or has taken, industrial action to support or advance claims that are the subject of the industrial dispute:
 - (i) is not genuinely trying to reach an agreement with the other negotiating parties in settlement of the industrial dispute; or
 - (ii) has failed to comply with any directions by the Commission relating to negotiating in good faith; or
- (b) industrial action that is being taken to support or advance claims that are the subject of the industrial dispute is threatening:
 - (i) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or
 - (ii) to cause significant damage to the Australian economy or an important part of it; or
- (c) if the bargaining period relates to employees employed in a part of a single business, or at a single place of work in a single business, and the initiating party is not complying with an award or order, or a direction of the Commission, in relation to another part of the single business or another place of work in the single business.

“(2) The Commission:

- (a) may not make an order under subsection (1) on a ground stated in paragraph (1)(a) or (c) except on an application made by a negotiating party; but
- (b) may make an order under that subsection on the ground stated in paragraph (1)(b):
 - (i) on its own initiative; or
 - (ii) on an application made by a negotiating party or by the Minister.

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“(3) The power of the Commission to suspend or terminate the bargaining period may be exercised whether those circumstances occurred before or during the bargaining period.

“(4) Anything done by:

(a) a negotiating party; or

(b) a member, officer or employee of an organisation of employees that is a negotiating party;

in connection with the industrial dispute in so far as the dispute relates to the single business or part of the single business, or the single place of work, to which the bargaining period relates is not protected action if it is done at a time when the bargaining period is suspended.

What happens if Commission terminates a bargaining period under paragraph 170PO(1)(b)

“170PP.(1) This section applies if a bargaining period initiated by an organisation of employees is terminated on the ground set out in paragraph 170PO(1)(b).

“(2) The Commission must immediately begin to exercise its powers under this Act to prevent or settle the industrial dispute.

“(3) Subject to subsection (5), if the Commission proposes:

(a) to make a new award covering; or

(b) to vary an existing award so as to cover;

employees whose terms and conditions of employment were the subject of the industrial dispute, the Commission must:

(c) if paragraph (a) applies—make the new award as a paid rates award; or

(d) if paragraph (b) applies—vary the award so that it will be a paid rates award;

in relation to any of those employees who are employed in the single business or part of the single business, or at the single place of work, to which the bargaining period relates.

“(4) In deciding the terms to be included in an award that it proposes to make or vary as mentioned in subsection (3), the Commission must base its decision on the merits of the matters under consideration and need not follow principles that apply in determining wages and conditions of employment by making awards under Part VI.

“(5) Subsection (3) does not apply to a new award or a variation of an existing award if the parties to the industrial dispute agree that the subsection is not so to apply.

“(6) An award made or varied as mentioned in subsection (3):

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- (a) may, if the Commission thinks it appropriate, include a bans clause; and
 - (b) must be expressed to operate for a fixed period.
- “(7) During the fixed period:
- (a) subsections 148(1) and (3) do not apply to the award but subsection 148(2) does so apply; and
 - (b) the award may only be varied for the purpose of:
 - (i) removing ambiguity or uncertainty; or
 - (ii) including, omitting or varying a bans clause; or
 - (iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; and
 - (c) the parties to the award may not initiate a bargaining period under section 170PD for negotiating an agreement in relation to matters dealt with in the award.

“Division 5—Commission’s role in facilitating agreements under this Part

“Subdivision A—Bargaining Division of Commission

Bargaining Division of Commission

“170QA.(1) A Bargaining Division of the Commission is established.

“(2) The Division consists of the Vice President, and the other member or members of the Commission, assigned to it under section 170QC.

Role of the Bargaining Division

“170QB.(1) Subject to this Part, the Bargaining Division is to perform and exercise:

- (a) the Commission’s functions and powers under this Part; and
- (b) the Commission’s functions and powers in relation to an industrial dispute in relation to which a bargaining period has been initiated under section 170PD.

These are called **the Bargaining Division’s functions and powers**.

“(2) The Bargaining Division’s functions and powers may only be performed and exercised:

- (a) by a member of the Division; or
- (b) by a member of the Commission in accordance with a declaration in force under subsection 170QD(1); or
- (c) by the Commission constituted by 2 or more of its members, each of whom is:
 - (i) a member of the Division; or

- (ii) a member of the Commission acting in accordance with a declaration in force under subsection 170QD(1); or
- (d) by a Full Bench (whether on appeal or otherwise); or
- (e) by the President under section 108.

“(3) Subsection (2) does not affect the validity of any act or decision.

Assignment of Commission members to the Bargaining Division

“170QC.(1) The Governor-General may by writing assign to the Bargaining Division a Vice President or acting Vice President, unless a Vice President or acting Vice President is already assigned to the Division.

“(2) The Governor-General may by writing assign to the Division a member of the Commission (except the President, a Vice President or an acting Vice President).

“(3) In this section:

‘**acting Vice President**’ means a person acting in an office of Vice President during a vacancy in the office.

Exercise of Bargaining Division’s functions and powers by other Commission members

“170QD.(1) The President may make available a member of the Commission to perform or exercise all or any of the Bargaining Division’s functions and powers, as the President thinks fit.

“(2) The President may, under subsection (1), make a member of the Commission available to perform or exercise functions and powers of the Bargaining Division either generally or as the President otherwise specifies.

“(3) The President must exercise the power under subsection (1) by written declaration.

Composition of Full Bench established to perform or exercise any of the Bargaining Division’s functions and powers

“170QE.(1) A Full Bench established for the purposes of a proceeding that will involve performing or exercising any of the Bargaining Division’s functions and powers (whether on appeal or otherwise) must consist, so far as practicable, of members of the Bargaining Division.

“(2) Before establishing a Full Bench for the purposes of such a proceeding, the President must consult the Vice President assigned to the Bargaining Division.

Organisation of the Bargaining Division's work

“170QF. The Vice President assigned to the Bargaining Division is to organise and allocate its work. The other member or members of the Division, and a member or members made available to the Division under subsection 170QD(1), must comply with the Vice President's directions in relation to that work.

Assignment of other work to Bargaining Division

“170QG.(1) A member of the Bargaining Division may, as well as performing and exercising the Bargaining Division's functions and powers, perform other functions, and exercise other powers, as a member of the Commission, but only as provided by Part VIC or in accordance with a determination under subsection (2).

“(2) The President may determine in writing that specified members of the Bargaining Division are to perform specified functions, and exercise specified powers, as members of the Commission, either generally or as otherwise specified in the determination.

“(3) Before making an instrument under subsection (2), the President must consult the Vice President assigned to the Bargaining Division.

“(4) A determination under subsection (2) has effect despite section 37, in so far as the determination relates to a member of the Commission who is not a member of the relevant panel.

“(5) Subsection (1) does not affect the validity of an act or decision.

“Subdivision B—Conciliation in relation to proposed agreements

Commission may conciliate in relation to certain proposed agreements under this Part

“170QH.(1) This section applies if the Commission becomes aware that:

- (a) a party to an industrial situation wants to negotiate, or is negotiating, with any other party or parties to the situation, an agreement under Division 2 for preventing the situation from giving rise to an industrial dispute between them; or
- (b) an employer that is a constitutional corporation and carries on an enterprise wants to negotiate, or is negotiating, with employees whom the employer employs to perform work in that enterprise, for the making of an agreement under Division 3; or
- (c) employees whom such an employer employs to perform work in the enterprise want to negotiate, or are negotiating, with the employer for the making of an agreement under Division 3.

“(2) The Commission may try, by conciliation, to facilitate the making of such an agreement if it considers that conciliation by it would facilitate the making of such an agreement.

“(3) If:

- (a) a party to the industrial situation; or
- (b) the employer, any of the employees, or an eligible union;

as the case requires, asks the Commission to exercise powers under subsection (2), the Commission must decide as quickly as it can whether or not to do so.

Directions and orders to overcome procedural difficulties

“170QI.(1) The Vice President assigned to the Bargaining Division may give directions, and make orders, in order to facilitate the making of agreements under this Part.

“(2) A direction or order has effect subject to an order of the Court, but despite:

- (a) the regulations or the Rules of the Commission; or
- (b) the rules of an organisation.

Application of Part VI to conciliation under this Division

“170QJ. In so far as it relates to conciliation by the Commission, Part VI applies in relation to conciliation by the Commission under this Division:

- (a) in the same way as it applies to preventing and settling industrial disputes by conciliation; and
- (b) in the case of conciliation under section 170QH—as if the industrial situation were an industrial dispute referred for conciliation under that Part; and
- (c) in the case of conciliation under section 170QI—as if the subject matter of the negotiations between the employer and employees were an industrial dispute referred for conciliation under that Part; and
- (d) with any other necessary changes.

Commission orders in relation to negotiations for agreements under this Part

“170QK.(1) To avoid doubt, a reference in subsection 111(2) to a proceeding before the Commission includes a reference to a conciliation proceeding under Part VI or under this Division.

“(2) The Commission may make orders under paragraph 111(1)(t) for the purpose of:

- (a) ensuring that the parties negotiating an agreement under this Part do so in good faith; or
- (b) promoting the efficient conduct of negotiations for such an agreement; or
- (c) otherwise facilitating the making of such an agreement.

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In particular, the Commission may, for such a purpose, order a party to take, or refrain from taking, specified action.

“(3) In deciding what orders (if any) to make, the Commission:

- (a) must consider the conduct of each of the parties to the negotiations, in particular, whether the party concerned has:
 - (i) agreed to meet at reasonable times proposed by another party; or
 - (ii) attended meetings that the party had agreed to attend; or
 - (iii) complied with negotiating procedures agreed to by the parties; or
 - (iv) capriciously added or withdrawn items for negotiation; or
 - (v) disclosed relevant information as appropriate for the purposes of the negotiations; or
 - (vi) refused or failed to negotiate with one or more of the parties; or
 - (vii) in or in connection with the negotiations, contravened section 170RB by refusing or failing to negotiate with a person who is entitled under that section to represent an employee; and
- (b) may consider:
 - (i) proposed conduct of any of the parties (including proposed conduct of a kind referred to in paragraph (a)); and
 - (ii) any other relevant matter.

“(4) Nothing in this section limits the generality of section 111 as applying in relation to:

- (a) an industrial dispute; or
- (b) a conciliation proceeding under Part VI or this Division; or
- (c) any other proceeding before the Commission.

“Division 6—Miscellaneous

Employer not to discriminate between unionists and non-unionists when negotiating agreement under this Part

“170RA.(1) An employer must not, in negotiating the terms of an agreement under this Part, discriminate between employees of the employer:

- (a) because some of those employees are members of an organisation of employees while others are not members of such an organisation; or
- (b) because some of those employees are members of a particular organisation of employees, while others are not members of that organisation or are members of a different organisation of employees.

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“(2) Subsection (1) does not prevent the inclusion in the agreement of a provision for preference to be given, in relation to specified matters, in a specified manner, and subject to specified conditions, to specified organisations, members of specified organisations, or persons who have applied to become members of specified organisations. The specified matters may include, for example, any of the matters referred to in subsection 122(1A).

“(3) In so far as a purpose of the agreement is to settle some or all of the matters that are the subject of an industrial dispute to which the employer is a party, subsection (1) does not require the agreement to cover:

- (a) matters that are not the subject of that dispute; or
- (b) employees whose terms and conditions of employment are not the subject of that dispute.

“(4) In so far as a purpose of the agreement is to prevent industrial disputes of a particular kind, subsection (1) does not require the agreement to cover:

- (a) matters that are not likely to be the subject of a dispute of that kind; or
- (b) employees whose terms and conditions of employment are not likely to be the subject of a dispute of that kind.

Representation of employees by union officials in negotiations for agreements under Division 3

“170RB.(1) This section applies for the purposes of negotiations, between an employer that is a constitutional corporation and employees of the employer, for the making of an agreement under Division 3.

“(2) An officer or employee (**‘the official’**) of an organisation of employees is entitled to represent an employee if:

- (a) the employee is a member of the organisation; and
- (b) the organisation is entitled to represent the employee’s industrial interests; and
- (c) the official is duly authorised under the organisation’s rules, or by its committee of management, to represent those interests; and
- (d) the employee has informed the employer that he or she wishes to be represented by the official for the purposes of the negotiations.

“(3) An employer must not refuse or fail to negotiate with a person who is entitled under subsection (2) to represent an employee.

Annual report about developments in bargaining at the enterprise and workplace levels

“170RC.(1) For each reporting period, the Minister must cause a person to review and to report to the Minister in writing about:

- (a) developments in Australia during that period in bargaining at the enterprise and workplace levels for the making of agreements under this Part; and
- (b) in particular, the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees and immigrants.

“(2) In subsection (1):

‘reporting period’ means:

- (a) the period beginning at the commencement of this Part and ending on 31 December 1994; or
- (b) a calendar year ending on or after 31 December 1995.

“(3) The person who reviews and reports for a period as mentioned in subsection (1) must be someone who, in the Minister’s opinion, is suitably qualified and appropriate to do so.

“(4) The person preparing a report under this section must give it to the Minister as soon as practicable, and in any event within 6 months, after the end of the period to which it relates.

“(5) The Minister must cause a copy of a report under this section to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

“(6) Subsections 34C(4) to (7) of the *Acts Interpretation Act 1901* apply to a report under this section as if it were a periodic report as defined in subsection 34C(1) of that Act.

“PART VIC—PAID RATES AWARDS

“Division 1—Objects of Part

Objects

“170SA. The objects of this Part are to ensure that:

- (a) in appropriate cases, employees are protected by paid rates awards that set fair and enforceable wages and conditions of employment that are maintained at a relevant level; and
- (b) paid rates awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees’ interests are also properly taken into account.

“Division 2—Role of the Bargaining Division

Paid rates functions and powers

“170TA.(1) Subject to this Part, the Bargaining Division is to perform and exercise:

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- (a) the Commission's functions and powers in relation to making, varying, suspending or cancelling a paid rates award, or varying an award so that it becomes a paid rates award; and
- (b) the Commission's functions and powers in relation to an industrial dispute ('a **paid rates dispute**') that is required to be, or has been, referred under section 170TB and has not since been referred under section 170TC; and
- (c) the Commission's functions and powers under this Part; and
- (d) any other functions and powers of the Commission in relation to a paid rates award.

These are called **the paid rates functions and powers**.

“(2) The paid rates functions and powers are distinct from, and do not form part of, the Bargaining Division's functions and powers as defined by subsection 170QB(1).

“(3) However, subsections 108(2A) and 170QB(2) and (3) and sections 170QD, 170QE and 170QF apply to the paid rates functions and powers in the same way as they apply to the Bargaining Division's functions and powers as so defined.

Certain disputes to be referred to Bargaining Division

“170TB.(1) If, at any time after:

- (a) an alleged industrial dispute is notified under section 99; or
- (b) the relevant Presidential Member otherwise becomes aware of the existence of an alleged industrial dispute;

the relevant Presidential Member, or any other member of the Commission who is dealing with the alleged industrial dispute, considers that, except so far as the dispute may be settled by the making of an agreement under Part VIB, settlement of the dispute may involve performing or exercising any of the paid rates functions and powers (except those covered by paragraph 170TA(1)(b)), the relevant Presidential Member or other member must refer the dispute to the Vice President assigned to the Bargaining Division.

“(2) Subsection (1) applies even if the dispute has been so referred before and has since been referred under section 170TC.

“(3) This section does not affect the validity of any act or decision.

Certain disputes to be referred back to relevant Presidential Member

“170TC.(1) The member of the Commission who is dealing with a paid rates dispute must consult the Vice President assigned to the Bargaining Division if the member is of the opinion that settlement of the dispute will not involve performing or exercising any of the paid rates functions and powers (except those covered by paragraph 170TA(1)(b) or conferred by this section).

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“(2) If the Vice President assigned to the Bargaining Division is of the same opinion, the member must refer the dispute to the relevant Presidential Member.

“(3) This section does not affect the validity of any act or decision.

“Division 3—Making, varying and cancelling paid rates awards

Commission to consider whether paid rates dispute should be settled by an agreement under Part VIB

“170UA. The Commission must not make an award in relation to a paid rates dispute unless satisfied that:

- (a) it is more appropriate to make the award than for the matters that would be dealt with by the award to be dealt with by an agreement under Part VIB; or
- (b) there is no reasonable prospect of those matters being dealt with by such an agreement.

Making or varying paid rates awards

“170UB.(1) This section applies if:

- (a) the Commission proposes to make a new award covering, or to vary an existing award so as to cover, employees of a particular kind in an industry carried on by employers; and
- (b) the wages and conditions of employees of that kind in that industry, in so far as they have customarily been determined by an award or a State award, have customarily been determined by a paid rates award or a State award in the nature of a paid rates award.

“(2) The Commission must make the new award as a paid rates award, or must vary the existing award so as to be a paid rates award, in so far as it determines wages and conditions of employment, of employees of that kind in that industry, that have customarily been determined by a paid rates award or a State award in the nature of a paid rates award.

“(3) However, the Commission need not do so in so far as:

- (a) the Commission is satisfied that it would be against the public interest; or
- (b) each of the parties to the proposed award, or to the award as proposed to be varied, has consented to the award not being a paid rates award.

Note: Section 170PP also provides for when a new award is to be made as a paid rates award, or an existing award is to be varied so as to be a paid rates award.

Commission to maintain existing paid rates awards

“170UC.(1) The Commission must maintain existing paid rates awards, and vary them from time to time, as appropriate having regard to the objects of this Part and the Commission’s duty under subsection 90AA(2). However, the Commission need not do so in so far as the Commission is satisfied that it is against the public interest.

“(2) Paragraph 90AA(2)(a) does not require the Commission to ensure that paid rates awards are consistent with awards that are not paid rates awards.

Party acting inconsistently with award’s status as a paid rates award

“170UD. The Commission may:

(a) cancel a paid rates award and replace it with an award that is not a paid rates award; or

(b) vary a paid rates award so that it stops being a paid rates award; if the Commission is satisfied, after giving the parties to the award an opportunity to be heard, that such a party has acted in a way that is so inconsistent with the award as to make it inappropriate for the award to continue as a paid rates award.

Paid rates awards to be identified as such

“170UE.(1) The Commission must include in a new paid rates award a statement that the award is a paid rates award.

“(2) If the Commission:

(a) varies an existing paid rates award; or

(b) varies an existing award so that it becomes a paid rates award;

the Commission must include in the varied award a statement that the award is a paid rates award, unless the award already contains such a statement.

“(3) If the Commission varies an award so that it stops being a paid rates award, the Commission must remove from the award the statement included under subsection (1) or (2).

“(4) This section does not affect the validity of an award or variation.”.

Imposition and recovery of penalties

32. Section 178 of the Principal Act is amended:

(a) by inserting after subparagraph (4)(a)(i) the following subparagraphs:

“(iia) if the breach is of a term of an award constituted by a certified agreement or enterprise flexibility agreement, or of a term of an award that states that it is a paid rates award, and continues for more than one day—the total of:

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- (A) \$5,000; and
- (B) \$2,500 for each day for which the breach continues; and
- (iib) if the breach is of a term of an award constituted by such an agreement, or of a term of an award that states that it is a paid rates award, but subparagraph (iia) does not apply—\$5,000; and”;
- (b) by inserting after subsection (4) the following subsection:

“(4A) A certified agreement or enterprise flexibility agreement may provide that subparagraph (4)(a)(iia) applies to specified breaches of the agreement as if sub-subparagraph (4)(a)(iia)(B) referred to a specified amount that is greater or less than \$2,500. If such an agreement so provides, paragraph (4)(a) has effect accordingly.”;
- (c) by inserting in paragraph (5)(e) “or employee” after “officer” (twice occurring).

Certain offences in relation to members of organisations etc.

33. Section 334 of the Principal Act is amended:

- (a) by inserting after each of paragraphs (1)(ba) and (2)(ba) the following paragraphs:
 - “(bb) has refused or failed to agree or consent to, or vote in favour of, the making of an agreement to which an organisation of which the employee is a member would be a party;
 - (bc) has refused or failed to become a party to, or otherwise agree or consent to the making of, or vote in favour of the making of, an agreement in respect of which the employer might apply to the Commission under Division 3 of Part VIB;”;
- (b) by inserting after paragraph (3)(ba) the following paragraphs:
 - “(bb) with intent to coerce the employee to agree or consent to, or vote in favour of, the making of an agreement to which an organisation of which the employee is a member would be a party;
 - (bc) because the employee has refused or failed so to agree, consent or vote;
 - (bd) with intent to coerce the employee to become a party to, or otherwise agree or consent to the making of, or vote in favour of the making of, an agreement in respect of which the employer might apply to the Commission under Division 3 of Part VIB;
 - (be) because the employee has refused or failed so to become a party, agree, consent or vote;”;

(c) by inserting after subsection (3) the following subsection:

“(3A) An employer must not (whether by threats or promises or otherwise) induce an employee to stop being an officer, delegate or member of an organisation, or of an association that has applied to be registered as an organisation.”.

Consequential amendments

34. The Principal Act is amended as set out in Schedule 2.

Transitional: certified agreements

35.(1) In this section:

“**amended Act**” means the Principal Act as amended by this Part;

“**commencement day**” means the day on which Division 3A of Part VI of the Principal Act is repealed by this Part.

(2) Despite the repeal of Division 3A of Part VI of the Principal Act:

- (a) an agreement made under that Division and in force (although not certified) immediately before the commencement day has effect as if it had been made under section 170MA of the amended Act; and
- (b) an agreement certified under that Division and in force immediately before the commencement day has effect as if the Principal Act had not been amended by this Act, but may be extended under section 170MI of the amended Act; and
- (c) if an application that was made under that Division for certification of an agreement was pending immediately before the commencement day:
 - (i) if subparagraph (ii) does not apply, the Commission is to deal with the application as if it had been made under section 170MA of the amended Act; or
 - (ii) if each of the applicants so requests, the Commission is to deal with the application as if that Division had not been repealed, and, if the agreement is certified, it has effect as if the Principal Act had not been amended by this Act, but may be extended under section 170MJ of the amended Act.

(3) The Commission may permit the parties to an agreement to which paragraph (2)(a) or subparagraph (2)(c)(i) applies to vary its terms so as to accord with Division 2 of Part VIB of the amended Act.

(4) A Full Bench established for the purposes of an appeal against a decision made, or an act done, in performing or exercising any of the Commission’s functions and powers under Division 3A of Part VI must consist, so far as practicable, of members of the Bargaining Division.

(5) Before establishing a Full Bench for the purposes of such an appeal, the President must consult the Vice President assigned to the Bargaining Division.

PART 6—SECONDARY BOYCOTTS

Division 1—Amendments of the Industrial Relations Act 1988

Principal Act

36. In this Division, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

Interpretation

37. Section 4 of the Principal Act is amended by omitting from subsection (1) the definitions of “boycott”, “boycott conduct” and “Trade Practices Act”.

