

Industrial Relations Bill 1979

EXPLANATORY NOTES ON CLAUSES

PART I.—CLAUSES 1–4

Clause 1 Title

Commencement Date

Division Table

Repeal of Acts in Schedule

Savings Clauses

Definitions

Clauses 2–3 Construction of References

Act to bind the Crown

PART II.—CLAUSES 4–23—INDUSTRIAL RELATIONS COMMISSION

Clause 4 Establishes the Industrial Relations Commission consisting of a President, two Commissioners and as many chairmen of Boards as may be necessary. This follows the recommendations of the First Report of the Committee for Review of the *Labour and Industry Act* 1958.

Clause 5 Term of office of the President (until age 65 years) and sets down various conditions which would lead to the office of President becoming vacant. It also provides for the removal of the President from office upon an address of both Houses of Parliament.

The clause also fixes the salary and allowances at the same rate as is received by a puisne judge of the Supreme Court. This level has been selected to help in attracting the best possible candidate to the office. It approximates the rates paid to holders of similar offices in the Commonwealth and other States' industrial relations jurisdictions.

It requires the President to summon conferences of all members of the Commission, including chairmen of Conciliation and Arbitration Boards, at least annually and to report on the activities of the Commission to the Minister—once a year. The clause also provides for such reports to be tabled in both Houses of Parliament.

Clause 6 Provides for the appointment of a Deputy President—a (person qualified for appointment) Judge of the County Court of Victoria who may act as a deputy to the President in the absence of the President (see Clause 8). He may act as Deputy until 65 years of age. The clause provides for ways in which the office may become vacant and allows the Governor in Council to remove or suspend a Deputy President from office. It also provides for fees expenses and allowances to be fixed by regulation.

Clause 7 Provides for the appointment of two Commissioners who are required to have had extensive experience in industrial relations.

Term of appointment—until 65 years.

It provides for ways in which either office may become vacant and gives the Governor in Council power to suspend or remove from office a Commissioner. It provides for payment of salary expenses and allowances and saves superannuation rights if any Commissioner was prior to appointment an officer within the *Superannuation Act 1958*.

Clause 8 Provides for the appointment of deputies in the event of the absence of any member of the Commission.

Clause 9 Provides for the appointment of a Registrar and necessary staff subject to the provisions of the *Public Service Act 1974* and empowers the Registrar to carry out such duties as are prescribed under the Bill.

Clause 10 Outlines how the powers and duties of the Commission may be exercised. The President sitting alone—Court Session. The President and two Commissioners—Full Session. One Commissioner sitting alone.

Clause 11 Deals with those matters the Commission in Full Session may hear and determine. These include, among other things, matters formerly dealt with by the Governor in Council or the Minister and includes the creation and abolition of boards, their jurisdiction, interpretation of awards and interpretations, matters referred by the Minister, a board or a chairman of a board, any appeal against an award of a board, appeals against a decision by the Registrar on application for recognition of an industrial association, revocation of industrial agreements and any other matter authorized by any Act.

Clause 12 (1) Deals with the Commission in Court session which may hear and determine appeals against convictions in the Magistrates' Court for offences against the *Labour and Industry Act 1958*, any request to require a chairman to convene a meeting of a board, any appeal against a refusal of the Secretary to register or to cancel a registration of any shop, factory or market.

(2) Permits a Commissioner alone to hear and determine at the direction of the President any matter referred by the Minister, a board or a chairman, or any other matter.

Clause 13 Provides for all hearings of the Commission to be public unless otherwise directed by the President. This maintains an open hearing unless some special reasons make it necessary for the public to be excluded.

Clause 14 Requires representation of persons or associations to be personal or by officers of the association unless legal representation is consented to either by the Commission or any other party to the proceedings.

Clause 15 Requires the Commission to be guided by the best evidence it can procure and by real justice without regard to legal form. This follows Section 44 of the *Labour and Industry Act* 1958. It likewise limits the determination of points of law to the President and requires the other Commission members to assist the President in any way he requires.

Clause 16 Is similar in effect to Section 45 of the *Labour and Industry Act*. It provides for appeals against decisions of Boards by industrial associations. It allows the Minister to intervene in appeal proceedings in the public interest and stays the operation of an award of a Board until the appeal is determined. It also allows any person to apply to the Commission for the right to appeal.

In appeal proceedings, the Commission has and may exercise all or any of the powers of a Board and may amend the whole or any part of the award and to fix a date of operation.

Where the Minister has intervened in an appeal the Commission is required to consider the effects on the public and on associated trades and gives to the President powers for the summoning, sending for and examining witnesses.

