



ANNO TRICESIMO TERTIO

# ELIZABETHAE II REGINAE

A.D. 1984

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No. 19 of 1984

**An Act to amend the Industrial Conciliation and Arbitration Act, 1972;  
and to make related amendments to the Judges' Pensions Act, 1971.**

*[Assented to 3 May 1984]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. (1) This Act may be cited as the "Industrial Conciliation and Arbitration Act Amendment Act, 1984".

(2) The Industrial Conciliation and Arbitration Act, 1972, is in this Act referred to as "the principal Act".

Commencement.

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

Repeal of s. 3 and substitution of new section.

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 Section 3 of the principal Act is repealed and the following section is substituted:

Objects of Act.

3. The chief objects of this Act are—

- (a) to promote goodwill in industry;
- (b) to encourage and provide means for conciliation with a view to preventing or settling industrial disputes by amicable agreement;
- (c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal formality and technicality;
- (d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes;
- (e) to encourage the organization of representative associations of employers and employees and their registration under this Act;

and

- (f) to encourage the democratic control of associations so registered and the full participation by members of such an association in the affairs of the association.

4. Section 6 of the principal Act is amended—

(a) by striking out the definition of “lock-out”;

(b) by striking out the definition of “strike”;

and

(c) by inserting after subsection (2) the following subsection:

(3) An award or order made against the Public Service Board in pursuance of this Act, or an industrial agreement made by the Public Service Board in pursuance of this Act, is binding upon, and enforceable against, any body corporate or other person who would, at common law, be regarded as the employer of the employees to whom the award, order or agreement relates.

Amendment of  
s. 6—  
Interpretation.

5. Section 9 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) There shall be—

(a) a President of the Court (who shall be appointed by the Governor);

and

(b) such number of Deputy Presidents of the Court as the Governor thinks fit to appoint.

(2) A person is not eligible for appointment as the President of the Court unless he is eligible for appointment as a Judge of the Supreme Court and a person is not eligible for appointment as a Deputy President of the Court unless he is a legal practitioner of at least seven years standing.

(2a) A Deputy President of the Court may be appointed on an acting basis and, in that event, his appointment shall be for a term (not exceeding six months) specified in the instrument of his appointment. ;

Amendment of  
s. 9—  
President and  
Deputy President.

and

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

(4) The President of the Court shall have the same rank, status and precedence as a Judge of the Supreme Court and shall be entitled to be styled “The Honourable Mr. Justice . . .” or “The Honourable Justice . . .”.

6. Section 10 of the principal Act is amended by striking out subsection (3).

Amendment of  
s. 10—  
Absence from  
office of  
President.

7. Section 12 of the principal Act is amended—

Amendment of  
s. 12—  
Tenure of office.

- (a) by striking out from subsection (1) the word "The" and substituting the passage "Subject to this section, the";
- (b) by striking out from subsection (1) the passage " , except as provided in subsection (2) of this section,";
- (c) by inserting after subsection (1) the following subsection:

(1a) A Deputy President of the Court who has been appointed on an acting basis shall cease to hold office on the expiration of his term of appointment. ;

and

- (d) by striking out from subsection (2) the passage "before attaining the age of sixty-five years" and substituting the passage "at the time that he ceases to hold office".

Amendment of  
s. 15—  
Jurisdiction of the  
Court.

8. Section 15 of the principal Act is amended—

- (a) by striking out paragraph (e) of subsection (1);

and

- (b) by inserting after subsection (2) the following subsections:

(3) A claim may not be made under subsection (1) (d) by reason only of an award made under section 25a.

(4) Where the Court gives a judgment, or makes an order, for the payment of a pecuniary sum, it may, by the terms of the judgment or order, authorize the payment of that sum by instalments.

Amendment of  
s. 17—  
Powers of Court.

9. Section 17 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage " , as regards every matter over which it has jurisdiction,";

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

(l) to correct an error, irregularity or defect in any proceedings (notwithstanding that the error, irregularity or defect may be such as to render the proceedings void); ;

and

- (c) by inserting after subsection (1) the following subsection:

(1a) Where the Court corrects an error, irregularity or defect in the proceedings in pursuance of subsection (1) (l), the proceedings shall be as valid as if the error, irregularity or defect had never existed.

Amendment of  
s. 18—  
Special provisions  
relating to claims  
under awards, etc.

10. Section 18 of the principal Act is amended by striking out subsection

(3).

Amendment of  
s. 22—  
Presidential  
members.

11. Section 22 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) The Governor may appoint such further persons to the office of Deputy President of the Commission as he thinks fit.

(4) A Deputy President of the Commission may be appointed under subsection (3) on an acting basis and, in that event, his appointment shall be for a term (not exceeding six months) specified in the instrument of his appointment.

(5) A person is not eligible for appointment under subsection (3) unless—

- (a) he is a legal practitioner of at least five years standing;
- (b) he has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government;

or

- (c) he has, not less than five years previously, obtained a degree of a university, or an educational qualification of a similar standard, after studies in the field of law, economics or industrial affairs or some other field of study considered by the Governor to have substantial relevance to the duties of a Deputy President of the Commission,

and he is, in the opinion of the Governor, by reason of his qualifications, experience and standing in the community, a fit and proper person to hold the office of Deputy President of the Commission.

(6) The remuneration and conditions of office of a Deputy President of the Commission appointed under subsection (3) shall be the same as for a Deputy President of the Court.

(7) A person who ceases to hold office as a Deputy President of the Commission may, with the approval of the President, sit to hear and determine proceedings previously part-heard by him and, for the purposes of those proceedings, he shall be deemed to continue in office.

