



TASMANIA

**INDUSTRIAL RELATIONS AMENDMENT (ENTERPRISE
AGREEMENTS AND WORKPLACE FREEDOM) ACT 1992**

No. 59 of 1992

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**INDUSTRIAL RELATIONS AMENDMENT (ENTERPRISE
AGREEMENTS
AND WORKPLACE FREEDOM) ACT 1992**

**AN ACT to amend the *Industrial Relations Act 1984* and the
*Tasmanian State Service Act 1984***

[Royal Assent 15 December 1992]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled, as
follows:—

Short title

1—This Act may be cited as the *Industrial Relations
Amendment (Enterprise Agreements and Workplace Freedom)
Act 1992*.

Commencement

2—This Act commences on a day to be proclaimed.

Principal Act

3—In this Act, the *Industrial Relations Act 1984** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 (1) of the Principal Act is amended as follows:—

(a) by omitting the definition of “Australian Commission” and substituting the following definitions:—

“**adult**” means a person who has attained the age of 21 years;

“**Agency**” means a Government department or State authority or other organization specified in Column 1 of Schedule 1 to the *Tasmanian State Service Act 1984*;

“**Australian Commission**” means the Australian Industrial Relations Commission established by section 8 of the Commonwealth Act;

(b) by omitting the definition of “Commissioner” and substituting the following definition:—

“**Commissioner**” means a member of the Commission;

(c) by omitting the definition of “Commonwealth Act” and substituting the following definition:—

“**Commonwealth Act**” means the *Industrial Relations Act 1988* of the Commonwealth;

(d) by omitting the definition of “conscientious beliefs” and substituting the following definition:—

“**conditions of employment**” includes wages;

(e) by omitting paragraph (d) of the definition of “controlling authority” and substituting the following paragraph:—

(d) any other State employee—the principal officer of the State authority by which that employee is employed;

(f) by omitting “the Deputy” from the definition of “Deputy President” and substituting “a Deputy”;

(g) by inserting the following definitions after the definition of “employer organization”:—

* No. 21 of 1984. Amended by Nos. 29 and 105 of 1984, No. 125 of 1985, No. 113 of 1986, No. 25 of 1987, No. 5 of 1990 and Nos. 4 and 43 of 1991 and by S.R. 1987, No. 244.

“enterprise” means—

- (a) any business, undertaking or project or part of any business, undertaking or project; or
- (b) any combination of businesses, undertakings or projects or parts of businesses, undertakings or projects; or
- (c) any service provided by an Agency or State authority that is not an Agency or by part of an Agency or such a State authority; or
- (d) any combination of services provided by Agencies or State authorities that are not Agencies or by parts of Agencies or such State authorities;

“Enterprise Commissioner” means the person appointed as such under section 61ZA;

(h) by omitting paragraph (c) of the definition of “industrial dispute” and substituting the following paragraph:—

- (c) any question relating to the demarcation of functions of employees or classes of employees—

but does not include a dispute relating to any matter arising from a registered enterprise agreement if that agreement includes a grievance procedure which provides for private arbitration;

- (i) by omitting “age;” from paragraph (a) (vii) of the definition of “industrial matter” and substituting “age; or”;
- (j) by omitting “employees; or” from paragraph (a) (viii) of the definition of “industrial matter” and substituting “employees; and”;
- (k) by omitting paragraph (a) (ix) of the definition of “industrial matter”;
- (l) by omitting “for the time being, whether by reference to a basic wage or to any other matter, whether or not that other matter is or is to be determined under an award” from paragraph (b) of the definition of “industrial matter”;

- (m) by inserting the following paragraphs after paragraph (e) of the definition of “industrial matter”:
- (ea) the deduction and collection by an employer of fees payable in respect of membership of an employee organization;
 - (f) the preferential employment or non-employment of a particular person or class of persons who are or are not members of an organization;
- (n) by omitting “, not being an Agency within the meaning of the *Tasmanian State Service Act 1984*,” from the definition of “principal officer” and substituting “that is not an Agency,”;
- (o) by omitting the definition of “private employee” and substituting the following definition:—
- “**private employee**” means an employee other than—
- (a) a State employee; or
 - (b) an employee who is appointed under section 7, 29 or 60 of the *Tasmanian State Service Act 1984*; or
 - (c) an employee whose remuneration is specified in any Act, determined under the *Statutory Salaries Act 1979* or determined by the Governor under any Act; or
 - (d) an employee who is a contract employee under section 38 (1) (b) of the *Tasmanian State Service Act 1984*;
- (p) by inserting the following definition after the definition of “proclaimed day”:
- “**registered enterprise agreement**” means an enterprise agreement registered under Part IVA;
- (q) by omitting the definition of “State employee” and substituting the following definition:—
- “**State employee**” means a person who is employed in an Agency or by a State authority that is not an Agency other than a person—
- (a) who is appointed under section 7, 29 or 60 of the *Tasmanian State Service Act 1984*;
- or

- (b) whose remuneration is specified in any Act, determined under the *Statutory Salaries Act 1979* or determined by the Governor under any Act; or
- (c) who is a contract employee under section 38 (1) (b) of the *Tasmanian State Service Act 1984*;

Section 5 amended (Constitution of Commission)

5—Section 5 of the Principal Act is amended as follows:—

- (a) by inserting the following subsection after subsection (2):—

(2A) The Enterprise Commissioner, by virtue of that office, is a member of the Commission.

- (b) by omitting paragraph (b) of subsection (5) and substituting the following paragraph:—

(b) the Enterprise Commissioner and one other Commissioner to be Deputy Presidents of the Commission.

Section 6 amended (Provisions relating to appointment of Commissioners)

6—Section 6 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

(2) Subject to sections 11 and 12, a person appointed as Commissioner holds office—

- (a) until that person attains the age of 65 years, if that person was appointed before the commencement of the *Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act 1992*; or
- (b) for a period of 7 years, if that person was appointed on or after the commencement of the *Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act 1992*.

(2A) A person appointed as a Commissioner on or after the commencement of the *Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act 1992*—

- (a) is to be appointed on such terms and conditions as are specified in the instrument of appointment; and
- (b) may be re-appointed as a Commissioner.

Section 10 amended (Appointment of substitute to act during absence of Deputy President or another Commissioner)

7—Section 10 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) “, other than the Deputy President who is the Enterprise Commissioner,” after “President” (first occurring);
- (b) by omitting from subsection (8) (a) “the office of Deputy President, Acting Deputy President, or a Commissioner” and substituting “office as a member, other than the President,”.

Section 11 amended (Removal and suspension of Commissioners)

8—Section 11 of the Principal Act is amended by inserting the following subsection after subsection (5):—

- (6) This section does not apply to the Commissioner who is the Enterprise Commissioner.

Section 12 amended (Resignation from office)

9—Section 12 (1) of the Principal Act is amended by inserting “, other than the Commissioner who is the Enterprise Commissioner,” after “Commissioner”.

Section 14 amended (Constitution of Full Bench of Commission)

10—Section 14 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) A Full Bench of the Commission is constituted by at least 3 members of the Commission one of whom, wherever practicable, must be the President or a Deputy President.

Section 15 amended (General functions and powers of the President)

11—Section 15 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) (d) “industrial” before “disputes”;
- (b) by omitting from subsection (1) (g) “section 61; and” and substituting “section 61;”;
- (c) by omitting from subsection (1) (h) “section 33 and to section 43.” and substituting “section 43; and”;
- (d) by inserting the following paragraph after paragraph (h) of subsection (1):—
 - (i) appoint Commissioners to hear applications under sections 79 and 81;
 - (j) appoint a Commissioner to hear an application for an order under section 75 (7A).
- (e) by omitting from subsection (2) (d) “determination; or” and substituting “determination;”;
- (f) by omitting from subsection (2) (e) “section 61.” and substituting “section 61; or”;
- (g) by inserting the following paragraph after paragraph (e) of subsection (2):—
 - (f) by subsection (1) (i) from appointing himself or herself to hear applications under sections 79 and 81.