No trade secrets etc. may be required in evidence and the Commission's award freezes conditions determined for twelve months unless the Commission gives leave for re-opening. As stated, this clause is the same in substance and effect as Section 45 of the *Labour and Industry Act*.

Clause 17 This clause is similar in substance and effect to Section 45A of the *Labour and Industry Act*. It allows the Minister to refer Awards to the Commission. It does not effect the operation of the Award. Under Section 45A it has been used to bring National Wage cases before the Industrial Appeals Court.

Clause 18 Similar to Section 45D of the *Labour and Industry Act* and brings for advice of the Commission draft regulations on wages or the rates of pay for apprentices of the Industrial Training Commission.

Clause 19 This clause is similar to Section 45B of the *Labour and Industry Act*. It permits the Minister to refer to the Commission matters before two or more boards where he considers it fair and reasonable to have a uniform approach taken in drafting and in substance. Example, applications for maternity leave in a group of awards of boards. It does not affect the operation of an award.

Clause 20 This is similar to Section 45C of the *Labour and Industry Act*. It permits the Minister to refer to the Commission 7 days after the 14 days from the making of an award for an appeal under Clause 16 and has the effect of staying the operation of an award.

Clause 21 This is similar to Section 46A of the *Labour and Industry Act*. It allows the Commission to declare the true intention and meaning of awards at the request of the Minister or any other interested person.

Clause 22 This is similar to Section 47 of the *Labour and Industry Act* and gives the Commission exclusive appeal jurisdiction over decisions by Magistrates' Courts on offences against the *Labour and Industry Act* and the *Industrial Training*

Act and gives to the Commission in Court Session all the powers of the County Court. Decisions of the Commission in these matters are binding on the Magistrates Court.

Clause 23 Similar to Section 48 of the Labour and Industry Act and refers to rule-making powers and power to regulate proceedings.

PART III.—CONCILIATION AND ARBITRATION BOARDS

Clause 24 Similar to Section 20 of the Labour and Industry Act and refers to the appointment of Conciliation and Arbitration Boards. It transfers the appointments from the Governor in Council to the Commission (as recommended by the Committee for Review at page 3 of its Report dated 9 April 1976).

It also provides a saving clause in the event of a board being deprived of power until a new award is made.

It requires the President of the Commission to assign a chairman to each Board—previously carried out by the Minister.

It provides transitory provisions to enable Wages Boards appointed under the Labour and Industry Act to continue for the remainder of their term of office. Similar continuity is provided for proceedings under Wages Boards. Determinations of Wages Boards will become Awards of Boards.

Clause 25 Similar in form and substance to Section 21 of the Labour and Industry Act. It provides for the establishment of a General Board for specified trades or breaches of trades. This Board is used to provide cover for those workers not covered by other wages boards.

Clause 26 This is similar to Sections 22 and 24 of the Labour and Industry Act. They provide for equal numbers of members on a Board, normally 4 or 6 and for a chairman to be assigned to each Board from a panel of chairmen. The only change from the Labour and Industry Act is to bring the tenure of office of chairmen into line with the other members of the Commission, that is, until 65 years of age (see Clauses 5 (2), 6 (2), 7 (3)). It also provides for chairmen to be assigned to Boards by the President (formerly the Minister) and for Acting Chairmen.

Clause 27 This is similar to Section 22 and 23 of the Labour and Industry Act. It provides for the appointment and re-appointment of Boards, in equal number. The appointments are to be made by the Commission (formerly the Minister).

Clauses 28–33 Are substantially re-enactments of Sections 25–29 of the Labour and Industry Act.

Clause 34 This is a re-enactment of Section 30 of the Labour and Industry Act and refers to the powers of Conciliation and Arbitration Boards.

Clause 35 Is a re-enactment of Section 33 of the Labour and Industry Act and requires Boards to take into consideration relevant decisions of the Australian Conciliation and Arbitration Commission.

Clause 36 Relates to the procedures for the calling of a Board meeting.

Clause 37 Requires the Chairman of a Board, before commencing a hearing, to satisfy himself that all appearing to him to have an interest in the hearing have been advised of the meeting. It requires the Board to hear any person who satisfies the Board of a proper interest in the matter before the Board.

It requires proceedings to be open to the public unless the chairman considers it undesirable in the public interest or in the interest of parties to the proceedings. It maintains the right of the Board to retire to consider submissions in private. It also establishes that procedures are to be informal and permits the referral of matters to the Commission.

Clause 38 Establishes the method of publishing an Award and fixing the date of operation.

Clauses 39, 40, 41, 42, 43 Re-enacts Sections 35, 36, 37, 38, 39 of the Labour and Industry Act. (The employment of children of the occupier of a business, sheltered workshops, mixed functions).

Clause 44 Re-enacts the substance of Section 41 of the Labour and Industry Act but spells out steps available in settling disputes.

Clause 45 Re-enacts Section 41A of the *Labour and Industry Act 1958* and covers those years when Christmas Day, Boxing Day and New Year's Day fall on a Saturday or Sunday.

Clause 46 Re-enacts Section 9 (1) of the *Labour and Industry (Wages Boards Determinations) Act 1975* and requires Chairmen of Boards to state reasons for decisions.

PART IV.—INDUSTRIAL AGREEMENTS

Clause 47 This introduces, to the Victorian Industrial Relations jurisdiction, the concept of Industrial Agreements and follows directly from the First Report of the Committee for Review.

It allows recognized associations of employers and employes to enter into agreements on any industrial matters; for the agreement to be filed with the Registrar if the parties agree and for the agreement to be put before the Commission for its consideration. Each agreement approved by the Commission is to be registered and thus attains the status of an award.

The clause also allows the Commission, on the application of the Minister, Registrar or any person bound in the public interest to impose conditions, prohibit the enforcement of the agreement.

The agreement will continue to operate unless the parties retire, the method of which is outlined.

Clause 48 Provides the method of registration, for a certified copy of the agreement to be admissible as evidence.

Clause 49 Parties may be added to the agreement.

Clause 50 Those bound by the agreement include the parties to the agreement and those on whose behalf it was entered into.

Clause 51 Is a savings clause protecting the rights of parties.

Clause 52 Award does not apply while the agreement is in force.

PART V.—RECOGNIZED ASSOCIATIONS

Clauses 53, 54 Applications are to be made to the Registrar in writing in a form prescribed.

Clause 55 The Registrar refers each application to the Commission for consideration. If bona fide, application is granted.

Clause 56 Registrar to issue certificate of recognition. Commission has power to revoke certificate.

Benefits of certification

- * right to nominate to boards
- * to be kept informed of boards proceedings
- * to appear before boards in interests of members
- * to enter into an industrial agreement.

PART VI.—ANNUAL HOLIDAYS

Clauses 57–63 Re-enacts Sections 142–149 of the Labour and Industry Act and provides the Commission with power to provide annual holiday benefits to workers not otherwise provided.

PART VII.

Clauses 64–78 Re-enacts Sections 150–164 of the Labour and Industry Act—Long Service Leave.

PART VIII.—OTHER CONDITIONS

Clause 79 Is similar in substance to Section 122 of the Labour and Industry Act. It requires employers to keep records of employées in an approved form, to produce these records on demand to an inspector and requires the name of the occupier to be displayed.

Clause 80 Re-enacts Section 128 of the Labour and Industry Act and requires that no employ   shall be required to work for more than five hours continuously.

Clause 81 Re-enacts substantially Section 129 of the Labour and Industry Act and requires an employer to keep time of commencing and finishing work either in a written form or in some other form approved and to produce these records on demand.

Clause 82 Re-enacts Section 133 of the Labour and Industry Act and requires an employer to pay his workers in cash at least fortnightly. The cash requirement may be suspended, in writing, at the wish of the worker.

Clause 83 Re-enacts Section 134 of the Labour and Industry Act and prohibits payment in kind, goods, board or lodging.

Clauses 84, 85 and 86 Re-enact Section 138 of the Labour and Industry Act and prohibits certain guarantees.

PART IX.—OTHER MATTERS

Clauses 87–89 Substantially the same as *Labour and Industry Act 1958*. Deals with the appointment of inspectors, their powers, the use of interpreters. Appoints Inspectors under the Labour and Industry Act as Inspectors under this legislation. Requires occupiers to assist Inspectors and prohibits assault on, intimidation or threats to an Inspector.

PART X.—LEGAL PROCEEDINGS

Clauses 90–97 Relate to legal proceedings taken under the Act and deal with: —proceedings for offences to be before the Metropolitan Industrial Court, proceedings against offenders, the authorization of proceedings.

The requirement of the courts to take judicial notice of the signature of the person or persons authorized to sign on behalf of the Minister, acceptance of awards as evidence, the prosecution of firms, the recovery of wages, power of the Court to award arrears.

PART XI.—OFFENCES AND PENALTIES

Clause 98 Establishes penalties for breaches of an award. Permits for most secondary students to work in factories for less than award rates.

Clause 99 Establishes penalties for false entries in books and records.

Clause 100 General penalty.

Clause 101 Penalty for dismissal of employees in certain cases.

Clause 102 Regulation-making powers.

Clauses 103–105 Consequential amendments to the *Labour and Industry Act* 1958, the *Industrial Training Act* 1974 and the *Building Industry Long Service Leave Board Act* 1975.