**12. Section 23 of the principal Act is amended—**

Amendment of  
s. 23—  
Commissioners.

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

(3) A person who ceases to hold office as a Commissioner may, with the approval of the President, sit to hear and determine proceedings previously part-heard by him and, for the purposes of those proceedings, he shall be deemed to continue as a Commissioner.;

and

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

(5) Each Commissioner must be a person experienced in industrial affairs either—

- (a) by reason of having been associated with the interests of employees;

or

- (b) by reason of having been associated with the interests of employers,

and the power of appointing Commissioners shall be so exercised as to ensure that the number of Commissioners who have acquired their experience in industrial affairs through their association with the interests of employees is equal to, or differs by no more than one from, the number of Commissioners who have acquired their experience in industrial affairs through their association with the interests of employers.

Amendment of  
s. 24—  
Composition of  
Commission.

**13. Section 24 of the principal Act is amended—**

(a) by striking out paragraphs (a) and (b) of subsection (2) and substituting the passage “at least three members consisting of one or more Presidential Members and one or more Commissioners”;

and

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

(3a) The Full Commission shall not be constituted of more than three members if any party, before the commencement of a hearing, objects to the Full Commission being so constituted for the purposes of the hearing.

Insertion of new  
ss. 25a and 25b.

**14. The following sections are inserted after section 25 of the principal Act:**

Power to make  
awards of general  
application.

25a. (1) The Full Commission has jurisdiction to make an award of general application regulating remuneration or conditions of employment.

(2) An award made under this section is, subject to this section and any qualification stated in the award, binding upon all employers and employees.

(3) An award made under this section affects a condition of employment of an employee only to the extent to which that condition is inferior to a condition prescribed by the award.

(4) An award shall not be made under this section except upon the application of—

(a) the Minister;

(b) the United Trades and Labor Council;

(c) the South Australian Chamber of Commerce and Industry (S.A.) Incorporated;

(d) the South Australian Employers Federation Incorporated;

or

(e) any other registered association that applies by leave of the Full Commission.

Advisory  
jurisdiction of the  
Commission.

25b. The Commission has jurisdiction to inquire into, and report and make recommendations to the Minister upon, a question related to any industrial or other matter that is referred to the Commission for inquiry by the Minister.

Amendment of  
s. 26—  
Mediation.

**15. Section 26 of the principal Act is amended—**

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

(1) Where it appears to a Presidential Member or a Commissioner that mediation in an industrial matter is desirable in the public interest, he—

(a) may direct a Committee that has jurisdiction in the matter to act as mediator and for that purpose to call a voluntary conference of the parties involved;

or

(b) may himself act as mediator in the matter and call a voluntary conference of the parties involved.

(1a) Where a Committee is directed to call a voluntary conference—

(a) the conference shall be called, on behalf of the Committee, by its chairman;

and

(b) the chairman shall preside at the conference.;

and

(b) by striking out from subsection (2) the passage “the Presidential Member or Commissioner presiding” and substituting the passage “the person who is presiding”.

16. Section 27 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

Amendment of  
s. 27—  
Compulsory  
conference.

(1) In respect of any industrial matter the President may, on his own motion or on application by a registered association or a member of a Committee—

(a) direct a Committee that has jurisdiction in the matter to call a compulsory conference of the parties involved;

(b) direct a Presidential Member or a Commissioner to call a compulsory conference of the parties involved;

or

(c) himself call a compulsory conference of the parties involved.

(1a) Where a Committee is directed to call a compulsory conference—

(a) the conference shall be called, on behalf of the Committee, by its chairman;

and

(b) the chairman shall preside at the conference.

(1b) Where a compulsory conference is called by a Presidential Member or a Commissioner, the Presidential Member or the Commissioner, as the case may be, shall preside at the conference.

(2) The person who is presiding, or is to preside, at a compulsory conference may summon any person to attend at the conference.;

- (b) by striking out the passage "the Presidential Member or Commissioner presiding over the conference" wherever it occurs and substituting, in each case, the passage "the person presiding at the conference";
- (c) by inserting in subsection (9) after the passage "desirable to do so, he may" the passage ", after giving reasonable notice to the persons attending at the conference,".
- (d) by striking out from subsection (9) the passage "constituted of himself and thereupon the Commission as so constituted may of its own motion and without any application being made" and substituting the passage "(which may, where he is a Presidential Member or a Commissioner, be constituted of himself) and the Commission may";

and

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

(9a) A matter may be referred to the Commission under subsection (9) orally and without formality.

Amendment of  
s. 28—  
General powers of  
the Commission.

**17. Section 28 of the principal Act is amended—**

- (a) by striking out from subsection (1) the passage ", as regards any matter within its jurisdiction,";
- (b) by striking out paragraph (n) of subsection (1) and substituting the following paragraph:
  - (n) to correct an error, irregularity or defect in any proceedings (notwithstanding that the error, irregularity or defect may be such as to render the proceedings void);;

and

- (c) by inserting after subsection (1) the following subsections:

(1a) The cost of an expert's report under subsection (1) (k) shall, if the Minister so determines, be paid out of the General Revenue of the State.

(1b) Where the Commission corrects an error, irregularity or defect in proceedings in pursuance of subsection (1) (n), the proceedings shall be as valid as if the error, irregularity or defect had never existed.

Amendment of  
s. 29—  
Further powers of  
Commission.

