



ANNO QUADRAGESIMO

ELIZABETHAE II REGINAE

A.D. 1991

No. 34 of 1991

An Act to amend the Industrial Conciliation and Arbitration Act 1972; to repeal the Public Service Arbitration Act 1968; and to make related amendments to the Education Act 1972 and the Technical and Further Education Act 1976.

[Assented to 24 April 1991]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991*.

(2) The *Industrial Conciliation and Arbitration Act 1972* is referred to in this Act as “the principal Act”.

Date of commencement

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

Substitution of s. 1

3. Section 1 of the principal Act is repealed and the following section is substituted:

Short title

1. This Act may be cited as the *Industrial Relations Act (S.A.) 1972*.

Objects of Act

4. Section 3 of the principal Act is amended by striking out “and” from between paragraphs (e) and (f) and inserting after paragraph (f):

(g) to encourage and facilitate the amalgamation of associations;

and

(h) to encourage and facilitate the development of associations, particularly by reducing the number of associations that are in an industry or enterprise.

Interpretation**5. Section 6 of the principal Act is amended—**

(a) by striking out the definition of “association” and substituting the following definition:

“association” means—

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

or

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

(b) by striking out “or a Committee” from the definition of “award”;

(c) by striking out the definition of “Committee”;

(d) by inserting after the definition of “decision” the following definition:

“demarcation dispute” includes—

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

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

or

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

(e) by striking out paragraph (a) of the definition of “employer” and substituting the following paragraph:

(a) in relation to public employees—

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

(ii) in any other case—the Commissioner for Public Employment;

(f) by inserting after the definition of “industrial agreement” the following definition:

“industrial authority” means—

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

or

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

(g) by inserting after paragraph (j) of the definition of “industrial matter” the following paragraph:

-
- (ja) a demarcation dispute;;
- (h) by striking out the definition of “industry” and substituting the following definition:
“industry” includes—
- (a) any business, trade, manufacture, undertaking or calling of employers;
 - (b) any calling, service, employment, handicraft, industrial occupation or vocation of employees;
 - (c) any activity of government or local government in which employees are employed;
 - (d) a branch of an industry or a group of industries;
- (i) by striking out the definition of “Inspector” and substituting the following definition:
“Inspector”—See section 49;;
- (j) by inserting after the definition of “order” the following definition:
“organization” means an organization registered under the Commonwealth Act;;
- (k) by inserting after the definition of “outworker” the following definition:
“peak council” means—
- (a) the United Trades and Labor Council;
- or
- (b) a prescribed body that represents employer associations;;
- (l) by striking out the definition of “prescribed employer” and substituting the following definition:
“prescribed employer” means—
- (a) an employer of public employees declared by the regulations to be a prescribed employer;
 - (b) any council;
- or
- (c) in relation to public employees (except public employees employed by an employer declared to be a prescribed employer under paragraph (a))—the Commissioner for Public Employment;;
- (m) by striking out the definition of “registered association” and substituting the following definition:
“registered association” means—
- (a) an association registered under Division II of Part IX;
- or
- (b) an organization registered under Division III of Part IX or an organization of which a branch is registered under Division III of Part IX;;
- (n) by inserting after the definition of “Rules” the following definition:
“State” includes a Territory of the Commonwealth;;
- (o) by striking out subsection (1b);

(p) by striking out from subsection (2) “, a Committee”;

and

(q) by striking out from subsection (3) “the Public Service Board or” wherever it occurs.

Jurisdiction of the Court

6. Section 15 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) “or a Committee”;

(b) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

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

(c) by striking out paragraph (d) of subsection (1) and substituting the following paragraph:

(d) to hear and determine—

(i) a claim for a sum due to an employee or former employee from an employer or former employer under this Act, an award, industrial agreement or a contract of employment;

(ii) a claim for a sum due to an employer or former employer from an employee or former employee under this Act, an award, industrial agreement or a contract of employment;

(iii) a claim by an employee or former employee for compensation from an employer or former employer for failure to make contributions (either before or after the enactment of this subparagraph) for the benefit of the claimant to a superannuation fund in accordance with this Act, an award, industrial agreement or a contract of employment;