(h) by inserting the following subsection after subsection (2):—

(2A) In performing any functions under subsection (1), the President must take into account that the Commissioner who is the Enterprise Commissioner must give priority to the functions of the office of Enterprise Commissioner.

(i) by inserting in subsection (4) “, other than the Deputy President who is the Enterprise Commissioner,” after “Deputy President”.

Section 18 amended (Staff of Commission)

12—Section 18 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsection:—

(2) Subject to this Act, the Registrar is responsible to the President for the organization of the work of persons appointed under subsection (1A).

Part II, Division 2: Heading amended

13—The heading to Division 2 of Part II is amended by omitting “*General jurisdiction*” and substituting “*Jurisdiction, functions*”.

Section 19 amended (Jurisdiction of the Commission under this Act)

14—Section 19 (2) of the Principal Act is amended as follows:—

- (a) by inserting in paragraph (c) “industrial” before “disputes”;
- (b) by inserting in paragraph (e) “and Part VIII” after “Part VI”;
- (c) by omitting from paragraph (f) “proceedings; and” and substituting “proceedings;”;
- (d) by omitting from paragraph (g) “organization.” and substituting “organization; and”;

(e) by inserting the following paragraph after paragraph (g):—

(h) hear and determine applications under sections 79 and 81.

Section 20 amended (Commission to act according to equity and good conscience)

15—Section 20 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

(2) The Commission has the power to deal with an industrial dispute referred to it in accordance with the Commonwealth Act.

Section 22 amended (Powers of inspection)

16—Section 22 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) “or the Enterprise Commissioner” after “Commissioner”;
- (b) by inserting in subsection (2) “or the Enterprise Commissioner” after “Commissioner”;
- (c) by inserting in subsection (2) “, industrial agreement or registered enterprise agreement” after “award”;
- (d) by inserting in subsection (3) (b) “, industrial agreement or registered enterprise agreement” after “award”.

Section 24 amended (Award hearings before Commissioner sitting alone)

17—Section 24 of the Principal Act is amended by inserting in subsection (5) “or refuse to make” after “make”.

Section 27 amended (Intervention and appearances)

18—Section 27 of the Principal Act is amended as follows:—

- (a) by omitting subsection (1) and substituting the following subsection:—

(1) The Minister may intervene in the public interest or otherwise in any proceedings before the Commission or the Enterprise Commissioner.

(b) by inserting the following subsections after subsection (3):—

(4) Subsections (2) and (3) do not apply to proceedings before the Enterprise Commissioner under Part IVA.

(5) A person having a direct interest in any proceedings before the Commission may apply to the Commission for leave to appear and be heard in those proceedings.

(6) The Commission, if satisfied that the person has a direct interest in the proceedings before it, must grant an application under subsection (5).

Section 28 amended (Representation)

19—Section 28 of the Principal Act is amended as follows:—

(a) by inserting in subsection (1) “or Enterprise Commissioner” after “Commission”;

(b) by inserting in subsection (5) “except with the leave of the Commission, Enterprise Commissioner or the Registrar” after “subsection (1)”.

Section 29 amended (Hearings for settling disputes)

20—Section 29 (1) of the Principal Act is amended by omitting “or a private employer” and substituting “, employer or employee”.

Section 30 amended (Conferences for settling disputes)

21—Section 30 (4) of the Principal Act is amended by omitting “telegram or telex sent by him or on his behalf” and substituting “any other means the President considers appropriate”.

Section 31 amended (Enforcement of decisions of hearings and conferences)

22—Section 31 of the Principal Act is amended by inserting the following subsection after subsection (4):—

(4A) The Registrar must cause a copy of an order made by the Commission to be served on—

- (a) any person to whom the order applies; and
- (b) any party to the hearing of the industrial dispute.

Section 32 amended (Subject-matter of awards)

23—Section 32 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1A) “scheme or” (wherever occurring);

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

(1B) In making or varying an award in relation to payment of contributions to a superannuation fund, the Commission must not refuse to make or vary that award if the superannuation fund—

- (a) is a complying superannuation fund; and
- (b) is one which the Commission is satisfied meets the wishes of employees.

(1C) In making or varying an award in relation to payment of contributions to a superannuation fund, the Commission must ensure that the provisions of the award do not require payment of any amount greater than an amount prescribed by wage fixing principles adopted by the Commission.

(1D) For the purpose of subsection (1B), “**complying superannuation fund**” means a fund—

- (a) that is in receipt of a current notice under the *Occupational Superannuation Standards Act 1987* of the Commonwealth stating that the fund has satisfied the superannuation fund conditions in relation to the most recent completed year of income; or
- (b) the trustees of which certify that they propose to take the required action under that Act to obtain a notice of compliance in relation to the current year of income.

- (c) by omitting from subsection (2) “for the time being, whether by reference to a basic wage or to any other matter, whether or not that other matter is or is to be determined under an award”;
- (d) by omitting subsection (5);
- (e) by inserting the following subsection after subsection (7):—
 - (7A) The Commission may, of its own motion or upon application by an organization and after consultation with such organizations as it considers appropriate, by notice in the *Gazette*, rescind an award it considers no longer serves any useful purpose.
- (f) by omitting subsections (8), (9), (10), (11) and (12).

Section 33 amended (Power of Commission to make awards in respect of private sector employment)

24—Section 33 of the Principal Act is amended as follows:—

- (a) by omitting paragraph (b) of subsection (1) and substituting the following paragraph:—
 - (b) all or any private employees employed in an enterprise.
- (b) by omitting subsection (2);
- (c) by omitting from subsection (3) “, or the class of employees to whom,”.

Section 34 substituted

25—Section 34 of the Principal Act is repealed and the following section is substituted:—

Power of Commission to make awards in respect of public sector employment

34—The Commission may make an award in respect of—

- (a) all State employees employed in one or more Agencies; or
- (b) all employees employed in a State authority that is not an Agency; or
- (c) classes of State employees employed in one or more Agencies; or

- (d) classes of employees employed in one or more State authorities that are not Agencies; or
- (e) all or any employees employed in an enterprise; or
- (f) any combination of the categories of employees referred to in paragraphs (a) to (e).

Section 35 amended (Certain matters to be dealt with by Full Bench of Commission)

26—Section 35 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(1) The powers of the Commission to make an award or to approve an industrial agreement is exercisable only by a Full Bench in respect of the following matters:—

- (a) making provision for, or altering, the ordinary hours of work;
 - (b) making provision for, or altering, a minimum wage that is to be payable to adults without regard to the work performed;
 - (c) making provision for, or altering a provision for—
 - (i) the amount of annual leave; and
 - (ii) the payment of wages or allowances during annual leave;
 - (d) making provision for, or altering, rates of wages generally or the manner in which rates of wages generally are to be ascertained;
 - (e) modifying or affecting not less than 5 awards;
 - (f) dealing with any other matter referred by the President under section 15 (1) (c).
- (b) by omitting from subsection (3) “or occupation”;
- (c) by omitting from subsection (9) (a) “on behalf of the Crown”.

Section 37 amended (Signature, operation and lodging of awards, &c.)

27—Section 37 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (2) (a) “for Labour”;
- (b) by omitting subsection (6).

Section 42 substituted

28—Section 42 of the Principal Act is repealed and the following section is substituted:—

Award subject to Acts dealing with same subject-matter

42—An award has effect subject to the provisions of any Act dealing with the same subject-matter.

Section 43 amended (Interpretation of awards)

29—Section 43 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsections:—

(1) The Secretary, an employer or an organization with members subject to an award may apply to the President for a declaration on how any provision of that award is to be interpreted.