38. Division 7 of Part VI of the Principal Act is repealed and the following Division is substituted:

“Division 7—Secondary Boycotts

“Subdivision A—Interpretation

Definitions

“156. In this Division, unless the contrary intention appears:

‘**acquire**’ includes:

- (a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and
- (b) in relation to services—accept;

‘**agreement**’ includes an arrangement or understanding;

‘**boycott conduct**’ means conduct that constitutes or would constitute:

- (a) a boycott contravention; or
- (b) attempting to commit a boycott contravention; or
- (c) aiding, abetting, counselling or procuring a person to commit a boycott contravention; or
- (d) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to commit a boycott contravention; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of a boycott contravention; or
- (f) conspiring with others to commit a boycott contravention;

‘**boycott contravention**’ means a contravention of section 162 or 163;

‘**boycott dispute**’ means a dispute:

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- (a) that relates to a boycott contravention or a threatened, impending or probable boycott contravention; and
- (b) in relation to which either of the following applies:
 - (i) the dispute relates, or may relate, to work done or to be done under an award or under an award or order of the Coal Industry Tribunal established under the *Coal Industry Act 1946*;
 - (ii) the dispute involves an organisation of employees or a member, officer or employee of such an organisation;

‘business’ includes a business not carried on for profit;

‘constitutional corporation’ means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a financial corporation formed within the limits of the Commonwealth; or
- (c) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a trading corporation formed within the limits of the Commonwealth; or
- (d) a body corporate that is incorporated in a Territory;

‘constitutional trade or commerce’ means:

- (a) trade or commerce between Australia and places outside Australia;
or
- (b) trade or commerce among the States; or
- (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (d) the supply of goods or services to or by the Commonwealth or an authority or instrumentality of the Commonwealth;

‘goods’ includes:

- (a) ships, aircraft or other vehicles; or
- (b) animals, including fish; or
- (c) minerals, trees or crops, whether on, under or attached to land or not;
or
- (d) gas or electricity;

‘industrial dispute’ means an industrial dispute within the meaning of paragraph 51(xxxv) of the Constitution, whether or not it extends beyond the limits of a State;

‘industrial matter’ means a matter that is, or could be, the subject of an industrial dispute;

‘provision’, in relation to an understanding, means any matter forming part of the understanding;

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‘services’ includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the above, includes the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under:

- (a) a contract for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or
 - (ii) the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
- (b) a contract of insurance; or
- (c) a contract between a banker and a customer of the banker entered into in the course of banking business; or
- (d) a contract for or in relation to the lending of money;

but does not include rights or benefits consisting of the supply of goods or the performance of work under a contract of service;

‘supply’ includes:

- (a) in relation to goods—supply by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services—provide, grant or confer;

‘trading’, in relation to a person, means:

- (a) supplying goods or services to the person; or
- (b) acquiring goods or services from the person.

Engaging in conduct

“157. In this Division, a reference to engaging in conduct is a reference to doing or not doing any act, including the making of, or the giving effect to a provision of, a contract or arrangement or the arriving at, or the giving effect to a provision of, an understanding.

Acquisition or supply of goods or services

“158. In this Division, unless the contrary intention appears:

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods pursuant to a supply of the goods; and
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services; and

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- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both; and
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both.

“Subdivision B—Operation of Division

Application of Division to Commonwealth and Commonwealth authorities

“159. To the extent that a business is carried on by:

- (a) the Commonwealth; or
- (b) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or
- (c) an incorporated company in which the Commonwealth, or a body corporate of a kind referred to in paragraph (b), has a controlling interest;

this Division applies to the Commonwealth, the body corporate or the incorporated company, as the case may be, as if it were a constitutional corporation.

Additional operation of provision prohibiting boycotts

“160. In addition to its effect apart from this section, section 162 has the effect that it would have if:

- (a) any reference to conduct were a reference to conduct in the course of, or in relation to, constitutional trade or commerce; and
- (b) the reference in paragraph 162(2)(a) to trading were a reference to trading by way of constitutional trade or commerce; and
- (c) in subsection 162(3) the words ‘if either the third person or the fourth person is a constitutional corporation’ were omitted.

Additional operation of provision prohibiting boycotting agreements

“161. In addition to its effect apart from this section, section 163 has the effect that it would have if:

- (a) any reference to trade, or to trading, were a reference to trade, or trading, as the case may be, by way of constitutional trade or commerce; and
- (b) paragraph 163(3)(b) were omitted.

“Subdivision C—Boycotts and boycotting agreements

Boycotts

“162. (1) This section applies if a person (the ‘**first person**’) and another person (the ‘**second person**’), in concert, engage in conduct the ultimate purpose of which is to protect or advance the interests of a person or trade union in relation to industrial matters.

“(2) For the purposes of this section, the first person and the second person, by so engaging in the conduct, are to be regarded as taking part in a boycott if, and only if:

- (a) the conduct hinders or prevents a third person from trading with a fourth person; and
- (b) neither the first nor the second person is an employee of the fourth person; and
- (c) the conduct is in support of a claim made or intended to be made on the fourth person about an industrial matter; and
- (d) an immediate and substantial purpose of the conduct is to cause substantial loss or damage to the business of the fourth person, and the conduct has or is likely to have that effect.

“(3) A person must not take part in a boycott if either the third person or the fourth person is a constitutional corporation.

“(4) A person is not regarded as taking part in a boycott by engaging in conduct the ultimate purpose of which is substantially related to:

- (a) the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person; or
- (b) an employer of that person having terminated, or taken action to terminate, the employment of that person or of another person employed by that employer.

“(5) A person may be regarded as taking part in a boycott by engaging in particular conduct in concert with another person even though, because of subsection (4), the other person is not regarded as taking part in a boycott by engaging in that conduct.

“(6) If the following persons:

- (a) an organisation or organisations of employees, or an officer or officers of such an organisation, or both such an organisation or organisations and such an officer or officers; and
- (b) an employee, or 2 or more employees who are employed by the one employer;

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engage in conduct, in concert with each other (and not in concert with anyone else), none of them is regarded as taking part in a boycott by engaging in that conduct if the ultimate purpose of the conduct is substantially related to:

- (c) the remuneration, conditions of employment, hours of work or working conditions of the employee, or of any of the employees, referred to in paragraph (b); or
- (d) the employer of the employee, or of the employees, referred to in paragraph (b) having terminated, or taken action to terminate, the employment of any of his or her employees.

“(7) This section does not apply if:

- (a) the fourth person has freely agreed to the conduct; or
- (b) the conduct was specifically authorised or approved by or under an award, an award or order of a State industrial authority, or a law of the Commonwealth or of a State or Territory; or
- (c) the conduct was in contemplation or furtherance of claims against the fourth person that directly affected the persons who engaged in the conduct; or
- (d) the conduct was in support of industrial action engaged in by, and was in contemplation or furtherance of claims about industrial matters that directly affected, persons:
 - (i) who were employed by the same employer as persons who engaged in the conduct or, if the employer of those persons was a body corporate, by a related body corporate; or
 - (ii) who had been so employed but whose employment had been terminated.

“(8) For the purposes of paragraph (7)(d), the question whether 2 bodies corporate are related to each other is to be determined in the same way as for the purposes of the Corporations Law.

“(9) This section does not apply to conduct if:

- (a) the following persons:
 - (i) one or more persons (**‘the members’**); and
 - (ii) one or more persons each of whom is:
 - (A) a trade union of which at least one of the members is a member; or
 - (B) an officer of such a trade union;engage in the conduct, in concert with each other (and not in concert with anyone else); and
- (b) because of paragraph (7)(c) or (d), this section would not apply to the conduct if it had been engaged in only by the members.

Exemption of peaceful picketing

“162A. Section 162 does not apply to conduct consisting only of persons being present outside particular premises or a particular place for one or more of these purposes:

- (a) obtaining information from, or communicating information to, people wishing to enter or leave the premises or place;
- (b) persuading people not to enter or leave the premises or place;

if the conduct does not involve any obstruction, molestation or intimidation of any of those people.

Boycotting agreements

“163.(1) This section applies if a person (the ‘**first person**’) enters into an agreement with another person (the ‘**second person**’) the ultimate purpose of which is to prevent or settle an industrial dispute or part of such a dispute in connection with trading between the first person and a third person.

“(2) For the purposes of this section, the first person and the second person, by entering into the agreement, are to be regarded as entering into a boycotting agreement if, and only if:

- (a) the first person is accustomed, or under an obligation, to trade with a third person in particular goods or services; and
- (b) a substantial immediate purpose of the agreement is:
 - (i) to prevent or hinder the first person from continuing to trade with the third person in those goods or services; or
 - (ii) to make any continued trading between the first person and the third person in those goods or services subject to a condition preventing or hindering the third person from supplying any goods or services to another person; and
- (c) the agreement has or is likely to have the effect of causing substantial loss or damage to the business of the third person.

“(3) A person must not enter into a boycotting agreement as the first person if:

- (a) the second person is a trade union or a member, officer or employee of a trade union; and
- (b) either the first person or the third person is a constitutional corporation.

“(4) This section does not apply if:

- (a) the third person is a party to the agreement or otherwise has freely agreed to it; or
- (b) the agreement was specifically authorised or approved by or under an award, an award or order of a State industrial authority, or a law of the Commonwealth or of a State or Territory; or

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- (c) the condition referred to in subparagraph (2)(b)(ii), or a substantially similar condition, has been included in a previous agreement between the first person and the third person.

“(5) Subject to subsection (6), a reference in this section to a person who is accustomed to trading with another person in goods or services is a reference to:

- (a) a person who has been a regular trader with the other person in those goods or services; or
- (b) a person who:
- (i) traded with the other person in those goods or services at any time within the immediately preceding period of 3 months; and
 - (ii) could reasonably be expected to continue to trade regularly with the other person in those goods or services.

“(6) If:

- (a) a person has traded with another person in goods or services under a contract under which the first-mentioned person was required over a particular period to trade with the other person in such goods or services; and
- (b) the period has ended; and
- (c) after the end of the period the first-mentioned person has refused to trade in such goods or services with the other person;

then, for the purposes of the application of subsection (5) in relation to anything done after the first-mentioned person has refused to trade in goods or services as mentioned in paragraph (c), the first-mentioned person is taken not to be a person who is accustomed to trading with the other person in those goods or services.

“Subdivision D—Powers of Commission in relation to boycott disputes

Notification of boycott disputes

“163A.(1) A boycott dispute may be notified to a member of the Commission, or to a Registrar, by any of the following persons:

- (a) an organisation of employees that is, or any of whose members, officers or employees are, involved in the dispute;
- (b) an organisation of employees, if the employment of any of its members is affected by the dispute;
- (c) an employer whose employees are involved in the dispute;
- (d) an employer, if the employment of any of the employer’s employees is affected by the dispute;
- (e) an organisation of which an employer referred to in paragraph (c) or (d) is a member;

- (f) a Minister;
- (g) a person who committed or is alleged to have committed a boycott contravention to which the dispute relates;
- (h) a person who is, in relation to the boycott contravention or alleged boycott contravention:
 - (i) the third person or fourth person referred to in subsection 162(2); or
 - (ii) either of the persons entering into, or alleged to be entering into, the agreement referred to in section 163.

“(2) If a boycott dispute is notified to a Registrar, he or she must tell a member of the Commission as soon as practicable.

“(3) A member of the Commission or a Registrar to whom a boycott dispute is notified must immediately tell each person (other than the person who notified the dispute) who is entitled to be a party to a proceeding before the Commission in relation to the dispute that the dispute has been notified and the day and time of the notification.

Commission to act quickly

“163B.(1) Upon the notification of the boycott dispute, the Commission must take immediate steps to begin to exercise its powers under this Division in relation to the dispute and must complete the exercise of those powers as quickly as possible.

“(2) The powers of the Commission under this Division apply in relation to a boycott dispute even though the Coal Industry Tribunal or a Local Coal Authority established under the *Coal Industry Act 1946* may exercise or is exercising powers in relation to the dispute, but this Division does not prevent or otherwise affect the exercise of any powers by that Tribunal or such an Authority.

Parties to proceedings under Division

“163C. The following persons, and no others, are entitled to be parties to a proceeding before the Commission under this Division:

- (a) an organisation referred to in paragraph 163A(1)(a);
- (b) an employer referred to in paragraph 163A(1)(c);
- (c) an organisation of which an employer referred to in paragraph 163A(1)(c) is a member;
- (d) a person referred to in paragraph 163A(1)(g) or (h);
- (e) a Minister;
- (f) a person who has notified the dispute concerned to a member of the Commission or a Registrar under section 163A;
- (g) a person who proposes to seek an injunction under section 163G in relation to a boycott or alleged boycott involved in the dispute;

(h) a person declared by the Commission to be entitled to be a party.

Certificates by Commission

“163D.(1) If, after the Commission starts to exercise conciliation powers in relation to a boycott dispute, the Commission thinks that it is not likely to be able to settle the dispute promptly, or otherwise to stop the boycott or alleged boycott promptly, the Commission must immediately certify in writing to that effect.

“(2) The Commission may certify under subsection (1) on its own initiative or on application by a party to the dispute.

“(3) If a party to a boycott dispute tells the Commission that the party wants to begin a proceeding under section 163G or 163H in relation to any boycott conduct to which the dispute relates and:

(a) the Commission decides that it would cause substantial injustice to the party if the party were prevented from beginning the proceeding while the Commission is exercising conciliation powers in relation to the dispute; or

(b) a period of 72 hours has elapsed since the boycott contravention that constituted or gave rise to the boycott conduct;

the Commission must immediately certify in writing to that effect.

“(4) If:

(a) conduct constituting a contravention of section 162 stops before the end of 72 hours after it started; and

(b) after the conduct stopped another contravention of that section occurs; and

(c) in the Commission’s opinion the other contravention is substantially related to the first-mentioned contravention;

the other contravention is taken, for the purposes of paragraph (3)(b), to have occurred when the first-mentioned contravention started.

Application of other provisions of Act

“163E. Subject to this Division, the provisions of this Act relating to an industrial dispute (other than those relating to arbitration powers or to making awards or certifying agreements) apply in relation to a proceeding before the Commission about a boycott dispute as if:

(a) a reference to an industrial dispute were a reference to the boycott dispute; and

(b) a reference to the parties to an industrial dispute were a reference to the parties to the proceeding; and

(c) any other necessary changes were made.

“Subdivision E—Proceedings

Criminal proceedings not to be brought for boycott conduct

“163F. Criminal proceedings do not lie against a person merely because the person has engaged in boycott conduct.

Injunctions

“163G.(1) If, on the application of any person directly affected, the Court is satisfied that a person has engaged, or is proposing to engage, in boycott conduct, the Court may grant an injunction in such terms as it thinks fit.

“(2) If an application for an injunction under subsection (1) is made and the Court thinks it appropriate to do so, the Court may grant an injunction under that subsection by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in that subsection.

“(3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

“(4) The Court may discharge or vary an injunction granted under subsection (1) or (3).

“(5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

“(6) The power of the Court to grant an injunction requiring a person to do any thing may be exercised:

- (a) whether or not it appears to the Court that the person intends not to do that thing or to continue not to do that thing; and
- (b) whether or not the person has previously not done that thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person does not do that thing.

Actions for damages

“163H.(1) A person who suffers loss or damage by boycott conduct may recover the amount of the loss or damage by action in the Court.

“(2) The action must be brought within 3 years after the date on which the cause of action arose.

Findings admissible in other proceedings

“163J. A finding of any fact by the Court made in proceedings under section 163G or 163H is admissible as *prima facie* evidence of that fact in any other proceedings before the Court or the Commission under this Act.

“Subdivision F—Miscellaneous

Conduct on behalf of an organisation of employees

“163K.(1) For the purposes of this Division, any conduct engaged in by:

- (a) the committee of management of an organisation of employees or of a branch of such an organisation; or
- (b) a member or group of members of an organisation of employees or a branch of such an organisation, acting in accordance with a resolution passed, or a direction given, under the rules of the organisation or branch;

is taken to have been engaged in also by the organisation.

“(2) For the purposes of this Division, any conduct engaged in by:

- (a) a person acting as an officer, employee or agent of an organisation of employees or of a branch of such an organisation; or
- (b) a person acting as a member of an organisation of employees who performs the function of dealing with an employer on behalf of the member and other members of the organisation;

within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the organisation.

“(3) Subject to subsection (4), for the purposes of this Division, conduct (the ‘**relevant conduct**’) is taken to have been engaged in by an organisation of employees if it is proved:

- (a) that the committee of management of the organisation or of a branch of the organisation expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or
- (b) that:
 - (i) a person acting as an officer, employee or agent of the organisation or of a branch of the organisation; or
 - (ii) a person acting as a member of the organisation who performs the function of dealing with an employer on behalf of the member and other members of the organisation;

with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the organisation expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

“(4) Paragraph (3)(b) does not apply if the organisation or branch, as the case may be, proves that it exercised due diligence to prevent the relevant conduct.

Conduct by directors, servants or agents of body corporate

“163L.(1) Subject to subsection (2), for the purposes of this Division:

- (a) any conduct engaged in by a director, servant or agent of a body corporate within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the body corporate; and
- (b) conduct (the ‘**relevant conduct**’) is taken to have been engaged in by a body corporate if it is proved:
 - (i) that the directors of the body corporate expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or
 - (ii) that a servant or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the body corporate expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

“(2) Subparagraph (1)(b)(ii) does not apply if the body corporate proves that it exercised due diligence to prevent the relevant conduct.

“(3) In this section:

‘**body corporate**’ does not include an organisation of employees or a branch of such an organisation.

Conduct by servants or agents of an individual

“163M.(1) Subject to subsection (2), for the purposes of this Division:

- (a) any conduct engaged in by a servant or agent of an individual within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the individual; and
- (b) conduct (the ‘**relevant conduct**’) is taken to have been engaged in by an individual if it is proved that a servant or agent of the individual with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

“(2) Paragraph (1)(b) does not apply if the individual proves that he or she exercised due diligence to prevent the relevant conduct.

Matters to be taken into account in boycott proceedings

“163N. For the purpose of the exercise of its powers in proceedings under this Division, the Court is to have regard to any action that the applicant in the proceedings has taken or could take before the Commission or a State industrial authority in relation to the boycott dispute.

Jurisdiction of the Court

“163P.(1) The jurisdiction of the Court with respect to matters arising under this Division is exclusive of the jurisdiction of any other court.

“(2) The Court does not have jurisdiction with respect to a matter arising under this Division in relation to a boycott dispute unless the Commission has given a certificate under section 163D in relation to the matter.

Costs

“163Q. Section 347 does not apply to proceedings under this Division.”.

39. Section 164 of the Principal Act is repealed and the following section is substituted:

Certain actions not to lie under other laws in relation to boycott conduct

“164.(1) Subject to this section, an action under a law of a State or Territory does not lie against a trade union, or officer, member or employee of a trade union, in relation to conduct of the trade union or of the officer, member or employee acting in that capacity if the conduct is boycott conduct as defined by section 156 or would be boycott conduct as so defined if subsections 162(7) and 163(4) and section 162A had not been enacted.

“(2) Subsection (1) does not apply in relation to conduct that has involved or is likely to involve:

- (a) personal injury; or
- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

“(3) Subsection (1) does not prevent an action for defamation being brought in respect of anything that occurred in the course of engaging in boycott conduct.”.

40. After section 166 of the Principal Act the following section is inserted:

Restriction on certain actions in tort

“166A.(1) Subject to this section, an action in tort under the law of a State or Territory may not be brought by a person against an organisation of employees, or an officer, member or employee of such an organisation, in

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relation to conduct by the organisation, or by the officer, member or employee acting in that capacity, in contemplation or furtherance of claims that are the subject of an industrial dispute unless the Commission:

- (a) has certified in writing as mentioned in paragraph (6)(a) or (c) in respect of the conduct; or
- (b) has certified in writing as mentioned in paragraph (6)(b) in relation to the person in respect of the conduct.

“(2) Subsection (1) does not apply to:

- (a) conduct that has resulted in:
 - (i) personal injury; or
 - (ii) wilful or reckless destruction of, or damage to, property; or
 - (iii) the unlawful taking, keeping or use of property; or
- (b) conduct arising out of a demarcation dispute; or
- (c) conduct arising out of a dispute relating to a claim for payment to employees in respect of a period during which the employees engaged, or engage, in industrial action.

“(3) A person who wants to bring an action in tort in respect of conduct to which subsection (1) applies may give written notice to a member of the Commission or a Registrar stating that the person wants to bring the action.

“(4) If a notice under subsection (3) is given to a Registrar, he or she must tell a member of the Commission as soon as practicable.

“(5) If such a notice is given, the Commission must take immediate steps to try, or to continue to try, by the exercise of its powers under this Act, to stop the conduct.

“(6) If:

- (a) after the Commission starts to exercise conciliation powers in relation to the industrial dispute it forms the opinion that it is not likely to be able to stop the conduct promptly; or
- (b) the Commission decides that it would cause substantial injustice to the person who gave a notice under subsection (3) in respect of the conduct if the person were prevented from bringing the action to which the notice relates while the Commission is exercising conciliation powers in relation to the industrial dispute; or
- (c) the Commission has not stopped the conduct by the end of 72 hours after the notice was given under subsection (3) in respect of the conduct;

the Commission must immediately certify in writing to that effect.”.

Repeal of sections 311 and 312

41. Sections 311 and 312 of the Principal Act are repealed.

Division 2—Amendments of the Trade Practices Act 1974

Principal Act

42. In this Division, “**Principal Act**” means the *Trade Practices Act 1974*².

43. Section 45D of the Principal Act is repealed and the following section is substituted:

Boycotts

“45D.(1) Subject to subsection (2), a person must not, in concert with a second person, engage in conduct that hinders or prevents the supply of goods or services by a third person to a fourth person, or the acquisition of goods or services by a third person from a fourth person, if:

- (a) the third person is, and the fourth person is not, a corporation and:
 - (i) the conduct would have or be likely to have the effect of causing a substantial lessening of competition in any market in which the third person supplies or acquires goods or services; and
 - (ii) the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person acquires goods or services; or
- (b) the fourth person is a corporation and the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person supplies or acquires goods or services.

“(2) In determining whether a contravention of subsection (1) has been committed, boycott conduct within the meaning of Division 7 of Part VI of the *Industrial Relations Act 1988* is to be disregarded.

“(3) This section does not affect the operation of any other provision of this Part.”.

Prohibition of contracts, arrangements or understandings affecting supply or acquisition of goods or services

44. Section 45E of the Principal Act is repealed.

Exceptions

45. Section 51 of the Principal Act is amended by omitting from subsection (2) “45D, 45E or”.

Pecuniary penalties

46. Section 76 of the Principal Act is amended:

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(a) by omitting subsection (1A) and substituting the following subsection:

“(1A) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed \$10,000,000 for each act or omission to which this section applies.”;

(b) by omitting subsection (2).

Stay of injunctions

47. Section 80AA of the Principal Act is repealed.

Consequential amendments

48. The Principal Act is amended as set out in Schedule 3.

Division 3—Amendments of the Jurisdiction of Courts (Cross-vesting) Act 1987

Principal Act

49. In this Division, “**Principal Act**” means the *Jurisdiction of Courts (Cross-vesting) Act 1987*³.

Interpretation and application

50. Section 3 of the Principal Act is amended by omitting from paragraph (a) of the definition of “special federal matter” in subsection (1) “(other than section 45D or 45E)”.

Additional jurisdiction of certain courts

51. Section 4 of the Principal Act is amended by omitting from paragraph (4)(c) “45D, 45E.”.

Division 4—Amendments of the Public Service Act 1922

Principal Act

52. In this Division, “**Principal Act**” means the *Public Service Act 1922*⁴.

Officers taking part in strikes against Government

53. Section 66 of the Principal Act is repealed.

Division 5—Transitional provisions

Proceedings and orders under the Trade Practices Act

54. Despite the amendments of the *Trade Practices Act 1974* made by this Part:

(a) any proceeding that was pending in relation to a matter that arose under section 45D or 45E of that Act immediately before the commencement of this Part may be continued as if those amendments had not been made; and

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- (b) any injunction granted by the Federal Court of Australia that was in force under section 80 of that Act immediately before the commencement of this Part in respect of conduct that constitutes or would constitute a contravention of a provision of section 45D or 45E of that Act may be varied or discharged by that Court at any time as if those amendments had not been made; and
- (c) any order of the Federal Court of Australia that was in force under subsection 80AA(1) of that Act immediately before the commencement of this Part staying the operation of an injunction granted in respect of conduct that constitutes or would constitute a contravention of a provision of section 45D or 45E of that Act may be varied or rescinded by that Court at any time as if those amendments had not been made.