(iv) a claim for payment of a benefit against the trustee of a superannuation fund to which contributions have been made in accordance with this Act, an award, industrial agreement or a contract of employment.;

(d) by striking out subsections (2), (3), (4), (4a), (5), (6) and (7) and substituting the following subsections:

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

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

(a) the claim must be made within six years after the sum claimed became payable unless the claim relates to non-payment of superannuation contributions, in which case there is no limitation on the time for making the claim;

(b) the claim—

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

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

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

Commissioners

7. Section 23 of the principal Act is amended—

(a) by striking out subsection (2) and substituting:

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

(2a) Subject to this section, a Commissioner is, unless lawfully removed, entitled to hold office until the age of 65 years, and will cease to hold office on attaining that age.

(2b) A Commissioner who has been appointed on an acting basis ceases to hold office on the expiration of the term of appointment.;

(b) by striking out subsections (4) and (5) and substituting the following subsections:

(4) The Governor may—

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

or

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

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

(c) by striking out from paragraph (b) of subsection (7) "Part II" and substituting "Part III";

and

(d) by inserting after subsection (10) the following subsections:

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

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

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

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

- (b) the Commissioner becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (c) the Commissioner is absent from duty, except for the purposes of leave, for 14 consecutive days or for 28 days in any 12 months;
- or
- (d) the Commissioner engages in remunerative work outside the duties of office in contravention of subsection (11) or holds an office in contravention of subsection (12).

Insertion of s. 23a

8. The following section is inserted after section 23 of the principal Act:

Concurrent appointments

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

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

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

- (a) the appointment will terminate if the member ceases for any reason to hold office as a member of the relevant industrial authority;
- (b) the member is not entitled to be remunerated as a member of the Commission but is entitled, in circumstances determined by the Governor, to allowances for expenses at rates fixed by the Governor.

(4) A member who holds concurrent appointments may simultaneously exercise in relation to a particular matter powers deriving from both or all those appointments.

(5) Where a member holds concurrent appointments, the following provisions apply:

- (a) if the member was appointed first to the Commission and subsequently to the other industrial authority, the extent to which the member performs the duties of a member of that other industrial authority will be determined by agreement between the President and the head of that other industrial authority;
- (b) if the member was appointed first to the other industrial authority and subsequently to the Commission, the extent to which the member performs the duties of a member of the Commission will be determined by agreement between the President and the head of that other industrial authority.

Insertion of s. 24a

9. The following section is inserted after section 24 of the principal Act:

Disclosure of interest by Commission members

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

(a) the member must disclose the interest to the parties to the proceeding;

and

(b) the member must not take part in the proceeding or exercise any powers in relation to the proceeding—

(i) if the President directs the member to withdraw from the proceedings;

or

(ii) if any party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceeding.

Jurisdiction of the Commission

10. Section 25 of the principal Act is amended—

(a) by striking out from subsection (1) “but except as provided in this Act the Commission does not have jurisdiction over any matter or thing that is within the jurisdiction of a Committee”;

(b) by striking out subsection (3) and substituting the following subsections:

(3) In performing its functions, the Commission must have due regard to the provisions of the *Equal Opportunity Act 1984* as to discrimination in relation to employment.

(4) In dealing with a demarcation dispute, the Commission must consider whether it should consult with appropriate peak councils representing employer or employee associations and may consult with any such council.

(5) The President may, on the application of a party to a demarcation dispute made before the commencement of any hearing of the dispute, direct that the Commission will, for the purposes of the hearing, be constituted as the Full Commission.

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

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

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

and

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

Mediation**11. Section 26 of the principal Act is amended—**

- (a) by striking out paragraph (a) of subsection (1) and the word “or” immediately following that paragraph;

and

- (b) by striking out subsection (1a).

Compulsory conference**12. Section 27 of the principal Act is amended—**

- (a) by striking out from subsection (1) “or a member of a Committee”;

- (b) by striking out paragraph (b) of subsection (1);

and

- (c) by striking out subsection (1a).