**18. Section 29 of the principal Act is amended—**

- (a) by striking out paragraphs (b), (c) and (d) of subsection (1) and substituting the following paragraphs:
  - (b) by award, appoint a board of reference consisting of one or more members to hear and determine any matters prescribed by the award (but such a board shall not have power to make an award or order for the payment of moneys alleged to be payable in pursuance of the award);

(c) by award, authorize an official of a registered association of employees, subject to such terms and conditions as the Commission thinks fit, after giving the employer notice prescribed by the award, to enter the premises of an employer subject to the award, or any other premises where employees of the employer may be working, and—

(i) inspect time books and wage records of the employer at those premises;

(ii) inspect the work carried out by the employees and note the conditions under which the work is carried out;

and

(iii) interview employees (being employees who are members, or are eligible to become members, of the association) in relation to the membership and business of the association;;

(b) by striking out from paragraph (f) of subsection (1) the passage “but, except as is provided by section 110 of this Act, no such award shall be made binding on any employers or employees who are for the time being subject to an industrial agreement”;

(c) by striking out paragraph (g) of subsection (1);

and

(d) by striking out subsections (2) and (3) and substituting the following subsections:

(2) An award of the Commission shall be binding on all persons and associations expressed to be bound by the award.

(3) Subject to subsection (4), an award of the Commission shall, if it so provides, have retrospective operation.

(4) An award shall not operate retrospectively as from a day antecedent to the day on which the application in respect of which the award is made was lodged with the Commission unless—

(a) there is some nexus between the award and—

(i) another award of the Commission;

or

(ii) an award or agreement under the *Conciliation and Arbitration Act 1904* of the Commonwealth,

and, in view of that nexus, it is desirable that there should be common dates of operation;

(b) the award gives effect to, in whole or in part and with or without modification, any principles, guidelines or conditions relating to remuneration enunciated or laid down in, or attached to, any relevant decision or declaration of the Australian Conciliation and Arbitration Commission;



or

(c) the day as from which the award is to operate is fixed with the consent of all parties to the proceedings.

(5) An appeal shall lie against a determination of a board of reference appointed under subsection (1) (b) to the Full Commission.

(6) An award under subsection (1) (b) may appoint, or provide for the appointment of, a chairman of the board of reference but no such appointment may be made unless the Commission has first consulted with all parties to the award.

(7) A board of reference appointed by an award under subsection (1) (b) shall notify the parties to the award of—

(a) the times and places at which it proposes to sit for the purpose of hearing and determining any matter prescribed by the award;

and

(b) any determination made by the board.

(8) The powers conferred on an official of a registered association by an award under subsection (1) (c) shall not be exercised in such a manner as to hinder or obstruct an employee in carrying out the duties of his employment.

Insertion  
of new  
s. 29a.

19. The following section is inserted after section 29 of the principal Act:

Power to grant  
preference to  
members of  
registered  
associations.

29a. (1) The Commission may, by an award, direct that preference shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to such registered associations or members of registered associations as are specified in the award.

(2) Notwithstanding the terms of a direction under subsection (1)—

(a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal;

and

(b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

Amendment of  
s. 30—  
Applications to  
the Commission.

20. Section 30 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) The Commission shall not entertain an application under subsection (1) (b) or (c) unless it is satisfied that it is in the public interest to do so.

21. The following section is inserted after section 30 of the principal Act:

Insertion of new  
s. 31.

31. (1) Where an employer dismisses an employee, the employee may, within twenty-one days after the employer's decision to dismiss him took effect, apply to the Commission for relief under this section.

Special  
jurisdiction of the  
Commission to  
deal with cases of  
unfair dismissal.

(2) An application shall not be made under this section where the employer's decision to dismiss the employee is subject to appeal or review under some other Act or law.

(3) Where in proceedings under this section the Commission is of the opinion that the decision of the employer to dismiss the employee was harsh, unjust or unreasonable, the Commission—

(a) may—

(i) order that the applicant be re-employed by the employer in his former position without prejudice to his former conditions of employment;

or

(ii) where it would be impracticable for the employer to re-employ the applicant in accordance with an order under subparagraph (i), or such re-employment would not, for some other reason, be an appropriate remedy—order that the applicant be re-employed by the employer in a position other than his former position (if such a position is available) on conditions (if any) determined by the Commission;

or

(b) may, where it would be impracticable for the employer to re-employ the applicant in any position, or re-employment would not, for any other reason, be an appropriate remedy—order the employer to pay to the applicant an amount of compensation determined by the Commission.

(4) Where the Commission makes an order for re-employment under this section, the employee shall, subject to any contrary direction of the Commission, be remunerated in respect of the period intervening between the date of his dismissal and the date of his re-employment as if his employment in the position from which he was dismissed had not been terminated.

(5) Where, in the opinion of the Commission, an application under this section is frivolous or vexatious, the Commission may make an order for costs against the applicant (including any costs incurred by the other party to the application in respect of representation by a legal practitioner or agent).

(6) Before an application is heard by the Commission under this section, a conference of the parties to the application shall be held in accordance with the rules of the Commission for the purpose of exploring the possibility of resolving the matters at issue by conciliation and ensuring that the parties are fully informed of the possible consequences of further proceedings upon the application.

Amendment of  
s. 34—  
Representation of  
parties, etc.

22. Section 34 of the principal Act is amended by inserting after subsection (2) of the following subsection:

(3) Where the interests of a registered association, or members of a registered association, that is affiliated with the United Trades and Labor Council are affected (either directly or indirectly) by proceedings before the Commission, the United Trades and Labor Council is entitled to intervene in the proceedings.

Amendment of  
s. 40—  
President may  
make  
arrangements.

23. Section 40 of the principal Act is amended—

(a) by striking out from subsection (2) the word “The” and substituting the passage “Subject to this section, the”;

(b) by inserting in subsection (2) after the passage “assign a Commissioner” the passage “, for a term of assignment (not exceeding two years) specified in the instrument of assignment,”;

and

(c) by inserting after subsection (2) the following subsections:

(3) An assignment of a Commissioner under subsection (2) shall expire on the expiration of the term of assignment but the President may then reassign the Commissioner to the same industry or group of industries.

(4) The President shall not assign or reassign a Commissioner to an industry or group of industries under this section unless he has first consulted with those registered associations that have, in the opinion of the President, an interest in the industry or group of industries to which the proposed assignment or reassignment relates.

Insertion of new  
ss. 40a, 40b and  
40c.

24. The following sections are inserted after section 40 of the principal Act:

Co-operation  
between industrial  
authorities.

40a. (1) Where it appears to the President to be desirable, in relation to an industrial matter, that a conference should be held with an industrial authority of the Commonwealth or of another State or Territory of the Commonwealth he may, if that authority is willing, confer with that authority, or arrange for a Deputy President to confer with that authority, with a view to securing co-ordination between awards made, or to be made, under this Act and orders, awards, decisions or determinations made or given, or to be made or given, by that authority.

(2) Where it appears to the President to be desirable that proceedings in relation to an industrial matter before an industrial authority of the State should be heard in joint session with an industrial authority of the Commonwealth or of another State or Territory of the Commonwealth he may, with the consent of that authority, authorize the industrial authority of the State to hear the proceedings in joint session with that authority and to confer with that authority in relation to the proceedings and the order, award, decision or determination to be made or given in those proceedings.

(3) In this section—

“industrial authority” means a commission, court, board, tribunal or committee having authority under the law of the

Commonwealth or any State or Territory of the Commonwealth to exercise powers of conciliation or arbitration in relation to industrial disputes.

40b. (1) In respect of any industrial matter the President may, on his own motion, request the President of the Commonwealth Commission to nominate a member of that Commission to deal with the whole or any part of the industrial matter.

Reference of industrial matters to Commonwealth Commission.

(2) Where, in accordance with a request under subsection (1), the President of the Commonwealth Commission nominates a member of that Commission, the President of the Commission may refer the whole or part of the industrial matter in respect of which the request was made to the member to be dealt with by him in accordance with the provisions of this Act.

(3) For the purposes of dealing with a matter referred to him under subsection (2), the member of the Commonwealth Commission may exercise all the powers of the Commission under this Act and shall, in the exercise of those powers, be deemed to be the Commission.

(4) Without limiting subsection (3), an award made by a member of the Commonwealth Commission in relation to an industrial matter referred to him under subsection (2) shall, for the purposes of this Act, be deemed to be an award made under this Act.

(5) The reference of an industrial matter to a member of the Commonwealth Commission under subsection (2) is revocable by the President at will and does not derogate from the power of the Commission to act itself in relation to the matter.

(6) In this section—

“Commonwealth Commission” means the Australian Conciliation and Arbitration Commission.

40c. (1) Subject to this Act, the Commission may exercise such powers as may be conferred upon it by or under the *Conciliation and Arbitration Act* 1904 of the Commonwealth or any other prescribed Act.

Commission may exercise powers vested by certain other Acts.

(2) An award, decision or determination made by the Commission in the exercise of a power as provided by subsection (1) shall, for the purposes of this Act, be deemed not to have been made by the Commission under this Act.

25. Section 49 of the principal Act is amended by inserting after subsection (2) the following subsection:

Amendment of s. 49—  
Inspectors.

(2a) An inspector shall produce his certificate of appointment for inspection by any person who questions his authority to exercise the powers of an inspector under this Act.

26. Section 50 of the principal Act is amended—

Amendment of s. 50—  
Powers of inspectors, etc.

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

(1a) Before, or as soon as practicable after, entering any place, premises, ship or vessel in pursuance of this section, an inspector shall produce his certificate of appointment for

inspection by the occupier or person in charge of the place, premises, ship or vessel;

(b) by inserting in subsection (2) after the passage "indenture of apprenticeship, or" the word "other";

and

(c) by inserting after subsection (2) the following subsections:

(2a) Subject to subsection (2b), any document produced under subsection (2) may be taken away by the inspector for examination and copying, and the inspector may retain possession of it for a period not exceeding seven days.

(2b) Subsection (2a) is subject to the following qualifications:

(a) the inspector may not take away a document if the employer supplies a copy of it to the inspector for his own use;

(b) the inspector may not take away the original of any document that is required for the day-to-day operations of the employer.

Amendment of  
s. 54—  
Inquiries by the  
Commission with  
reference to  
Conciliation  
Committees.

27. Section 54 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "and report to the Minister" and substituting the passage "into the following matters";

(b) by striking out from paragraph (a) of subsection (1) the passage "what Committees it recommends should be constituted for any industries" and substituting the passage "whether Committees should be constituted for particular industries";

and

(c) by striking out from subsection (2) the passage "and report on" and substituting the word "into".

Amendment of  
s. 55—  
Governing  
principles.

28. Section 55 of the principal Act is amended—

(a) by striking out from subsection (1) the passage ", before recommending the appointment of a Committee, shall" and substituting the passage "shall, when considering whether a Committee should be constituted,";

(b) by striking out from subsection (2) the passage "before recommending that" and substituting the passage "when considering whether";

and

(c) by striking out from subsection (2) the passage ", and in making its recommendation shall give effect to such determination".

Repeal of ss. 56  
and 57 and  
substitution of  
new section.

29. Sections 56 and 57 of the principal Act are repealed and the following section is substituted:

Powers of Full  
Commission upon  
conclusion of  
inquiry.

56. (1) Upon the conclusion of an inquiry under this Part, the Full Commission may, by determination—

- (a) constitute a new Committee;
- (b) alter the membership of an existing Committee;
- (c) dissolve a Committee;
- (d) define or redefine the jurisdiction of the Committee;
- (e) define or redefine the part of the State in relation to which jurisdiction is to be exercisable by the Committee.

(2) In determining or altering the membership of a Committee, the Full Commission shall endeavour to secure, as far as possible, a fair representation of the interests of all relevant employers and employees.

(3) Where the Full Commission constitutes a new Committee or alters the membership of an existing Committee, it may make any provision that it thinks necessary or expedient in relation to the appointment and tenure of office of members of the Committee.

(4) Subject to any provision made under subsection (3), the appointment and tenure of office of members of a Committee shall be governed by the rules.

(5) A determination of the Full Commission under this section shall be published in the *Gazette*.

**30. Section 58 of the principal Act is amended—**

- (a) by inserting in subsection (1) after the word “chairman” the passage “(who shall be a Commissioner)”;

and

- (b) by striking out from subsection (1) the word “recommended” and substituting the word “fixed”.

Amendment of  
s. 58—  
Members of  
Committees.

**31. Sections 59 to 68 (inclusive) of the principal Act are repealed and the following section is substituted:**

59. The President may appoint a Commissioner to act as an alternative chairman of a Committee and a Commissioner so appointed may, in the absence of the chairman, act as chairman of the Committee.

Repeal of ss. 59  
to 68 (inclusive)  
and substitution  
of new section.

President may  
appoint  
alternative  
chairman.

**32. Section 69 of the principal Act is amended—**

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

(e) to authorize, by award, an official of a registered association of employees, subject to such terms and conditions as the Committee thinks fit, after giving the employer notice prescribed by the award, to enter the premises of an employer subject to the award, or any other premises where employees of the employer may be working, and—

- (i) inspect time books and wage records of the employer at those premises;

Amendment of  
s. 69—  
Jurisdiction of  
Committees.

(ii) inspect the work carried out by the employees and note the conditions under which the work is carried out;

and

(iii) interview employees (being employees who are members, or are eligible to become members, of the association) in relation to the membership and business of the association;

(c) by striking out paragraph (g) of subsection (1) and the word "and" immediately preceding that paragraph;

and

(d) by inserting after subsection (1) the following subsections:

(2) The powers conferred on an official of a registered association by an award under subsection (1) (e) shall not be exercised in such a manner as to hinder or obstruct an employee in carrying out the duties of his employment.

(3) A Committee may, by an award, direct that preference shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to such registered associations or members of registered associations as are specified in the award.

(4) Notwithstanding the terms of a direction under subsection (3)—

(a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal;

and

(b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

(5) Where an application is made to a Committee for variation of an award, and all parties to the award are in agreement that the proposed variation should be made, the jurisdiction of the Committee is, in relation to that application, exercisable by the Chairman.

(6) Subject to subsection (7), an award of a Committee shall, if it so provides, have retrospective operation.

(7) An award shall not operate retrospectively as from a day antecedent to the day on which the application in respect of which the award is made was lodged with the Committee unless—

(a) there is some nexus between the award and—

(i) another award of the Committee;

(ii) another award of another Committee or of the Commission;

or

(iii) an award or agreement under the *Conciliation and Arbitration Act 1904* of the Commonwealth,

and, in view of that nexus, it is desirable that there should be common dates of operation;

(b) the award gives effect to, in whole or in part and with or without modification, any principles, guidelines or conditions relating to remuneration enunciated or laid down in, or attached to, any relevant decision or declaration of the Australian Conciliation and Arbitration Commission;

or

(c) the day as from which the award is to operate is fixed with the consent of all parties to the proceedings.

33. The following section is inserted after section 69 of the principal Act: Insertion of new s. 69a.

69a. Where it appears to the chairman of a Committee that mediation in an industrial matter in relation to which the Committee has jurisdiction is desirable in the public interest, he— Mediation by a Committee or its chairman.

(a) may direct that the Committee act as mediator and for that purpose call a voluntary conference of the parties involved;

or

(b) may himself act as mediator in the matter and call a voluntary conference of the parties involved.

34. Section 76 of the principal Act is amended—

(a) by striking out subsection (1);

(b) by striking out from subsection (2) the passage "Such award" and substituting the passage "An award of a Committee";

and

(c) by striking out from paragraph (c) of subsection (2) the passage "the Minister has constituted the Committee" and substituting the passage "the Committee is constituted".

Amendment of s. 76—  
Making of award.

35. Section 81 of the principal Act is amended—

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

(1a) In determining the general standard for the purposes of this section, the Full Commission may—

(a) determine what constitutes continuous employment for the purposes of subsection (1);

Amendment of s. 81—  
Granting of and payment for annual leave.



(b) determine the circumstances giving rise to an entitlement to leave, or payment in lieu of leave, and the extent of that entitlement;

(c) determine the payments to be made in respect of leave, or in lieu of leave, and the manner and time of those payments;

and

(d) determine any other incidental or ancillary matters.;

(b) by striking out from subsection (2) the passage “the requirements and subject to the conditions set out in”;

and

(c) by striking out from subsection (5) the passage “of the period of annual leave”.

Repeal of s. 85.

36. Section 85 of the principal Act is repealed.

Amendment of  
s. 88—  
Aged, slow,  
inexperienced or  
infirm workers.

37. Section 88 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “The permanent head, or any officer authorized by him” and substituting the passage “The Commission”;

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

(1a) Where it appears to the Commission that a registered association may have an interest in an application under this section, it shall give the association at least seven days notice of the time and place at which it intends to hear and determine the application and the registered association shall then be entitled to appear and be heard upon the application.;

(c) by striking out from subsection (2) the passage “The permanent head or other officer” and substituting the passage “The Commission”;

and

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

(4) Subject to subsection (5), the Registrar may, at the direction of the Commission, exercise any power, duty or function of the Commission in relation to matters arising from an application under this section.

(5) The Commission should not direct the Registrar to specify the wage at which an applicant under this section may be licensed to work.

Amendment of  
s. 90—  
Declared  
organizations.

38. Section 90 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “to be an organization” and substituting the passage “, or specified activities of that organization, to be an organization, or activities.”;

and

(b) by striking out subsection (2) and substituting the following subsection:

(2) Notwithstanding anything in this Act, no award shall operate—

(a) where the notice published in the *Gazette* under subsection (1) relates to an organization generally—in relation to that organization;

or

(b) where the notice relates to specified activities of an organization—in relation to those activities,

for so long as the notice remains in force.

39. The following section is inserted after section 91 of the principal Act: Insertion of new s. 91a.

91a. (1) The Commission may, on the application of the Registrar, rescind an award on the ground that it is obsolete. Rescission of obsolete awards.

(2) The Registrar shall, at least twenty-one days before an application is to be heard by the Commission under this section, give notice of the time and place of the hearing and the names of the awards to which the application relates—

(a) in the *Gazette*,

and

(b) in a newspaper circulating generally throughout the State.

(3) Any interested person may appear and be heard by the Commission upon an application under this section.

40. Section 93 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “Except as provided in subsection (2) of this section an” and substituting the word “An”; Amendment of s. 93—  
Appeal to Full Court.

(b) by striking out subsection (2);

and

(c) by striking out paragraph (b) of subsection (3) and substituting the following paragraph:

(b) refer the order or decision to the Court, as constituted of a single judge, with such directions as the Full Court thinks fit.

41. Section 94 of the principal Act is amended by striking out paragraph (b) of subsection (2) and substituting the following paragraph: Amendment of s. 94—  
Appeal from Industrial Magistrate.

(b) refer the order or decision to the Court, as constituted of an Industrial Magistrate, with such directions as the Court thinks fit.

42. Section 96 of the principal Act is amended by inserting after subsection (2) the following subsection: Amendment of s. 96—  
Rights of appeal.

(3) For the purposes of hearing and determining an appeal against an award or decision of the Commission on an application under section 31, the Full Commission shall be constituted of at least two Presidential Members.

Amendment of  
s. 101—  
Reference of  
matters to Full  
Commission.

**43. Section 101 of the principal Act is amended—**

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

(2a) Before giving a direction under subsection (1) or (2), the President should consult with all the parties in order to ascertain their views on the question of whether the matter should be dealt with by the Full Commission.;

and

(b) by inserting after subsection (5) the following subsection:

(6) In this section—

“matter” includes a part or aspect of a matter.

Insertion of new  
s. 105a.

**44. The following section is inserted after section 105 of the principal Act:**

Cases stated.

105a. (1) The Registrar may state a case on a question of law for the opinion of the Court.

(2) The Court may determine any questions of law that arise upon a case stated under this section and make or give any consequential or ancillary orders or directions that it thinks necessary or expedient.

Insertion of new  
s. 108a.

**45. The following section is inserted after section 108 of the principal Act:**

Approval of  
Commission in  
relation to  
industrial  
agreements.

108a. (1) An industrial agreement has no force or effect unless and until it has been approved by the Commission.

(2) The Commission shall not approve an industrial agreement to which an unregistered association of employees is a party unless it is satisfied—

(a) that its terms are fair and reasonable;

and

(b) that the industrial agreement, when considered as a whole, does not provide conditions of employment that are inferior to those prescribed by a relevant award (if any) applying at the time that application is made for the approval of the agreement under this section.

(3) Where—

(a) an industrial agreement, if approved under this section, would affect remuneration or working conditions;

and

(b) principles, guidelines or conditions that are relevant to the question of whether the agreement should be approved have been enunciated or laid down in, or attached to, a decision or declaration of the Full Commission under section 146b,

the Commission shall, before deciding whether to approve the agreement, have due regard to those principles, guidelines or conditions.

(4) Where an application is made for approval of an industrial agreement under this section, the Registrar shall give to any registered

association that has, in his opinion, a proper interest in the matter notice of the time and place appointed for the hearing of the application.

(5) Subject to subsection (6), the Commission may, on the application of a party to an industrial agreement, rescind or vary the agreement but it shall not vary an industrial agreement unless the agreement, as varied, is such as would have been approved by the Commission under this section.

(6) For the purposes of subsection (5), subsection (2) (b) shall not apply in relation to a variation of an industrial agreement where the agreement was entered into before any relevant award was made.

(7) In this section a reference to a relevant award in relation to an industrial agreement means an award that, apart from the industrial agreement, governs the conditions of employment of the employees to whom the industrial agreement relates.

**46.** Section 110 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

Amendment of  
s. 110—  
Effect of  
industrial  
agreement.

(2) Subject to subsection (3) and to any term to the contrary in an industrial agreement, the agreement operates, as regards the employers and employees subject to the agreement, to the exclusion of the provisions of any award that are inconsistent with the provisions of the agreement.

(3) Where an industrial agreement was in force immediately before the commencement of the Industrial Conciliation and Arbitration Act Amendment Act, 1984—

(a) subsection (2) does not apply to the agreement as in force immediately before the commencement of that amending Act;

but

(b) where the agreement is varied after the commencement of that amending Act, any provision of the agreement shall then operate to the exclusion of inconsistent provisions of an award.

**47.** Section 115 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

Amendment of  
s. 115—  
Registration of  
associations.

(2) For the purpose of determining whether the membership of an association of employees amounts to twenty or more, members of the following classes shall not be counted:

(a) retired employees;

(b) persons undergoing courses of training to enable them to undertake employment;

(c) persons employed by the Government of the Commonwealth or an instrumentality or agency of that Government;

(d) persons of a prescribed class.

(2a) The fact that an association of employees has members of a class referred to in subsection (2) shall not be a ground upon which the association may be refused registration.

(2b) An association—

(a) of which the purpose, or one of the purposes, is to protect, or further, the interests of employers;

and

(b) of which the membership includes two or more employers who employ, in aggregate, not less than twenty employees,

is eligible for registration under this Part notwithstanding that its membership includes persons who are not employers.

48. Section 116 of the principal Act is amended—

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

(1a) The Registrar may, on the application of an association that has applied to be registered under this Part—

(a) waive compliance with any one or more of the prescribed conditions;

(b) amend the rules of the association so as to bring them into conformity with the prescribed conditions.;

and

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

(3) Subject to this section, the Registrar shall, if satisfied that—

(a) the association is eligible to be registered under this Part;

and

(b) the prescribed conditions (insofar as compliance with them has not been waived) have been complied with,

register the association without fee and issue a certificate of registration.

49. Section 121 of the principal Act is repealed and the following section is substituted:

121. (1) A registered association may apply to the registrar for the registration of an addition to, or the revocation or variation of, any of its rules.

(2) No addition to, or revocation or variation of, the rules of a registered association shall have effect until registered.

(3) The Registrar may determine an application under this section forthwith or he may, where in his opinion it is necessary to do so—

(a) publish notice of the application in the *Gazette* and in a daily newspaper circulating in the metropolitan area;

(b) inform such registered associations as may, in his opinion, be affected by the application;

Amendment of  
s. 116—  
Method of  
dealing with  
application for  
registration.

Repeal of s. 121  
and substitution  
of new section.

Change to rules  
of association.

and

- (c) fix a day (not being a day that falls before the expiration of thirty days from the date of the application) for the consideration of any objections to the application.

(4) The Registrar may at any time before determining an application under this section, with the approval of the registered association that has made the application, adjourn the application for the purpose of enabling the applicant to amend the addition to, or the revocation or variation of, the rules to which the application relates (and upon the amendment being made the Registrar may determine the application taking into account that amendment).

(5) The Registrar may refuse an application under this section—

- (a) if, in his opinion, the addition to, or revocation or variation of, the rules would prejudicially affect the members of the applicant association or any other registered association;

- (b) for any reason for which an application by an association for registration could be refused;

or

- (c) if for any other reason it is, in the opinion of the Registrar, proper that the application should be refused.

(6) Notwithstanding anything in subsection (5), the Registrar may register an addition to, or the revocation or variation of, the rules of an applicant association although the addition, revocation or variation might prejudicially affect the members of the applicant association or any other registered association, if the applicant association is an organization registered under the *Conciliation and Arbitration Act 1904* of the Commonwealth or is a branch of or forms part of an organization registered under that Act and the effect of the addition, revocation or variation is to bring the rules of the applicant association into substantial conformity with the rules or constitution of that organization as registered under that Act.

50. The following section is inserted after section 143 of the principal Act:

143a. (1) Subject to this section, no action in tort lies in respect of an act or omission done or made in contemplation or furtherance of an industrial dispute.

Insertion of new s. 143a.

Limitation upon actions in tort in respect of acts done in contemplation or furtherance of industrial disputes.

(2) This section does not prevent—

- (a) an action for the recovery of damages in respect of death or personal injury;

- (b) an action for the recovery of damages in respect of damage to property (not being economic damage);

- (c) an action for conversion or detinue;

or

- (d) an action for defamation.

(3) Where—

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

or

(b) the Full Commission determines, on the application of any person, that—

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

and

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

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

(4) The Full Commission shall, in hearing and determining an application under subsection (3) (b), act as expeditiously as possible.

Amendment of  
s. 144—  
Conscientious  
objection.

51. Section 144 of the principal Act is amended—

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

(3) An employer who discriminates against an employee, or an applicant for employment, on the ground that he is the holder of a certificate under this section shall be guilty of an offence.

Penalty: Five hundred dollars.;

and

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

(5) Amounts received by the Registrar by way of fees under this section shall be paid into the General Revenue of the State.

Insertion of new  
s. 145a.

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

Annual report.

145a. (1) The President shall, before the thirty-first day of December in each year, prepare and forward to the Minister a report—

(a) on the work of the Court and the Commission;

and

(b) generally on the operation of this Act,

during the financial year that ended on the thirtieth day of June in that year.

(2) The Minister shall, as soon as practicable after his receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

Amendment of  
s. 146a—  
Interpretation.

53. Section 146a of the principal Act is amended by inserting after paragraph (c) of the definition of "industrial authority" in subsection (1) the following paragraph:

(ca) the Parliamentary Salaries Tribunal;

54. Section 146b of the principal Act is amended by striking out subsection (4).

Amendment of s. 146b—  
Due regard to be had to certain general principles.

55. Division II of Part X (Lock-outs and Strikes) of the principal Act is repealed.

Repeal of Division II of Part X.

56. Section 153 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

Amendment of s. 153—  
Manner in which employee is to be paid.

(3) From moneys payable to an employee under subsection (1), an employer may deduct and pay on behalf of the employee—

(a) any amount that the employer is authorized, in writing, by the employee to deduct and pay on his behalf;

and

(b) any amount that the employer is authorized to deduct and pay on behalf of the employee under the provisions of the award or industrial agreement.

57. Section 156 of the principal Act is amended—

Amendment of s. 156—

(a) by striking out from subsection (1) the passage “No employer shall dismiss from his employment any employee” and substituting the passage “No employer shall dismiss an employee from his employment or injure an employee in his employment”;

Employee not to be dismissed from, or injured in, his employment for taking part in industrial proceedings.

(b) by striking out from subsection (2) the passage “dismissed from any employment” and substituting the passage “dismissed from, or injured in, his employment”;

(c) by striking out from subsection (2) the passage “such dismissal” and substituting the passage “the dismissal or injury”;

(d) by inserting in subsection (3) after the word “dismissed” the passage “from, or injured in, his employment”;

and

(e) by striking out subsection (4).

58. Section 157 of the principal Act is repealed and the following section is substituted:

Repeal of s. 157 and substitution of new section.

157. (1) No employer shall dismiss an employee from his employment or injure him in his employment by reason only of the fact that the employee—

Employer not to discriminate against employee on certain grounds.

(a) is or is not a member or officer of an association;

(b) is a workers safety representative or a member of a safety committee under the Industrial Safety, Health and Welfare Act, 1972;

— or



(c) is entitled to the benefit of an award or industrial agreement.

Penalty: Five hundred dollars.

(2) Where it is established in proceedings for an offence against subsection (1) that an employer has dismissed an employee or injured him in his employment, the onus shall lie upon the employer to establish that he dismissed the employee or injured him for a reason other than a reason referred to in subsection (1), and that he did not act in a manner that was harsh, unjust or unreasonable.

Insertion of new  
s. 157a.

59. The following section is inserted after section 157 of the principal Act:

Right of injured  
employee to  
compensation.

157a. (1) A court by which an employer has been convicted of an offence against section 156 or 157 may, on the application of the employee against whom the offence was committed—

(a) award compensation to the applicant for loss resulting from the commission of the offence;

and

(b) if the applicant has been dismissed from his employment—order the employer to re-employ the applicant on conditions determined by the court.

(2) An order for the payment of compensation under subsection (1) may be enforced in the same way as an order for the payment of a fine.

(3) This section does not derogate from any right under this Act or any other law of a person against whom an offence has been committed under section 156 or 157.

Amendment of  
s. 159—  
Employers to  
keep certain  
records.

60. Section 159 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) the passage “and the age” and substituting the passage “and the date of birth”;

and

(b) by inserting in paragraph (b) of subsection (1) after the passage “times of beginning and of ending work on every day” the passage “(together with a note of time allowed for meals and other breaks)”.

Amendment of  
s. 161—  
Exhibition, etc.,  
of relevant  
awards.

61. Section 161 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) An employer who is bound by an award shall, at the request of an employee, produce a copy of the award and afford the employee a reasonable opportunity to peruse it.

Penalty: Two hundred dollars.

Amendment of  
s. 174—  
Summary  
procedure.

62. Section 174 of the principal Act is amended by striking out the passage “a special magistrate” and substituting the passage “an industrial magistrate”.

63. The provisions of the principal Act set out in the first column of the schedule to this Act are amended as shown in the second column of the schedule.

Amendments to penalties.

64. The Judges' Pensions Act, 1971, is amended—

Amendments to the Judges' Pensions Act, 1971.

(a) by inserting after paragraph (c) of the definition of "Judge" in section 4 the following paragraph:

(ca) a Deputy President of the Industrial Commission of South Australia (other than a Deputy President appointed on an acting basis);

and

(b) by striking out paragraph (b) of section 13 and substituting the following paragraph:

(b) who has been removed from office in the manner provided for by the Industrial Conciliation and Arbitration Act, 1972;.

## THE SCHEDULE

Provision Amended	How Amended
Section 17 (3)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 27 (6)	By striking out "Five hundred dollars" and substituting "Two thousand dollars".
Section 28 (4)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 50 (5)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 52 (1)	By striking out "Five hundred dollars" and substituting "Two thousand dollars".
Section 52 (2)	By striking out "Five hundred dollars" and substituting "Two thousand dollars".
Section 70 (2)	By striking out "one thousand dollars" and substituting "two thousand dollars".
Section 70 (3)	By striking out "Twenty dollars" and substituting "One hundred dollars".
Section 72 (2)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 88 (8)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 128 (4)	By striking out "twenty dollars" and substituting "one hundred dollars".
Section 129 (1)	By striking out "Fifty dollars" and substituting "Two hundred dollars".
Section 130 (1)	By striking out "Fifty dollars" and substituting "Two hundred dollars".
Section 135 (2)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 154 (1)	By striking out "one hundred dollars" and substituting "five hundred dollars".
Section 154 (2)	By striking out "one hundred dollars" and substituting "five hundred dollars".
Section 154 (4)	By striking out "Five hundred dollars" and substituting "Two thousand dollars".
Section 156 (1)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 158 (1)	By striking out "Fifty dollars" and substituting "Two hundred dollars".
Section 159 (1)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 159 (3)	By striking out "Fifty dollars" and substituting "Two hundred dollars".
Section 160	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 162 (1)	By striking out "Fifty dollars" and substituting "Five hundred dollars".
Section 163 (1)	By striking out "Fifty dollars" and substituting "Two hundred dollars".
Section 164 (1)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 164 (2)	By striking out "One hundred dollars" and substituting "Five hundred dollars".
Section 166 (1)	By striking out "One hundred dollars" and substituting "Five hundred dollars".

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

D. B. DUNSTAN, Governor