(1A) On receipt of an application under subsection (1), the President must—

(a) declare, retrospectively or prospectively, how the provision of the award is to be interpreted and, if the declaration so requires, by order, vary any provision of the award to remedy any defect in it or give full effect to it; or

(b) if satisfied that a declaration under paragraph (a) would be inappropriate, by order, direct that an application to vary the award be made to clarify the provision of the award in respect of which the application was made.

(b) by inserting in subsection (2) (b) “or employer” after “organization” (first occurring);

(c) by omitting from subsection (3) (b) “by which the application is made” and substituting “or employer making the application”.

Section 44 amended (Evidence of awards, order, &c.)

30—Section 44 of the Principal Act is amended by inserting “43 or 75 (7E)” after “31,”.

Section 46 substituted

31—Section 46 of the Principal Act is repealed and the following section is substituted:—

Application of Division

46—This Division applies to the employment of a person whose terms and conditions of employment are not—

- (a) prescribed by or under any Act or Act of the Commonwealth; or
- (b) regulated by an order, award, determination or agreement having effect under any Act or Act of the Commonwealth.

Section 49 amended (Entitlement to award rates of remuneration)

32—Section 49 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) “industrial agreement or registered enterprise agreement,” after “award,”;
- (b) by inserting in subsection (2) “industrial agreement or registered enterprise agreement,” after “award,”;
- (c) by inserting in subsection (3) “industrial agreement or registered enterprise agreement,” after “award,”;
- (d) by omitting subsection (4) and substituting the following subsections:—

(4) An employee who is subject to an award, industrial agreement or registered enterprise agreement is entitled to be paid in respect of any week if—

- (a) due to the act, default or order of an employer, the employee does not work during that week or does not work for the maximum number of ordinary working hours specified in the award, industrial agreement or registered enterprise agreement; and
- (b) the employee was ready and willing to work during those ordinary working hours in that week.

(5) An employee referred to in subsection (4) is entitled to be paid—

- (a) wages at the rate fixed by the award, industrial agreement or registered enterprise agreement for a full week’s work; and

- (b) overtime payments for any overtime worked in accordance with the award, industrial agreement or registered enterprise agreement at the rate fixed by the award, industrial agreement or registered enterprise agreement.
- (6) Subsections (4) and (5) do not apply—
 - (a) if the employee is employed on a casual or part-time basis; or
 - (b) if the award, industrial agreement or registered enterprise agreement or the disciplinary provisions of an Act otherwise provide.

Section 50A inserted

33—After section 50 of the Principal Act, the following section is inserted:—

Power to stand down without pay

50A—Notwithstanding any other provision of this Act, an employer may stand down, without pay, any employee who refuses to perform any or all of the duties that the employee normally carries out and could reasonably be expected to carry out for such period as the employee continues to so refuse.

Section 51 amended (Offences relating to remuneration)

34—Section 51 of the Principal Act is amended as follows:—

- (a) by omitting subsections (1) and (2) and substituting the following subsections:—

(1) An employer who does not pay an employee the remuneration to which the employee is entitled to be paid under—

- (a) section 49 or 50; or
 - (b) an authority granted under section 79 or 81—
- is guilty of an offence.

(2) A person who contravenes—

- (a) any of the provisions of section 50 (1) or (2); or

(b) the terms of an authority, relating to remuneration, granted under section 79 or 81—

is guilty of an offence.

(b) by omitting subsection (5).

Section 52 amended (Remedy of employees)

35—Section 52 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (2) “or 50” and substituting “, 50, 79 or 81”;
- (b) by omitting from subsection (3) “or 50” and substituting “, 50, 79 or 81”;
- (c) by inserting after subsection (3) the following subsection:—

(4) If a person is convicted of an offence under this Division in respect of the non-payment by that person of any sum payable into a superannuation fund on behalf of a person in accordance with an award, the court by which that person is convicted must, in addition to imposing a penalty for the offence, order the person convicted to pay to or on behalf of the person in respect of whom the offence was committed—

- (a) any sum payable in respect of superannuation; and
- (b) any such further sum by way of compensation for interest foregone or financial loss incurred as a result of the failure to pay that sum as the court considers reasonable.

Section 55 amended (Making of industrial agreements)

36—Section 55 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (3) “or not approve” after “approve”;
- (b) by omitting from subsection (5) “Registrar” and substituting “Commission”;

- (c) by omitting subsection (6) and substituting the following subsections:—

(5A) The Commission must cause notice of its decision to be served on the parties to the industrial agreement.

- (6) An industrial agreement has effect from—

(a) the date it is approved by the Commission;
or

(b) such other date agreed by the parties to the agreement and approved by the Commission.

- (d) by inserting after subsection (7), the following subsection:—

(7A) Not less than 30 days nor more than 60 days before the expiry of an industrial agreement the Registrar must serve on each party to the agreement a written notice reminding that party of the expiry date of the agreement.

- (e) by inserting the following subsection after subsection (9):—

(10) If all parties to an industrial agreement agree to enter into an enterprise agreement, they may, by mutual consent, retire from that industrial agreement by filing in the office of the Registrar a notice in the prescribed form signifying their intention to retire on the day on which the enterprise agreement is to commence and on that day the industrial agreement ceases to have effect.

Section 56 amended (Registration and evidence of industrial agreements)

37—Section 56 of the Principal Act is amended by inserting after subsection (1) the following subsections:—

(1A) The Registrar must revoke the registration of an industrial agreement if the Full Bench revokes approval of the agreement under section 71.

(1B) The revocation of the registration of an industrial agreement under subsection (1A) takes effect on the day on which the approval is revoked.

Section 57 amended (Addition of parties to industrial agreements)

38—Section 57 of the Principal Act is amended by omitting “a person” and substituting “an employer”.

Section 59 amended (Variation, &c., of agreement)

39—Section 59 of the Principal Act is amended as follows:—

(a) by omitting “An” and substituting “(1) An”;

(b) by adding the following subsection:—

(2) Without prejudice to subsection (1), the Commission may, by order, vary an industrial agreement if the parties to it agree.

Part IVA inserted

40—After section 61 of the Principal Act, the following Part is inserted:—

PART IVA

ENTERPRISE AGREEMENTS

Division 1—Enterprise agreements

Interpretation

61A—In this Part—

“enterprise agreement” includes an agreement to extend or vary a registered enterprise agreement;

“register” means the register kept under section 61ZE.

Purpose of enterprise agreement

61B—The purpose of an enterprise agreement is to regulate the conditions of employment for any or all of the persons employed in a single enterprise.

Single or separate enterprises

61C—(1) Enterprises carried on by corporations that are related to each other for the purposes of the Corporations Law may, for the purposes of this Act, be regarded as either one enterprise or separate enterprises.

(2) For the purposes of this Act, enterprises carried on—

- (a) by different Agencies; or
- (b) by different State authorities that are not Agencies; or
- (c) by an Agency and a State authority that is not an Agency or part of an Agency and part of such a State authority—

may be regarded as either one enterprise or separate enterprises.

Parties to an enterprise agreement

61D—(1) An enterprise agreement may be made between any employer and any one of the following:—

- (a) one or more employee organizations representing persons employed in the enterprise;
- (b) each of at least 60% of the individuals employed in one or more classes of employment in the enterprise;
- (c) an employee committee formed under this Part to represent persons employed in the enterprise;
- (d) subject to the approval of the Enterprise Commissioner, any other person not mentioned in paragraph (a), (b) or (c) employed in the enterprise.

(2) Before an employee or employee committee can become a party to an enterprise agreement, the proposed agreement must be approved in a secret ballot by at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the agreement is to apply.

Content of enterprise agreement

61E—An enterprise agreement is to include provisions—

- (a) identifying the parties to the agreement, the enterprise for which it is made and the classes of employment to which it relates; and
- (b) fixing the conditions of employment to which employment under the agreement is to be subject; and

- (c) setting out or adopting procedures to be followed by individual employees and parties subject to the agreement to avoid grievances and to settle them; and
- (d) specifying the period for which the agreement remains in force.