General powers of the Commission**13. Section 28 of the principal Act is amended—**

- (a) by striking out paragraph (l) of subsection (1) and substituting the following paragraph:

(l) subject to this Act, to rescind or vary its awards or decisions, and to re-open any question;;

- (b) by striking out from paragraph (o) of subsection (1) “other than the time for appealing prescribed by section 98 (1)”;

and

- (c) by striking out from paragraph (a) of subsection (5) “judgments, awards, orders and decisions” and substituting “awards and decisions”.

Further powers of the Commission**14. Section 29 of the principal Act is amended by striking out paragraph (a) of subsection (1) and substituting the following paragraph:**

- (a) make an award (including a provisional or interim award) and, without being restricted to the specific relief claimed by the parties, may include in the award any provision the Commission thinks necessary or expedient;

Applications to the Commission**15. Section 30 of the principal Act is amended—**

- (a) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) by an employer, or group of employers, employing not less than—

- (i) 20 employees in the industry concerned where the Commission is satisfied that there is no registered association to which the

applicant or applicants belong, or could appropriately and conveniently belong, that could reasonably be expected to bring the application on behalf of the applicant or applicants:

or

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

(b) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) by not less than—

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

or

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

and

(c) by striking out paragraphs (d) and (e) of subsection (1) and the word “or” between those paragraphs and substituting the following paragraphs:

(d) by a registered association of employers;

(e) by a registered association of employees;

(f) by the United Trades and Labor Council;

or

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

Unfair dismissal

16. Section 31 of the principal Act is amended by inserting after subsection (2) the following subsections:

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

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

or

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

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

(ii) in the case of a dismissal taking effect in a subsequent calendar year—a sum arrived at by dividing the State average adult earnings as at 30 June in the preceding calendar year, by State average

adult earnings as at 30 June, 1990 and multiplying the quotient by \$65 000.

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

Exercise of powers by the Commission

17. Section 33 of the principal Act is amended—

(a) by striking out from subsection (1) “Subject to subsection (2), the” and substituting “The”;

and

(b) by striking out subsection (2).

Representation of parties

18. Section 34 of the principal Act is amended by striking out subsection (1c) and substituting the following subsection:

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

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

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

(ii) the United Trades and Labor Council;

or

(iii) any registered association;

or

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

President may make arrangements

19. Section 40 of the principal Act is amended—

(a) by striking out from subsection (1) “the Commission or a Committee” and substituting “or the Commission”;

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

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

and

(c) by striking out “Commissioner” wherever occurring in subsections (2), (3) and (4) and substituting, in each case, “member of the Commission”.

Co-operation between industrial authorities

20. Section 40a of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

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

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

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

Summons and evidence, etc.

21. Section 46 of the principal Act is amended by inserting after subsection (1) the following subsection:

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

Insertion of s. 48a

22. The following section is inserted after section 48 of the principal Act:

Ability of Commonwealth Registrars to act under this Act

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

Substitution of s. 49

23. Section 49 of the principal Act is repealed and the following section is substituted:

Inspectors

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

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

or

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

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

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

Powers of Inspectors, etc.

24. Section 50 of the principal Act is amended by striking out from subsection (1a) "certificate of appointment" and substituting "identity card".

Repeal of Part V of principal Act

25. Part V of the principal Act (comprising sections 53 to 77 (inclusive)) is repealed.

Declaration as to terms of contract

26. Section 79 of the principal Act is amended by striking out from subsection (1) "or a Committee".

Provisions relating to automation

27. Section 82 of the principal Act is amended by striking out from subsection (1) "or a Committee" wherever it occurs.

Consolidation of awards

28. Section 86 of the principal Act is amended—

(a) by striking out from subsection (1) “or the Committee concerned”;

and

(b) by striking out subsection (4) and substituting the following subsection:

(4) A consolidated award is binding on the persons and associations on whom or on which the awards so consolidated were binding.