PART 7—INDUSTRIAL RELATIONS COURT OF AUSTRALIA

Division 1—Creation of new Court

Principal Act

55. In this Division, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

56. The Principal Act is amended by adding at the end the following Part:

“PART XIV—INDUSTRIAL RELATIONS COURT OF AUSTRALIA

“Division 1—Interpretation

Definitions

“360. In this Part, unless the contrary intention appears:

‘**Chief Justice**’ means the Chief Justice of the Court;

‘**Court**’ means the Industrial Relations Court of Australia;

‘**Judge**’ means:

(a) in the case of a reference to the Court or a Judge—a Judge (including the Chief Justice) sitting in Chambers; or

(b) otherwise—a Judge of the Court (including the Chief Justice);

‘**proceeding**’ means a proceeding in a court, whether or not between parties, and includes:

(a) an incidental proceeding in the course of, or in connection with, a proceeding; and

(b) an appeal;

‘**suit**’ includes any action or original proceeding between parties.

“Division 2—Constitution of the Court

Creation of Court

“361.(1) This Act creates a federal court to be known as the Industrial Relations Court of Australia.

“(2) The Court is a superior court of record and is a court of law and equity.

“(3) The Court consists of a Chief Justice and as many other Judges as hold office under this Act.

Appointment, removal and resignation of Judges

“362.(1) A Judge is appointed by the Governor-General, by commission, for a term ending when the Judge attains the age of 70 years.

“(2) A Judge cannot be removed from office except by the Governor-General, on an address from both Houses of the Parliament in the same session, praying for the Judge’s removal on the ground of proved misbehaviour or incapacity.

“(3) A person may be appointed as a Judge only if the person:

- (a) is or has been a Judge of a prescribed court; or
- (b) has been enrolled for at least 5 years as a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

“(4) A person who has attained the age of 70 years cannot be appointed as a Judge.

“(5) A Judge may resign by delivering to the Governor-General a signed resignation. A resignation takes effect on the day when the Governor-General receives it, or on such later day as it specifies.

“(6) A person may hold office at the one time as a Judge of the Court and as a Judge of one or more other prescribed courts.

“(7) A Judge or former Judge is entitled to be styled ‘The Honourable’.

“(8) In this section:

‘prescribed court’ means:

- (a) a court created by the Parliament; or
- (b) the Supreme Court of the Northern Territory; or
- (c) the Supreme Court of the Australian Capital Territory.

Acting Chief Justice

“363. Whenever:

- (a) the Chief Justice is absent from Australia or from duty; or
- (b) there is a vacancy in the office of Chief Justice;

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the next senior Judge who is in Australia and is able and willing to do so is to perform the duties, and may exercise the powers, of the Chief Justice.

Seniority

“364.(1) The Chief Justice is the senior Judge of the Court. The other Judges have seniority according to the respective dates on which their commissions took effect.

“(2) However, if the commissions of 2 or more Judges took effect on the same date, those Judges have seniority according to the precedence assigned to them by their commissions.

Salary and allowances of Judges

“365.(1) The Chief Justice is to receive salary, expenses of office allowance, and travelling allowance, at the same rates, and on the same conditions, as apply to the Chief Judge of the Federal Court.

“(2) A Judge (other than the Chief Justice) is to receive salary, expenses of office allowance, and travelling allowance, at the same rates, and on the same conditions, as apply to the Judges (other than the Chief Judge) of the Federal Court.

“(3) This section has effect subject to sections 366 and 367.

Salary and allowances of Judges who hold other judicial appointments

“366.(1) If:

- (a) a person becomes a Judge when he or she is already a judge of another prescribed court within the meaning of section 362; or
 - (b) a person becomes a judge of such court when he or she is a Judge;
- subsections (3), (4) and (5) of this section apply so long as he or she is both a Judge and such a judge.

“(2) For the purposes of subsection (1), disregard an office of additional Judge of the Supreme Court of a Territory.

“(3) The person is to receive the salary and allowance to which he or she is entitled as a judge of a prescribed court other than the Court.

“(4) If that salary or allowance is less than the salary or allowance to which he or she would be entitled under section 365 but for this section, he or she is to receive, in respect of his or her office as Judge, an additional amount by way of salary or allowance, as the case may be, equal to the difference.

“(5) He or she is not entitled to receive salary or allowance under section 365.

“(6) In this section:

'allowance' means expenses of office allowance.

Payment of salary and allowance

“367. The salary and expenses of office allowance to which the Judges are entitled under section 365 and subsection 366(4) accrue from day to day and are payable monthly.

Oath or affirmation of office

“368. Before proceeding to discharge the duties of his or her office, a Judge must take an oath, or make an affirmation, in the form set out in section 473. This must be done before the Governor-General, a Justice of the High Court, another Judge of the Court or a Judge of the Supreme Court of a State or Territory.

Place of sitting

“369. Sittings of the Court are to be held from time to time as required at the places at which the registries of the Court are established, but the Court may sit at any place in Australia or in a Territory.

How Court may be constituted

“370.(1) For the purposes of exercising its jurisdiction, the Court may be constituted by a single Judge or as a Full Court.

“(2) A Full Court consists of 3 or more Judges sitting together or, to the extent permitted by subsection (3), of 2 Judges sitting together.

“(3) If, after a Full Court (including a Full Court constituted in accordance with this subsection), has commenced the hearing, or further hearing, of a proceeding and before the proceeding has been determined, one of the Judges constituting the Full Court dies, resigns his or her office or otherwise becomes unable to continue as a member of the Full Court for the purposes of the proceeding, then the hearing and determination, or the determination, of the proceeding may be completed by a Full Court constituted by the remaining Judges, if at least 3 Judges remain or, if the remaining Judges are 2 in number and the parties consent, by a Full Court constituted by the remaining Judges.

“(4) A Full Court constituted in accordance with subsection (3) may have regard to any evidence given or received, and arguments adduced, by or before the Full Court as previously constituted.

“(5) The Court constituted by one or more Judges may sit and exercise the jurisdiction of the Court even though the Court constituted by one or more other Judges is at the same time sitting and exercising the jurisdiction of the Court.

Arrangement of business of Court

“371. The Chief Justice is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may, subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to the Judge or Judges who is or are to constitute the Court in particular matters or classes of matters.

Court divided in opinion

“372.(1) This section applies if the Judges constituting a Full Court for the purposes of a proceeding are divided in opinion about what judgment is to be given.

“(2) If there is a majority, judgment is to be given according to the majority’s opinion.

“(3) If the Judges are equally divided, judgment is to be given according to:

- (a) if the Chief Justice is a member of the Full Court—the Chief Justice’s opinion; or
- (b) otherwise—the opinion of the Senior Judge who is a member of the Full Court.

Exercise of jurisdiction in open court and in Chambers

“373.(1) The jurisdiction of the Court is to be exercised in open court, except so far as this section or another law of the Commonwealth authorises it to be exercised by a Judge sitting in Chambers.

“(2) The jurisdiction of the Court may be exercised by a Judge sitting in Chambers in:

- (a) a proceeding on an application relating to the conduct of a proceeding; or
- (b) a proceeding on an application for orders or directions as to any matter that this Act or any other law of the Commonwealth makes subject to the direction of a Judge sitting in Chambers; or
- (c) a proceeding on any other application authorised by the Rules of Court to be made to a Judge sitting in Chambers.

“(3) A Judge may order a proceeding in Chambers to be adjourned into court.

“(4) The Court may order the exclusion of the public or of persons specified by the Court from a sitting of the Court if the Court is satisfied that the presence of the public or of those persons, as the case may be, would be contrary to the interests of justice.

Powers of Court to extend to whole of Australia

“374. The process of the Court runs, and the judgments of the Court have effect and may be executed, throughout Australia and the Territories.

“Division 3—Judicial Registrars

Judicial Registrars

“375. The Governor-General may appoint one or more Judicial Registrars of the Court.

Powers of Judicial Registrars

“376.(1) The Rules of Court may delegate to the Judicial Registrars, either generally or as otherwise provided in the Rules, all or any of the Court’s powers in relation to proceedings in the Court, in so far as the proceedings relate to:

- (a) a claim for an amount of not more than the amount specified in the Rules; or
- (b) a claim that the termination of an employee’s employment was unlawful, or that the proposed termination of an employee’s employment would be unlawful, whether because of this Act or any other law (including an unwritten law) of the Commonwealth or of a State or Territory.

“(2) For the purposes of paragraph (1)(a), the Rules may specify an amount of not more than:

- (a) \$10,000; or
- (b) such greater amount as the regulations prescribe.

“(3) Without limiting subsection (1), Rules of Court made because of that subsection:

- (a) may delegate to the Judicial Registrars powers that could be delegated to the Registrar of the Court; and
- (b) may so delegate powers by reference to powers that have been delegated to the Registrar of the Court under section 466.

“(4) A power delegated to the Judicial Registrars is, when exercised by a Judicial Registrar, taken to have been exercised by the Court or a Judge, as the case requires.

“(5) The delegation of a power to the Judicial Registrars does not prevent the exercise of the power by the Court or a Judge.

“(6) The provisions of this Act, the regulations and the Rules of Court, and of other laws of the Commonwealth, that relate to the exercise of a power by the Court apply, in relation to an exercise of the power by a Judicial Registrar under a delegation under subsection (1), as if a reference to the Court or a Judge, or to a court exercising jurisdiction under this Act, were a reference to a Judicial Registrar.

“(7) As well as the powers delegated under subsection (1), the Judicial Registrars have such other powers as are conferred on them by this Act, the regulations or the Rules of Court.

Review of decisions of Judicial Registrars

“377.(1) A party to proceedings may apply to the Court to review a Judicial Registrar’s exercise in the proceedings of a power delegated under section 376. An application must be made within the period prescribed by the Rules of Court or such further period as is allowed in accordance with the Rules.

“(2) On an application under subsection (1) or of its own motion, the Court may review a Judicial Registrar’s exercise of a power so delegated. The Court may make whatever order it considers appropriate in relation to the matter in relation to which the power was exercised.

“(3) On the application of a party or of its own motion, the Court may refer to a Full Court of the Court an application under subsection (1).

Exercise by Court of delegated powers

“378.(1) If:

(a) an application for the exercise of a power delegated under section 376 is to be, or is being, heard by a Judicial Registrar; and

(b) the Judicial Registrar considers that it is not appropriate for him or her to determine the application;

he or she must not hear, or continue to hear, the application, and must instead make appropriate arrangements for the Court to hear the application.

“(2) If a Judicial Registrar proposes to exercise in a particular case a power delegated under section 376 but has not begun to exercise the power in that case, a Judge may order that the power be exercised in that case by a Judge.

“(3) An order under subsection (2) may only be made on application by a person who would be a party to the proceedings before the Judicial Registrar in relation to the proposed exercise of the power.

“(4) If an application is made under subsection (3), the Judicial Registrar must not exercise the power in that case until the application has been determined.

Independence of Judicial Registrars

“379. Despite anything else in this Act or in any other law, a Judicial Registrar is not subject to the direction or control of any person or body in the exercise of a power delegated under section 376.

Judicial Registrars hold office on full-time or part-time basis

“380. A Judicial Registrar may be appointed on a full-time or part-time basis.

Qualifications for appointment etc.

“381.(1) A person may be appointed as a Judicial Registrar only if the person:

- (a) is or has been a Judge of a prescribed court within the meaning of section 362; or
- (b) has been enrolled for at least 5 years as a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

“(2) A person who has attained the age of 65 years cannot be appointed as a Judicial Registrar on a full-time basis.

Term of office

“382.(1) The instrument appointing a Judicial Registrar must specify as the date of effect of the appointment a day that is not earlier than the day when the instrument is signed.

“(2) Subject to this Act, a Judicial Registrar holds office:

- (a) if the instrument of appointment so provides—until he or she attains the age of 65 years; or
- (b) otherwise—for the term specified in the instrument of appointment.

“(3) The term specified in an instrument of appointment must not exceed 5 years and, if the appointment is on a full-time basis, must not extend beyond the day when the Judicial Registrar will attain the age of 65 years.

“(4) Subject to this Act, a Judicial Registrar is eligible for re-appointment.

Remuneration and allowances

“383.(1) A Judicial Registrar is to be paid such remuneration as the Remuneration Tribunal determines.

“(2) A Judicial Registrar is to be paid such allowances as the regulations prescribe.

“(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

“384.(1) Subject to section 87E of the *Public Service Act 1922*, a person appointed as a full-time Judicial Registrar has such recreation leave entitlements as the Remuneration Tribunal determines.

“(2) The Chief Justice may grant a person appointed as a full-time Judicial Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Justice, with the Minister’s approval, determines.

Resignation

“385. A Judicial Registrar may resign by delivering to the Governor-General a signed resignation. A resignation takes effect on the day when the Governor-General receives it, or on such later day as it specifies.

Termination of appointment

“386.(1) The Governor-General may terminate a Judicial Registrar’s appointment for misbehaviour or physical or mental incapacity.

“(2) The Governor-General must terminate a Judicial Registrar’s appointment if the Judicial Registrar becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit.

Oath or affirmation of office

“387. Before proceeding to discharge the duties of his or her office, a Judicial Registrar must take an oath, or make an affirmation, in the form set out in section 473, before a Judge of the Court.

Other terms and conditions of appointment

“388. A Judicial Registrar holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as the Governor-General determines in writing.

“Division 4—Management of the Court

“Subdivision A—Responsibilities of Chief Justice and Registrar

Management of administrative affairs of Court

“389.(1) The Chief Justice is responsible for managing the administrative affairs of the Court.

“(2) For that purpose, the Chief Justice has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

- (a) entering into contracts; and
- (b) acquiring or disposing of personal property.

“(3) The powers given to the Chief Justice by subsection (2) are in addition to any powers given to the Chief Justice by any other provision of this Act or by any other Act.

“(4) Subsection (2) does not authorise the Chief Justice to:

- (a) acquire an interest or right that would constitute an interest in land for the purposes of the *Lands Acquisition Act 1989*; or
- (b) enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the Minister’s approval.

Registrar

“390. In the management of the administrative affairs of the Court, the Chief Justice is assisted by the Registrar of the Court.

“Subdivision B—Appointment, powers etc. of Registrar

Appointment of Registrar

“391. The Registrar is appointed by the Governor-General on the nomination of the Chief Justice.

Powers of Registrar

“392.(1) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Justice under section 390.

“(2) In particular, the Registrar may act on behalf of the Chief Justice in relation to the administrative affairs of the Court.

“(3) The Chief Justice may give the Registrar directions regarding the exercise of his or her powers under this Part.

Remuneration of Registrar

“393.(1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

“(2) If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.

“(3) The Registrar is to be paid such other allowances as are prescribed.

“(4) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

Terms and conditions of appointment of Registrar

“394.(1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of appointment, but is eligible for re-appointment.

“(2) A person who has reached 65 cannot be appointed as Registrar.

“(3) A person cannot be appointed as Registrar for a period extending beyond the day on which he or she will reach 65.

“(4) The Registrar holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Justice.

Leave of absence

“395.(1) Subject to section 87E of the *Public Service Act 1922*, the Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.

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“(2) The Chief Justice may grant the Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Justice, with the Minister’s approval, determines.

Resignation

“396. The Registrar may resign by delivering to the Governor-General a signed resignation.

Outside employment of Registrar

“397.(1) Except with the consent of the Chief Justice, the Registrar must not engage in paid employment outside the duties of his or her office.

“(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

Termination of appointment

“398.(1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.

“(2) The Governor-General must terminate the appointment of the Registrar if the Registrar:

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) engages in paid employment contrary to section 397; or
- (d) fails, without reasonable excuse, to comply with section 399.

“(3) The Governor-General may, with the consent of a Registrar who is:

- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
- (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;

retire the Registrar from office on the ground of incapacity.

“(4) Despite anything contained in this section, if the Registrar:

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
- (b) has not reached his or her maximum retiring age within the meaning of that Act;

he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

“(5) Despite anything contained in this section, if the Registrar:

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- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

Disclosure of interests by Registrar

“399. The Registrar must give written notice to the Chief Justice of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

Acting Registrar

“400.(1) The Chief Justice may, in writing, appoint a person to act in the office of Registrar:

- (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

“(2) A person appointed to act in the office of Registrar during a vacancy may not continue to act in that office for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

“Subdivision C—Other officers and staff of Registries

Personnel other than the Registrar

“401.(1) In addition to the Registrar, there are the following officers of the Court:

- (a) a District Registrar of the Court for each District Registry;
- (b) such Deputy Registrars and Deputy District Registrars as are necessary;
- (c) the Sheriff of the Court;
- (d) such Deputy Sheriffs as are necessary.

“(2) The officers of the Court, other than the Registrar, have such duties, powers and functions as are given to them by this Act or by the Chief Justice.

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“(3) The officers of the Court are appointed by the Registrar.

“(4) The officers of the Court, other than the Registrar and the Deputy Sheriffs, are to be persons appointed or employed under the *Public Service Act 1922*.

“(5) The Deputy Sheriffs may be persons appointed or employed under the *Public Service Act 1922*.

“(6) The Registrar may, on behalf of the Chief Justice, arrange with the Secretary of a Department of the Australian Public Service, or with an authority of the Commonwealth, for the services of officers or employees of the Department or authority to be made available for the purposes of the Court.

“(7) There are to be such staff of the Registries as are necessary.

“(8) The staff of the Registries is to consist of persons appointed or employed under the *Public Service Act 1922*.

Sheriff

“402.(1) The Sheriff of the Court is responsible for the service and execution of all process of the Court directed to the Sheriff.

“(2) The Sheriff is also responsible for:

- (a) taking, receiving and detaining all persons committed to his or her custody by the Court; and
- (b) discharging such persons when so directed by the Court or otherwise required by law.

“(3) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

“(4) The Sheriff or a Deputy Sheriff may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

Powers of Registrar regarding Court officers and Registry staff

“403. In relation to the branch of the Australian Public Service consisting of the officers of the court (other than the Registrar and any Deputy Sheriffs who are not persons appointed or employed under the *Public Service Act 1922*) and the staff of the Registries, the Registrar has the same powers as if that Branch were a Department of the Australian Public Service and the Registrar were the Secretary of that Department.

Engagement of consultants etc.

“404.(1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.

“(2) An engagement under subsection (1) is to be made:

- (a) on behalf of the Commonwealth; and
- (b) by written agreement.

“Subdivision D—Miscellaneous administrative matters

Annual report

“405.(1) As soon as practicable after the end of each financial year, the Chief Justice is to submit to the Minister:

- (a) a report of the management of the administrative affairs of the Court during the financial year; and
- (b) financial statements in respect of that financial year.

“(2) The financial statements are to be in a form approved by the Minister for Finance.

“(3) Before submitting the financial statements to the Minister, the Chief Justice must submit them to the Auditor-General, who is to report to the Minister:

- (a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records; and
- (b) whether the statements are in agreement with the accounts and records; and
- (c) whether, in his or her opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

“(4) The Minister must cause a copy of the report and financial statements, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

Proper accounts to be kept

“406.(1) The Chief Justice is to ensure that proper accounts and records are kept of the transactions and affairs relating to the administration of the Court under section 389.

“(2) The Chief Justice is to do all things necessary to ensure that:

- (a) all payments out of money appropriated by the Parliament for the purposes of the Court are correctly made and properly authorised; and
- (b) adequate control is maintained over assets held by, or in the custody of, the Chief Justice on behalf of the Commonwealth and over the incurring of liabilities on behalf of the Commonwealth under this Part.

Audit

“407.(1) At least once in each financial year, the Auditor-General is to inspect and audit the accounts and records of financial transactions relating to the administration of the affairs of the Court under section 389 and the records relating to assets held by, or in the custody of, the Chief Justice on behalf of the Commonwealth and must immediately draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify doing so.

“(2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

“(3) The Auditor-General is to report to the Minister the results of the inspection and audit carried out under subsection (1).

“(4) The Auditor-General or a person authorised by him or her is entitled at all reasonable times to full and free access to all accounts and records maintained under section 406 and relating directly or indirectly to the receipt or payment of money, or to the acquisition, receipt, custody or disposal of assets, by the Chief Justice on behalf of the Commonwealth.

“(5) The Auditor-General or a person authorised by him or her may make copies of, or take extracts from, any such accounts and records.

“(6) The Auditor-General or a person authorised by him or her may require any person to give him or her information in the person’s possession or to which the person has access which the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person must comply with the requirement.

“(7) A person who, without reasonable excuse, contravenes subsection (6) is guilty of an offence punishable, on conviction, by a fine not exceeding 10 penalty units.

Delegation of administrative powers of Chief Justice

“408. The Chief Justice may, in writing, delegate all or any of his or her powers under section 389 to any one or more of the Judges.

Proceedings arising out of administration of Court

“409. Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.

Oath or affirmation of office

“410. Before proceeding to discharge the duties of his or her office, the Registrar, a District Registrar, a Deputy Registrar or a Deputy District Registrar must take an oath, or make an affirmation, in the form set out in section 473, before a Judge of the Court.

Arrangements with other courts to perform functions

“411.(1) The Minister may arrange with the appropriate Minister of a State or of the Northern Territory for an officer or officers of that State or Territory to perform:

- (a) the functions of a Deputy Sheriff in that State or Territory; or
- (b) on behalf of the Court at any office of the Registry of the Court in that State or Territory all or any of the functions referred to in subsection (3).

“(2) The Chief Justice may arrange with the Chief Judge of the Federal Court for an officer or officers of that Court to perform on behalf of the Industrial Relations Court at an office or offices of the Registry of the Industrial Relations Court referred to in the arrangement all or any of the functions referred to in subsection (3).

“(3) The functions to which an arrangement under subsection (1) or (2) may relate are:

- (a) the receipt of documents to be lodged with or filed in the Court;
- (b) the signing and issuing of writs, commissions and process;
- (c) the administration of oaths and affirmations for the purposes of any proceedings in the Court;
- (d) such other functions as are permitted by the Rules of Court to be performed under such an arrangement.

“Division 5—Jurisdiction of the Court

“Subdivision A—Original jurisdiction

Jurisdiction of Court

“412.(1) The Court has jurisdiction with respect to matters arising under this Act in relation to which:

- (a) applications may be made to it under this Act; or
- (b) actions may be brought in it under this Act; or
- (c) questions may be referred to it under this Act; or
- (d) appeals lie to it under section 422; or
- (e) penalties may be sued for and recovered under this Act; or
- (f) prosecutions may be instituted for offences against this Act, other than a prosecution under section 407 or 485.

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“(2) For the purposes of section 44 of the *Judiciary Act 1903*, the Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth holding office under this Act or the *Coal Industry Act 1946*.

Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.

“(3) The Court has jurisdiction with respect to matters remitted to it under section 44 of the *Judiciary Act 1903*.

“(4) The Court has such other jurisdiction as is vested in it by this Act or other laws made by the Parliament.

Interpretation of awards

“413.(1) The Court may give an interpretation of an award on application by:

- (a) the Minister; or
- (b) an organisation or person bound by the award.

“(2) The decision of the Court is final and conclusive and is binding on the organisations and persons bound by the award who have been given an opportunity of being heard by the Court.

Exclusive jurisdiction

“414.(1) Subject to this Act, the jurisdiction of the Court in relation to an act or omission for which an organisation or member of an organisation is liable to be sued, or to be proceeded against for a pecuniary penalty, is exclusive of the jurisdiction of any other court created by the Parliament or any court of a State or Territory.

“(2) The jurisdiction of the Court in relation to matters arising under section 208, 209 or 261 or Division 5 of Part IX is exclusive of the jurisdiction, or any similar jurisdiction, of a State industrial authority.

“(3) The jurisdiction of the Court under section 422 is exclusive of the jurisdiction of any court of a State or Territory to hear and determine an appeal from a judgment from which an appeal may be brought to the Court under that section.

Exercise of Court’s original jurisdiction

“415.(1) Subject to subsection (2) and section 423, the jurisdiction of the Court may be exercised by a single Judge.

“(2) The jurisdiction of the Court is to be exercised by a Full Court in relation to:

- (a) questions referred to the Court under section 46 or 82;
- (b) matters in relation to which applications are made to the Court under section 153;

- (c) matters in relation to which applications are made to the Court under section 294; and
- (d) matters in which a writ of mandamus or prohibition or an injunction is sought against:
 - (i) a Presidential member; or
 - (ii) officers of the Commonwealth at least one of whom is a Presidential member.

“(3) Subsection (2) does not require the jurisdiction of the Court to be exercised by a Full Court in relation to a prosecution for an offence merely because the offence relates to a matter to which that subsection applies.

Reference of proceedings to Full Court

“416.(1) At any stage of a proceeding in a matter arising under this Act, a single Judge exercising the jurisdiction of the Court:

- (a) may refer a question of law for the opinion of a Full Court; and
- (b) may, of the Judge’s own motion or on the application of a party, refer the matter to a Full Court to be heard and determined; and
- (c) on application by the Minister, is to refer the matter to a Full Court to be heard and determined.

“(2) If a Judge refers a matter to a Full Court under subsection (1), the Full Court may have regard to any evidence given, or arguments adduced, in the proceeding before the Judge.

Declarations of right

“417.(1) The Court may, in relation to a matter in which it has jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.

“(2) A suit is not open to objection on the ground that a declaratory order only is sought.

Determination of matter completely and finally

“418. In every matter before it, the Court is to grant, either absolutely or on such terms and conditions as the Court thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward in the matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters avoided.

Making of orders and issue of writs

“419. The Court has power, in relation to matters in which it has jurisdiction, to make orders of such kinds, including interlocutory orders, and to issue, or direct the issue of, writs of such kinds, as the Court thinks appropriate.

“Subdivision B—Appellate and related jurisdiction

Appellate jurisdiction

“420.(1) The Court has jurisdiction to hear and determine appeals from judgments of the Court constituted by a single Judge.

“(2) An appeal does not lie from an interlocutory judgment unless the Court or a Judge gives leave to appeal.

“(3) Subsection (1) has effect subject to this Act (other than Division 2 of this Part) and to any other Act, whether passed before or after the commencement of this Part (including an Act that makes a judgment final and conclusive or not subject to appeal).

Limitation on appeals to Full Court

“421. Despite anything else in this Part, an appeal does not lie to a Full Court from a judgment of the Court constituted by a single Judge in an inquiry referred to in section 219 or 253M.

Appeals from State and Territory courts

“422.(1) An appeal lies to the Court from a judgment of a court of a State or Territory in a matter arising under this Act.

“(2) It is not necessary to obtain the leave of the Court or the court appealed from in relation to an appeal under subsection (1).

“(3) An appeal does not lie to the High Court from a judgment from which an appeal may be made to the Court under subsection (1).

Exercise of appellate jurisdiction

“423.(1) The Court’s appellate jurisdiction is to be exercised by a Full Court, except as provided by this Act (other than Division 2 of this Part) or by any other Act.

“(2) The following applications may be heard and determined by a single Judge or by a Full Court:

- (a) an application for leave or special leave to appeal to the Court;
- (b) an application for an extension of time within which to appeal to the Court;
- (c) an application for leave to amend the grounds of an appeal to the Court;
- (d) an application to stay an order of a Full Court.

“(3) The Rules of Court may provide for applications of the kinds referred to in subsection (2) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

“(4) Subject to this or another Act, the Court’s jurisdiction in an appeal from a judgment of a court of summary jurisdiction may be exercised by a single Judge or by a Full Court.

“(5) The Court constituted by a single Judge may state a case, or reserve a question, for a Full Court’s consideration, concerning a matter if an appeal would lie to a Full Court from a judgment of the Judge with respect to that matter. The Full Court has jurisdiction to hear and determine the case or question.

Cases stated and questions reserved

“424.(1) A court (**‘the lower court’**) from which appeals lie to the Court may state a case, or reserve a question, for the Court’s consideration, concerning a matter if an appeal would lie to the Court from a judgment of the lower court with respect to that matter. The Court has jurisdiction to hear and determine the case or question.

“(2) If the lower court is a court of summary jurisdiction, the Court’s jurisdiction under subsection (1) may be exercised by a single Judge or by a Full Court. Otherwise, it must be exercised by a Full Court.

“(3) The lower court must not state a case, or reserve or refer a question, concerning the matter, to a court other than the Court.

Evidence on appeal

“425. In an appeal, the Court shall have regard to the evidence given in the proceedings out of which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence, which may be taken on affidavit, by oral examination before the Court or a Judge or otherwise in accordance with section 476.

Form of judgment on appeal

“426.(1) Subject to this and any other Act, the Court may, in the exercise of its appellate jurisdiction:

- (a) affirm, reverse or vary the judgment appealed from; or
- (b) give such judgment, or make such order, as, in all the circumstances, it thinks fit, or refuse to make an order; or
- (c) set aside the judgment appealed from, in whole or in part, and remit the proceeding to the court from which the appeal was brought for further hearing and determination, subject to such directions as the Court thinks fit; or
- (d) set aside a verdict or finding of a jury in a civil proceeding, and enter judgment despite such a verdict or finding; or
- (e) set aside the verdict and judgment in a trial on indictment and order a verdict of not guilty or other appropriate verdict to be entered; or
- (f) grant a new trial in any case in which there has been a trial, either with or without a jury, on any ground on which it is appropriate to grant a new trial; or

- (g) award execution from the Court or, in the case of an appeal from another court, award execution from the Court or remit the cause to that other court, or to a court from which a previous appeal was brought, for the execution of the judgment of the Court.

“(2) It is the duty of a court to which a cause is remitted in accordance with paragraph (1)(g) to execute the judgment of the Court in the same manner as if it were its own judgment.

“(3) The powers specified in subsection (1) may be exercised by the Court even if the notice of appeal asks that part only of the decision may be reversed or varied, and may be exercised in favour of all or any of the respondents or parties, including respondents or parties who have not appealed from or complained of the decision.

“(4) An interlocutory judgment or order from which there has been no appeal does not prevent the Court, on hearing an appeal, from giving such decision on the appeal as is just.

“(5) The powers of the Court under subsection (1) in an appeal against a sentence in a criminal matter (whether by the Crown or by the defendant) include the power to increase or decrease the sentence or substitute a different sentence.

Stay of proceedings and suspension of orders

“427.(1) If an appeal to the Court from another court has been instituted:

- (a) the Court or a Judge, or a judge of that other court (not being a court of summary jurisdiction), may order, on such conditions (if any) as it or he or she thinks fit, a stay of all or any proceedings under the judgment appealed from; and
- (b) the Court or a Judge may, by order, on such conditions (if any) as it or he or she thinks fit, suspend the operation of an injunction or other order to which the appeal, in whole or in part, relates.

“(2) This section does not affect the operation of any provision made by or under any other Act or by the Rules of Court for or in relation to the stay of proceedings.

New trials

“428.(1) In an appeal in which the Court grants a new trial, the Court may impose such conditions on a party, and may direct such admissions to be made by a party, for the purpose of the new trial as are just.

“(2) If the Court grants a new trial in a suit, the Court:

- (a) may grant it, either generally or on particular issues only, as it thinks just; and
- (b) may order that testimony of a witness examined at the former trial may be used in the new trial in the manner provided in the order.

“Subdivision C—General

Contempt of Court

“429.(1) Subject to any other Act, the Court has the same power to punish contempts of its power and authority as the High Court has in respect of contempts of the High Court.

“(2) The jurisdiction of the Court to punish a contempt of the Court committed in the face or hearing of the Court may be exercised by the Court as constituted at the time of the contempt.

Jurisdiction in associated matters

“430.(1) So far as the Constitution permits, jurisdiction is conferred on the Court in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Court is invoked.

“(2) The jurisdiction conferred by subsection (1) extends to jurisdiction to hear and determine an appeal from a judgment of a court so far as it relates to a matter that is associated with a matter in respect of which an appeal from that judgment, or another judgment of that court, is brought.

Injunctions against contravening Act etc.

“431. The Court may grant an injunction requiring a person not to contravene, or to cease contravening, this Act.

“Subdivision D—Appeals to High Court

Limitations on appeals from Court to High Court

“432.(1) An appeal does not lie to the High Court from a judgment of a single Judge of the Court under this Act.

“(2) Subject to subsection (3), an appeal lies to the High Court, with the leave of the High Court, from a judgment of a Full Court of the Court in a matter arising under this Act.

“(3) An appeal does not lie to the High Court from a judgment of a Full Court of the Court:

- (a) in a matter arising under section 46 or 82, Part IX (other than Subdivision G of Division 7 or Division 8) or section 413 or 431, unless the judgment was made, given or pronounced in relation to a prosecution for an offence; or
- (b) in relation to a contempt of the Court in relation to a proceeding in a matter arising under this Act.

“Division 6—Representative proceedings

“Subdivision A—Preliminary

Interpretation

“433. In this Division, unless the contrary intention appears:

‘group member’ means a member of a group of persons on whose behalf a representative proceeding has been commenced;

‘representative party’ means a person who commences a representative proceeding;

‘representative proceeding’ means a proceeding commenced under section 435;

‘respondent’ means a person against whom relief is sought in a representative proceeding;

‘sub-group member’ means a person included in a sub-group established under section 446;

‘sub-group representative party’ means a person appointed to be a sub-group representative party under section 446.

Application

“434. A proceeding may only be brought under this Division in respect of a cause of action arising on or after 4 March 1992 (the day of commencement of the *Federal Court of Australia Amendment Act 1991*).

“Subdivision B—Commencement of representative proceeding

Commencement of proceeding

“435.(1) Subject to this Division, if:

- (a) 7 or more persons have claims against the same person; and
- (b) the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and
- (c) the claims of all those persons give rise to a substantial common issue of law or fact;

a proceeding may be commenced by one or more of those persons as representing some or all of them.

“(2) A representative proceeding may be commenced:

- (a) whether or not the relief sought:
 - (i) is, or includes, equitable relief; or
 - (ii) consists of, or includes, damages; or
 - (iii) includes claims for damages that would require individual assessment; or
 - (iv) is the same for each person represented; and
- (b) whether or not the proceeding:
 - (i) is concerned with separate contracts or transactions between the respondent in the proceeding and individual group members; or
 - (ii) involves separate acts or omissions of the respondent done or omitted to be done in relation to individual group members.

Standing

“436.(1) A person referred to in paragraph 435(1)(a) who has a sufficient interest to commence a proceeding on his or her own behalf against another person has a sufficient interest to commence a representative proceeding against that other person on behalf of other persons referred to in that paragraph.

“(2) If a person has commenced a representative proceeding, the person retains a sufficient interest:

- (a) to continue that proceeding; and
 - (b) to bring an appeal from a judgment in that proceeding;
- even though the person ceases to have a claim against the respondent.

Is consent required to be a group member?

“437.(1) The consent of a person to be a group member in a representative proceeding is not required unless subsection (2) applies to the person.

“(2) None of the following persons is a group member in a representative proceeding unless the person gives written consent to being so:

- (a) the Commonwealth, a State or a Territory;
- (b) a Minister or a Minister of a State or Territory;
- (c) a body corporate established for a public purpose by a law of the Commonwealth, of a State or of a Territory, other than an incorporated company or association; or
- (d) an officer of the Commonwealth, of a State or of a Territory, in his or her capacity as such an officer.

Persons under disability

“438.(1) It is not necessary for a person under disability to have a next friend or committee merely in order to be a group member.

“(2) A group member who is under disability may only take a step in the representative proceeding, or conduct part of the proceeding, by his or her next friend or committee, as the case requires.

Originating process

“439.(1) An application commencing a representative proceeding, or a document filed in support of such an application, must, in addition to any other matters required to be included:

- (a) describe or otherwise identify the group members to whom the proceeding relates; and
- (b) specify the nature of the claims made on behalf of the group members and the relief claimed; and
- (c) specify the questions of law or fact common to the claims of the group members.

“(2) In describing or otherwise identifying group members for the purposes of subsection (1), it is not necessary to name, or specify the number of, the group members.

Right of group member to opt out

“440.(1) The Court must fix a date before which a group member may opt out of a representative proceeding.

“(2) A group member may opt out of the representative proceeding by written notice given under the Rules of Court before the date so fixed.

“(3) The Court, on the application of a group member, the representative party or the respondent in the proceeding, may fix another date so as to extend the period during which a group member may opt out of the representative proceeding.

“(4) Except with the leave of the Court, the hearing of a representative proceeding must not commence earlier than the date before which a group member may opt out of the proceeding.

Causes of action accruing after commencement of representative proceeding

“441.(1) The Court may at any stage of a representative proceeding, on application made by the representative party, give leave to amend the application commencing the representative proceeding so as to alter the description of the group.

“(2) The description of the group may be altered so as to include a person:

- (a) whose cause of action accrued after the commencement of the representative proceeding but before such date as the Court fixes when giving leave; and
- (b) who would have been included in the group, or, with the consent of the person would have been included in the group, if the cause of action had accrued before the commencement of the proceeding.

“(3) The date mentioned in paragraph (2)(a) may be the date on which leave is given or another date before or after that date.

“(4) If the Court gives leave under subsection (1), it may also make any other orders it thinks just, including an order relating to the giving of notice to persons who, as a result of the amendment, will be included in the group and the date before which such persons may opt out of the proceeding.

Situation if fewer than 7 group members

“442. If, at any stage of a representative proceeding, it appears likely to the Court that there are fewer than 7 group members, the Court may, on such conditions (if any) as it thinks fit:

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- (a) order that the proceeding continue under this Division; or
- (b) order that the proceeding no longer continue under this Division.

Cost of distributing money etc. excessive

“443. If:

- (a) the relief claimed in a representative proceeding is or includes payment of money to group members (otherwise than in respect of costs); and
- (b) on application by the respondent, the Court concludes that it is likely that, if judgment were to be given in favour of the representative party, the cost to the respondent of identifying the group members and distributing to them the amounts ordered to be paid to them would be excessive having regard to the likely total of those amounts;

the Court may, by order:

- (c) direct that the proceeding no longer continue under this Division; or
- (d) stay the proceeding so far as it relates to relief of the kind mentioned in paragraph (a).

Order that proceeding not continue as representative proceeding if costs excessive etc.

“444.(1) The Court may, on application by the respondent or of its own motion, order that a proceeding no longer continue under this Division if it is satisfied that it is in the interests of justice to do so because:

- (a) the costs that would be incurred if the proceeding were to continue as a representative proceeding are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding; or
- (b) all the relief sought can be obtained by means of a proceeding other than a representative proceeding under this Division; or
- (c) the representative proceeding will not provide an efficient and effective means of dealing with the claims of group members; or
- (d) it is otherwise inappropriate that the claims be pursued by means of a representative proceeding.

“(2) If the Court dismisses an application under this section, the Court may order that no further application under this section be made by the respondent except with the leave of the Court.

“(3) Leave for the purposes of subsection (2) may be granted subject to such conditions as to costs as the Court considers just.

Consequences of order that proceeding not continue under this Division

“445. If the Court makes an order under section 442, 443 or 444 that a proceeding no longer continue under this Division:

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- (a) the proceeding may be continued as a proceeding by the representative party on his or her own behalf against the respondent; and
- (b) on the application of a person who was a group member for the purposes of the proceeding, the Court may order that the person be joined as an applicant in the proceeding.

Determination of issues if not all issues are common

“446.(1) If it appears to the Court that determination of the issue or issues common to all group members will not finally determine the claims of all group members, the Court may give directions in relation to the determination of the remaining issues.

“(2) In the case of issues common to the claims of some only of the group members, the directions given by the Court may include directions establishing a sub-group consisting of those group members and appointing a person to be the sub-group representative party on behalf of the sub-group members.

“(3) If the Court appoints a person other than the representative party to be a sub-group representative party, that person, and not the representative party, is liable for costs associated with the determination of the issue or issues common to the sub-group members.

Individual issues

“447.(1) In giving directions under section 446, the Court may permit an individual group member to appear in the proceeding for the purpose of determining an issue that relates only to the claims of that member.

“(2) In such a case, the individual group member, and not the representative party, is liable for costs associated with the determination of the issue.

Directions relating to commencement of further proceedings

“448. If an issue cannot properly or conveniently be dealt with under section 446 or 447, the Court may:

- (a) if the issue concerns only the claim of a particular member—give directions relating to the commencement and conduct of a separate proceeding by that member; or
- (b) if the issue is common to the claims of all members of a sub-group—give directions relating to the commencement and conduct of a representative proceeding in relation to the claims of those members.

Adequacy of representation

“449.(1) If, on an application by a group member, it appears to the Court that a representative party cannot adequately represent the interests of the group members, the Court may substitute another group member as representative party and may make such other orders as it thinks fit.

“(2) If, on an application by a sub-group member, it appears to the Court that a sub-group representative party cannot adequately represent the interests of the sub-group members, the Court may substitute another person as sub-group representative party and may make such other orders as it thinks fit.

Stay of execution in certain circumstances

“450. If a respondent in a representative proceeding commences a proceeding in the Court against a group member, the Court may order a stay of execution in respect of any relief awarded to the group member in the representative proceeding until the other proceeding is determined.

Settlement and discontinuance—representative proceeding

“451.(1) A representative proceeding may not be settled or discontinued without the approval of the Court.

“(2) If the Court gives such an approval, it may make such orders as are just with respect to the distribution of any money paid under a settlement or paid into the Court.

Settlement of individual claim of representative party

“452.(1) A representative party may, with leave of the Court, settle his or her individual claim in whole or in part at any stage of the representative proceeding.

“(2) A representative party who is seeking leave to settle, or who has settled, his or her individual claim may, with leave of the Court, withdraw as representative party.

“(3) If a person has sought leave to withdraw as representative party under subsection (2), the Court may, on the application of a group member, make an order for the substitution of another group member as representative party and may make such other orders as it thinks fit.

“(4) Before granting a person leave to withdraw as a representative party:

- (a) the Court must be satisfied that notice of the application has been given to group members in accordance with subsection 453(1) and in sufficient time for them to apply to have another person substituted as the representative party; and
- (b) any application for the substitution of another group member as a representative party has been determined.

“(5) The Court may grant leave to a person to withdraw as representative party subject to such conditions as to costs as the Court considers just.

“Subdivision C—Notices

Notice to be given of certain matters

“453.(1) Notice must be given to group members of the following matters in relation to a representative proceeding:

- (a) the commencement of the proceeding and the right of the group members to opt out of the proceeding before a specified date, being the date fixed under subsection 440(1);
- (b) an application by the respondent in the proceeding for the dismissal of the proceeding on the ground of want of prosecution;
- (c) an application by a representative party seeking leave to withdraw under section 452 as representative party.

“(2) The Court may dispense with compliance with any or all of the requirements of subsection (1) if the relief sought in a proceeding does not include any claim for damages.

“(3) If the Court so orders, notice must be given to group members of the bringing into Court of money in answer to a cause of action on which a claim in the representative proceeding is founded.

“(4) Unless the Court is satisfied that it is just to do so, an application for approval of a settlement under section 451 must not be determined unless notice has been given to group members.

“(5) The Court may, at any stage, order that notice of any matter be given to a group member or group members.

“(6) Notice under this section must be given as soon as practicable after the happening of the event to which the notice relates.

Notices—ancillary provisions

“454.(1) This section is concerned with notices under section 453.

“(2) The form and content of a notice must be as approved by the Court.

“(3) The Court must, by order, specify:

- (a) who is to give the notice; and
- (b) how the notice is to be given;

and the order may include provision:

- (c) directing a party to provide information relevant to the giving of the notice; and
- (d) relating to the costs of notice.

“(4) An order under subsection (3) may require that notice be given by means of press advertisement, radio or television broadcast, or by any other means.

“(5) The Court may not order that notice be given personally to each group member unless it is satisfied that it is reasonably practicable, and not unduly expensive, to do so.

“(6) A notice that concerns a matter for which the Court’s leave or approval is required must specify the period within which a group member or other person may apply to the Court, or take some other step, in relation to the matter.

“(7) A notice that includes or concerns conditions must specify the conditions and the period, if any, for compliance.

“(8) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given, in a proceeding.

“Subdivision D—Judgment etc.

Judgment—powers of the Court

“455.(1) The Court may, in determining a matter in a representative proceeding, do any one or more of the following:

- (a) determine an issue of law;
- (b) determine an issue of fact;
- (c) make a declaration of liability;
- (d) grant any equitable relief;
- (e) make an award of damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or of amounts worked out as the Court specifies;
- (f) award damages in an aggregate amount without specifying amounts awarded in respect of individual group members;
- (g) make such other order as the Court thinks just.

“(2) In making an order for an award of damages, the Court must make provision for the payment or distribution of the money to the group members entitled.

“(3) Subject to section 451, the Court is not to make an award of damages under paragraph (1)(f) unless a reasonably accurate assessment can be made of the total amount to which group members will be entitled under the judgment.

“(4) If the Court has made an order for the award of damages, the Court may give such directions (if any) as it thinks just in relation to:

- (a) how a group member is to establish his or her entitlement to share in the damages; and
- (b) how any dispute regarding the entitlement of a group member to share in the damages is to be determined.

Constitution etc. of fund

“456.(1) Without limiting subsection 455(2), in making provision for the distribution of money to group members, the Court may provide for:

- (a) the constitution and administration of a fund consisting of the money to be distributed; and
- (b) either:
 - (i) the payment by the respondent of a fixed sum of money into the fund; or
 - (ii) the payment by the respondent into the fund of such instalments, on such terms, as the Court directs to meet the claims of group members; and
- (c) entitlements to interest earned on the money in the fund.

“(2) The costs of administering a fund are to be borne by the fund, or by the respondent in the representative proceeding, as the Court directs.

“(3) If the Court orders the constitution of a fund mentioned in subsection (1), the order must:

- (a) require notice to be given to group members in such manner as is specified in the order; and
- (b) specify the manner in which a group member is to make a claim for payment out of the fund and establish his or her entitlement to the payment; and
- (c) specify a day (which is 6 months or more after the day on which the order is made) on or before which the group members are to make a claim for payment out of the fund; and
- (d) make provision in relation to the day before which the fund is to be distributed to group members who have established an entitlement to be paid out of the fund.

“(4) The Court may allow a group member to make a claim after the day fixed under paragraph (3)(c) if:

- (a) the fund has not already been fully distributed; and
- (b) it is just to do so.

“(5) On application by the respondent in the representative proceeding after the day fixed under paragraph (3)(d), the Court may make such orders as are just for the payment from the fund to the respondent of the money remaining in the fund.

Effect of judgment

“457. A judgment given in a representative proceeding:

- (a) must describe or otherwise identify the group members who will be affected by it; and

- (b) binds all such persons other than any person who has opted out of the proceeding under section 440.

“Subdivision E—Appeals

Appeals to the Court

“458.(1) The following appeals under Subdivision B of Division 5 from a judgment of the Court in a representative proceeding may themselves be brought as representative proceedings:

- (a) an appeal by the representative party on behalf of group members and in respect of the judgment to the extent that it relates to issues common to the claims of group members;
- (b) an appeal by a sub-group representative party on behalf of sub-group members in respect of the judgment to the extent that it relates to issues common to the claims of sub-group members.

“(2) The parties to an appeal referred to in paragraph (1)(a) are the representative party, as the representative of the group members, and the respondent.

“(3) The parties to an appeal referred to in paragraph (1)(b) are the sub-group representative party, as the representative of the sub-group members, and the respondent.

“(4) On an appeal by the respondent in a representative proceeding, other than an appeal referred to in subsection (5), the parties to the appeal are:

- (a) in the case of an appeal in respect of the judgment generally—the respondent and the representative party as the representative of the group members; and
- (b) in the case of an appeal in respect of the judgment to the extent that it relates to issues common to the claims of sub-group members—the respondent and the sub-group representative party as the representative of the sub-group members.

“(5) The parties to an appeal in respect of the determination of an issue that relates only to a claim of an individual group member are that group member and the respondent.

“(6) If the representative party or the sub-group representative party does not bring an appeal within the time provided for instituting appeals, another member of the group or sub-group may, within a further 21 days, bring an appeal as representing the group members or sub-group members, as the case may be.

“(7) If an appeal is brought from a judgment of the Court in a representative proceeding, the Court may direct that notice of the appeal be given to such person or persons, and in such manner, as the Court thinks appropriate.

“(8) Section 440 does not apply to an appeal proceeding.

“(9) The notice instituting an appeal in relation to issues that are common to the claims of group members or sub-group members must describe or otherwise identify the group members or sub-group members, as the case may be, but need not specify the names or number of those members.

Appeals to the High Court—extended operation of sections 458 and 461

“459.(1) Sections 458 and 461 apply in relation to appeals to the High Court from judgments of the Court in representative proceedings in the same way as they apply to appeals to the Court from such judgments.

“(2) Nothing in subsection (1) limits the operation of section 432 whether in relation to appeals from judgments of the Court in representative proceedings or otherwise.

“Subdivision F—Miscellaneous

Suspension of limitation periods

“460.(1) On the commencement of a representative proceeding, the running of any limitation period that applies to the claim of a group member to which the proceeding relates is suspended.

“(2) The limitation period does not begin to run again unless either the member opts out of the proceeding under section 440 or the proceeding, and any appeals arising from the proceeding, are determined without finally disposing of the group member’s claim.

General power of Court to make orders

“461.(1) In any proceeding (including an appeal) conducted under this Division, the Court may, of its own motion or on application by a party or a group member, make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding.

“(2) Subsection (1) does not limit the operation of section 418.

Saving of rights, powers etc.

“462. Except as otherwise provided by this Division, nothing in this Division affects:

- (a) the commencement or continuance of any action of a representative character commenced otherwise than under this Division; or
- (b) the Court’s powers under provisions other than this Division, for example, its powers in relation to a proceeding in which no reasonable cause of action is disclosed or that is oppressive, vexatious, frivolous or an abuse of the process of the Court; or
- (c) the operation of any law relating to:

- (i) vexatious litigants (however described); or
- (ii) proceedings of a representative character; or
- (iii) joinder of parties; or
- (iv) consolidation of proceedings; or
- (v) security for costs.

Reimbursement of representative party's costs

“463.(1) If the Court has made an award of damages in a representative proceeding, the representative party or a sub-group representative party, or a person who has been such a party, may apply to the Court for an order under this section.

“(2) If, on an application under this section, the Court is satisfied that the costs reasonably incurred in relation to the representative proceeding by the person making the application are likely to exceed the costs recoverable by the person from the respondent, the Court may order that an amount equal to the whole or a part of the excess be paid to that person out of the damages awarded.

“(3) On an application under this section, the Court may also make any other order it thinks just.

“Division 7—Registries, officers and seal

Registries

“464.(1) The Governor-General is to cause such Registries of the Court to be established as he or she thinks fit, but so that at least one Registry is established in each State, in the Australian Capital Territory and in the Northern Territory.

“(2) The Governor-General is to designate one of the Registries as the Principal Registry, and each of the other Registries as a District Registry in respect of such District as the Governor-General specifies.

Officers of Court

“465. In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the Rules of Court or by the Chief Justice.

Powers of Registrars

“466.(1) Subject to subsection (2), the following powers of the Court may, if the Court or a Judge so directs, be exercised by a Registrar:

- (a) the power to dispense with service of process of the Court;
- (b) the power to make orders in relation to substituted service;
- (c) the power to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to proceedings in the Court or of any other person;

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- (d) the power to make orders in relation to interrogatories;
- (e) the power, in proceedings in the Court, to make an order adjourning the hearing of the proceedings;
- (f) the power to make an order as to costs;
- (g) the power to make an order exempting a party to proceedings in the Court from compliance with a provision of the Rules of Court;
- (h) a power of the Court prescribed by the Rules of Court.

“(2) A Registrar must not exercise the powers referred to in paragraph (1)(f) except in relation to costs of or in connection with an application heard by a Registrar.

“(3) The provisions of this Act and the Rules of Court that relate to the exercise by the Court of a power that is, by virtue of subsection (1), exercisable by a Registrar apply in relation to an exercise of the power by a Registrar under this section as if a reference in those provisions to the Court were a reference to the Registrar.

“(4) Despite any other provision of this Act and any provision of the *Public Service Act 1922* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the manner in which he or she exercises powers under subsection (1).

“(5) A party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection (1) may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

“(6) The Court may, on an application under subsection (5) or of its own motion, review an exercise of power by a Registrar under this section and may make such order or orders as it thinks fit with respect to the matter with respect to which the power was exercised.

“(7) Where an application for the exercise of a power referred to in subsection (1) is being heard by a Registrar; and

- (a) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under this section; or
 - (b) an application is made to the Registrar to arrange for the first-mentioned application to be determined by the Court;
- he or she must not hear, or continue to hear, the application and must make appropriate arrangements for the application to be heard by the Court.

“(8) In this section:

‘**Registrar**’ means the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court.

Seal of Court

“467.(1) The Court is to have a seal, whose design is to be determined by the Minister.

“(2) The seal of the Court is to be kept at the Principal Registry in such custody as the Chief Justice directs.

“(3) The Registrar must have in his or her custody a stamp whose design is the same, as nearly as practicable, as that of the seal of the Court, but with the addition of the words ‘Principal Registry’.

“(4) The District Registrar in respect of each District Registry must have in his or her custody a stamp whose design is the same, as nearly as practicable, as that of the seal of the Court, but with the addition of such words as the Chief Justice directs for the purpose of relating the stamp to that District Registry.

“(5) A document or a copy of a document marked with a stamp referred to in subsection (3) or (4) is as valid and effectual as if it had been sealed with the seal of the Court.

“(6) The seal of the Court and the stamps referred to in this section are to be affixed to documents as provided by this or any other Act or by the Rules of Court.

Writs etc.

“468. All writs, commissions and process issued from the Court must be:

- (a) under the seal of the Court; and
- (b) signed by the Registrar, a District Registrar or an officer acting with the authority of the Registrar or a District Registrar.

“Division 8—Representation and intervention

Representation of parties before Court

“469.(1) A party to a proceeding before the Court in a matter arising under this Act may appear in person.

“(2) Subject to this and any other Act, a party to a proceeding before the Court in a matter arising under this Act may be represented only as provided by this section.

“(3) A party (including an employing authority) may be represented by counsel or solicitor.

“(4) An employing authority may be represented by a prescribed person.

“(5) Regulations made for the purposes of subsection (4) may prescribe different classes of persons in relation to different classes of proceedings.

“(6) Subject to subsections (8) and (9), a party that is an organisation may be represented by:

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- (a) a member, officer or employee of the organisation; or
- (b) a member, officer or employee of a peak council to which the organisation is affiliated.

“(7) Subject to subsections (8) and (9), a party other than an organisation or employing authority may be represented by:

- (a) an officer or employee of the party; or
- (b) a member, officer or employee of an organisation of which the party is a member; or
- (c) an officer or employee of a peak council to which the party is affiliated; or
- (d) an officer or employee of a peak council to which an organisation or association of which the party is a member is affiliated.

“(8) Subsections (6) and (7) do not apply in relation to:

- (a) proceedings under section 422; or
- (b) proceedings in relation to offences against this Act.

“(9) In a relevant proceeding, a party may be represented as provided by subsection (6) and (7) only with the leave of the Court.

“(10) In this section:

‘party’ includes an intervener;

‘relevant proceeding’ means:

- (a) proceedings under section 46, 82, 153, 413 or 431; or
- (b) proceedings under section 429.

Intervention generally

“470. If the Court is of the opinion that an organisation, person or body should be heard in a proceeding before the Court in a matter arising under this Act, the Court may grant leave to the organisation, person or body to intervene in the proceeding.

Particular rights of intervention of Minister

“471.(1) The Minister may, on behalf of the Commonwealth, by giving written notice to the Registrar of the Court, intervene in the public interest in a proceeding before the Court in a matter arising under this Act.

“(2) If the Minister intervenes in a proceeding before the Court, the Court may, despite section 347, make an order as to costs against the Commonwealth.

“(3) If the Minister intervenes in a proceeding before the Court, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceeding, the Minister is taken to be a party to the proceeding.

“(4) If, under subsection (3), the Minister institutes an appeal from a judgment, a court hearing the appeal may, despite section 347, make an order as to costs against the Commonwealth.

“Division 9—General

Practice and procedure

“472.(1) Subject to any provision made by or under this or any other Act with respect to practice and procedure, the practice and procedure of the Court shall be in accordance with Rules of Court made under this Act.

“(2) In so far as the provisions for the time being applicable in accordance with subsection (1) are insufficient, the Rules of the High Court, as in force for the time being, apply to the Court’s practice and procedure, so far as they can, and so apply:

- (a) with such modifications as the circumstances require; and
- (b) subject to any directions of the Court or a Judge.

“(3) In this section:

‘**practice and procedure**’ includes all matters in relation to which Rules of Court may be made under this Act.

Form of oath or affirmation

“473.(1) This is the form of oath for the purposes of sections 368, 387 and 410:

‘I, _____, do swear that I will well and truly serve in the office of (*Chief Justice, Judge, Judicial Registrar, Registrar, District Registrar, Deputy Registrar, or Deputy District Registrar, as the case requires*) of the Industrial Relations Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill will, So help me God.’

“(2) This is the form of affirmation for the purposes of those sections:

‘I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of (*Chief Justice, Judge, Judicial Registrar, Registrar, District Registrar, Deputy Registrar, or Deputy District Registrar, as the case requires*) of the Industrial Relations Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill will.’

Oaths and affirmations

“474.(1) A Judge may require and administer all necessary oaths and affirmations.

“(2) A person may, for the purposes of any proceeding in the Court, make an affirmation instead of an oath.

“(3) Subject to the Rules of Court, the forms of oaths and affirmations must be the same, as nearly as practicable, as those that are used in the Supreme Court of the State or Territory in which the oath or affirmation is administered.

Swearing of affidavits

“475.(1) An affidavit to be used in a proceeding in the Court may be sworn within Australia or a Territory before a person authorised to administer oaths for the purposes of the High Court or the Supreme Court of a State or Territory, a Judge of the Court, the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar, a justice of the peace, a commissioner of affidavits or a commissioner for declarations.

“(2) An affidavit to be used in a proceeding in the Court may be sworn at a place outside Australia and the Territories before:

- (a) a Commissioner of the High Court authorised to administer oaths in that place for the purposes of the High Court; or
- (b) a commissioner of the Supreme Court of a State or Territory for taking affidavits empowered and authorised to act in that place; or
- (c) an Australian Diplomatic Officer, or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, performing his or her function in that place; or
- (d) a notary public performing his or her function in that place; or
- (e) a person who is qualified to administer an oath in that place and is certified by a person mentioned in any of paragraphs (b), (c) and (d), or by the superior court of that place, to be so qualified.

“(3) An affidavit sworn outside the Commonwealth and the Territories otherwise than before a person referred to in subsection (2) may be used in a proceeding in the Court in circumstances provided by the Rules of Court.

Orders and commissions for examination of witnesses

“476. The Court or a Judge may, for the purposes of any proceeding before it or him or her:

- (a) order the examination of a person on oath before the Court or a Judge, an officer of the Court, or any other person, at any place within Australia; or
- (b) order that a commission issue to a person, either within or beyond Australia, authorising him or her to take testimony on oath of a person;

and the Court or a Judge may:

- (c) by the same or a later order, give any necessary directions concerning the time, place and manner of the examination; and
- (d) empower any party to the proceeding to give in evidence in the proceeding the testimony so taken on such terms (if any) as the Court or Judge directs.

Oral and affidavit evidence

“477.(1) In a proceeding, not being the trial of a cause, testimony is to be given by affidavit or as otherwise directed or allowed by the Court or a Judge.

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“(2) At the trial of a cause, proof may be given by affidavit of the service of a document in or incidental to the proceedings in the cause or of the signature, to such a document, of a party to the cause or of the solicitor of such a party.

“(3) The Court or Judge may at any time, for sufficient reason and on such conditions (if any) as the Court or Judge thinks necessary in the interests of justice, direct or allow proof by affidavit at the trial of a cause to such extent as the Court or Judge thinks fit.

“(4) Despite any order under subsection (3), if a party to a cause desires in good faith that the maker of an affidavit (other than an affidavit referred to in subsection (2)) proposed to be used in the cause be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the cause unless that person appears as a witness for such cross-examination or the Court, in its discretion, permits the affidavit to be used without the person so appearing.

“(5) If the parties to a cause so agree and the Court does not otherwise order, testimony at the trial of the cause may be given by affidavit.

“(6) Subject to this section, and without prejudice to any other law that would, if this subsection had not been enacted, expressly permit any testimony to be otherwise given, testimony at the trial of causes shall be given orally in court.

Change of venue

“478. The Court or a Judge may, at any stage of a proceeding in the Court, direct that the proceeding or a part of the proceeding be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court or Judge imposes.

Reserved judgments

“479.(1) When any proceeding, after being fully heard before a Full Court of the Court, is ordered to stand for judgment, it is not necessary that all the Judges before whom it was heard be present together in Court to declare their opinions.

“(2) Instead, the opinion of any one of them may be reduced to writing and may be made public by any other of them at any later sitting of the Court at which judgment in the proceeding is appointed to be delivered.

“(3) If that is done, the question is to be decided in the same manner, and the judgment of the Court shall have the same force and effect, as if the Judge whose opinion is so made public had been present in Court and declared his or her opinion in person.

Prohibition of publication of evidence etc.

“480. The Court may, at any time during or after the hearing of a proceeding in the Court, make such order forbidding or restricting the publication of particular evidence, or the name of a party or witness, as appears to the Court to be necessary in order to prevent prejudice to the administration of justice or the security of the Commonwealth.

Formal defects not to invalidate

“481.(1) No proceedings in the Court are invalidated by a formal defect or an irregularity, unless the Court considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by an order of the Court.

“(2) The Court or a Judge may, on such conditions (if any) as the Court or Judge thinks fit, make an order declaring that the proceeding is not invalid by reason of a defect that the Court or Judge considers to be formal, or by reason of an irregularity.

Interest up to judgment

“482.(1) In proceedings for the recovery of money (including a debt or damages) in respect of a cause of action that arose after 21 November 1984, the Court or a Judge must, on application, unless good cause is shown to the contrary, either:

- (a) order that there be included in the sum for which judgment is given interest at such rate as the Court or Judge thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date as of which judgment is entered; or
- (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which judgment is given a lump sum instead of any such interest.

“(2) Subsection (1) does not:

- (a) authorise the giving of interest on interest or of a sum instead of such interest; or
- (b) apply in relation to a debt on which interest is payable as of right whether because of an agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange; or
- (d) limit the operation of any enactment or rule of law that, apart from this section, provides for the award of interest; or
- (e) authorise the giving of interest, or a sum instead of interest, except by consent, on a sum for which judgment is given by consent.

“(3) If the sum for which judgment is given (**‘the relevant sum’**) includes, or the Court or a Judge in its or his or her absolute discretion determines that the relevant sum includes, an amount for:

- (a) compensation in respect of liabilities incurred that do not carry interest as against the person claiming interest or claiming a sum instead of interest; or
- (b) compensation for loss or damage to be incurred or suffered after the date on which judgment is given; or
- (c) exemplary or punitive damages;

interest, or a sum instead of interest, must not be given under subsection (1) in respect of such an amount or in respect of so much of the relevant sum as in the opinion of the Court or Judge represents such an amount.

“(4) Subsection (3) does not prevent interest or a sum instead of interest being given under this subsection or compensation in respect of a liability of the kind referred to in paragraph (3)(a) if that liability has been met by the applicant, as from the date on which that liability was so met.

Interest on judgment

“483.(1) A judgment debt under a judgment of the Court carries interest from the date as of which the judgment is entered.

“(2) Interest is payable:

- (a) at such rate as is fixed by the Rules of Court; or
- (b) if the Court, in a particular case, thinks that justice so requires—at such lower rate as the Court determines.

Enforcement of judgment

“484.(1) Subject to the Rules of Court, a person in whose favour a judgment of the Court is given is entitled to the same remedies for enforcement of the judgment in a State or Territory, by execution or otherwise, as are allowed in like cases by the laws of that State or Territory to persons in whose favour a judgment of the Supreme Court of that State or Territory is given.

“(2) This section does not affect the operation of any provision made by or under any other Act or by the Rules of Court for the execution and enforcement of judgments of the Court.

Offences by witnesses

“485.(1) A person duly served with a summons to appear as a witness before the Court must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Court.

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Penalty: 10 penalty units or imprisonment for 3 months.

“(2) A person appearing as a witness before the Court must not, without reasonable excuse:

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that he or she is required by the Court to answer; or
- (c) refuse or fail to produce a book or document that he or she is required by the Court, or by a summons issued from the Court, to produce.

Penalty: 10 penalty units or imprisonment for 3 months.

“(3) Nothing in this section limits the power of the Court to punish for contempt of the Court, but a person must not be punished under this section and for contempt of the Court for the same act or omission.

“Division 10—Rules of Court and regulations

Rules of Court

“486.(1) The Judges of the Court, or a majority of them, may make Rules of Court, not inconsistent with this Act, making provision for or in relation to the practice and procedure to be followed in the Court (including the practice and procedure to be followed in Registries of the Court) and for or in relation to all matters and things incidental to such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court.

“(2) In particular, the Rules of Court may make provision for or in relation to:

- (a) pleading; and
- (b) appearance under protest; and
- (c) interrogatories and discovery, production and inspection of documents; and
- (d) the attendance of witnesses; and
- (e) the administration of oaths and affirmations; and
- (f) the custody of convicted persons; and
- (g) the service and execution of the process of the Court, including the manner in which and the extent to which the process of the Court, or notice of any such process, may be served out of the jurisdiction of the Court; and
- (h) the issue by the Court of letters of request for the service in another country of any process of the Court; and

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- (i) the service by officers of the Court, in Australia or in a Territory, of the process of a court of another country or of a part of another country, in accordance with a request of that court or of an authority of that country or of that part of that country, or in accordance with an arrangement in force between Australia and the government of that other country or of that part of that other country; and
- (j) the enforcement and execution of judgments of the Court; and
- (k) the stay of proceedings in, or under judgments of, the Court or another court; and
- (l) the prevention or termination of vexatious proceedings; and
- (m) the death of parties; and
- (n) the furnishing of security; and
- (o) the costs of proceedings in the Court; and
- (p) the means by which particular facts may be proved and the mode in which evidence of particular facts may be given; and
- (q) the forms to be used for the purposes of proceedings in the Court; and
- (r) the time and manner of instituting appeals to the Court; and
- (s) the duties of officers of the Court; and
- (t) the fees to be charged by practitioners practising in the Court for the work done by them in relation to proceedings in the Court and the taxation of their bills of costs, either as between party and party or as between solicitor and client; and
- (u) the reception, for the purposes of this Act and Part VA of the *Evidence Act 1905*, of copies of instruments, documents and things reproduced by facsimile telegraphy; and
- (v) the reception, for the purposes of this Act and Part VA of the *Evidence Act 1905*, of evidence or submissions by video link or telephone; and
- (w) matters for which any other provision of this Part requires or permits the Rules of Court to make provision.

“(3) Rules of Court under this section have effect subject to any provision made by this or another Act, or by rules or regulations under another Act, about the practice and procedure in particular matters.

“(4) Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under this section as if references in those sections to regulations were references to Rules of Court.

Regulations relating to fees

“487.(1) The Governor-General may make regulations prescribing the fees to be paid in respect of proceedings in the Court or the service or execution of the process of the Court by officers of the Court.

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“(2) This section does not prevent the making of rules or regulations under another Act with respect to a matter referred to in this section, or affect the operation of any such rules or regulations so far as they are not inconsistent with regulations under this section.”.

***Division 2—Amendments of the Industrial Relations Act 1988
to transfer to the new Court jurisdiction of the Federal Court***

Principal Act

57. In this Division, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

Interpretation

58. Section 4 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of “Judge”;
- (b) by omitting from subsection (1) the definitions of “Court” and “judgment” and substituting the following definitions:
 - “ ‘**Court**’ means the Industrial Relations Court of Australia;
 - ‘**judgment**’ means a judgment, decree or order, whether final or interlocutory, or a sentence;”;
- (c) by inserting in subsection (1) the following definitions:
 - “ ‘**Chief Justice**’ means the Chief Justice of the Court;
 - ‘**Federal Court**’ means the Federal Court of Australia;
 - ‘**Full Court**’ means a Full Court of the Court;
 - ‘**Judge**’ means:
 - (a) in the case of a reference to the Court or a Judge—a Judge (including the Chief Justice) sitting in Chambers; or
 - (b) otherwise—a Judge of the Court (including the Chief Justice);”.

Repeal of Part III

59. Part III of the Principal Act is repealed.

Interest on judgment

60.(1) Section 179B of the Principal Act is amended by omitting everything after “would apply” and substituting “under Part XIV if the debt were a judgment debt to which section 483 applies.”.

(2) The amendment made by subsection (1) applies to a judgment or order made after the commencement of this section.

Definitions

61. Section 360 of the Principal Act is amended by omitting the definitions of “Chief Justice”, “Court” and “Judge”.

Division 3—Consequential amendments of other Acts

Consequential amendments

62. The Acts set out in Schedule 4 are amended as set out in that Schedule.

Division 4—Transitional

Interpretation

63. In this Division:

“**Federal Court**” means the Federal Court of Australia;

“**new Court**” means the Industrial Relations Court of Australia;

“**relevant proceeding**” means a proceeding in a matter under section 45D or 45E of the *Trade Practices Act 1974* that was pending immediately before the commencement of Part 6 of this Act;

“**transition**” means the commencement of Divisions 2 and 3 and of this Division.

Transfer of proceedings from Federal Court to new Court

64. This section automatically transfers a proceeding to the new Court at the transition if:

(a) the proceeding is:

(i) a proceeding in a matter arising under the *Industrial Relations Act 1988*; or

(ii) a relevant proceeding; and

(b) immediately before the transition, the proceeding was pending in the Federal Court, but the hearing of the proceeding (except an interlocutory hearing) had not yet begun.

Federal Court to determine part-heard proceedings

65.(1) This section applies if, immediately before the transition:

(a) a proceeding in a matter arising under the *Industrial Relations Act 1988*; or

(b) a relevant proceeding;

was pending in the Federal Court, and the hearing of the proceeding (except an interlocutory hearing) had begun but not yet been completed.

(2) The proceeding is called “**the part-heard proceeding**”.

(3) The Federal Court may complete the hearing and determination of the proceeding as provided by this Division.

(4) For the purposes of subsection (3):

(a) the Federal Court and its Judges continue to have, in respect of that matter, all the jurisdiction and powers they would have had if this Part had not been enacted; and

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- (b) section 4, and Part III, of the *Industrial Relations Act 1988* as in force immediately before the transition continue to have effect as if this Part had not been enacted.

(5) The Federal Court may by order transfer the part-heard proceeding to the new Court if:

- (a) a proceeding that is related to the part-heard proceeding begins in the new Court; and
- (b) the Federal Court considers that it would be in the interests of justice to make the order.

The Federal Court may do so of its own motion or on the application of a party to the part-heard proceeding.

(6) If the Federal Court determines the part-heard proceeding, an appeal from a judgment of the Court given in the proceeding lies, and must be heard and determined, as if this Part had not been enacted.

Provisions about transferred proceedings

66.(1) This section applies if a proceeding is transferred to the new Court by section 64 or under subsection 65(5).

(2) This subsection vests the new Court with such jurisdiction as the Court would not otherwise have with respect to matters for determination in the proceeding.

(3) The new Court may hear and determine the proceeding in accordance with this Division.

(4) Part XIV of the *Industrial Relations Act 1988* applies in relation to the proceeding, and the exercise of jurisdiction under this section in relation to the proceeding, as if the proceeding had begun in the new Court under that Act.

(5) All documents filed of record in the Federal Court in the proceeding must be transferred to the Registrar of the new Court.

(6) Money lodged with the Federal Court in relation to the proceeding must be transferred to the new Court and then dealt with as if it had been originally lodged with the new Court.

(7) Everything done in relation to the proceeding in the Federal Court is taken to have been done in relation to the proceeding in the new Court.

New Court may enforce certain orders of Federal Court

67.(1) The new Court has the same powers in respect of an order of the Federal Court made:

- (a) under the *Industrial Relations Act 1988*; or
- (b) under the *Conciliation and Arbitration Act 1904*; or
- (c) in a relevant proceeding;

as if the order were an order of the new Court. Those powers include powers in respect of contempt of court and enforcing orders.

(2) Subsection (1) does not limit or affect the Federal Court's own powers.

PART 8—MISCELLANEOUS

Principal Act

68. In this Part, "**Principal Act**" means the *Industrial Relations Act 1988*¹.

69. Before section 8 of the Principal Act the following section is inserted in Part I:

Act not to apply so as to exceed Commonwealth power

"7A.(1) Unless the contrary intention appears, if a provision of this Act:

- (a) would, apart from this section, have an invalid application; but
- (b) also has at least one valid application;

it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.

"(2) Despite subsection (1), the provision is not to have a particular valid application if:

- (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
- (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.

"(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

"(4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.

"(5) In this section:

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'application' means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases;

'invalid application', in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power;

'valid application', in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power."

Organisation coverage

70. Section 118A of the Principal Act is amended by inserting after subsection (1) the following subsection:

"(1A) The Commission may make an order under subsection (1) in relation to a demarcation dispute only if:

- (a) it has decided under section 100 not to refer the dispute for conciliation; or
- (b) a conciliation proceeding in relation to the dispute is completed, but the dispute has not been fully settled."

Unfair contracts with independent contractors: Court's powers

71. Section 127A of the Principal Act is amended:

- (a) by inserting in subsection (1) "and in section 127B" after "section";
- (b) by omitting subsection (2) and substituting the following subsection:

"(2) Application may be made to the Court to review a contract on either or both of the following grounds:

- (a) the contract is unfair;
- (b) the contract is harsh."
- (c) by omitting from subsections (4), (5), (6) and (7) "Commission" (wherever occurring) and substituting "Court";
- (d) by omitting paragraph (4)(c).

Court may make orders about unfair contracts

72. Section 127B of the Principal Act is amended by omitting from subsections (1) and (3) "Commission" (wherever occurring) and substituting "Court".

73. Section 133 of the Principal Act is repealed and the following section is substituted:

Industry consultative councils

“133.(1) The Commission must encourage and facilitate the establishment and effective operation of consultative councils for particular industries.

“(2) The Commission must encourage the participants in an industry to use the relevant consultative council:

- (a) to develop measures to improve efficiency and competitiveness in that industry; and
- (b) to address barriers to workplace reform in that industry.

“(3) In order to promote the effective operation of a consultative council for an industry, a Presidential Member may, if the President consents:

- (a) chair meetings of the council; or
- (b) take part in the council’s discussions; or
- (c) nominate another member of the Commission to chair meetings of the council or take part in its discussions.

“(4) The President may consent under subsection (3) only if he or she is satisfied that the council properly represents organisations and associations of employers and organisations of employees in the industry.”.

74. Before Division 1 of Part IX of the Principal Act the following Division is inserted:

“Division 1A—Preliminary

Objects of Part

“187A. As well as the objects set out in section 3, this Part has these objects:

- (a) to encourage the democratic control of organisations;
- (b) to encourage members of organisations to participate in the organisations’ affairs;
- (c) to encourage the efficient management of organisations;
- (d) to encourage and help organisations to develop in a way that promotes the economic prosperity and welfare of the people of Australia;
- (e) to encourage and facilitate the amalgamation of organisations.”.

Criteria for registration

75. Section 189 of the Principal Act is amended by omitting paragraphs (1)(b) and (c) and substituting the following paragraphs:

- “(b) in the case of an association of employers—the members who are employers have, in the aggregate, throughout the 6 months before the application, employed on an average taken per month at least 100 employees;

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- (c) in the case of an association of employees—the association has at least 100 members who are employees;”.

Repeal of sections 193 and 193A

76.(1) Sections 193 and 193A of the Principal Act are repealed.

(2) Despite section 8 of the *Acts Interpretation Act 1901*, no further action is to be taken under section 193 or 193A of the Principal Act after the commencement of this section.

Change of name or alteration of eligibility rules of organisation

77. Section 204 of the Principal Act is amended by inserting after subsection (6) the following subsections:

“(6A) A designated Presidential Member may refuse to consent to an alteration of the eligibility rules of an organisation if satisfied that the alteration would contravene an agreement or understanding to which the organisation is a party and that deals with the organisation’s right to represent under this Act the industrial interests of a particular class or group of persons.

“(6B) Subsection (6A) does not limit the grounds on which a Presidential Member may refuse as mentioned in that subsection.”.

Resignation from membership

78. Section 264 of the Principal Act is amended by adding at the end the following subsection:

“(7) Within 28 days after an organisation of employers receives from an employer a notice of the employer’s resignation from membership of the organisation, the organisation must give written notice of the resignation to:

- (a) the Industrial Registrar; and
- (b) each organisation of employees that is bound by an award that, when the organisation received the notice from the employer, bound the employer because of membership of the organisation (see paragraph 149(1)(f)).”.

Cancellation of registration on technical grounds etc.

79. Section 296 of the Principal Act is amended:

- (a) by adding at the end of subparagraph (b)(i) “or”;
- (b) by omitting subparagraphs (b)(ii) and (iii) and substituting the following subparagraph:

“(ii) is no longer effectively representative of the members who are employers or employees, as the case requires;”;

- (c) by omitting paragraph (c) and substituting the following paragraph:

“(c) on the Presidential Member’s own motion, if:

- (i) the Presidential Member has satisfied himself or herself, as prescribed, that the organisation is defunct; or

- (ii) the organisation is an organisation of employees and has fewer than 100 members who are employees.”.

80. After section 334 of the Principal Act the following section is inserted:

Employees not to be dismissed etc. for engaging in industrial action

“334A.(1) The object of this section is to give effect, in certain respects, to Australia’s international obligation to provide for a right to strike. This obligation arises as mentioned in section 170PA.

“(2) An employer must not dismiss an employee, injure an employee in his or her employment, or alter the position of an employee to the employee’s prejudice, merely because the employee has engaged, or is proposing to engage, in industrial action in relation to an industrial dispute that has been notified to the Commission or that the Commission has found to exist.

Penalty:

- (a) in the case of an individual—5 penalty units; or
- (b) in the case of a body corporate—10 penalty units.

“(3) Subsection (2) does not apply if the industrial action has involved or is likely to involve:

- (a) personal injury; or
- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

“(4) Subsection (2) does not apply in relation to an employee included in a class of employees prescribed by the regulations.

“(5) Regulations may not prescribe a class of employees for the purposes of subsection (4) unless the exclusion of employees in that class from the operation of subsection (2) is consistent with Australia’s international obligation referred to in subsection (1).

“(6) In a prosecution for an offence against subsection (2), it is not necessary for the prosecutor to prove the defendant’s reason for the action charged or the intent with which the defendant took the action charged, but it is a defence to the prosecution if the defendant proves that the action was not motivated solely by the reason, or taken with the sole intent, stated in the charge.

“(7) If an employer is convicted of an offence against subsection (2), the Court may order the employer:

- (a) if the offence was constituted by dismissing an employee—to reinstate the person dismissed to the position that the person occupied immediately before the dismissal or to a position no less favourable than that position; and

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(b) in any case—to pay, to the person dismissed, injured or prejudiced, compensation for loss suffered as a result of the dismissal, injury or prejudice.

“(8) The rights of and relating to reinstatement that are conferred on a person by this section do not limit any other rights of the person.”

SCHEDULE 1

Section 24

**SCHEDULES TO BE ADDED AT THE END OF THE
PRINCIPAL ACT**

SCHEDULE 5

Section 4

**CONVENTION CONCERNING MINIMUM WAGE FIXING, WITH
SPECIAL REFERENCE TO DEVELOPING COUNTRIES**

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour
Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Convention, 1928, and
the Equal Remuneration Convention, 1951, which have been widely ratified, as
well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951,
and

Considering that these Conventions have played a valuable part in protecting
disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing
these Conventions and providing protection for wage earners against unduly low
wages, which, while of general application, pays special regard to the needs of
developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage
fixing machinery and related problems, with special reference to developing
countries, which is the fifth item on the agenda of the session, and

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

adopts this twenty-second day of June of the year one thousand nine hundred and
seventy, the following Convention, which may be cited as the Minimum Wage Fixing
Convention, 1970:

Article 1

1. Each Member of the International Labour Organisation which ratifies this
Convention undertakes to establish a system of minimum wages which covers all
groups of wage earners whose terms of employment are such that coverage would be
appropriate.

2. The competent authority in each country shall, in agreement or after full
consultation with the representative organisations of employers and workers concerned,
where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the
application of the Convention submitted under article 22 of the Constitution of the
International Labour Organisation any groups of wage earners which may not have been
covered in pursuance of this Article, giving the reasons for not covering them, and shall
state in subsequent reports the position of its law and practice in respect of the groups
not covered, and the extent to which effect has been given or is proposed to be given to
the Convention in respect of such groups.

SCHEDULE 1—continued

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include—

- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 hereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of—

- (a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
- (b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

Article 6

This Convention shall not be regarded as revising any existing Convention.

SCHEDULE 1—continued

Article 7

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

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

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

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

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

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

Article 12

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

SCHEDULE 1—continued

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

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

SCHEDULE 1—continued

SCHEDULE 6

Section 4

**CONVENTION CONCERNING EQUAL REMUNERATION FOR MEN
AND WOMEN WORKERS FOR WORK OF EQUAL VALUE.**

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour
Office, and having met in its Thirty-fourth Session on 6 June 1951, and
Having decided upon the adoption of certain proposals with regard to the principle
of equal remuneration for men and women workers for work of equal value, which
is the seventh item on the agenda of the session, and
Having determined that these proposals shall take the form of an International
Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one
the following Convention, which may be cited as the Equal Remuneration Convention,
1951:

Article 1

For the purpose of this Convention—

- (a) the term “remuneration” includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment;
- (b) the term “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of—

- (a) national laws or regulations;
- (b) legally established or recognised machinery for wage determination;
- (c) collective agreements between employers and workers; or
- (d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

SCHEDULE 1—continued

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

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

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate—

- (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;
- (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- (d) the territories in respect of which it reserves its decisions pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

SCHEDULE 1—continued

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

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

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

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

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

SCHEDULE 1—continued

Article 12

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

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

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

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Thirty-fourth Session which was held at Geneva and declared closed the twenty-ninth day of June 1951.

IN FAITH WHEREOF we have appended our signatures this second day of August 1951.

SCHEDULE 1—continued

SCHEDULE 7

Section 170BA

RECOMMENDATION NO. 90

**RECOMMENDATION CONCERNING EQUAL REMUNERATION FOR MEN
AND WOMEN WORKERS FOR WORK OF EQUAL VALUE**

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour
Office, and having met in its Thirty-fourth Session on 6 June 1951, and
Having decided upon the adoption of certain proposals with regard to the principle
of equal remuneration for men and women workers for work of equal value, which
is the seventh item on the agenda of the session, and
Having determined that these proposals shall take the form of a Recommendation,
supplementing the Equal Remuneration Convention, 1951,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one
the following Recommendation, which may be cited as the Equal Remuneration
Recommendation, 1951:

Whereas the Equal Remuneration Convention, 1951, lays down certain general
principles concerning equal remuneration for men and women workers for work of
equal value;

Whereas the Convention provides that the application of the principle of equal
remuneration for men and women workers for work of equal value shall be promoted
or ensured by means appropriate to the methods in operation for determining rates of
remuneration in the countries concerned;

Whereas it is desirable to indicate certain procedures for the progressive application
of the principles laid down in the Convention;

Whereas it is at the same time desirable that all Members should, in applying these
principles, have regard to methods of application which have been found satisfactory
in certain countries;

The Conference recommends that each Member should, subject to the provisions of
Article 2 of the Convention, apply the following provisions and report to the
International Labour Office as requested by the Governing Body concerning the
measures taken to give effect thereto:

1. Appropriate action should be taken, after consultation with the workers'
organisations concerned or, where such organisations do not exist, with the workers
concerned—

- (a) to ensure the application of the principle of equal remuneration for men and women
workers for work of equal value to all employees of central Government
departments or agencies; and
- (b) to encourage the application of the principle to employees of State, provincial or
local Government departments or agencies, where these have jurisdiction over rates
of remuneration.

2. Appropriate action should be taken, after consultation with the employers' and
workers' organisations concerned, to ensure, as rapidly as practicable, the application
of the principle of equal remuneration for men and women workers for work of equal

SCHEDULE 1—continued

value in all occupations, other than those mentioned in Paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards—

- (a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority;
- (b) industries and undertakings operated under public ownership or control; and
- (c) where appropriate, work executed under the terms of public contracts.

3. (1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women for work of equal value.

(2) The competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully informed as to such legal requirements and, where appropriate, advised on their application.

4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration for men and women workers for work of equal value, in respect of employment covered by Paragraph 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures as—

- (a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value;
- (b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as—

- (a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement;
- (b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement;
- (c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and

SCHEDULE 1—continued

(d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

SCHEDULE 1—continued

SCHEDULE 8

Sections 4 and 170PA

**PREAMBLE, AND PARTS II AND III, OF THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

SCHEDULE 1—continued

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

SCHEDULE 1—continued

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

SCHEDULE 1—continued

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

SCHEDULE 1—continued

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

SCHEDULE 1—continued

SCHEDULE 9

Section 170BA

RECOMMENDATION NO. 111

**RECOMMENDATION CONCERNING DISCRIMINATION IN RESPECT OF
EMPLOYMENT AND OCCUPATION**

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour
Office, and having met in its Forty-second Session on 4 June 1958, and
Having decided upon the adoption of certain proposals with regard to discrimination
in the field of employment and occupation, which is the fourth item on the agenda
of the session, and
Having determined that these proposals shall take the form of a Recommendation
supplementing the Discrimination (Employment and Occupation) Convention,
1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and
fifty-eight the following Recommendation, which may be cited as the Discrimination
(Employment and Occupation) Recommendation, 1958;

The Conference recommends that each Member should apply the following
provisions:

I. DEFINITIONS

1.(1) For the purpose of this Recommendation the term “discrimination”
includes—

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex,
religion, political opinion, national extraction or social origin, which has the effect
of nullifying or impairing equality of opportunity or treatment in employment or
occupation;
- (b) such other distinction, exclusion or preference which has the effect of nullifying or
impairing equality of opportunity or treatment in employment or occupation as may
be determined by the Member concerned after consultation with representative
employers’ and workers’ organisations, which such exist, and with other
appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on
the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms “employment” and
“occupation” include access to vocational training, access to employment and to
particular occupations, and terms and conditions of employment.

II. FORMULATION AND APPLICATION OF POLICY

2. Each Member should formulate a national policy for the prevention of
discrimination in employment and occupation. This policy should be applied by means
of legislative measures, collective agreements between representative employers’ and
workers’ organisations or in any other manner consistent with national conditions and
practice, and should have regard to the following principles:

SCHEDULE 1—continued

- (a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;
- (b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of—
 - (i) access to vocational guidance and placement services;
 - (ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;
 - (iii) advancement in accordance with their individual character, experience, ability and diligence;
 - (iv) security of tenure of employment;
 - (v) remuneration for work of equal value;
 - (vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
- (c) government agencies should apply non-discriminatory employment policies in all their activities;
- (d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;
- (e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;
- (f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should—

- (a) ensure application of the principles of non-discrimination—
 - (i) in respect of employment under the direct control of a national authority;
 - (ii) in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- (b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as—
 - (i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;
 - (ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;
 - (iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

SCHEDULE 1—continued

4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular—

- (a) to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;
- (b) to receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and
- (c) to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

**III. CO-ORDINATION OF MEASURES FOR THE
PREVENTION OF DISCRIMINATION IN ALL FIELDS**

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.

SCHEDULE 1—continued

SCHEDULE 10

Section 4

**CONVENTION CONCERNING TERMINATION OF EMPLOYMENT AT
THE INITIATIVE OF THE EMPLOYER**

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour
Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Noting the existing international standards contained in the Termination of
Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment Recommendation,
1963, significant developments have occurred in the law and practice of many
member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new
international standards on the subject, particularly having regard to the serious
problems in this field resulting from the economic difficulties and technological
changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of
employment at the initiative of the employer, which is the fifth item on the agenda
of the session, and

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

adopts this twenty-second day of June of the year one thousand nine hundred and
eighty-two the following Convention, which may be cited as the Termination of
Employment Convention, 1982:

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise made
effective by means of collective agreements, arbitration awards or court decisions or in
such other manner as may be consistent with national practice, be given effect by laws
or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed
persons.

2. A Member may exclude the following categories of employed persons from all
or some of the provisions of this Convention:

- (a) workers engaged under a contract of employment for a specified period of time or
a specified task;
- (b) workers serving a period of probation or a qualifying period of employment,
determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of
employment for a specified period of time the aim of which is to avoid the protection
resulting from this Convention.

SCHEDULE 1—continued

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

For the purpose of this Convention the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION

DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

SCHEDULE 1—continued

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

- (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
- (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination

SCHEDULE 1—continued

was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to—

- (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

SCHEDULE 1—continued

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
 - (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.
2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.
3. For the purposes of this Article the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.
2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.
3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV. FINAL PROVISIONS

Article 15

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

Article 16

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

SCHEDULE 1—continued

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17

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

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

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

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

Article 20

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

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

SCHEDULE 1—continued

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22

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

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.

SCHEDULE 1—continued

SCHEDULE 11

Section 170CA

RECOMMENDATION NO. 166

**RECOMMENDATION CONCERNING TERMINATION OF
EMPLOYMENT AT THE INITIATIVE OF THE EMPLOYER**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two, the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

2.(1) This Recommendation applies to all branches of economic activity and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a whole provide protection that is at least equivalent to the protection afforded under the Recommendation.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application

SCHEDULE 1—continued

of this Recommendation or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

3.(1) Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following:

- (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;
- (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;
- (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

II. STANDARDS OF GENERAL APPLICATION

Justification for Termination

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:

- (a) age, subject to national law and practice regarding retirement;
- (b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6.(1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

Procedure Prior to or at the Time of Termination

7. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

SCHEDULE 1—continued

8. The employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

9. A worker should be entitled to be assisted by another person when defending himself, in accordance with Article 7 of the Termination of Employment Convention, 1982, against allegations regarding his conduct or performance liable to result in the termination of his employment; this right may be specified by the methods of implementation referred to in Paragraph 1 of this Recommendation.

10. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

11. The employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.

12. The employer should notify a worker in writing of a decision to terminate his employment.

13.(1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) Subparagraph (1) of this Paragraph need not be applied in the case of collective termination for the reasons referred to in Articles 13 and 14 of the Termination of Employment Convention, 1982, if the procedure provided for therein is followed.

Procedure of Appeal against Termination

14. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment.

15. Efforts should be made by public authorities, workers' representatives and organisations of workers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

Time Off from Work during the Period of Notice

16. During the period of notice referred to in Article 11 of the Termination of Employment Convention, 1982, the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

Certificate of Employment

17. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying only the dates of his engagement and termination of his employment and the type or types of work on which he was employed; nevertheless, and at the request of the worker, an evaluation of his conduct and performance may be given in this certificate or in a separate certificate.

Severance Allowance and Other Income Protection

18.(1) A worker whose employment has been terminated should be entitled, in accordance with national law and practice, to—

SCHEDULE 1—continued

- (a) a severance allowance or other separation benefits, the amount of which should be based, inter alia, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in subparagraph (1)(a) of this Paragraph solely because he is not receiving an unemployment benefit under subparagraph (1)(b).

(3) Provision may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1)(a) of this Paragraph in the event of termination for serious misconduct.

III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

19.(1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.

(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

Consultations on Major Changes in the Undertaking

20.(1) When the employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Measures to Avert or Minimise Termination

21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce

SCHEDULE 1—continued

reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

22. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.

Criteria for Selection for Termination

23.(1) The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

Priority of Rehiring

24.(1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights—particularly seniority rights—in the event of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

Mitigating the Effects of Termination

25.(1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

SCHEDULE 1—continued

26.(1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

IV. EFFECT ON EARLIER RECOMMENDATION

27. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.

SCHEDULE 1—continued

SCHEDULE 12

Section 4

CONVENTION CONCERNING EQUAL OPPORTUNITIES AND EQUAL TREATMENT FOR MEN AND WOMEN WORKERS: WORKERS WITH FAMILY RESPONSIBILITIES

The General Conference of the International Labour Organisation,

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

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

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

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

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

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

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

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

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

SCHEDULE 1—continued

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

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

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

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

Article 1

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

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms “dependent child” and “other member of the immediate family who clearly needs care or support” mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as “workers with family responsibilities”.

Article 2

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

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term “discrimination” means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

SCHEDULE 1—continued

Article 4

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

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

Article 5

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

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

SCHEDULE 1—continued

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

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

Article 12

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

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

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

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

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

SCHEDULE 1—continued

Article 16

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

Article 17

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

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

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

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

SCHEDULE 1—continued

SCHEDULE 13

Section 170KA

RECOMMENDATION NO. 165

RECOMMENDATION CONCERNING EQUAL OPPORTUNITIES AND EQUAL TREATMENT FOR MEN AND WOMEN WORKERS: WORKERS WITH FAMILY RESPONSIBILITIES

The General Conference of the International Labour Organisation,

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

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

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

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

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

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

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

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

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

SCHEDULE 1—continued

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

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

Having determined that these proposals shall take the form of a Recommendation, adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the Workers with Family Responsibilities Recommendation, 1981:

I. DEFINITION, SCOPE AND MEANS OF IMPLEMENTATION

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

(2) The provisions of this Recommendation should also be applied to men and women workers with responsibilities in relation to other members of their immediate family who need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(3) For the purposes of this Recommendation, the terms “dependent child” and “other member of the immediate family who needs care or support” mean persons defined as such in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(4) The workers covered by virtue of subparagraphs (1) and (2) of this Paragraph are hereinafter referred to as “workers with family responsibilities”.

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

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

4. The provisions of this Recommendation may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken should apply in any case to all the workers covered by Paragraph 1, subparagraph (1).

5. Employers’ and workers’ organisations should have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Recommendation.

SCHEDULE 1—continued

II. NATIONAL POLICY

6. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member should make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

7. Within the framework of a national policy to promote equality of opportunity and treatment for men and women workers, measures should be adopted and applied with a view to preventing direct or indirect discrimination on the basis of marital status or family responsibilities.

8.(1) For the purposes of Paragraphs 6 and 7 above, the term “discrimination” means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

(2) During a transitional period special measures aimed at achieving effective equality between men and women workers should not be regarded as discriminatory.

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

- (a) to enable workers with family responsibilities to exercise their right to vocational training and to free choice of employment;
- (b) to take account of their needs in terms and conditions of employment and in social security; and
- (c) to develop or promote child-care, family and other community services, public or private, responding to their needs.

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

11. The competent authorities and bodies in each country should take appropriate measures—

- (a) to undertake or promote such research as may be necessary into the various aspects of the employment of workers with family responsibilities with a view to providing objective information on which sound policies and measures may be based; and
- (b) to promote such education as will encourage the sharing of family responsibilities between men and women and enable workers with family responsibilities better to meet their employment and family responsibilities.

III. TRAINING AND EMPLOYMENT

12. All measures compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

SCHEDULE 1—continued

13. In accordance with national policy and practice, vocational training facilities and, where possible, paid educational leave arrangements to use such facilities should be made available to workers with family responsibilities.

14. Such services as may be necessary to enable workers with family responsibilities to enter or re-enter employment should be available, within the framework of existing services for all workers or, in default thereof, along lines appropriate to national conditions; they should include, free of charge to the workers, vocational guidance, counselling, information and placement services which are staffed by suitably trained personnel and are able to respond adequately to the special needs of workers with family responsibilities.

15. Workers with family responsibilities should enjoy equality of opportunity and treatment with other workers in relation to preparation for employment, access to employment, advancement within employment and employment security.

16. Marital status, family situation or family responsibilities should not, as such, constitute valid reasons for refusal or termination of employment.

IV. TERMS AND CONDITIONS OF EMPLOYMENT

17. All measures compatible with national conditions and possibilities and with the legitimate interests of other workers should be taken to ensure that terms and conditions of employment are such as to enable workers with family responsibilities to reconcile their employment and family responsibilities.

18. Particular attention should be given to general measures for improving working conditions and the quality of working life, including measures aiming at—

- (a) the progressive reduction of daily hours of work and the reduction of overtime, and
- (b) more flexible arrangements as regards working schedules, rest periods and holidays,

account being taken of the stage of development and the particular needs of the country and of different sectors of activity.

19. Whenever practicable and appropriate, the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work.

20. Family responsibilities and considerations such as the place of employment of the spouse and the possibilities of educating children should be taken into account when transferring workers from one locality to another.

21.(1) With a view to protecting part-time workers, temporary workers and homeworkers, many of whom have family responsibilities, the terms and conditions on which these types of employment are performed should be adequately regulated and supervised.

(2) The terms and conditions of employment, including social security coverage, of part-time workers and temporary workers should be, to the extent possible, equivalent to those of full-time and permanent workers respectively; in appropriate cases, their entitlement may be calculated on a pro rata basis.

(3) Part-time workers should be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances which determined assignment to part-time employment no longer exist.

SCHEDULE 1—continued

22.(1) Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded.

(2) The length of the period following maternity leave and the duration and conditions of the leave of absence referred to in subparagraph (1) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(3) The leave of absence referred to in subparagraph (1) of this Paragraph may be introduced gradually.

23.(1) It should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness.

(2) It should be possible for a worker with family responsibilities to obtain leave of absence in the case of the illness of another member of the worker's immediate family who needs that worker's care or support.

(3) The duration and conditions of the leave of absence referred to in subparagraphs (1) and (2) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

V. CHILD-CARE AND FAMILY SERVICES AND FACILITIES

24. With a view to determining the scope and character of the child-care and family services and facilities needed to assist workers with family responsibilities to meet their employment and family responsibilities, the competent authorities should, in co-operation with the public and private organisations concerned, in particular employers' and workers' organisations, and within the scope of their resources for collecting information, take such measures as may be necessary and appropriate—

- (a) to collect and publish adequate statistics on the number of workers with family responsibilities engaged in or seeking employment and on the number and age of their children and of other dependants requiring care; and
- (b) to ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for child-care and family services and facilities.

25. The competent authorities should, in co-operation with the public and private organisations concerned, take appropriate steps to ensure that child-care and family services and facilities meet the needs and preferences so revealed; to this end they should, taking account of national and local circumstances and possibilities, in particular—

- (a) encourage and facilitate the establishment, particularly in local communities, of plans for the systematic development of child-care and family services and facilities, and
- (b) themselves organise or encourage and facilitate the provision of adequate and appropriate child-care and family services and facilities, free of charge or at a reasonable charge in accordance with the workers' ability to pay, developed along flexible lines and meeting the needs of children of different ages, of other dependants requiring care and of workers with family responsibilities.

SCHEDULE 1—continued

26.(1) Child-care and family services and facilities of all types should comply with standards laid down and supervised by the competent authorities.

(2) Such standards should prescribe in particular the equipment and hygienic and technical requirements of the services and facilities provided and the number and qualifications of the staff.

(3) The competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and family services and facilities.

VI. SOCIAL SECURITY

27. Social security benefits, tax relief, or other appropriate measures consistent with national policy should, when necessary, be available to workers with family responsibilities.

28. During the leave of absence referred to in Paragraphs 22 and 23, the workers concerned may, in conformity with national conditions and practice, and by one of the means referred to in Paragraph 3 of this Recommendation, be protected by social security.

29. A worker should not be excluded from social security coverage by reference to the occupational activity of his or her spouse and entitlement to benefits arising from that activity.

30.(1) The family responsibilities of a worker should be an element to be taken into account in determining whether employment offered is suitable in the sense that refusal of the offer may lead to loss or suspension of unemployment benefit.

(2) In particular, where the employment offered involves moving to another locality, the considerations to be taken into account should include the place of employment of the spouse and the possibilities of educating children.

31. In applying Paragraphs 27 to 30 of this Recommendation, a Member whose economy is insufficiently developed may take account of the national resources and social security arrangements available.

VII. HELP IN EXERCISE OF FAMILY RESPONSIBILITIES

32. The competent authorities and bodies in each country should promote such public and private action as is possible to lighten the burden deriving from the family responsibilities of workers.

33. All measures compatible with national conditions and possibilities should be taken to develop home-help and home-care services which are adequately regulated and supervised and which can provide workers with family responsibilities, as necessary, with qualified assistance at a reasonable charge in accordance with their ability to pay.

34. Since many measures designed to improve the conditions of workers in general can have a favourable impact on those of workers with family responsibilities, the competent authorities and bodies in each country should promote such public and private action as is possible to make the provision of services in the community, such as public transport, supply of water and energy in or near workers' housing and housing with labour-saving layout, responsive to the needs of workers.

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SCHEDULE 1—continued

VIII. EFFECT ON EXISTING RECOMMENDATIONS

35. This Recommendation supersedes the Employment (Women with Family Responsibilities) Recommendation, 1965.

SCHEDULE 1—continued

SCHEDULE 14

Section 170KB

PARENTAL LEAVE

PART 1—PRELIMINARY

Basic Principles

1.(1) Under this Schedule, an employee who gives birth to a child, and that employee's spouse, are entitled to unpaid parental leave totalling 52 weeks to care for the newborn child.

(2) However, an employee's entitlement to leave under this Schedule is reduced by his or her other parental leave entitlements (for example, under an award or under a State law).

(3) To obtain parental leave under this Schedule, an employee must satisfy requirements relating to:

- (a) length of service;
- (b) notice periods;
- (c) information and documentation.

(4) Except for a period of one week at the time of the birth, an employee and his or her spouse must take parental leave at different times.

(5) An employee may take other leave (for example, annual leave) in conjunction with parental leave, but this will reduce the amount of parental leave he or she may take.

(6) Parental leave may be varied in certain circumstances. In general, if a variation is foreseeable, an employee must give notice of it, but if a variation is not foreseeable notice is not required (for example, in the case of a premature birth).

(7) Cancellation of parental leave by the employer is limited to situations where the employee will not become, or ceases to be, the child's primary care-giver, or where there has been a mistake in calculating the amount of leave to which the employee is entitled.

(8) An employee who takes parental leave is, in most circumstances, entitled to return to the position which he or she held before the leave was taken.

(9) Parental leave does not break an employee's continuity of service.

Definitions

2. In this Schedule:

SCHEDULE 1—continued

“employee” includes a part-time employee, but not a casual or seasonal employee;

“continuous service” means service (otherwise than as a casual or seasonal employee) under an unbroken contract of employment, and includes a period of leave, or a period of absence, authorised:

- (a) by the employer; or
- (b) by an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or a workplace agreement certified by such a body; or
- (c) by a contract of employment; or
- (d) by this Schedule or another law of the Commonwealth or of a State or a Territory;

“law” includes an unwritten law;

“long paternity leave” means Schedule 14 long paternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of the birth of a child of his spouse, otherwise than under this Schedule (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 long paternity leave, or would be of such a kind but for one or more of the following:
 - (i) it is paid leave;
 - (ii) differences in the rules governing eligibility for it;
 - (iii) differences in the period or periods for which it can be taken;

“maternity leave” means Schedule 14 maternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of her pregnancy or the birth of her child, otherwise than under this Schedule (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 maternity leave, or would be of such a kind but for one or more of the following:
 - (i) it is paid leave;
 - (ii) it can begin before the estimated date of birth;
 - (iii) differences in the rules governing eligibility for it;
 - (iv) differences in the period or periods for which it can be taken;

SCHEDULE 1—continued

“**medical certificate**” means a certificate signed by a registered medical practitioner;

“**parental leave**” means maternity leave or paternity leave;

“**paternity leave**” means short paternity leave or long paternity leave;

“**short paternity leave**” means Schedule 14 short paternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of the birth of a child of his spouse, otherwise than under this Schedule (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 short paternity leave, or would be of such a kind but for one or more of the following:
 - (i) it is paid leave;
 - (ii) differences in the rules governing eligibility for it;
 - (iii) differences in the period or periods for which it can be taken;

“**Schedule 14 long paternity leave**” has the meaning given by clause 13;

“**Schedule 14 maternity leave**” has the meaning given by subclause 3(1);

“**Schedule 14 short paternity leave**” has the meaning given by clause 13;

“**spouse**”, in relation to an employee, includes a person of the opposite sex to the employee who lives with the employee in a marriage-like relationship, although not legally married to the employee.

PART 2—MATERNITY LEAVE

Entitlement to maternity leave

3.(1) Subject to this Schedule, an employee who becomes pregnant is entitled to a single period of unpaid leave (“**Schedule 14 maternity leave**”) in respect of the birth of the child.

(2) An employer must grant Schedule 14 maternity leave to an employee in accordance with clause 4 if:

- (a) at least 10 weeks before the estimated date of birth, she notifies the employer in writing of that date; and
- (b) she applies in writing for the leave; and
- (c) the application specifies the first and last days of the period of leave; and
- (d) the first day of the period of leave is the estimated date of birth or a later day; and
- (e) she submits the application at least 4 weeks before the first day of the period of leave; and

SCHEDULE 1—continued

- (f) she submits with the application a medical certificate that:
 - (i) states that she is pregnant and specifies the estimated date of birth; or
 - (ii) states that she has given birth to a living child and specifies the date of birth;as the case requires; and
 - (g) she submits with the application a statutory declaration specifying:
 - (i) any period of short paternity leave for which her spouse intends to apply, or has applied, in respect of the birth of the child; and
 - (ii) the first and last days of any period of long paternity leave for which her spouse intends to apply, or has applied, in respect of the birth of the child; and
 - (iii) the first and last days of each period of annual leave, or long service leave, for which her spouse intends to apply, or has applied, instead of, or in conjunction with, such paternity leave;and stating:
 - (iv) that she will be the child's primary care-giver throughout the period of maternity leave; and
 - (v) that she will not engage in any conduct inconsistent with her contract of employment while on maternity leave; and
 - (h) it is reasonable to expect that she will complete, or she had completed, as the case requires, a period of at least 12 months continuous service with the employer on the day before the date notified under paragraph (a).
- (3) Paragraphs (2)(a) and (h) do not apply if:**
- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with paragraph (2)(a); and
 - (b) if it was reasonably practicable for the employee to give to the employer, before the actual date of birth, written notice of the estimated date of birth—she did so as soon as reasonably practicable; and
 - (c) otherwise—the medical certificate submitted under paragraph (2)(f) also specifies the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and

SCHEDULE 1—continued

(d) it is reasonable to expect that the employee will complete, or the employee had completed, as the case requires, 12 months continuous service with the employer on the day before the date notified under paragraph (b), or specified under paragraph (c), of this subclause.

(4) Paragraph (2)(e) does not apply if:

- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with that paragraph; and
- (b) the employee submits the application as soon as reasonably practicable before, on or after the first day of the period of leave; and
- (c) if the child is born before the employee submits the application—the first day of the period of leave is the date of the child’s birth or a later day.

If paragraph (c) of this subclause applies, paragraph (2)(d) does not apply.

(5) If, because of paragraph (4)(c), the first day of the period of leave is earlier than the date notified under paragraph (2)(a) or (3)(b) or specified under paragraph (3)(c), a reference in paragraph (2)(h) or (3)(d) or clause 9 to 12 months continuous service is taken to be a reference to a period of continuous service equal to 12 months reduced by the period beginning on the first day of the period of leave and ending on that date.

(6) If an employee applies under subclause (2) for maternity leave (“**the substitute leave**”) to be taken instead of maternity leave (“**the original leave**”) for which she has already applied under that subclause, then:

- (a) if a document submitted with the application for the original leave complies with paragraph (2)(f) or (g) as applying in relation to the application for the substitute leave, the document is taken to have also been submitted with the latter application; and
- (b) if the employer grants the substitute leave, the employer:
 - (i) must cancel the original leave if it has already been granted; or
 - (ii) must not grant it if it has not already been granted.

What maternity leave must the employer grant?

4.(1) The period of Schedule 14 maternity leave that clause 3 requires an employer to grant to an employee:

- (a) if the child has not yet been born—must begin on the later of:
 - (i) the day specified in the application as the first day of the period of leave; or
 - (ii) the estimated date of birth;and must not extend beyond the first anniversary of the estimated date of birth; and

SCHEDULE 1—continued

- (b) otherwise—must begin on the later of:
 - (i) the day specified in the application as the first day of the period of leave; or
 - (ii) the child’s date of birth;and must not extend beyond the child’s first birthday; and
 - (c) must not overlap with a period of leave (other than short paternity leave) specified in the relevant statutory declaration; and
 - (d) subject to the preceding paragraphs, must be a continuous period equal to the shorter of:
 - (i) the period applied for;
 - (ii) the period of entitlement.
- (2)** The period of entitlement is 52 weeks less the total of:
- (a) each period of unpaid leave, or paid sick leave, other than maternity leave, that the employer has already granted to the employee in respect of the same pregnancy; and
 - (b) each period of annual leave, or long service leave, that the employee has applied for instead of, or in conjunction with, maternity leave in respect of the pregnancy; and
 - (c) each period of leave specified in the relevant statutory declaration.

Entitlement under clauses 3 and 4 to be reduced by other maternity leave available to employee

5.(1) This section applies if, had this Schedule not been enacted:

- (a) an employee could have applied, in respect of her pregnancy or the birth of her child, for maternity leave to which paragraphs (a) and (b) of the definition of “maternity leave” in clause 2 applies; and
- (b) if she had so applied in accordance with the rules governing that maternity leave, she would have a legally enforceable right to a period of such leave;

whether or not she has in fact so applied.

(2) The period of leave referred to in paragraph (1)(b) is called “**the period of alternative leave**”.

(3) The period (if any) of Schedule 14 maternity leave that clauses 3 and 4 would, but for this clause, require the employer to grant to the employee in respect of the birth of the child is called “**the unadjusted period of maternity leave**”.

(4) If the period of alternative leave is as long as, or longer than, the unadjusted period of maternity leave, the employer must not grant maternity leave to the employee under clauses 3 and 4 in respect of the birth.

SCHEDULE 1—continued

(5) Otherwise, the employer must grant to the employee, instead of the unadjusted period of maternity leave, a period of maternity leave that:

- (a) equals the difference between the unadjusted period of maternity leave and the period of alternative leave; and
- (b) begins immediately after the period of alternative leave if the employer grants it; and
- (c) in other respects complies with clause 4.

Note: This clause assumes that an employee will make a single application for a composite period of parental leave to which she is entitled, and that the application will be made in accordance with both this Schedule and the rules governing the other kind of parental leave for which the employee is applying.

Taking annual leave or long service leave instead of, or in conjunction with, maternity leave

6. If an employee (“the mother”) applies to take annual leave, or long service leave, instead of, or in conjunction with, Schedule 14 maternity leave, the employer must grant the annual leave or long service leave if:

- (a) had this Schedule not been enacted, the employer would have been obliged to grant it (for example, because of some other law of the Commonwealth or of a State or Territory); or
- (b) the total of the following does not exceed 52 weeks:
 - (i) the period of annual leave or long service leave;
 - (ii) each period of annual leave, or long service leave, that the employer has already granted to the mother instead of, or in conjunction with, the maternity leave;
 - (iii) the period of maternity leave;
 - (iv) each period of unpaid leave, or paid sick leave, other than maternity leave, that the employer has already granted to the mother in respect of the same pregnancy;
 - (v) each period of leave specified under paragraph 3(2)(g) in the relevant statutory declaration.

Extension of maternity leave

7.(1) An employee may apply in writing for an extension of Schedule 14 maternity leave granted to her.

- (2) The employer must grant the application if:
 - (a) it is given to the employer at least 14 days before the last day of the period of leave; and
 - (b) it specifies the first or last day of the extended period of leave, as the case requires; and

SCHEDULE 1—continued

- (c) unless the matters referred to in subparagraphs 3(2)(g)(i), (ii) and (iii) are still as stated in the relevant statutory declaration—the employee submits with the application for the extension a statutory declaration stating the matters referred to in those subparagraphs; and
- (d) the period of leave, if extended in accordance with the application, would not exceed the period of entitlement under clause 4, calculated as at the time of granting the application for the extension.

(3) The period of maternity leave may be extended again only by agreement between the employer and the employee.

Shortening of maternity leave

8.(1) An employee may apply in writing to shorten the period of Schedule 14 maternity leave granted to her.

(2) The employer may grant the application if it specifies the last day of the shortened period of leave.

Effect on maternity leave of failure to complete 12 months continuous service

9. If Schedule 14 maternity leave has been granted on the basis that it is reasonable to expect that the employee will complete a period of at least 12 months continuous service with the employer on a particular day, the employer may cancel the leave if the employee does not complete such a period on that day.

Effect on maternity leave if pregnancy terminates or child dies

10.(1) This clause applies if an employer has granted Schedule 14 maternity leave to an employee and:

- (a) the pregnancy terminates otherwise than by the birth of a living child;
or
- (b) the employee gives birth to a living child but the child later dies.

(2) The employer may cancel the maternity leave at any time before it begins.

(3) If the maternity leave has begun, the employee may notify the employer in writing that she wishes to return to work.

(4) If she does so, the employer must notify her in writing of the day on which she is to return to work. That day must be within 4 weeks after the employer received the notice under subclause (3).

(5) If the maternity leave has begun, the employer may notify the employee in writing that she must return to work on a specified day that is not less than 4 weeks after the notice is given.

SCHEDULE 1—continued

(6) If the employee returns to work, the employer must cancel the rest of the maternity leave.

Effect on maternity leave if mother ceases to be the primary care-giver

11.(1) This clause applies if:

- (a) during a substantial period beginning on or after the beginning of an employee's Schedule 14 maternity leave, the employee is not the child's primary care-giver; and
- (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.

(2) The employer may notify the employee in writing that she must return to work on a specified day that is not less than 4 weeks after the notice is given.

(3) If the employee returns to work, the employer must cancel the rest of the maternity leave.

Return to work after maternity leave

12.(1) This clause applies when an employee returns to work after a period of Schedule 14 maternity leave.

(2) The employer must employ her in the position she held:

- (a) if she was transferred to a safe job because of her pregnancy—immediately before the transfer; or
- (b) if she began working part-time because of the pregnancy—immediately before she so began; or
- (c) otherwise—immediately before she began maternity leave.

(3) If that position no longer exists but she is qualified for, and can perform the duties of, other positions in the employer's employment, the employer must employ her in whichever of those positions is nearest in status and remuneration to the position referred to in subclause (2).

PART 3—PATERNITY LEAVE

Entitlement to paternity leave

13. Subject to this Schedule, an employee is entitled, in respect of the birth of a child of his spouse, to each of the following:

- (a) a period of unpaid paternity leave ("**Schedule 14 short paternity leave**") beginning on the child's date of birth and lasting not more than one week;

SCHEDULE 1—continued

- (b) a period of unpaid paternity leave (“**Schedule 14 long paternity leave**”) in order to be the child’s primary care-giver.

Short paternity leave

14.(1) An employer must grant Schedule 14 short paternity leave to an employee if:

- (a) at least 10 weeks before the estimated date of birth, he gives to the employer:
 - (i) a written notice stating his intention to apply for the leave and specifying how long the leave is to last, being a period of not more than one week; and
 - (ii) a medical certificate that names his spouse, states that she is pregnant and specifies the estimated date of birth; and
 - (b) he applies in writing for the leave; and
 - (c) the application specifies the first and last days of the period of leave; and
 - (d) he submits the application as soon as reasonably practicable on or after the first day of the period of leave; and
 - (e) the period of leave does not exceed the period specified under paragraph (a); and
 - (f) unless the first day of the period of leave is the same as the date specified under subparagraph (a)(ii):
 - (i) he submits with the application a medical certificate that names his spouse and specifies the actual date of birth; and
 - (ii) the first day of the period of leave is that day; and
 - (g) it is reasonable to expect that he will complete, or he had completed, as the case requires, a period of at least 12 months continuous service with the employer on the day before the date specified under subparagraph (a)(ii).
- (2)** Paragraphs (1)(a) and (g) do not apply if:
- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with paragraph (1)(a); and
 - (b) if it was reasonably practicable for the employee to give to the employer, before the actual date of birth, the notice and certificate referred to in that paragraph—he did so as soon as reasonably practicable; and
 - (c) otherwise—the medical certificate submitted under subparagraph (1)(f)(i) also specifies the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and

SCHEDULE 1—continued

- (d) it is reasonable to expect that the employee will complete, or the employee had completed, as the case requires, 12 months continuous service with the employer on the day before the estimated date of birth specified in the certificate given under paragraph (b), or specified under paragraph (c), of this subclause.

Long paternity leave

15.(1) An employer must grant Schedule 14 long paternity leave to an employee if:

- (a) he applies in writing for the leave; and
- (b) the application specifies the first and last days of the period of leave; and
- (c) he submits the application at least 10 weeks before the first day of the period of leave; and
- (d) he submits with the application a medical certificate that names his spouse and:

- (i) states that she is pregnant and specifies the estimated date of birth; or
- (ii) states that she has given birth to a living child and specifies the date of birth;

as the case requires; and

- (e) he submits with the application a statutory declaration specifying the first and last days of:
 - (i) each period of unpaid leave, or paid sick leave, other than maternity leave, for which the spouse intends to apply, or has applied, in respect of the pregnancy; and
 - (ii) any period of maternity leave for which the spouse intends to apply, or has applied, in respect of the birth of the child; and
 - (iii) each period of annual leave, or long service leave, for which the spouse intends to apply, or has applied, instead of, or in conjunction with, maternity leave;

and stating:

- (iv) that he will be the child's primary care-giver throughout the period of paternity leave; and
- (v) that he will not engage in any conduct inconsistent with his contract of employment while on paternity leave; and
- (f) it is reasonable to expect that he will complete, or he had completed, as the case requires, a period of at least 12 months continuous service with the employer on the day before the first day of the period of leave.

SCHEDULE 1—continued

- (2)** Paragraph (1)(c) does not apply if:
- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to submit the application at least 10 weeks before the first day of the period of leave; and
 - (b) the employee submits the application as soon as reasonably practicable before, on or after that day.
- (3)** The period of Schedule 14 long paternity leave:
- (a) if the child has not yet been born—must begin on the later of:
 - (i) the day specified in the application as the first day of the period of leave; or
 - (ii) the estimated date of birth;and must not extend beyond the first anniversary of the estimated date of birth; and
 - (b) otherwise—must begin on the later of:
 - (i) the day specified in the application as the first day of the period of leave; or
 - (ii) the child's date of birth;and must not extend beyond the child's first birthday; and
 - (c) must not overlap with a period of leave specified in the relevant statutory declaration; and
 - (d) subject to the preceding paragraphs, must be a continuous period equal to the shorter of:
 - (i) the period applied for;
 - (ii) the period of entitlement.
- (4)** The period of entitlement is 52 weeks less the total of:
- (a) if the employee has given the employer notice of his intention to apply for a period of short paternity leave in respect of the birth of the child—that period; and
 - (b) each period of annual leave, or long service leave, that the employee has applied to take instead of, or in conjunction with, long paternity leave in respect of the birth of the child; and
 - (c) each period of leave specified in the relevant statutory declaration.

Entitlement under clause 14 or 15 to be reduced by other paternity leave available to employee

- 16.(1)** This clause applies if, had this Schedule not been enacted:

SCHEDULE 1—continued

- (a) an employee could have applied, in respect of the birth of a child of his spouse, for short paternity leave or long paternity leave to which paragraphs (a) and (b) of the definition of “short paternity leave” or “long paternity leave”, as the case may be, in clause 2 apply; and
- (b) if he had so applied in accordance with the rules governing that paternity leave, he would have a legally enforceable right to a period of such leave;

whether or not he has in fact so applied.

(2) The period of leave referred to in paragraph (1)(b) is called “**the period of alternative leave**”.

(3) The period of Schedule 14 short paternity leave or Schedule 14 long paternity leave, as the case may be, that clause 14 or 15 would, but for this clause, require the employer to grant to the employee in respect of the birth of the child is called the “**unadjusted period of paternity leave**”.

(4) If the period of alternative leave is as long as, or longer than, the unadjusted period of paternity leave, the employer must not grant leave under clause 14 or 15, as the case may be, in respect of the birth.

(5) Otherwise, the employer must grant to the employee, instead of the unadjusted period of paternity leave, a period of short paternity leave, or long paternity leave, as the case may be, that:

- (a) equals the difference between the unadjusted period of paternity leave and the period of alternative leave; and
- (b) begins immediately after the period of alternative leave if the employer grants it; and
- (c) in other respects complies with clause 14 or 15, as the case may be.

Note: This clause assumes that an employee will make a single application for a composite period of parental leave to which he is entitled, and that the application will be made in accordance with both this Schedule and the rules governing the other kind of parental leave for which the employee is applying.

Taking annual leave or long service leave instead of, or in conjunction with, paternity leave

17. If an employee applies to take annual leave, or long service leave, instead of, or in conjunction with, Schedule 14 short paternity leave or Schedule 14 long paternity leave in respect of the birth of a child of the employee’s spouse, the employer must grant the annual leave or long service leave if:

- (a) had this Schedule not been enacted, the employer would have been obliged to grant it (for example, because of some other law of the Commonwealth or of a State or a Territory); or
- (b) the total of the following does not exceed 52 weeks:

SCHEDULE 1—continued

- (i) the period of annual leave or long service leave;
- (ii) each period of annual leave, or long service leave, that the employer has already granted to the employee instead of, or in conjunction with, the paternity leave;
- (iii) each period of paternity leave that the employer has already granted to the employee in respect of the birth;
- (iv) each period of leave specified under paragraph 15(1)(e) in the relevant statutory declaration.

Extension of long paternity leave

18.(1) An employee may apply in writing for an extension of Schedule 14 long paternity leave granted to him.

- (2) The employer must grant the application if:
 - (a) it is given to the employer at least 14 days before the last day of the period of leave; and
 - (b) it specifies the last day of the extended period of leave; and
 - (c) unless the matters referred to in subparagraphs 15(1)(e)(i), (ii) and (iii) are still as stated in the statutory declaration submitted with the application for the leave—the employee submits with the application for the extension a statutory declaration stating the matters referred to in those subparagraphs; and
 - (d) the period of leave, if extended in accordance with the application, would not exceed the period of entitlement under subclause 15(4), calculated as at the time of granting the application for the extension.

(3) The period of paternity leave may be extended again only by agreement between the employer and the employee.

Shortening of paternity leave

19.(1) An employee may apply in writing to shorten the period of Schedule 14 paternity leave granted to him.

(2) The employer may grant the application if it specifies the last day of the shortened period of leave.

Effect on long paternity leave of failure to complete 12 months continuous service

20. If Schedule 14 long paternity leave has been granted on the basis that it is reasonable to expect that the employee will complete a period of at least 12 months continuous service with the employer on a particular day, the employer may cancel the leave if the employee does not complete such a period on that day.

SCHEDULE 1—continued

Effect on long paternity leave if pregnancy terminates or child dies

21.(1) This clause applies if an employer has granted Schedule 14 long paternity leave to an employee and:

- (a) the employee's spouse's pregnancy terminates otherwise than by the birth of a living child; or
- (b) the employee's spouse gives birth to a living child but the child later dies.

(2) The employer may cancel the leave at any time before it begins.

(3) If the leave has begun, the employee may notify the employer in writing that he wishes to return to work.

(4) If he does so, the employer must notify him in writing of the day on which he is to return to work. That day must be within 4 weeks after the employer received the notice under subclause (3).

(5) If the leave has begun, the employer may notify the employee in writing that he must return to work on a specified day that is not less than 4 weeks after the notice is given.

(6) If the employee returns to work, the employer must cancel the rest of the leave.

Effect on paternity leave of ceasing to be the primary care-giver

22.(1) This clause applies if:

- (a) during a substantial period beginning on or after the beginning of an employee's Schedule 14 long paternity leave, the employee is not the child's primary care-giver; and
- (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.

(2) The employer may notify the employee in writing that he must return to work on a specified day that is not less than 4 weeks after the notice is given.

(3) If the employee returns to work, the employer must cancel the rest of the leave.

Return to work after paternity leave

23.(1) This clause applies when an employee returns to work after a period of Schedule 14 long paternity leave.

(2) The employer must employ him in the position he held immediately before that period.

SCHEDULE 1—continued

(3) If that position no longer exists but he is qualified for, and can perform the duties of, other positions in the employer's employment, the employer must employ him in whichever of those positions is nearest in status and remuneration to the position referred to in subclause (2).

PART 4—GENERAL

Employee's duty if excessive leave granted or if maternity leave and paternity leave overlap

24.(1) This clause applies if the total of the following exceeds 52 weeks:

- (a) any period of maternity leave granted by an employer to an employee ("the mother") in respect of a pregnancy;
- (b) each period of annual leave or long service leave granted by the employer to the mother instead of, or in conjunction with, such maternity leave;
- (c) each period of unpaid leave, or paid sick leave, other than maternity leave, granted by the employer to the mother in respect of the same pregnancy;
- (d) each period of paternity leave granted by an employer to the mother's spouse in respect of the birth of the child;
- (e) each period of annual leave or long service leave granted, by the employer referred to in paragraph (e), to the mother's spouse instead of, or in conjunction with, such paternity leave.

(2) This clause also applies if a period of leave of a kind referred to in paragraph (1)(a), (b) or (c) overlaps with a period of leave of a kind referred to in paragraph (1)(d) or (e).

(3) The mother must give to her employer a written notice that:

- (a) if subclause (1) applies—states that the total exceeds 52 weeks and specifies the amount of the excess; and
- (b) if subclause (2) applies—specifies the period of overlap; and
- (c) sets out how she suggests the employer vary or cancel leave granted to her (except in so far as she has already taken it) so as to reduce or remove the excess or overlap; and
- (d) unless the variations and cancellations suggested under paragraph (c) will remove the excess or overlap—sets out the suggestions her spouse has made or will make under paragraph (4)(c).

(4) The mother's spouse must give to his employer a written notice that:

- (a) if subclause (1) applies—states that the total exceeds 52 weeks and specifies the amount of the excess; and

SCHEDULE 1—continued

- (b) if subclause (2) applies—specifies the period of overlap; and
- (c) sets out how he suggests the employer vary or cancel leave granted to him (except in so far as he has already taken the leave) so as to remove the excess or overlap; and
- (d) unless the variations or cancellations suggested under paragraph (c) will remove the excess or overlap—specifies the suggestions that the mother has made or will make under paragraph (3)(c).

(5) The variations and cancellations suggested under this clause must be such that, if they are all made, the excess or overlap will be removed.

(6) An employer who receives a notice under subclause (3) or (4) may vary or cancel periods of leave as suggested in the notice, or as agreed with the mother or her spouse, as the case may be.

Employer to warn replacement employee that employment is only temporary

25. An employer must not employ a person:

- (a) to replace an employee while he or she is on parental leave; or
- (b) to replace an employee who, while another employee is on parental leave, is to perform the duties of the position held by the other employee;

unless the employer has informed the person:

- (c) that his or her employment is only temporary; and
- (d) about the rights of the employee who is on parental leave.

Parental leave and continuity of service

26. A period of parental leave does not break an employee's continuity of service, but does not otherwise count as service except:

- (a) for the purpose of determining the employee's entitlement to a later period of parental leave; or
- (b) as expressly provided in a law of the Commonwealth or of a State or Territory, or in an award, order, agreement or instrument; or
- (c) as prescribed by the regulations.

Effect of Schedule on other laws

27. To avoid doubt, this Schedule has effect despite:

- (a) a law of a State or Territory; or
- (b) an award, order, agreement or instrument;

but is not intended to exclude or limit the operation of such a law, or of an award, order, agreement or instrument, in so far as that law, award, order, agreement or instrument can operate concurrently with this Schedule.

SCHEDULE 1—continued

SCHEDULE 15

Section 170PA

**PREAMBLE, AND PARTS I AND II, OF THE CONVENTION
CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION
OF THE RIGHT TO ORGANISE**

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares “recognition of the principle of freedom of association” to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that “freedom of expression and of association are essential to sustained progress”;

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I. FREEDOM OF ASSOCIATION

Article 1

1. Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

SCHEDULE 1—continued

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

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SCHEDULE 1—continued

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

SCHEDULE 1—continued

SCHEDULE 16

Section 170PA

**PREAMBLE, AND ARTICLES 1 TO 6, OF THE CONVENTION CONCERNING
THE APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE
AND TO BARGAIN COLLECTIVELY**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

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

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

SCHEDULE 1—continued

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

SCHEDULE 2

Section 34

**AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT 1988
CONSEQUENT ON PART 5 OF THIS ACT**

Subsection 4(1) (definition of “designated Presidential Member”):

Omit “Vice President’s”, substitute “Organisations”.

Subsection 4(1) (definition of “Presidential Member”):

Omit “the” (second occurring), substitute “a”.

Subsection 4(1) (definition of “Vice President”):

Omit the definition, substitute:

“ ‘Vice President’:

(a) means a Vice President of the Commission; and

(b) in the case of a reference to the Vice President assigned to the Bargaining Division—includes a person who is acting in an office of Vice President during a vacancy in the office;”.

Subsection 4(1):

Insert:

“ ‘Bargaining Division’ means the Bargaining Division of the Commission established by section 170QA;

‘Bargaining Division’s functions and powers’ has the meaning given by subsection 170QB(1);”.

Paragraph 8(2)(ab):

Omit the paragraph, substitute:

“(ab) 2 Vice Presidents;”.

Subsection 9(1):

Omit “Vice President”, substitute “Vice Presidents”.

Subsection 10(2):

Omit “the Vice President” (wherever occurring), substitute “a Vice President”.

Paragraph 11(ab):

Omit the paragraph, substitute:

“(ab) the Vice Presidents, according to the days on which their commissions took effect, or, if their commissions took effect on the same day, according to the precedence assigned to them by their commissions;”.

SCHEDULE 2—continued

Subsection 17(1):

After “the Governor-General may appoint the” insert “senior”.

Subsection 17(1A):

Omit the subsection, substitute:

“(1A) If, during a period referred to in subsection (1), the senior Vice President is unavailable to act in the office of President but the other Vice President is available, the Governor-General may appoint the other Vice President to act in that office.

“(1B) If, during a period referred to in subsection (1):

- (a) neither Vice President is available to act in the office of President; or
- (b) both offices of Vice President are vacant; or
- (c) one of the offices of Vice President is vacant and the holder of the other is unavailable to act in the office of President;

the Governor-General may appoint any Presidential Member qualified to be appointed as President to act in the office of President.”.

Subsection 17(2):

Omit “or subsection (1A)”, substitute “, (1A) or (1B)”.

Subsection 17A(1):

- (a) Omit “the” (second occurring), substitute “a”;
- (b) Omit “the office of”, substitute “an office of”.

Paragraph 17A(1)(b):

Omit “the Vice President”, substitute “the holder of the office”.

Subsection 21(2):

Omit “The Vice President”, substitute “A Vice President”.

Subsection 21(2E):

- (a) Omit “the Vice President or a”, substitute “a Vice President or”.
- (b) Omit “the office”, substitute “an office”.

Subsection 38(1):

Omit the subsection, substitute:

“(1) There is to be an Organisations Panel, consisting of:

- (a) the Vice President not assigned to the Bargaining Division; and

SCHEDULE 2—continued

- (b) at least one other Presidential member (other than the President or a Vice President) assigned to the Panel by the President.”.

Subsection 40(1):

Omit “the Vice President”, substitute “a Vice President”.

Subsection 40(2):

Omit the subsection, substitute:

“(2) If the President delegates a power to only one of the Vice Presidents, he or she may, in addition, delegate that power to a Senior Deputy President to be exercised when that Vice President is unable, for any reason, to exercise that power personally.

“(3) If the President delegates the same power to both Vice Presidents, he or she may, in addition, delegate that power to a Senior Deputy President to be exercised when, for any reason, neither Vice President is able to exercise that power personally.”.

Paragraph 45(1)(e):

Omit “3A of Part VI”, substitute “2 of Part VIB”.

After paragraph 45(1)(e):

Insert:

“(eaa) a decision of a member of the Commission refusing to approve under Division 3 of Part VIB implementation of an agreement;”.

Paragraph 45(1)(ec):

Omit “paragraph 134E(1)(e)”, substitute “paragraph 170MC(1)(g)”.

After paragraph 45(3)(b):

Insert:

“(baa) in the case of an appeal under paragraph (1)(eaa)—by any person who would have been bound by the agreement if implementation of it had been approved;”.

Paragraph 45(3)(ba):

Omit “subparagraph 134E(1)(e)(i)”, substitute “subparagraph 170MC(1)(g)(i)”.

Paragraph 103(1)(a):

Omit “3A of Part VI”, substitute “2 of Part VIB”.

SCHEDULE 2—continued

Subsection 108(2):

Omit “The President”, substitute “Subject to subsection (2A), the President”.

After subsection 108(2):

Insert:

“(2A) If dealing with a proceeding would involve performing or exercising any of the Bargaining Division’s functions and powers, the President must consult the Vice President assigned to the Bargaining Division before deciding to deal with that proceeding under subsection (2).”.

Subsection 108(8):

Omit “3A of Part VI”, substitute “2 of Part VIB”.

Subsection 109(8):

Omit the subsection, substitute:

“(8) This section does not apply to:

- (a) an award constituted by a certified agreement or by an enterprise flexibility agreement; or
- (b) a decision to certify, or to approve implementation of, an agreement.”.

Paragraph 111(1)(c):

Omit the paragraph, substitute:

- “(c) in accordance with Division 2 of Part VIB, certify an agreement;
- (ca) in accordance with Division 3 of Part VIB, approve implementation of an agreement;”.

Paragraph 111(1)(f):

After “an award” insert “(except a certified agreement or enterprise flexibility agreement)”.

After subsection 113(2C):

Insert:

“(2D) Before taking action under subsection (2A) in relation to an enterprise flexibility agreement, the Commission must give the employer an opportunity to vary the agreement, so as to remove the discrimination, by an instrument made with the approval, obtained as directed by the Commission, of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement.”.

SCHEDULE 2—continued

Division 3A of Part VI:

Repeal the Division.

After subsection 143(1):

Insert:

“(1A) For the purposes of subsection (1), none of the following is an award or an order affecting an award:

- (a) a decision to certify, or to approve implementation of, an agreement under Part VIB;
- (b) a certified agreement;
- (c) an enterprise flexibility agreement.”.

Paragraph 143(2)(b):

Omit “either of the following”, substitute “one or more of these”.

After subparagraph 143(2)(b)(ii):

Insert:

- “(iii) in the case of a decision—it is a decision to certify, or approve implementation of, an agreement under Part VIB;
- (iv) the decision or determination is, in the Commission’s opinion, an order affecting a certified agreement or an enterprise flexibility agreement;”.

After each of subparagraphs 143(2)(d)(i) and (3)(a)(i):

Insert:

- “(ia) in the case of a decision to certify, or approve implementation of, an agreement under Part VIB—a copy of the agreement; and”.

Paragraph 143(3)(b):

Omit the paragraph, substitute:

- “(b) ensure that copies of each of the following are available for inspection at each registry:
 - (i) the decision or determination; and
 - (ii) in the case of a decision to certify, or approve implementation of, an agreement under Part VIB—a copy of the agreement; and
 - (iii) any written reasons received by the Registrar for the decision or determination.”.

SCHEDULE 2—continued

Subsection 143(4):

Omit the subsection, substitute:

“(4) The Industrial Registrar must ensure that the following are published as soon as practicable:

- (a) a decision or determination covered by subsection (1) or (2), except:
 - (i) a decision to certify an agreement under Part VIB that applies only to a single business, part of a single business or a single place of work;
 - (ii) a decision to approve implementation of an agreement under Part VIB;
 - (iii) a decision or determination that is, in the Commission’s opinion, an order affecting:
 - (A) a certified agreement covered by subparagraph (i); or
 - (B) an enterprise flexibility agreement;
- (b) any written reasons for a decision or determination covered by paragraph (a) that are received by a Registrar;
- (c) a certified agreement:
 - (i) that does not apply only to a single business, part of a single business or a single place of work; and
 - (ii) a copy of which is given to a Registrar under subparagraph (2)(d)(ia).”.

Section 143A:

Repeal the section.

SCHEDULE 3

**CONSEQUENTIAL AMENDMENTS OF THE TRADE PRACTICES
ACT 1974**

Paragraph 6(2)(a):

Omit “subsection 45D(1A) or in”.

Paragraph 6(2)(b):

Omit “(other than subsection (1A)), 45E”.

Paragraph 6(2)(eb):

Omit the paragraph.

Paragraph 6(2)(h):

Omit “, (eb)”.

Subsection 88(7A):

Omit the subsection.

Subparagraph 90(8)(a)(ii):

Omit “or (7A)”.

Paragraph 90(10)(a):

Omit “, (7A)”.

SCHEDULE 4

Section 62

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Crimes Act 1914

Paragraph 15A(1A)(a):

After “Australia” insert “, or by the Industrial Relations Court of Australia,”.

Judiciary Act 1903

Paragraph 23(2)(a):

Before “or a decision of the Family Court” insert “, a decision of the Industrial Relations Court of Australia or a Judge of that Court”.

After paragraph 39B(2)(a):

Insert:

“(aa) without limiting paragraph (a) of this subsection, a Judge or Judges of the Industrial Relations Court of Australia; or”.

NOTES

1. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988; No. 153, 1989 (as amended by No. 28, 1991); Nos. 37, 71 and 108, 1990; Nos. 19, 62 and 122, 1991; Nos. 52, 92, 94, 109, 132, 179, 196, 212 and 215, 1992; and No. , 1993.
2. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1974; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63 and 73, 1984; No. 165, 1984 (as amended by No. 17, 1986); No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; No. 8, 1988 (as amended by No. 120, 1988); No. 20; 1988; No. 87, 1988 (as amended by No. 108, 1990); Nos. 28 and 34, 1989; Nos. 11 and 70, 1990; Nos. 49, 122, 136, 173 and 180, 1991; and Nos. 22, 104, 105, 106 and 222, 1992.
3. No. 24, 1987, as amended. For previous amendments, see No. 87, 1988; Nos. 70 and 83, 1990; and Nos. 165 and 222, 1992.
4. No. 21, 1922, as amended. For previous amendments, see No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; Nos. 6 and 80, 1977; Nos. 36 and 170, 1978; Nos. 52 and

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NOTES—continued

- 155, 1979; No. 177, 1980; Nos. 61, 1981; Nos. 26 and 80, 1982; No. 111, 1982 (as amended by No. 39, 1983); Nos. 39, 56 and 92, 1983; No. 63, 1984 (as amended by No. 165, 1984); No. 165, 1984; Nos. 65, 166 and 187, 1985; Nos. 28, 29 and 76; 1986; No. 153, 1986 (as amended by No. 141, 1987); Nos. 92, 99 and 141, 1987; Nos. 75, 87, 99 and 109, 1988; Nos. 150 and 153, 1989; Nos. 2, 73, 122, 199, 205 and 208, 1991; Nos. 70, 94, 196 and 215, 1992; and No. 27, 1993.
5. No. 65, 1977, as amended. For previous amendments, see No. 125, 1979; No. 176, 1981; No. 80, 1982; Nos. 63 and 72, 1984; and No. 109, 1992.

*[Minister's second reading speech made in—
House of Representatives on 28 October 1993
Senate on 24 November 1993]*