Minimum conditions of employment

61F—(1) Conditions of employment fixed by an enterprise agreement in respect of rates of wages must not be less than—

- (a) in the case of an adult, the hourly rate for the lowest paid classification specified in an award or industrial agreement which would otherwise be applicable to an employee who is subject to that enterprise agreement; and
- (b) in the case of a person other than an adult—
 - (i) who is 18 years of age or under, 50% of the hourly rate referred to in paragraph (a); and
 - (ii) who is 19 years of age, 65% of the hourly rate referred to in paragraph (a); and
 - (iii) who is 20 years of age, 80% of the hourly rate referred to in paragraph (a); and
- (c) in the case of a person who is an adult and whose conditions of employment are not covered by an award or industrial agreement, an hourly rate calculated by reference to the minimum rate as established by the Commission under section 35 (1) (b) and to the ordinary weekly hours of work for which that person is employed; and
- (d) in the case of a person who is not an adult and whose conditions of employment are not covered by an award or industrial agreement, an hourly rate calculated in accordance with paragraph (c) using the relevant percentage according to age specified in paragraph (b) in respect of the hourly rate; and
- (e) in the case of an apprentice, the appropriate rate specified in a relevant award.

(2) Conditions of employment fixed by an enterprise agreement for conditions other than wages must not be less than—

- (a) in the case of annual leave the lowest amount of paid annual leave specified in any award; and
- (b) in the case of sick leave, the lowest amount of paid sick leave specified in any award; and
- (c) in the case of parental leave, the lowest amount of parental leave specified in any award.

Formal considerations

61G—An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

Lodgement of enterprise agreement

61H—(1) Parties to an enterprise agreement who wish to register the agreement must lodge the agreement with the Registrar.

(2) The Registrar is to forward a copy of the enterprise agreement to the Enterprise Commissioner as soon as practicable but no later than 7 days after it is lodged.

Hearing

61I—(1) On receipt of an enterprise agreement, the Enterprise Commissioner must—

- (a) set a hearing date and notify the Minister and the parties to the agreement accordingly; and
- (b) forward a copy of the agreement to the Minister.

(2) At the hearing, the Enterprise Commissioner must ensure that the parties to the agreement demonstrate an understanding of—

- (a) their rights and obligations under the agreement and this Part; and
- (b) the conditions of employment under any Act, award, industrial agreement or other enterprise agreement applying to the parties.

(3) The Enterprise Commissioner may summon any person to attend a hearing.

(4) A person who is summoned to attend a hearing must not, without reasonable excuse, fail or refuse to attend the hearing as required by the summons.

Penalty: Fine not exceeding 10 penalty units.

(5) A hearing is to be conducted in such manner as the Enterprise Commissioner may determine.

(6) A party to the enterprise agreement may appear before the Enterprise Commissioner in person or by an agent.

Approval of enterprise agreement

61J—(1) The Enterprise Commissioner must approve an enterprise agreement unless satisfied that—

- (a) the conditions of employment fixed by that agreement are less than the conditions specified in section 61F; or
- (b) the parties to the agreement do not demonstrate an understanding of the matters specified in section 61I (2); or
- (c) the matters referred to in section 61E are not contained in the agreement; or
- (d) the agreement was made under duress; or
- (e) where the Minister intervenes under section 27, the matters raised by the Minister at that intervention justify refusal, in the public interest, to approve the agreement.

(2) If the Enterprise Commissioner approves an enterprise agreement, the Enterprise Commissioner must—

- (a) by notice in writing advise the parties to the agreement and the Minister of the approval and their right to withdraw from the agreement under section 61K; and
- (b) forward a copy of the agreement to the Minister.

(3) The Enterprise Commissioner, if not satisfied as required under this section, must—

- (a) refuse to approve the enterprise agreement; and
- (b) by notice in writing advise the parties to the agreement and the Minister of the refusal and the reasons for the refusal.

Withdrawal from enterprise agreement

61K—(1) A party to an enterprise agreement, within 14 days after receipt of a notice under section 61J, may give written notice to the other parties of the intention to withdraw from the agreement.

(2) A copy of the withdrawal notice is to be lodged with the Registrar within the period referred to in subsection (1).

(3) If the parties to the enterprise agreement (other than the employer) include individuals or an employee committee, notice of withdrawal from the agreement by those parties may only be given if at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the agreement is to apply agree to it.

Registration of enterprise agreement

61L—(1) Parties to an enterprise agreement approved by the Enterprise Commissioner under section 61J may lodge with the Registrar an application to register that agreement.

(2) If a withdrawal notice in relation to an enterprise agreement is not lodged under section 61K, the Registrar is to register that agreement.

(3) If a withdrawal notice in relation to an enterprise agreement is lodged under section 61K—

(a) the application for registration under subsection (1) is taken to be withdrawn; and

(b) the Registrar is not to register that agreement.

(4) An enterprise agreement has no effect unless it is registered.

Effect of registered enterprise agreement

61M—(1) A registered enterprise agreement is enforceable as if it were an award.

(2) The provisions of a registered enterprise agreement prevail over the provisions of any award, industrial agreement or order of the Commission that deal with the same matters in so far as they purport to apply to any person bound by the enterprise agreement.

Persons bound by registered enterprise agreement

61N—A registered enterprise agreement is binding on—

- (a) the parties to the agreement; and
- (b) each person employed in the enterprise for which the agreement was made who is employed in a class of employment to which the agreement relates; and
- (c) each successor to an employer who was a party to the agreement.

Duration of registered enterprise agreement

61O—(1) A registered enterprise agreement remains in force for the period specified in the agreement, being a period not exceeding 5 years.

(2) The parties to a registered enterprise agreement, by mutual consent, may make a further agreement to extend the registered enterprise agreement.

(3) If the parties to the registered enterprise agreement (other than the enterprise employer) include individuals or an employee committee, a further agreement may be entered into by those individuals or that employee committee only after at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the enterprise agreement applies agree to it by secret ballot.

Variation of registered enterprise agreement

61P—(1) The parties to a registered enterprise agreement, by mutual consent, may make a further agreement to vary the registered enterprise agreement.

(2) If the parties to the registered enterprise agreement (other than the enterprise employer) include individuals or an employee committee, a further agreement to vary may be entered into by those individuals or that employee committee only after at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the enterprise agreement applies agree to it by secret ballot.

(3) A further agreement to vary a registered enterprise agreement remains in force for the remainder of the period during which the registered enterprise agreement remains in force.

(4) On the registration of a further agreement under this Part, a registered enterprise agreement as varied by that further agreement has effect as so varied.

Notice to be given of working conditions

61Q—(1) An employer of employees whose conditions of employment are affected by a registered enterprise agreement must cause a copy of the agreement to be displayed in a conspicuous place in all premises to which the agreement applies so as to be easily accessible to the employees in those premises.

Penalty: Fine not exceeding 10 penalty units.

(2) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment specified in a registered enterprise agreement, the employer must give the person notice of the existence of the agreement and access to a copy, or to an accurate (but simply expressed) summary, of the agreement.

Penalty: Fine not exceeding 10 penalty units.

Termination of registered enterprise agreement

61R—(1) A registered enterprise agreement may be terminated before the end of the period for which it remains in force with the mutual consent of the parties to the agreement.

(2) If the parties to a registered enterprise agreement (other than the employer) include individuals or an employee committee, an agreement to terminate the enterprise agreement during its duration may be entered into by those individuals or that employee committee only after at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the enterprise agreement applies agree to it by secret ballot.

(3) The parties to a registered enterprise agreement, by notice in writing, must notify the Enterprise Commissioner of their intention to terminate the enterprise agreement.