Rescission of obsolete awards

29. Section 91a of the principal Act is amended by inserting after subsection (3) the following subsection:

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

Amendment of heading

30. The heading before section 95 of the principal Act is amended by striking out “AND COMMITTEES”.

Decision to be final

31. Section 95 of the principal Act is amended—

(a) by striking out “section 96” and substituting “this Act”;

(b) by striking out paragraph (a) and substituting the following paragraph:

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

and

(c) by striking out from paragraph (b) “order or proceeding of any kind of the Commission or a Committee” and substituting “decision or proceeding of the Commission”.

Right of appeal

32. Section 96 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

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

(b) by striking out from subsection (3) “a decision or order” and substituting “an award or decision”;

and

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

(4) The Full Commission may direct—

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

or

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

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

Substitution of s. 97

33. Section 97 of the principal Act is repealed and the following section is substituted:

Entitlement to appeal

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

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

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

or

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

Notice of hearing, etc.

34. Section 98 of the principal Act is amended—

(a) by striking out subsections (1) and (1a) and substituting the following subsection:

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

(b) by striking out from subsection (3) “decision or order” and substituting “award or decision”;

(c) by striking out from paragraph (e) of subsection (3) “or the Committee (as the case may be)”;

(d) by striking out from paragraph (f) of subsection (3) “or the Committee”;

(e) by striking out “decision or order” wherever occurring in subsection (3a) and substituting, in each case, “award or decision”;

(f) by striking out subsections (4) and (6);

and

(g) by striking out subsection (7) and substituting the following subsection:

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

Stay of operation of award

35. Section 99 of the principal Act is amended by striking out subsection (1a) and substituting the following subsection:

(1a) Where an appeal is brought against an award of the Commission under section 31, the Full Commission may stay the operation of the award.

Substitution of s. 100

36. Section 100 of the principal Act is repealed and the following section is substituted:

Review on application by Minister

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

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

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

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

Reference of matters to the Full Commission

37. Section 101 of the principal Act is amended—

(a) by striking out from subsection (1) “, or when a Commissioner is dealing with a matter as the presiding officer of a Committee”, “or the Commissioner” and “a member of the Committee”;

(b) by striking out paragraph (b) of subsection (4) and the word “or” immediately preceding that paragraph;

and

(c) by striking out from subsection (5) “or the Committee”.

Reference of questions of law to the Court

38. Section 102 of the principal Act is amended—

(a) by striking out from subsection (1) “or a Committee”;

(b) by striking out from subsection (2) “or the Committee (as the case requires)”;

and

(c) by striking out from subsection (2) “or Committee”.

Approval of Commission in relation to industrial agreements

39. Section 108a of the principal Act is amended—

(a) by inserting after subsection (4) the following subsection:

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

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

and

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

and

(b) by inserting after subsection (7) the following subsection:

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

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

or

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

Effect of industrial agreement

40. Section 110 of the principal Act is amended—

(a) by striking out from subsection (2) “subsection (3) and to”;

and

(b) by striking out subsection (3).

Substitution of Part IX

41. Part IX of the principal Act (comprising sections 114 to 141 and the related headings) is repealed and the following Part is substituted:

PART IX

ASSOCIATIONS

DIVISION I—APPLICATIONS AND OBJECTIONS

Application for registration

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

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

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

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

and

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

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

Objections

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

DIVISION II—REGISTRATION AND INCORPORATION OF LOCALLY BASED ASSOCIATIONS**Eligibility for registration**

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

(a) an association—

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

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

(b) an association—

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

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

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

Registration of associations

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

(a) that the association is eligible for registration under this Division;

(b) that the rules of the association conform with the requirements of this Division;

(c) that the prescribed conditions have been complied with;

(d) that the registration of the association would be consistent with the provisions and objects of this Act;

(e) that there is—

(i) in the case of an employer association—no other registered association to which the members of the applicant association might conveniently belong;

(ii) in the case of an employee association—no other registered association whose continued registration is, in the Commission's opinion, consistent with implementation of the objective of achieving a coherent national framework of employee associations, to which the members of the applicant association might conveniently belong;

(f) that the name of the applicant association is not such as would cause confusion with the name of any other registered association or with the name of any organization registered under the Commonwealth Act.

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

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

(a) in the case of an employee association—

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

and

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

(b) in the case of an employer association—must consider whether it should consult with appropriate peak councils representing employer associations and may consult with any such council.

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

(a) under the name stated in its rules;

(b) with power to acquire, hold, deal with and dispose of real and personal property;

and

(c) with such other powers as may be stated in its rules.

Rules

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

(a) must state the association's name;

(b) must conform with the prescribed conditions;

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

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

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

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

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

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

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

- (a) the alteration would be consistent with the provisions and objects of this Act;
- (b) in the case of a change of name is not such as would cause confusion with the name of any other registered association or with the name of any organization registered under the Commonwealth Act.

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

Orders to secure compliance with rules, etc.

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

- (a) to carry out an obligation imposed by the rules of the association;
- (b) to make good any contravention of, or failure to comply with, the rules of the association;
- (c) to carry out any consequential or related directions that the Commission thinks necessary or desirable in the circumstance.

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

Penalty: Division 8 fine.

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

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

Amalgamation

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

(2) A resolution to amalgamate—

(a) must be passed—

- (i) by the executive committee, or committee of management, of the association;
- (ii) by the members of the association in the same way as a resolution for alteration of the rules of the association;

or

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

and

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

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

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

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

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

(7) On registration of the new association—

(a) the amalgamating associations are dissolved;

and

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

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

Financial records

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

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

(a) a balance sheet giving a true and fair view of the assets and liabilities of the association as at the end of the relevant accounting period;

(b) a statement of receipts and payments over the relevant accounting period.

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

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

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

Penalty: Division 9 fine.

De-registration of associations

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

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

or

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

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

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

or

- (d) the Registrar.

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

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

DIVISION III—REGISTRATION OF FEDERALLY BASED ASSOCIATIONS**Eligibility for registration**

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

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

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

Registration

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

- (a) that the organization or branch is eligible for registration under this Division;

(b) that the registration of the organization or branch would be consistent with the provisions and objects of this Act;

(c) that there is—

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

or

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

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

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

and

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

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

De-registration

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

(a) the organization or branch applies for de-registration;

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

(c) the organization or branch wilfully contravenes or fails to comply with an award of the Commission;

(d) the organization or branch is being administered in a manner that is oppressive or unfair to members resident in this State;

(e) the organization abolishes its South Australian branch or its rules cease to confer on the South Australian branch a reasonable degree of autonomy in the administration and control of South Australian assets or in the determination of questions affecting solely or principally the members resident in this State;

or

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

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

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

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

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

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

and

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

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

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

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

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

DIVISION IV—PROVISIONS GENERALLY APPLICABLE TO REGISTERED ASSOCIATIONS

Exercise of powers of the Commission

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

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

- (a) a Presidential Member or Industrial Magistrate nominated by the President;
- or
- (b) the Full Commission.

Federation

127. (1) Where—

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

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

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

Register of members and officers of associations

128. (1) A registered association must keep—

(a) a register of its officers;

and

(b) a register of its members.

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

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

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

and

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

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

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

Penalty: Division 9 fine.

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

Penalty: Division 9 fine.

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

Rules

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

Penalty: Division 9 fine.

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

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

Certificate of registration

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

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

Service

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

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

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

or

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

Saving of obligations

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

Limitations of actions in tort

42. Section 143a of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) Where—

(a) —

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

and

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

or

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

(i) all means provided under this Act for resolving an industrial dispute by conciliation or arbitration have failed;

and

(ii) there is no immediate prospect of the resolution of the industrial dispute,

a person may bring an action in tort notwithstanding the provisions of subsection (1).

Substitution of s. 145

43. Section 145 of the principal Act is repealed and the following section is substituted:

Notice of awards and decisions of the Commission

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

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

Insertion of s. 145b

44. The following section is inserted after section 145a of the principal Act:

Industry consultative councils

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

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

Interpretation

45. Section 146a of the principal Act is amended by striking out paragraphs (b), (c) and (e) of the definition of "industrial authority" in subsection (1).