(4) On receipt of a notice under subsection (3), the Enterprise Commissioner must approve the termination of the registered enterprise agreement if satisfied that—

- (a) the agreement to terminate the agreement is by mutual consent of the parties; and
- (b) the agreement to terminate the agreement is not a result of any duress applied to any party; and
- (c) the parties understand the matters referred to in section 61I (2).

(5) If the Enterprise Commissioner approves the termination of a registered enterprise agreement, the Registrar must—

- (a) remove the agreement from the register; and
- (b) notify the parties to the agreement accordingly.

(6) The termination of a registered enterprise agreement takes effect on the date on which it is removed from the register.

New enterprises

61s—(1) In this section—

“**intending employee**” means a person who intends to be employed in a new enterprise;

“**intending employer**” means a person who intends to be an employer in a new enterprise;

“**new enterprise**” means an enterprise which is not in existence but in which persons are proposed to be employed at the commencement of its operations.

(2) An enterprise agreement in relation to a new enterprise may be made between an intending employer and any one of the following:—

- (a) one or more organizations of employees representing intending employees;
- (b) each of at least 60% of the intending employees if the Enterprise Commissioner is satisfied that those intending employees have, by declaration in writing, specified a willingness to be employed under the conditions specified in the enterprise agreement.

(3) The provisions of sections 61E, 61F, 61G, 61H, 61I, 61J, 61K, 61L, 61M, 61N and 61Q apply with the necessary modifications to the making of an enterprise agreement under this section as if it were an enterprise agreement made in respect of an existing enterprise.

(4) If, at the end of 30 days after the commencement of the operation of the new enterprise, the Enterprise Commissioner is satisfied—

- (a) that the individuals who declared in writing a willingness to be employed under the conditions specified in the enterprise agreement constitute at least 60% of the employees of the enterprise; or
- (b) that at least 60% of the persons employed in the enterprise to which the enterprise agreement applies agree to it by secret ballot—

the enterprise agreement remains in force and the provisions of sections 61O, 61P and 61R apply to the agreement.

(5) If the Enterprise Commissioner is not satisfied as required under subsection (4), the Enterprise Commissioner must terminate the enterprise agreement.

(6) If the Enterprise Commissioner terminates an enterprise agreement, the Enterprise Commissioner must serve notice of the termination on all parties to the agreement.

(7) If the Enterprise Commissioner terminates an enterprise agreement, the relevant award conditions apply to employees employed in the enterprise.

Division 2—Employee committees

Decision to form employee committee

61T—(1) Employees in a single enterprise in any one or more classes of employment who intend to enter into an enterprise agreement may, at a meeting held for the purpose, decide whether to form an employee committee to represent employees in the enterprise in those classes of employment.

(2) A decision to form an employee committee must be supported in a secret ballot by at least 60% of the employees in the enterprise in those classes of employment.

Election of members of employee committee

61U—(1) If employees decide to form an employee committee under section 61T, they are to elect, by secret ballot, not more than 8 of their number as members of that employee committee.

(2) If the employer consents, the committee may consist of more than 8 persons.

(3) A member of an employee committee holds office for a term of 12 months.

Periodic elections

61V—At the end of the period of 12 months referred to in section 61U (3) and each successive 12 month period, employees in a single enterprise in any one or more classes of employment must elect, by secret ballot, not more than 8 of their number as members of an employee committee.

Function of employee committee

61W—The function of an employee committee is to represent employees in an enterprise in any one or more classes of employment—

- (a) in the negotiating, making, extending, varying and terminating of an enterprise agreement; and
- (b) in relation to any other matter relating to an enterprise agreement.

Decisions and procedure

61X—(1) A decision supported by the majority of the members of an employee committee is the decision of the committee.

(2) An employee committee must elect a chairperson from among its members who is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(3) Except as provided by this section, an employee committee may determine its own procedure.

Casual vacancy

61Y—(1) If a vacancy occurs in the office of a member of an employee committee, the employees being represented by the committee, by secret ballot, may elect one of their number to fill the vacancy.

(2) Pending the election, the chairperson may appoint an employee referred to in subsection (1) to fill the vacant position.

(3) A person elected under this section as a member of an employee committee holds office for the remainder of the term of office of his or her predecessor.

Dissolution

61Z—(1) An employee committee may be dissolved at any time by a decision made by secret ballot by at least 60% of the persons employed in the enterprise who are or would be bound by an enterprise agreement entered into by the committee.

(2) If an employee committee is dissolved while an enterprise agreement is in force, any employee committee formed in accordance with this Part within 30 days after the dissolution to represent the employees represented by the former committee is taken to be a party to the agreement instead of the former committee.

(3) If an employee committee is dissolved while an enterprise agreement is in force and a further employee committee is not so elected, the former committee ceases to be a party to the agreement but persons from time to time employed in the enterprise who would have been bound by the agreement if the employee committee had not been dissolved continue to be bound by the agreement as if each such person were a party to the agreement.

Division 3—Enterprise Commissioner**Appointment of Enterprise Commissioner**

61ZA—(1) The Governor may appoint a person to be the Enterprise Commissioner.

(2) The Enterprise Commissioner is to be appointed for a period not exceeding 7 years on such terms and conditions as are specified in the instrument of appointment.

(3) Except as provided in this section, the provisions of sections 5 (3), 5 (4), 6, 7, 8 and 9 apply to the appointment and office of the Enterprise Commissioner in the same manner as they apply to the appointment and office of a Commissioner.

Acting Enterprise Commissioner

61ZB—(1) The Governor may appoint a person to act in the office of Enterprise Commissioner during—

- (a) a vacancy in that office; or
- (b) any period when the Enterprise Commissioner is absent from duty or is for any other reason unable to perform the functions of office.

(2) The Governor may terminate the appointment of a person under this section at any time.

(3) The Governor may determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section.

(4) Where a person is acting in the office of the Enterprise Commissioner in pursuance of an appointment under this section, that person has, and may exercise, all the powers, and may perform all the functions, of the holder of that office under this Act or any other law.

(5) All things done or omitted to be done by a person acting in the office of the Enterprise Commissioner are as valid, and have the same consequences, as if they had been done or omitted to be done by the Enterprise Commissioner.

(6) The validity of anything done by or in relation to a person purporting to act under subsection (1) is not to be called in question on the ground that—

- (a) the occasion for the appointment had not arisen; or
- (b) there is a defect or irregularity in, or in connection with, the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Functions and powers

61ZC—(1) The functions of the Enterprise Commissioner are—

- (a) to keep under review the operation of the provisions of this Part relating to enterprise agreements; and
- (b) to promote the use of enterprise agreements; and
- (c) to report, as required by the Minister, on matters relating to the development and operation of enterprise agreements; and
- (d) to exercise such other functions as may be conferred or imposed under this or any other Act.

(2) The Enterprise Commissioner may exercise any power necessary and convenient to perform any functions under this Part.

(3) In performing any functions and exercising any powers under this Part, the Enterprise Commissioner must act according to equity and good conscience without regard to technicalities or legal forms.

Division 4—Miscellaneous**Secret ballots under this Part**

61ZD—(1) A secret ballot under this Part must be conducted in a manner determined by the Enterprise Commissioner.

(2) If, within 14 days after a ballot has been held, the Registrar receives a written complaint from any person entitled to vote in the ballot alleging specified irregularities in the conduct of the ballot and requesting that a further secret ballot be conducted by an independent person, and the Registrar is satisfied that such irregularities exist, the Registrar may arrange for the conduct of a further secret ballot.

(3) Before the Registrar arranges for the conduct of a further secret ballot, the Registrar must forward a copy of the complaint to the Enterprise Commissioner.

(4) The Registrar must not register an enterprise agreement—

- (a) within 14 days after the holding of a secret ballot (or a further secret ballot) under this Part; or
- (b) if a written complaint has been received under this section, until the complaint is resolved to the Registrar's satisfaction.

Register

61ZE—(1) The Registrar is to keep a register of all registered enterprise agreements, notices of termination of such agreements and any other particulars the Registrar considers appropriate.

(2) The Registrar is to permit the Secretary to inspect, and to make copies of, any document kept in the register.

(3) The Registrar is to permit parties to an enterprise agreement to inspect, and to make copies of, their enterprise agreement kept in the register.

(4) For the purposes of subsection (3), parties to an enterprise agreement include—

- (a) if an employee organization is a party to an enterprise agreement, members of the employee organization who are affected by the enterprise agreement; and
- (b) if an employee committee is a party to an enterprise agreement, employees who are represented by the enterprise committee.

Section 63 amended (Registration of associations)

41—Section 63 of the Principal Act is amended as follows:—

- (a) by omitting subsection (6);
- (b) by omitting subsection (7);
- (c) by omitting subsection (8);
- (d) by omitting paragraph (b) from subsection (9);

(e) by omitting subsection (12) and substituting the following subsection:—

(12) A Commissioner must, after making a determination under subsection (10) (c), forward a copy of the determination to the Registrar who must serve a written notice giving particulars of the determination on—

- (a) the organization to which the determination relates; and
- (b) any other organization having a registered interest in the award or awards to which the determination relates.

Section 63A repealed

42—Section 63A of the Principal Act is repealed.

Section 65 amended (Effect of registration)

43—Section 65 of the Principal Act is amended as follows:—

- (a) by inserting in paragraph (d) “and Part VIII” after “Part VI”;
- (b) by omitting from paragraph (h) “or land”.

Section 65A amended (Recall and re-issue of certificate of registration)

44—Section 65A (9) of the Principal Act is amended by omitting “(dc)”.

Section 67A inserted

45—After section 67 of the Principal Act, the following section is inserted:—

Amalgamation of organizations

67A—(1) If 2 or more organizations wish to amalgamate they must lodge in the office of the Registrar—

- (a) an application, signed on behalf of each organization, confirming that they have agreed to amalgamate; and
- (b) a notice specifying the proposed name and address of the amalgamated organization; and

- (c) a copy of the rules or constitution of the proposed amalgamated organization; and
- (d) the certificates of registration of each of the organizations proposing to amalgamate.

(2) If, after receiving an application, the Registrar is satisfied that were the application to amalgamate in the form of an application to register the amalgamated organization—

- (a) the application would comply with the requirements for the registration of an association that are specified in section 63 (3) (a); and
- (b) section 63 (9) would not prevent the organization being registered by the name chosen for the amalgamated organization—

the Registrar must register the amalgamated organization.

(3) If the Registrar registers an organization under subsection (2), the Registrar must at the same time—

- (a) cancel the registration of each of the organizations that amalgamated to form that organization; and
- (b) issue a certificate of registration to the organization in accordance with section 64.

(4) A new organization formed by the amalgamation of organizations and registered under subsection (2) has all the rights including interest in awards and industrial agreements and is subject to all the obligations that each of those organizations had or was subject to immediately before its registration was cancelled.

(5) An amalgamation of organizations is of no effect until the amalgamated organization is registered under subsection (2).

(6) If the Registrar is not satisfied as required under this section, the Registrar must—

- (a) refuse to register an amalgamated organization; and
- (b) by notice in writing served on each of the organizations seeking to amalgamate, inform the organizations of the refusal and the reason for the refusal.

Section 69 substituted

46—Section 69 of the Principal Act is repealed and the following section is substituted:—

Interpretation of Part

69—(1) For the purposes of this Part, a reference to an organization, a registered organization, an employer organization and an employer includes a reference to a controlling authority and a State authority.

(2) For the purposes of section 71, “**decision**” includes a declaration, an order, a determination, an approval, a refusal or a dismissal made by a Commissioner, the Enterprise Commissioner or the Registrar.

Section 70 substituted

47—Section 70 of the Principal Act is repealed and the following section is substituted:—

Rights of appeal

70—(1) An appeal may be made to a Full Bench against—

- (a) a decision of a Commissioner to make or refuse to make an award—by—
 - (i) an organization which appeared at the hearing which is aggrieved by the refusal to make the award; or
 - (ii) an organization which was determined under section 63 (10) to have an interest in the award which is aggrieved by the making of that award; or
 - (iii) the Minister; and
- (b) an order made by a Commissioner under section 31 directing that an amount be paid or that no amount be paid to a person who has been found by the Commissioner to have been unfairly dismissed in circumstances where reinstatement or re-employment is not possible or practical or to a person who has been retrenched or made redundant involuntarily—by—
 - (i) the organization of which the person is a member or that person; or
 - (ii) the employer or organization of which the employer is a member; and

- (c) an order made by a Commissioner under section 31 directing that a person be reinstated or re-employed—by the organization of which that person is a member or the employer, employer organization or that person; and
- (d) an order made by a Commissioner under section 31 directing that a person not be reinstated or re-employed—by that person or the organization of which that person is a member; and
- (e) the refusal of the Registrar to grant an application by an association for registration under Part V—by the association whose application was refused; and
- (f) a declaration made under section 43 by the President—by the Secretary, an organization whose members are affected by the declaration or an employer who is affected by the declaration; and
- (g) a decision by a Commissioner sitting alone to approve or not to approve an industrial agreement under section 55 (3)—by—
 - (i) a party to the agreement if the Commissioner has not approved the agreement; or
 - (ii) an organization, if the Commissioner approved the agreement; and
- (h) the approval by the Enterprise Commissioner under section 61J of an enterprise agreement—by the Minister where the Minister intervened under section 27; and
- (i) the refusal of the Enterprise Commissioner under section 61J to approve an enterprise agreement—by a party to the enterprise agreement or by the Minister where the Minister intervened under section 27; and
- (j) the refusal of the Enterprise Commissioner under section 61R to approve the termination of a registered enterprise agreement—by a party to the registered enterprise agreement; and
- (k) the termination of an enterprise agreement by the Enterprise Commissioner under section 61R—by a party to the enterprise agreement; and

- (l) a determination made under section 63 (10) (c) by a Commissioner—by an organization referred to in section 63 (10) (c), any organization notified and heard by a Commissioner under section 63 (11) or an organization bound by the relevant award; and
- (m) a determination made under section 65A (3) by a Commissioner—by the organization to which the determination relates; and
- (n) the refusal of the Registrar under section 67 (4) to grant an application for the approval of the alteration of the rules or constitution of an organization—by the organization whose application was refused; and
- (o) the refusal of the Registrar under section 67A to register organizations as an amalgamated organization—by an organization to which the refusal relates; and
- (p) an order made by a Commissioner under section 75 (7E) requiring certain records to be produced by an employer—by the Secretary or the employer to which the order relates.

(2) If an appeal is made under subsection (1) (a), (b), (c), (d), (f), (g), (l), (m) or (p), the membership of the Full Bench for the purpose of hearing the appeal is not to include the Commissioner who made the relevant order, award, decision, declaration or determination.

(3) If an appeal is made under subsection (1) (h), (i), (j) or (k) the membership of the Full Bench for the purpose of hearing the appeal is not to include the Commissioner who is the Enterprise Commissioner.

Section 71 amended (Procedure on appeals)

48—Section 71 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(1) An appeal under section 70 must be made by lodging a notice of appeal with the Registrar within 21 days after—

(a) the date of the notification of the making of the award being appealed against; or

- (b) the date of service of the notice relating to the decision being appealed against.
- (b) by omitting from subsection (2) (a) “, decision, declaration, determination, or refusal” and substituting “or decision”;
- (c) by omitting from subsection (3) “appropriate organization” and substituting “organizations and persons”;
- (d) by omitting subsection (4) and substituting the following subsection:—

(4) If a notice of appeal is lodged under subsection (1), the operation of the award or decision being appealed against is suspended until the appeal is determined but anything done before the lodging of the notice of appeal remains valid.

- (e) by omitting from subsection (5) “an appropriate organization” and substituting “an organization or any person”;
- (f) by omitting subsections (6) and (7) and substituting the following subsection:—

(6) A Full Bench may—

- (a) grant an application under subsection (5) either unconditionally or subject to such conditions as it determines; or
 - (b) refuse to grant the application.
- (g) by omitting subsections (13), (14), (15), (16), (16A) and (16B) and substituting the following subsection:—

(13) On the hearing of an appeal, a Full Bench may do one or more of the following:—

- (a) confirm, revoke or vary the award or decision appealed against;
- (b) make an award or decision dealing with the subject-matter of the award or decision appealed against;
- (c) direct the Commissioner who made the award or the Commissioner or Registrar whose decision is appealed against, or another Commissioner, to take further action to deal with the subject-matter of the award or decision in accordance with the directions of the Full Bench.

(h) by omitting subsection (19) and substituting the following subsection:—

(19) A Full Bench is to cause a copy of its decision in respect of an appeal to be served on—

(a) each of the parties to the appeal; and

(b) in the case of an appeal relating to an award or an interpretation, on any organization which under section 63 (10) was determined by a Commissioner to have an interest in the award or interpretation.

(i) by omitting from subsection (20) “to the Registrar pursuant to subsection (16B) (b)” and substituting “under subsection (13) (c) to recall the certificate of registration of an organization”;

(j) by omitting from subsection (22) “penalty not exceeding \$500” and substituting “fine not exceeding 5 penalty units”.

Section 73 repealed

49—Section 73 of the Principal Act is repealed.

Section 74 amended (Functions of Secretary)

50—Section 74 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:—

(6) In this section “**Commonwealth inspector**” means—

(a) a person appointed as an inspector under section 84 (2) of the Commonwealth Act; or

(b) a person to whom an arrangement referred to in section 84 (3) of the Commonwealth Act applies.

Section 75 amended (Records of employment)

51—Section 75 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(1) An employer must make and maintain a true record of employment in such form, and containing such information, as may be prescribed.

- (b) by omitting from subsection (4) “Where a person ceases to be an employer” and substituting “If a person ceases to be an employer otherwise than for a reason referred to in subsection (3)”.
- (c) by inserting the following subsections after subsection (7):—

(7A) If an employer who is required to keep a record under this section has failed to comply with a notice served on the employer in accordance with subsection (5), the Secretary may apply to the President for an order by a Commissioner requiring the employer to forward to the Secretary a true copy of the record or such information contained in the record as is specified in the application.

(7B) On receipt of an application under subsection (7A), the President must cause notice of the application to be served on the employer.

(7C) A notice under subsection (7B) must state—

- (a) the matter to which the application relates; and
- (b) the time and place where a hearing is to be conducted before a Commissioner.

(7D) The Secretary and the employer are entitled to be heard at a hearing held for the purposes of considering an application under subsection (7A).

(7E) After a hearing in respect of an application for an order referred to in subsection (7A), the Commissioner before whom the application was heard may—

- (a) make or refuse to make the order applied for; or
- (b) make such other order as the Commissioner in the circumstances considers appropriate.

(7F) The Registrar must serve on the relevant employer—

- (a) if the Commissioner makes an order under subsection (7E), a copy of that order; or
- (b) if the Commissioner refuses to make an order under that subsection, a notice in writing of that refusal.

- (d) by inserting in subsection (8) “or (7E)” after “subsection (7)”.

Section 76 amended (Powers of inspectors)

52—Section 76 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) (b) “, industrial agreement or registered enterprise agreement” after “award”;
- (b) by omitting from subsection (3) “an industry is carried on or at which any State”;
- (c) by inserting in subsection (6) “or a person who has been an employer” after “employer”.

Section 77 amended (Right of entry of union officials)

53—Section 77 of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following subsections:—

(1) An officer of an organization of employees, subject to any conditions prescribed in the regulations, may—

- (a) during working hours, enter any premises where members of that organization are employed for the purpose of talking with or interviewing the employees at the premises; and
- (b) during working hours, enter any premises where members of that organization are or were employed for the purpose of investigating any alleged breach of this Act, any award, industrial agreement or registered enterprise agreement in relation to the industry or enterprise in which those members are or were employed; and
- (c) for the purpose of investigating any alleged breach referred to in paragraph (b) and with the approval of the employee or former employee, require the employer to produce for inspection during the usual office hours at the employer’s office the record kept under section 75 in respect of that employee or former employee; and
- (d) make copies of the entries in any record kept under section 75 related to any alleged breach referred to in paragraph (b).

(2) Before exercising any power under subsection (1) (c) or (d), an officer referred to in that subsection must give the relevant employer notice of at least two working days not being a Saturday, Sunday or public holiday.

(2A) Notwithstanding subsection (2), an officer referred to in subsection (1) may exercise any of the powers referred to in paragraphs (c) or (d) of that subsection before the expiration of the period of notice referred to in subsection (2) if the relevant employer agrees to the exercise of those powers before that expiration.

(3) An officer referred to in subsection (1) is not entitled to inspect a record referred to in that subsection until the officer has made before a justice the declaration of secrecy prescribed in the regulations.

Section 78 amended (Service of requisitions on employers, &c.)

54—Section 78 of the Principal Act is amended by omitting “any part of an employer’s business is carried on, or at which any State employees are employed,” and substituting “any employees are employed by the employer”.

Sections 79, 80, 81 and 82 substituted

55—Sections 79, 80, 81 and 82 of the Principal Act are repealed and the following sections are substituted:—

Employment of infirm persons

79—(1) The Commission may, on application by an infirm person, grant that person an authority to work at a wage less than that fixed by any relevant award.

(2) The Commission must not grant an authority under subsection (1) unless, after consulting officers of such employee organizations as the Commission considers appropriate, the Commission is satisfied that the applicant is, by reason of infirmity, unable to obtain employment at the wage fixed by any relevant award.

(3) If the Commission refuses to grant an authority under subsection (1), the Commission must immediately serve a written notice on the applicant informing the applicant of the refusal and the reason for the refusal.

(4) An authority—

- (a) must specify the terms on which it is granted including the minimum wage rate at which the person to whom the authority is granted is authorized to work; and
- (b) may specify the period for which it is to remain in force.

(5) The Commission may revoke an authority at any time by giving the person to whom it was granted at least 7 days written notice of the revocation and the reason for the revocation.

(6) Subject to subsection (7), an employer in an industry or occupation within the jurisdiction of the Commission must not employ a number of persons authorized under this section that exceeds 20% of the whole number of persons employed by the employer in that industry or occupation.

Penalty: Fine not exceeding 20 penalty units.

(7) Subsection (6) does not apply to the employment in an industry or occupation of one person authorized under this section.

Employment of persons with disabilities in sheltered workshops, &c.

80—(1) Subject to subsection (2), an award does not apply to a person with a disability employed, or engaged in work, in a sheltered workshop or in an institution.

(2) Where, on application by the Registrar, the Commission is satisfied, after due inquiry, that any institution or sheltered workshop is unfairly competing with persons carrying on a business in which there is performed work similar to that performed by an inmate of the institution or a person with a disability employed or engaged in the sheltered workshop, the Commission may, by order, apply as from a day specified in the order a relevant award to any inmate or class of inmates of the institution or to any person with a disability or class of persons with disabilities employed or engaged in the sheltered workshop.

(3) In this section—

“disability” means a disability—

- (a) which is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and
- (b) which is permanent or likely to be permanent; and
- (c) which results in—
 - (i) a substantially reduced capacity of a person for communication, learning or mobility; and
 - (ii) the need for continuing support services; and
- (d) which may or may not be of a chronic episodic nature;

“institution” means an institution conducted in good faith for religious or charitable purposes;

“sheltered workshop” means premises where persons with disabilities are able to carry out work that benefits them, whether or not the work ordinarily yields a profit.

Employment of students

81—(1) In this section—

“prescribed period” means—

- (a) in the case of a person undergoing a full-time course of training at a college of technical and further education in Tasmania for a diploma as a trade teacher, 30 months; and
- (b) in any other case, 18 months;

“tertiary education” means—

- (a) a course at a university within the Commonwealth; or
- (b) a full-time course at a college of technical and further education in Tasmania.

(2) The Commission may, on application by a person who is undergoing a course of tertiary education, grant that person an authority to work in accordance with the terms of the authority for a specified employer for any periods, not exceeding in the aggregate the prescribed period, to gain practical experience in specified subjects in that course of tertiary education if the gaining of the practical experience is a requirement of the course.

(3) If the Commission refuses to grant an authority under subsection (2), the Commission must immediately serve a written notice on the applicant informing the applicant of the refusal and the reason for the refusal.

(4) The Commission may revoke an authority at any time by giving the holder of the authority at least 7 days written notice of revocation and the reason for the revocation.

(5) Nothing in this Act prevents a person to whom an authority has been granted under subsection (2) from being employed by the employer specified in the authority in accordance with the terms of that authority at a remuneration not less than that specified in the authority.

Appeals in respect of matters under sections 79, 80 and 81

82—(1) A person who is aggrieved by—

- (a) a refusal by a Commissioner sitting alone to grant an authority under section 79 or 81; or
- (b) the terms specified in an authority granted under either of those sections; or
- (c) the revocation of such an authority; or
- (d) an order made by the Commission under section 80 (2)—

may appeal to a Full Bench.

(2) An appeal must be instituted by giving written notice of appeal to the Registrar within a period of 21 days after—

- (a) the service of a notice under section 79 (3) or 81 (3), in the case of a refusal to grant an authority; or

- (b) the receipt of an authority, in the case of an appeal against the terms specified in the authority; or
- (c) the service of a notice under section 79 (5) or 81 (4), in the case of an appeal against the revocation of an authority; or
- (d) the date of the order of the Commission under section 80 (2).

(3) The membership of a Full Bench for the purpose of hearing an appeal is not to include the Commissioner whose decision is appealed against.

(4) An appeal must be heard and determined by a Full Bench in such manner as the Full Bench determines.

(5) At the hearing of an appeal a Full Bench may—

- (a) dismiss the appeal; or
- (b) quash the decision appealed against and direct the Commissioner who made the decision or some other Commissioner to take such action as the Full Bench considers necessary in the matter to which the appeal relates.

(6) If an appeal is in respect of the revocation of an authority, the revocation has no effect until—

- (a) the determination or abandonment of the appeal; or
- (b) such later date as the Full Bench determines.

(7) A Full Bench must cause a copy of its decision in relation to an appeal to be served on the parties to the appeal.

(8) The decision of a Full Bench on an appeal is final.

Section 83 amended (Requirements as to secrecy of officers, &c.)

56—Section 83 (1) of the Principal Act is amended by inserting “the Enterprise Commissioner,” after “A Commissioner,”.

Section 84 substituted

57—Section 84 of the Principal Act is repealed and the following section is substituted:—

Copies of award to be available to employees, &c.

84—An employer of employees subject to an award must ensure that a copy of the award, as currently in force—

- (a) is readily available for inspection and perusal by those employees; and
- (b) is displayed in a conspicuous place in the premises in which the employees are employed so as to be easily accessible to those employees.

Penalty: Fine not exceeding 10 penalty units.

Section 86 amended (Prohibition on victimization)

58—Section 86 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “by reason merely of the fact that” and substituting “because”;
- (b) by omitting subsection (2) and substituting the following subsection:—

(2) A person must not exert any duress on any other person in relation to the negotiating or making of an enterprise agreement.

Penalty: Fine not exceeding 20 penalty units.

Sections 87 and 87A substituted

59—Sections 87 and 87A of the Principal Act are repealed and the following sections are substituted:—

Freedom of association

87—(1) It is not compulsory for any person to be or not to be a member of, or to join or not to join, any organization or association.

(2) A person, organization or association must not take or threaten to take any action against a person—

- (a) which directly has the effect of making the person join or not join, or remain or not remain a member of, an organization or association; or
- (b) with the intention of coercing the person to join or not to join, or remain or not remain a member of, an organization or association.

Penalty: Fine not exceeding 30 penalty units in the case of a person or 250 penalty units in the case of an organization or association.

Responsibility of Secretary and Registrar for enforcement of certain provisions of Act

87A—(1) Subject to subsection (2), if an obligation is placed on an organization or other person to comply with, or not to contravene, a provision of Division 2 or 3 of Part III, Part IV, Part IVA, Part VII or this Part, the Secretary, subject to the direction of the Minister, is responsible for enforcing compliance with, or non-contravention of, that provision by that organization or other person.

(2) If an obligation is placed on an organization or other person by any provision of an order or notice made under section 31, 43, 65A (8), 71 (20) or 75 (7E), the Registrar, subject to the direction of the Minister, is responsible for enforcing compliance with, or non-contravention of, that provision by that organization or other person.

(3) The Secretary may delegate the Secretary's responsibility under subsection (1).

Section 90 amended (Provision for change of names of certain bodies)

60—Section 90 of the Principal Act is amended by omitting “Tasmanian Chamber of Industries” and substituting “Tasmanian Confederation of Industries”.

Section 91 repealed

61—Section 91 of the Principal Act is repealed.

Section 98 repealed

62—Section 98 of the Principal Act is repealed.

Section 99 repealed

63—Section 99 of the Principal Act is repealed.

Schedules 2 and 3 repealed

64—Schedules 2 and 3 of the Principal Act are repealed.

***Tasmanian State Service Act 1984* amended**

65—The *Tasmanian State Service Act 1984* is amended as follows:—

- (a) by inserting in the definition of “award” in section 3 (1) “, enterprise agreement” after “order”;
- (b) by omitting from the definition of “award” in section 3 (1) “*Conciliation and Arbitration Act 1904*” and substituting “*Industrial Relations Act 1988*”;
- (c) by omitting subsection (6) of section 3 and substituting the following subsection:—

(6) If a provision of this Act is inconsistent with an award, the award is to be read subject to that provision.

- (d) by omitting subsection (1) of section 38 and substituting the following subsections:—

(1) A person may be employed on a full-time, part-time, hourly, daily, weekly or other basis in a temporary capacity to undertake such work as may be required for a specified period of time or otherwise on—

- (a) a general contract of service; or

(b) a special contract of service—

by the Minister on behalf of the Crown in accordance with Employment Instructions issued by the Commissioner.

(1A) A special contract of service referred to in subsection (1) may only be used to employ persons in positions determined by the Commissioner to be of a senior executive or equivalent specialist nature.

(e) by inserting after section 81 (1) the following subsection:—

(1A) Except as provided in subsection (2), subsection (1) does not authorize regulations to be made fixing or altering rates of salaries or wages payable to employees.

(f) by omitting subsection (12) of section 81 and substituting the following subsection:—

(12) If a regulation under—

(a) subsection (2) (a) or (2) (b); or

(b) subsection (2) (c), except in so far as it relates to the duties of employees; or

(c) subsection (2) (d), in so far as it relates to recreation and sick leave; or

(d) subsection (2) (e) or (2) (f)—

is inconsistent with an award, it is, to the extent of the inconsistency, of no effect.

Transitional Provision

66—A person employed under section 38 (1) of the *Tasmanian State Service Act 1984* immediately before the commencement of this Act is taken to be employed under section 38 (1) (a) of the *Tasmanian State Service Act 1984* as amended by this Act.