Discrimination against employee for taking part in industrial proceedings

46. Section 156 of the principal Act is amended—

(a) by striking out paragraphs (d) and (e) of subsection (1);

and

(b) by striking out "the Commission or a Committee" from paragraphs (f) and (h) of subsection (1) and substituting, in each case, "or the Commission".

Employees to keep certain records

47. Section 159 of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) Unless otherwise provided by an award or industrial agreement, where an employer is required to make contributions to a superannuation fund in accordance with this Act or an award or industrial agreement for the benefit of an employee, the employer must, at the time that the employer makes a payment of wages, provide the employee with a written record showing any amount paid by the employer to the superannuation fund for the benefit of the employee during the period to which the payment of wages relates.

Punishment for contempt

48. Section 166 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

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

(3) Where—

(a) a party to proceedings before the Court or the Commission contravenes or fails to comply with an order in the nature of an interlocutory order or

an order (not being an order for payment of money) to do, or refrain from a particular act;

and

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

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

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

Proof of awards, etc.

49. Section 173 of the principal Act is amended—

(a) by striking out “the Commission or a Committee” wherever it occurs in subsection (1) and substituting, in each case, “or the Commission”;

(b) by striking out from subsection (1) “the Commission or the Committee” and substituting “or the Commission”.

and

(c) by striking out subsection (2).

Insertion of s. 174a

50. The following section is inserted after section 174 of the principal Act:

Conduct by officers, directors, employees or agents

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

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

and

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

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

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

or

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

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

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

Rules and procedures

51. Section 175 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (1) “the Registrar or Committees” and substituting “or the Registrar” and by striking out from the same paragraph the word “Committees” where it subsequently occurs;
- (b) by striking out from paragraph (b) of subsection (1) “the Commission or Committees” and substituting “or the Commission”;
- (c) by striking out from paragraph (f) of subsection (1) “the Commission or Committees” and substituting “or the Commission”;

and

- (d) by striking out from paragraph (h) of subsection (1) “in what circumstances a document will, for the purposes of Part IX, be taken to be the rules of an association, and any other”.

Repeal of Public Service Arbitration Act 1968

52. The *Public Service Arbitration Act 1968* is repealed.

Abolition of Teachers’ Salaries Board

53. The *Education Act 1972* is amended—

- (a) by striking out from section 5 (1) the definition of “the Salaries Board”;

and

- (b) by striking out Division VII of Part III (comprising sections 34 to 44 inclusive).

Amendment of Technical and Further Education Act 1976

54. The *Technical and Further Education Act 1976* is amended—

- (a) by striking out from section 4 (1) the definition of “the Teachers Salaries Board”;

and

- (b) by striking out section 15 (7).

Transitional provisions

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

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

- (b) in any other case—an association registered under Division II of Part IX.

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

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

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

- (a) each affiliated association ceases to have a separate legal identity and its property, rights and liabilities vest in or attach to the organization with which it is affiliated;

(b) the rules of the association formerly registered under the principal Act are revoked; and

(c) if the rules of the organization with which it is affiliated provide for a South Australian branch and confer on the branch a reasonable degree of autonomy in the administration and control of South Australian assets and in the determination of questions affecting solely or principally members resident in this State—

(i) if the organization has so nominated in accordance with the Rules—the organization will thereafter be considered to be registered under Division III of Part IX;

(ii) otherwise—the affiliated association will thereafter be considered to be registered as a branch of the organization under Division III of Part IX (with rules as registered for the organization under the Commonwealth Act).

(5) If—

(a) the rules of an affiliated association differ from the rules of the organization with which it is affiliated (as registered under the Commonwealth Act) so that a member of the affiliated association would not necessarily be eligible for membership in accordance with the latter;

(b) the organization takes reasonable steps to change its rules so as to allow all persons who are eligible for membership of the affiliated association to become members of the organization, but fails;

(c) the affiliated association, before the expiration of the transitional period, applies to the President under this subsection;

and

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

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

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

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

and

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

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

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

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

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

and

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

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

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

and

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

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

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

and

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

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

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

and

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

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor