



# INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT ACT 1992

No. 93 of 1992

## SUMMARY OF PROVISIONS

### Section

1. Short title
2. Commencement
3. Amendment of s. 6—Interpretation
4. Amendment of s. 12—Tenure of office
5. Amendment of s. 13—Industrial magistrates
6. Amendment of s. 15—Jurisdiction of the Court
7. Amendment of s. 19—Enforcement of orders for payment
8. Amendment of s. 25—Jurisdiction of the Commission
9. Amendment of s. 27—Compulsory conference
10. Amendment of s. 28—General powers of the Commission
11. Amendment of s. 31—Unfair dismissal
12. Substitution of s. 34
13. Amendment of s. 39—Review of unfair contracts
14. Amendment of s. 44—Intervention
15. Amendment of s. 48—Industrial Registrar
16. Insertion of s. 81a  
81a. Family leave and part-time work
17. Amendment of s. 86—Consolidation of awards
18. Amendment of s. 98—Notice of hearing, etc.
19. Amendment of s. 100—Review on application by Minister
20. Insertion of new heading

### DIVISION I—GENERAL INDUSTRIAL AGREEMENTS

21. Substitution of s. 106
22. Amendment of s. 107—Information to be provided by association
23. Amendment of s. 108—Term and form of agreement
24. Amendment of s. 108a—Approval of Commission
25. Insertion of s. 108b  
108b. Conscientious objection
26. Amendment of s. 109—Adding of parties to agreements
27. Amendment of s. 110—Effect of industrial agreement
28. Amendment of s. 111—Rescinding or varying agreement
29. Amendment of s. 112—Continuance of agreement
30. Insertion of new Division

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**DIVISION II—CERTIFIED INDUSTRIAL AGREEMENTS**

- 113. Interpretation
  - 113a. Parties
  - 113b. Term and form of agreement
  - 113c. Minister may intervene in certain cases
  - 113d. Approval of Commission
  - 113e. Procedures for preventing and settling disputes
  - 113f. Operation of agreements
  - 113g. Effect of industrial agreement
  - 113h. The Commission may vary or terminate an agreement
  - 113i. Termination of agreement by parties
  - 113j. Continuance of agreement unless rescinded
  - 113k. Conscientious objection
  - 113l. Consultation
- 31. Amendment of s. 144—Conscientious objection
  - 32. Amendment of s. 146b—Due regard to be had to certain principles
  - 33. Amendment of s. 159—Employers to keep certain records
  - 34. Amendment of s. 175—Rules and procedure
  - 35. Amendment of s. 176—Regulations
  - 36. Amendment of heading
  - 37. Insertion of schedule

**SECOND SCHEDULE****FAMILY LEAVE***Part I—Preliminary**Part II—Maternity Leave**Part III—Paternity Leave**Part IV—Adoption Leave**Part V—Part-Time Work*

- 38. Amendment of the Employees Registry Offices Act 1915
- 39. Amendment of the Long Service Leave Act 1987
- 40. Revision of penalties



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A.D. 1992

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No. 93 of 1992

**An Act to amend the Industrial Relations Act (S.A.) 1972, and to make related amendments to the Employees Registry Offices Act 1915 and the Long Service Leave Act 1987.**

[Assented to 17 December 1992]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Industrial Relations (Miscellaneous Provisions) Amendment Act 1992*.

(2) The *Industrial Relations Act (S.A.) 1972* is referred to in this Act as "the principal Act".

## Commencement

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

## Amendment of s. 6—Interpretation

3. Section 6 of the principal Act is amended—

(a) by striking out paragraphs (a) and (b) of the definition of "industrial agreement" in subsection (1) and substituting the following paragraphs:

(a) an industrial agreement approved under Division I of Part VIII;

(b) an industrial agreement certified under Division II of Part VIII;

(ba) an industrial agreement that is continued in operation under Part VIII;;

(b) by inserting after the definition of "public holiday" in subsection (1) the following definition:

"registered agent" means a person registered under the regulations as a registered agent for the purposes of this Act;

and

(c) by inserting after the definition of "Rules" in subsection (1) the following definition:

"single business" means—

(a) a business that is carried on by a single employer;

(b) a business that is carried on by two or more employers as a joint venture or common enterprise;

(c) a single project or undertaking;

or

(d) activities carried on by—

(i) the State;

(ii) a body, association, office or other entity established for a public purpose by or under a law of the State;

or

(iii) any other body in which the State has a controlling interest.

**Amendment of s. 12—Tenure of office**

4. Section 12 of the principal Act is amended—

(a) by striking out from subsection (1) "65" and substituting "70";

and

(b) by striking out from subsection (3) "65" and substituting "70".

**Amendment of s. 13—Industrial magistrates**

5. Section 13 of the principal Act is amended—

(a) by inserting "first" after "the provisions of the" in subsection (1);

and

(b) by striking out subsection (2).

**Amendment of s. 15—Jurisdiction of the Court**

6. Section 15 of the principal Act is amended—

(a) by striking out subparagraphs (i), (ii) and (iii) of subsection (3)(g) and substituting the following subparagraphs:

(i) —

(A) that, prior to the commencement of the proceedings, an Inspector had advised the defendant that the claim was, in the Inspector's opinion, justified;

or

(B) that the defendant has no reasonable ground on which to dispute the claim;

and

(ii) that, in the circumstances, the defendant should have satisfied the claim without putting the claimant to the trouble of taking proceedings to establish the validity of the claim.;

(b) by inserting after paragraph (h) of subsection (3) the following paragraph:

(ha) a legal practitioner or registered agent may represent a party to the proceedings for fee or reward;

and

(c) by inserting after subsection (4) the following subsections:

(5) Unless good reason is shown to the contrary, the Court will, on the application of a person who has been, or is to be, awarded a monetary sum on a claim under subsection (1)(d), include in the judgment an award of interest.

(6) The interest—

(a) will be calculated at a rate fixed by the Court;

(b) will be calculated from the date on which the liability to pay any amount of the claim fell due to the date of judgment;

and

(c) is, in accordance with the Court's determination, payable in respect of the whole or a specified part of the amount for which the judgment is given.

(7) The Court may, without proceeding to calculate interest under subsection (5), award a lump sum instead of interest.

(8) These provisions do not—

(a) authorize the award of interest on interest;

(b) apply in relation to any amount upon which interest is payable as of right (whether by virtue of an agreement or otherwise);

- (c) authorize the award of interest (except by consent) on a sum for which judgment is given by consent.

**Amendment of s. 19—Enforcement of orders for payment****7. Section 19 of the principal Act is amended—**

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

(2) On production of a certificate referred to in subsection (1) to an officer of the relevant court, the officer must forthwith register the certificate by entering the particulars of the certificate in a record to be called the "Register of Industrial Court Orders".

(3) From the date of registration, the certificate is a record of the court in which it is registered and has the same force and effect as a judgment or order of that court, and proceedings may be taken on the certificate as if the order to which it relates were a judgment or order of that court.;

and

- (b) by striking out subsections (5), (6) and (7) and substituting the following subsections:

(5) The court in which the certificate is registered has, in respect of the execution of the judgment and the enforcement of the order, the same power over the order as if it were a judgment or order of the court.

(6) The power to make Rules of Court under the *District Court Act 1991* and the *Magistrates Court Act 1991* includes a power to make rules regulating the practice and procedure relating to the registration of certificates under this section, the conduct of subsequent proceedings, and the payment of court fees.

- (7) In this section—

"the relevant court" means—

- (a) if the amount ordered to be paid does not exceed \$30 000, or such other amount as may be prescribed by regulation—the Magistrates Court;

- (b) in any other case—the District Court.

**Amendment of s. 25—Jurisdiction of the Commission****8. Section 25 of the principal Act is amended by inserting after subsection (1) the following subsection:**

(1a) The jurisdiction of the Commission includes the ability, by award, to regulate or prohibit the performance of work where the employee is required to work nude or partially nude, or in transparent clothing.

**Amendment of s. 27—Compulsory conference****9. Section 27 of the principal Act is amended—**

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

(1) A Presidential Member or a Commissioner may, in the exercise of a personal initiative or on application by a registered association, in respect of any industrial matter—

(a) call a compulsory conference of the parties involved;

or

(b) in the case of the President—direct a Presidential Member or a Commissioner to call a compulsory conference of the parties involved.

(1a) A Commissioner should, before calling a compulsory conference under subsection (1)(a), inform the President that he or she intends to call the conference.;

and

(b) by striking out from subsection (9) "notwithstanding that the industrial matter or thing would, but for this subsection, be within the jurisdiction of a Committee".

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

**10. Section 28 of the principal Act is amended by inserting after subsection (5) the following subsection:**

(6) A person may, with leave of the Commission, serve outside the State any summons or notice issued for the purposes of any proceedings before the Commission.

**Amendment of s. 31—Unfair dismissal**

**11. Section 31 of the principal Act is amended—**

(a) by striking out subsections (2a) and (2b);

(b) by inserting after subsection (4) the following subsections:

(4a) Where—

(a) an applicant's level of remuneration (excluding overtime payments) immediately before the date of dismissal (when expressed as an annual amount) was at a rate in excess of—

(i) in the case of a dismissal taking effect in 1992—\$67 000 per annum;

(ii) in the case of a dismissal taking effect in a subsequent calendar year—a sum arrived at by dividing the State average adult earnings as at 30 June in the preceding calendar year by State average adult earnings as at 30 June 1991 and multiplying the quotient by \$67 000;

and

(b) the employee's remuneration is not governed by an award or industrial agreement under this Act or the Commonwealth Act,

no compensation may be awarded under subsection (3)(c) on account of a failure by the employer to make a sufficient payment to the applicant, or to give the applicant sufficient notice, on the termination of the employee's employment.

(4b) For the purposes of subsection (4a), the Commission will determine the value of any non-monetary benefits in the nature of remuneration and such a determination will be final and without appeal.;

and

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

(8) A legal practitioner or registered agent may represent a party to proceedings under this section for fee or reward.

#### **Substitution of s. 34**

12. Section 34 of the principal Act is repealed and the following section is substituted:

#### **Representation of parties**

34. (1) Subject to this section, a party or intervener may be represented in proceedings before the Commission by a legal practitioner or agent.

(2) Leave is required for a party or intervener to be represented by a legal practitioner at—

(a) a voluntary conference under this Act;

(b) a compulsory conference under section 27 (the matter not having been referred to the Commission under section 27(9));

or

(c) a conference under section 31(6).

(3) Leave is required for a party to be represented by a registered agent at a conference under section 31(6).

(4) Leave will be granted under subsection (2) or (3) if (and only if)—

(a) all of the parties consent to the application for leave;

(b)—

(i) another party is represented by a legal practitioner or, in the case of a conference under section 31(6), registered agent (either by leave or pursuant to subsection (5));

or



- (ii) another party is to be represented by a person who is legally qualified (not being a legal practitioner);

(c)—

- (i) another party is a legal practitioner;

or

- (ii) another party is legally qualified (not being a legal practitioner);

or

(d) the person presiding at the conference is satisfied—

- (i) that the party or intervener would, if leave were not granted, be unfairly disadvantaged;

or

- (ii) that there are special circumstances that make such a representation desirable.

(5) Leave is not required under subsection (2) or (3) if—

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

- (i) an employer who is a party to the proceedings;
- (ii) the United Trades and Labor Council;

or

- (iii) any registered association;

or

(b) in the case of a legal practitioner, the legal practitioner is appearing on behalf of the Minister.

(6) Subject to any express provision as to costs elsewhere in this Act, the costs incurred by a party in respect of such representation will not be included in any order for the payment of costs under this Act.

#### **Amendment of s. 39—Review of unfair contracts**

**13. Section 39 of the principal Act is amended—**

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

(1) Application may be made to the Commission to review a contract of carriage or a service contract under this section on any or all of the following grounds:

- (a) that the contract is unfair;

(b) that the contract is harsh;

(c) that the contract is against the public interest.;

(b) by striking out from subsection (2) "for an order";

and

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

(3) In reviewing a contract, the Commission may have regard to—

(a) the relative strength of the bargaining positions of the parties to the contract and, if applicable, any persons acting on behalf of the parties;

(b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract;

(c) whether the contract may have an adverse effect on the development of the skills of employees performing work of the relevant kind in the industry to which the contract relates, including any system designed to provide a trained labour force (for example, apprenticeship or any arrangement for improving the skills of employees);

(d) whether it appears that the contract was entered into to evade the provisions of an award;

and

(e) any other matter that the Commission thinks relevant.

(4) If the Commission forms the opinion that a ground referred to in subsection (1) is established in relation to the whole or part of the contract (even if the ground was not canvassed in the application), it may, according to what is fair in the circumstances of the particular case, by order—

(a) set aside the contract (wholly or in part), or vary its terms, from the inception of the contract or from some later time;

(b) give consequential directions for the payment of money, or in relation to any other matter affected by the contract;

(c) prohibit the principal, or any person who is, in any way considered relevant by the Commission, associated with the principal, from entering into further contracts that would have the same or similar effect, or from inducing others to enter into such contracts.

(5) In framing an order under this section, the Commission must have regard to the principle that fair and reasonable remuneration should be paid for work but, despite this, the Commission must also have regard to any difficulties that would be experienced by the principal because of serious or extreme economic adversity if the principal were required to make payments at or above a certain level.

(6) While an application is pending, the Commission may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract.

(7) A person must not—

(a) discriminate against another person;

or

(b) advise, encourage or incite any person to discriminate against another person,

by virtue only of the fact that the other person—

(c) is a person who has made, or proposes, or has at any time proposed, to make, application to the Commission under this section;

(d) is a person on whose behalf an application has been made, or is proposed, or has at any time been proposed, to be made, under this section;

or

(e) is a person who has received the benefit of an order under this section.

Penalty: Division 8 fine.

(8) If in proceedings for an offence against subsection (7) all the facts constituting the offence other than the ground of the defendant's act or omission are proved, the onus of proving that the act or omission was not based on the ground alleged in the charge lies on the defendant.

(9) A court by which a person is convicted of an offence against subsection (7) may, if it thinks fit, on application under this subsection, award compensation to the person against whom the offence was committed for loss resulting from the commission of the offence.

#### **Amendment of s 44—Intervention**

14. Section 44 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1aa) The Minister may not intervene under this section in relation to an application to the Commission under Division II of Part VIII to certify an industrial agreement that applies only to a single business, part of a single business or a single place of work.

**Amendment of s. 48—Industrial Registrar**

15. Section 48 of the principal Act is amended by striking out from subsection (3) ", the Commission or a Committee" and substituting "or the Commission".

**Insertion of s. 81a**

16. The following section is inserted after section 81 of the principal Act:

**Family leave and part-time work**

81a. The provisions of the second schedule have effect in relation to maternity, paternity and adoption leave, and in relation to associated part-time work.

**Amendment of s. 86—Consolidation of awards**

17. Section 86 of the principal Act is amended by striking out subsection (3).

**Amendment of s. 98—Notice of hearing, etc.**

18. Section 98 of the principal Act is amended by striking out from subsection (3)(d) "or the Committee".

**Amendment of s. 100—Review on application by Minister**

19. Section 100 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsections:

(3a) Without limiting the operation of subsection (3), the Full Commission may, in relation to an industrial agreement, if it thinks fit, accept an undertaking from all or any of the parties in relation to the operation of the agreement.

(3b) If an undertaking is not observed, the Full Commission may, by order, revoke the industrial agreement after giving the parties an opportunity to be heard.;

and

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

(5) The Minister may not make an application under this section in relation to an industrial agreement that applies only to a single business, part of a single business or a single place of work and that has been certified by the Commission under Division II of Part VIII.

**Insertion of new heading**

20. The following heading is inserted immediately after the heading to Part VIII:

**DIVISION I — GENERAL INDUSTRIAL AGREEMENTS**

**Substitution of s. 106**

21. Section 106 of the principal Act is repealed and the following section substituted:

**Parties**

**106.** (1) An industrial agreement under this Division may be made between an association and any other association, or any person, in relation to any industrial matter.

(2) A reference in this Division to a party to an agreement includes a reference to a person who (as an employer) takes over or otherwise acquires the whole or part of the business of a party to the agreement.

**Amendment of s. 107—Information to be provided by association**

**22.** Section 107 of the principal Act is amended by inserting "under this Division" after "industrial agreement".

**Amendment of s. 108—Term and form of agreement**

**23.** Section 108 of the principal Act is amended—

(a) by inserting "under this Division" after "industrial agreement" (first occurring) in subsection (1);

and

(b) by striking out from subsection (1)(c) "the *Industrial Conciliation and Arbitration Act, 1972*," and substituting "Division I of Part VIII of the *Industrial Relations Act (S.A.) 1972*,";

and

(c) by inserting "under this Division" after "industrial agreement" in subsection (2).

**Amendment of s. 108a—Approval of Commission**

**24.** Section 108a of the principal Act is amended—

(a) by inserting "under this Division" after "industrial agreement" in subsection (1);

(b) by inserting "under this Division" after "The Commission must not" in subsection (2);

and

(c) by inserting "under this Division" after "cannot be approved by the Commission" in subsection (8).

**Insertion of s. 108b**

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

**Conscientious objection**

**108b.** A provision in an industrial agreement under this Division that requires a person to give preference to a member of a registered association will be taken not to require the person to give such preference over a person in respect of whom there is in force a certificate issued under section 144.

**Amendment of s. 109—Adding of parties to agreements**

**26.** Section 109 of the principal Act is amended by inserting "under this Division" after "an industrial agreement".

**Amendment of s. 110—Effect of industrial agreement**

27. Section 110 of the principal Act is amended by inserting "under this Division" after "industrial agreement" in subsection (1).

**Amendment of s. 111—Rescinding or varying agreement**

28. Section 111 of the principal Act is amended by inserting "under this Division" after "An industrial agreement".

**Amendment of s. 112—Continuance of agreement**

29. Section 112 of the principal Act is amended by inserting "under this Division" after "industrial agreement" in subsection (1).

**Insertion of new Division**

30. The following Division is inserted immediately after section 112 of the principal Act:

**DIVISION II: CERTIFIED INDUSTRIAL AGREEMENTS****Interpretation**

113. In this Division, unless the contrary intention appears—

"industrial action" means—

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where—
    - (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial agreement certified under this Division;or
    - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute;
  - (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial agreement certified under this Division;
  - (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute;
- or
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work,

but does not include—

- (e) action by employees that is authorized or agreed to by the employer of the employees;

or

- (f) action by an employer that is authorized or agreed to by or on behalf of employees of the employer.

### Parties

**113a.** (1) An industrial agreement under this Division may be made between a registered association of employees and any other association, or any person, in relation to any industrial matter.

(2) A reference in this Division to a party to an agreement includes a reference to a person who (as an employer) takes over or otherwise acquires the whole or part of the business of a party to the agreement.

### Term and form of agreement

**113b.** (1) If two or more parties agree on the terms of an industrial agreement that relates to—

- (a) a particular industry or industries (or part of a particular industry or industries);
- (b) a particular business or businesses (or part of a particular business or businesses);

or

- (c) a particular place of work,

the parties to the agreement may apply to the Commission to certify the industrial agreement under this Division.

(2) An industrial agreement under this Division must—

- (a) be in writing;
- (b) be for a term specified in the agreement (and different terms may be specified for different parts of the agreement);
- (c) indicate the scope of operation of the agreement, specifying the employee or employees, or class or classes of employees, who are covered by the agreement;

and

- (d) be in a form commencing as follows or in a similar form:

"This industrial agreement, made in pursuance of Division II of Part VIII of the *Industrial Relations Act (S.A.) 1972*, this            day of            between            ."  
(and the matter agreed upon must be set out).

**Minister may intervene in certain cases**

**113c.** (1) If an agreement applies only to a single business, part of a single business or a single place of work, the Minister may intervene in an application under this Division on the ground that certification of the agreement would seriously jeopardise the public interest.

(2) The intervention is to be made by giving written notice to the Commission.

(3) This section ceases to have effect at the end of 18 months after the commencement of this section.

(4) This section does not limit the operation of section 44.

**Approval of Commission**

**113d.** (1) Subject to this Division, the Commission must certify an agreement under this Division if, and must not certify an agreement unless, it is satisfied that—

(a) the agreement does not, in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement;

(b) the agreement includes procedures for preventing and settling any dispute between the employers and employees covered by the agreement about matters arising under the agreement;

(c) before the application for certification of the agreement was made, each association of employees that is a party to the agreement took reasonable steps—

(i) to consult with those of its members whose employment is covered by the agreement over the terms of the agreement;

and

(ii) to inform those members of the association's intention to apply for certification under this Division;

(d) each association of employees that is a party to the agreement has—

(i) informed the Commission whether or not it consulted with its members as described in paragraph (c)(i);

and

(ii) informed the Commission of the outcome of any such consultations;

(e) the parties to the agreement include—

(i) each registered association of employees whose membership includes one or more employees who are covered by the agreement;

or



- (ii) if there is no registered association of employees that qualifies under subparagraph (i), each registered association of employees that is able to represent industrial interests of the employees who are covered by the agreement;

and

- (f) if the agreement applies only to a single business, part of a single business or a single place of work, the agreement has been negotiated, on the one hand, by each employer concerned or a representative of the employer, and, on the other hand, by a single person or group of persons representing all the other parties to the agreement.

(2) For the purposes of subsection (1)(a), an agreement is only taken to disadvantage employees in relation to their terms and conditions of employment if—

- (a) certification of the agreement would result in the reduction of any entitlements or protections of those employees under an award, or under an industrial agreement approved under Division I;

and

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

(3) Subsection (1)(c) does not apply to an association of employees if—

- (a) the agreement applies only to a new business, project or undertaking;

and

- (b) at the time when the application for certification is made, no members of the association have yet been employed in connection with the business, project or undertaking.

(4) Subsection (1)(e) does not apply if—

- (a) in the case of an agreement that applies only to a single business, part of a single business or a single place of work—

- (i) the parties to the agreement include at least one registered association of employees;
- (ii) the Commission is satisfied that the agreement is in the interests of the employees whose employment is covered by the agreement;

and

- (iii) if the registered association of employees, or registered associations of employees, that are parties to the agreement are not able to represent the industrial interests of all employees who are covered by the agreement, or the parties to the agreement do not include each registered association of employees whose membership includes one or more employees who are covered by the agreement—

- 
- (A) the United Trades and Labor Council has been consulted in relation to the matter;
- and
- (B) the Commission is satisfied that it is appropriate that the registered association of employees, or registered associations of employees, that are parties to the agreement have, for the purposes of this Division, and notwithstanding the rules of that association or those associations, the ability to represent the industrial interests of the employees under the agreement;
- (b) in the case of an agreement that does not apply only to a single business, part of a single business or a single place of work—the Commission is satisfied that—
- (i) each relevant association of employees has been given the opportunity to be a party to the agreement;
- (ii) at least one of those associations is a party to the agreement;
- and
- (iii) the agreement is in the interests of the employees whose employment is covered by the agreement.
- (5) Notwithstanding subsection (1)—
- (a) the Commission may refuse to certify an agreement if—
- (i) the Commission thinks that the agreement seriously disadvantages a class of employees who are covered by the agreement;
- or
- (ii) the Commission thinks that certification of the agreement would be inappropriate having regard to the outcome of any consultations carried out for the purposes of subsection (1)(c);
- (b) the Commission may refuse to certify an agreement if the Commission thinks that certification of the agreement would be inappropriate having regard to the objective of achieving a coherent national framework of employee associations;
- and
- (c) the Commission may refuse to certify an agreement if—
- (i) in the case of an agreement that applies only to a single business, part of a single business or a single place of work and in relation to which the Minister has intervened under section 113c—the Commission thinks that certification of the agreement would seriously jeopardise the public interest;
- or

- (ii) in the case of an agreement that does not apply only to a single business, part of a single business or a single place of work—the Commission thinks that certification of the agreement would be contrary to the public interest.

(6) If the Commission has grounds to refuse to certify an agreement—

- (a) the Commission may accept an undertaking from one or more of the parties in relation to the operation of the agreement and, if satisfied that the undertaking meets the Commission's concerns, certify the agreement;

and

- (b) in any case, before refusing to certify the agreement, the Commission must give the parties an opportunity to amend it or to take any other action that may be necessary to satisfy the Commission that it is appropriate that the agreement be certified.

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

(8) Section 28(1)(f) does not apply in relation to an application to the Commission to certify an agreement that applies only to a single business, part of a single business or a single place of work.

#### **Procedures for preventing and settling disputes**

113e. Procedures in an industrial agreement under this Division for preventing and settling any dispute between employers and employees covered by the agreement may, if the Commission so approves, empower the Commission to do either or both of the following:

- (a) to settle disputes over the application of the agreement;
- (b) to appoint a board of reference consisting of one or more members for the purpose of settling such disputes.

#### **Operation of agreements**

113f. (1) An industrial agreement under this Division has no force or effect unless and until it has been certified by the Commission.

(2) An industrial agreement certified under this Division remains in force during the term specified in the agreement unless—

- (a) the agreement is rescinded by the Commission pursuant to this Act;

or

- (b) by reason of an order or declaration of the Commission under section 113h or 113i—

- (i) all the remaining parties to the agreement are associations of employees;

or

- (ii) all the remaining parties to the agreement are employers or associations of employers.

(3) The parties to an industrial agreement under this Division may, by agreement, extend the period of operation of the agreement.

**Effect of industrial agreement**

**113g.** (1) Subject to this Act, every industrial agreement under this Division is, during its continuance, binding on—

- (a) all parties to the agreement;
- (b) all members for the time being of any association which is a party to the agreement;  
and
- (c) to the extent that paragraphs (a) and (b) do not apply, all employees who are covered by the agreement.

(2) During the period of operation of an industrial agreement under this Division, the agreement operates, as regards the employers and employees subject to the agreement, to the exclusion of the provisions of any award, and of any industrial agreement approved under Division I, that are inconsistent with the agreement.

**The Commission may vary or terminate an agreement**

**113h.** (1) The Commission may, at any time, on the application of a party to the agreement, vary an industrial agreement under this Division—

- (a) to remove an ambiguity or uncertainty;
- or
- (b) to include, omit or vary a term (however expressed) that authorizes an employer to stand-down an employee.

(2) An industrial agreement may, by express provision, exclude or limit the operation of subsection (1)(b).

(3) The Full Commission may, at any time, on its own initiative or on the application of a person or association bound by the agreement, review the operation of an industrial agreement under this Division after giving the parties to the agreement an opportunity to be heard.

(4) If, on a review, the Full Commission finds—

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

it may do any of the following things:

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

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

(6) If a person or association bound by an industrial agreement under this Division engages in industrial action in relation to a matter dealt with in the agreement, a party to the agreement who is affected by the industrial action may apply to the Commission for a declaration that the party so applying is no longer bound by the agreement.

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

(8) Notwithstanding the other provisions of this section, for the period of 18 months after the commencement of this section, the following provisions apply in relation to an industrial agreement under this Division that applies only to a single business, part of a single business or a single place of work:

- (a) the Minister may apply to the Full Commission to review the agreement on the ground that its continued operation would seriously jeopardise the public interest;

and

- (b) if, on such an application, the Full Commission finds that the ground is established, it may do any of the things specified in subsection (4)(c), (d) and (e).

(9) Except as authorized by this Division, but without limiting the operation of section 100, the Commission is not to exercise arbitration powers to vary an industrial agreement under this Division.

#### **Termination of agreement by parties**

**113i.** (1) A party to an industrial agreement under this Division may, with the consent of all the relevant parties, give the Commission written notice stating that the party does not want to remain bound by the agreement.

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

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

(4) In this section—

"relevant party", in relation to an agreement, means—

(a) in relation to a party to the agreement that is an employer or an association of employers—a party that is an association of employees;

or

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

#### **Continuance of agreement unless rescinded**

**113j.** (1) In default of any express provision of the agreement to the contrary, an industrial agreement under this Division, unless rescinded or terminated, (and subject to any variation made as provided by this Part) continues in force after the expiration of the term specified in the agreement in respect of all parties except those who retire from the agreement.

(2) At any time after, or not more than one month before, the expiry of the term of an industrial agreement, any party may file a notice in the office of the Registrar and serve a copy of the notice on each of the other parties to the agreement signifying the party's intention to retire from the agreement at the expiration of one month from the date of the filing, and the party will, on the expiration of that period, cease to be a party to the agreement.

(3) When an association of employees has so ceased to be a party, the agreement also ceases to be binding on employers as regards employees who are members of the association insofar as the agreement has applied to those employees by virtue of their membership of that association.

(4) If the remaining parties to the agreement do not include at least one registered association of employees, the agreement will come to an end.

(5) Nothing in this section affects any right, obligation or liability which had arisen prior to a party ceasing to be a party.

#### **Conscientious objection**

**113k.** A provision in an industrial agreement under this Division that requires a person to give preference to a member of a registered association will be taken not to require the person to give such preference over a person in respect of whom there is in force a certificate issued under section 144.

#### **Consultation**

**113l.** In exercising its powers under this Division, the Commission must consider whether it should consult with appropriate peak councils representing employer or employee associations and may consult with any such council.

#### **Amendment of s. 144—Conscientious objection**

**31.** Section 144 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) An employer or an association must not—

(a) discriminate against a person on the ground that the person is the holder of a certificate under this section;

or

- (b) advise, encourage or incite any person to discriminate against another person on the ground that the other person is the holder of a certificate under this section.

Penalty: Division 8 fine.

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

32. Section 146b of the principal Act is amended by inserting after subsection (3) the following subsection:

- (4) This section does not apply in relation to any matter before the Full Commission under Division II of Part VIII.

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

33. Section 159 of the principal Act is amended by striking out subsection (8) and substituting the following subsection:

- (8) Unless otherwise provided by an award or industrial agreement, where an employer makes a contribution to a superannuation fund of a prescribed kind in accordance with this Act or an award or industrial agreement for the benefit of an employee, the employer must, on the next occasion that the employer makes a payment of wages, provide the employee with a written record showing the amount of the contribution.

**Amendment of s. 175—Rules and procedure**

34. Section 175 of the principal Act is amended—

- (a) by striking out from subsection (1)(i) ", a Committee";

and

- (b) by striking out from subsection (2) ", the Commission and the Committees" and substituting "and the Commission".

**Amendment of s. 176—Regulations**

35. Section 176 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

- (2) The regulations may provide for the creation of a register of persons (other than legal practitioners) who are entitled to act as registered agents under this Act.

- (3) The following provisions will apply in relation to such a register:

- (a) the register will be maintained by the Industrial Registrar;

- (b) a person will be entitled to be registered if he or she—

- (i) satisfies prescribed criteria relating to the qualifications or experience necessary to obtain registration;

- (ii) complies with such procedures as may be prescribed;

and

(iii) is not a person whose name has been struck off the roll of legal practitioners or who, although a legal practitioner, is not entitled to practice the profession of law because of disciplinary action taken against him or her, or is not otherwise disqualified from registration by virtue of a provision of the regulations;

(c) the regulations may—

(i) prescribe fees for the purposes of the register;

(ii) set scales of fees to be charged by registered agents who represent parties to proceedings under this Act;

(d) the Court may, in accordance with procedures prescribed by the regulations, disqualify a person from obtaining registration, or take steps to remove a person from the register;

and

(e) the Court may, by notice in the *Gazette*, establish (or vary) a code of conduct that must be observed by any registered person in the performance of any function under this Act (and a breach of such a code will be taken to be a breach of the regulations).

(4) The regulations may prescribe penalties, not exceeding a division 7 fine, for breach of, or non-compliance with, any regulation.

#### Amendment of heading

36. The heading to the schedule of the principal Act is amended by inserting "FIRST" before "SCHEDULE".

#### Insertion of schedule

37. The following schedule is inserted after the present schedule of the principal Act:

### SECOND SCHEDULE FAMILY LEAVE

#### *Part I—Preliminary*

#### Interpretation

1. In this schedule, unless the contrary intention appears—

"adoption leave" means adoption leave provided under Part IV (including special adoption leave):

"continuous service" means service under an unbroken contract of employment, and includes—

(a) any period of leave taken in accordance with this schedule;

and

(b) any period of leave or absence authorized by the employer, by or under this or any other Act, or by an award or industrial agreement:



"employee" includes a part-time employee but does not include an employee engaged in casual or seasonal work:

"maternity leave" means maternity leave provided under Part II (including special maternity leave):

"paternity leave" means paternity leave provided under Part III:

"primary care-giver" means a person who assumes the principal role of providing care and attention to a child:

"spouse" includes a *de facto* spouse or a former spouse.

#### Entitlement

2. (1) Subject to this section, an employee is entitled to take maternity, paternity or adoption leave, or to work part-time, in accordance with this schedule.

(2) An employer must, on becoming aware that an employee, or an employee's spouse, is pregnant, or that an employee is adopting a child, inform the employee of—

(a) the employee's entitlements under this schedule;

and

(b) the employee's responsibility to provide various notices under this schedule.

(3) An employer is not entitled to rely on an employee's failure to produce a certificate or give a notice as required by this schedule unless the employer establishes that this section has been complied with in relation to the employee.

(4) Subject to subsection (5), a contract, agreement or arrangement (whether made before or after the commencement of this schedule) does not operate to annul, exclude or vary the provisions of this schedule.

(5) The provisions of this schedule do not prevent—

(a) an award or industrial agreement;

or

(b) a contract, agreement or arrangement,

providing for leave or the provision of part-time work in terms or on conditions more favourable to employees than the terms and conditions provided by this schedule.

(6) Without derogating from the operation of subsection (5), an employee may work part-time under this schedule despite any other provision of any relevant award, industrial agreement or contract which limits or restricts the circumstances in which part-time work may be worked or the terms upon which it may be worked, including provisions—

(a) limiting the number of employees who may work part-time;

(b) establishing quotas as to the ratio of part-time to full-time employees;

or

(c) prescribing a minimum or maximum number of hours a part-time employee may work, and such provisions do not apply to part-time work under this schedule.

### *Part II—Maternity Leave*

#### **Eligibility for leave**

3. (1) Subject to this schedule, an employee who becomes pregnant is, on production of a certificate under subsection (4), entitled to up to 52 weeks of maternity leave.

(2) An entitlement to maternity leave is subject to the following qualifications:

- (a) an employee is not entitled to any leave if she does not have at least 12 months of continuous service with her employer immediately preceding the expected date of birth;
- (b) the entitlement is reduced by any period of extended paternity leave taken by the employee's spouse;
- (c) apart from paternity leave of up to one week at the time of the birth of the child, maternity leave cannot be taken concurrently with paternity leave;
- (d) the entitlement is reduced by any period of special maternity leave taken by the employee;
- (e) subject to this Part, the period of maternity leave must be taken as one continuous period and must, immediately following the birth of a child, include a period of six weeks of compulsory leave;

and

(f) maternity leave cannot extend beyond the child's first birthday.

(3) Maternity leave is unpaid leave.

(4) An employee must, when applying for maternity leave, produce to her employer a certificate from a legally qualified medical practitioner which states that the employee is pregnant and the expected date of birth (or, if appropriate, the expected date of termination of pregnancy).

(5) An employee must, at the request of the employer, produce to the employer within a reasonable time—

- (a) a statutory declaration which states the particulars of any period of paternity leave sought or taken by her spouse;
- (b) a statutory declaration which states that for the period of the leave the employee will not engage in any conduct inconsistent with her contract of employment;

and

(c) such other information prescribed by the regulations.

(6) Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with maternity leave, take any annual leave or long service leave (or any part of it) to which she is entitled.

(7) Paid sick leave or other paid absences (other than accrued annual leave or long service leave) are not available to an employee during her absence on maternity leave.

#### **Notice requirements**

4. (1) An employee must, not less than 10 weeks before the expected date of birth of the child, give notice in writing to her employer stating the expected date of birth.

(2) An employee must give not less than four weeks notice in writing to her employer of the date on which she proposes to commence maternity leave stating the period of leave to be taken.

(3) An employee is not in breach of subsection (2) if her failure to comply is caused by unforeseen circumstances so long as, where a living child is born, the notice is given not later than two weeks after the birth.

(4) An employer may, by not less than 14 days notice in writing to the employee, require her to commence maternity leave at any time within the six weeks immediately before the expected date of birth, but such a notice may be given only if the employee has not given her employer a notice under subsection (1).

#### **Transfer to a safe job**

5. (1) If, in the opinion of a legally qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee must, if the employer considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

(2) If the transfer to a safe job is not considered practicable, the employee is entitled, or the employer may require the employee, to take leave for such period as is certified necessary by a legally qualified medical practitioner.

(3) Leave under this section will be treated as maternity leave.

#### **Variation and cancellation of leave**

6. (1) The following provisions apply in relation to the variation of maternity leave (but not so as to extend an entitlement beyond the limit set by section 3):

(a) the leave may be lengthened once by the employee giving the employer not less than 14 days notice in writing stating the period by which she requires the leave to be lengthened;

or

(b) the leave may be lengthened or shortened by agreement between the employer and the employee.

(2) The following provisions apply in relation to the cancellation of maternity leave:

(a) leave, if applied for but not commenced, is cancelled should the pregnancy terminate otherwise than by the birth of a living child;

(b) if after the commencement of any maternity leave—

(i) the pregnancy is terminated otherwise than by the birth of a living child;

and

(ii) the employee gives the employer notice in writing stating that she desires to resume work,

the employer must allow the employee to resume work within four weeks of receipt of the notice;

or

(c) the leave may be cancelled by agreement between the employer and the employee.

#### **Special maternity leave and sick leave**

7. (1) If—

(a) an employee not then on maternity leave suffers illness related to her pregnancy;

or

(b) the pregnancy of an employee not then on maternity leave terminates after 28 weeks otherwise than by the birth of a living child,

she may take such paid sick leave as she is then entitled to and such further unpaid leave (to be known as special maternity leave) as a legally qualified medical practitioner certifies to be necessary.

(2) An employee who returns to work after the completion of a period of leave taken pursuant to this section is entitled to the position which she held immediately before commencing such leave or, in the case of an employee who was transferred to a safe job pursuant to section 5, to the position she held immediately before such transfer.

(3) If that position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position as nearly as possible comparable in status and pay as that of her former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Penalty: Division 8 fine.

#### **Return to work after maternity leave**

8. (1) An employee must confirm her intention to return to work by notice in writing to the employer given not less than four weeks before the end of her period of maternity leave.

(2) An employee, on returning to work after maternity leave, is entitled—

(a) to the position which she held immediately before commencing maternity leave;

or

(b) in the case of an employee who was transferred to a safe job pursuant to section 5, to the position which she held immediately before the transfer.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position as nearly as possible comparable in status and pay to that of her former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Penalty: Division 8 fine.

#### **Effect of maternity leave on employment**

9. Absence on maternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for the purpose of any other entitlement.

#### **Termination of employment**

10. (1) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with any relevant award or industrial agreement or, if no such award or agreement applies, by notice given in accordance with the regulations.

(2) An employer must not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

(3) An employer who terminates the employment of an employee in contravention of subsection (2) is guilty of an offence.

Penalty: Division 7 fine.

### *Part III—Paternity Leave*

#### **Eligibility for leave**

11. (1) Subject to this schedule, a male employee is, on production of a certificate under subsection (4), entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child;
- (b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child (to be known as "extended paternity leave").

(2) An entitlement to paternity leave under subsection (1) is subject to the following qualifications:

- (a) an employee is not entitled to any leave if he does not have at least 12 months of continuous service with his employer immediately preceding the date on which the leave would otherwise be first due to commence;
- (b) the entitlement to extended paternity leave is reduced by such period of maternity leave taken by the employee's spouse;

(c) extended paternity leave cannot be taken concurrently with maternity leave;

and

(d) paternity leave cannot extend beyond the child's first birthday.

(3) Paternity leave is unpaid leave.

(4) An employee must, when applying for paternity leave, produce to his employer a certificate from a legally qualified medical practitioner which names the employee's spouse and states that she is pregnant and the expected date of birth or the date on which the birth took place.

(5) An employee must, at the request of the employer, in respect of the conferral of extended paternity leave, produce to the employer within a reasonable time—

(a) a statutory declaration which states—

(i) that the employee is seeking the leave to become the primary care-giver of a child;

and

(ii) the particulars of any period of maternity leave sought or taken by his spouse;

(b) a statutory declaration which states that for the period of the leave the employee will not engage in conduct inconsistent with his contract of employment;

and

(c) such other information prescribed by the regulations.

(6) Subject to complying with any other relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with paternity leave, take any annual leave or long service leave (or any part of it) to which he is entitled.

(7) Paid sick leave or other paid absences (other than accrued annual leave or long service leave) are not available to an employee during his absence on paternity leave.

#### **Notice requirements**

12. (1) An employee must, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave.

(2) An employee is not in breach of subsection (1) if his failure to comply is caused by—

(a) the birth occurring earlier than the expected date;

(b) the death of the mother of the child;

or

(c) other compelling circumstances.

(3) The employee must notify his employer of any change in the information provided pursuant to section 11 within two weeks after the change takes place.

#### **Variation and cancellation of leave**

13. (1) The following provisions apply in relation to the variation of paternity leave (but not so as to extend an entitlement beyond the limits set by section 11):

(a) the leave may be lengthened once by the employee giving to the employer not less than 14 days notice in writing stating the period by which he requires the leave to be lengthened;

or

(b) the leave may be lengthened or shortened by agreement between the employer and the employee.

(2) Extended paternity leave, if applied for but not commenced, is cancelled should the pregnancy of the employee's spouse terminate otherwise than by the birth of a living child.

(3) Paternity leave may be cancelled by agreement between the employer and the employee.

#### **Return to work after paternity leave**

14. (1) An employee must confirm his intention to return to work by notice in writing to the employer given not less than four weeks before the end of a period of extended paternity leave.

(2) An employee, on returning to work after paternity leave, is entitled to the position which he held immediately before commencing paternity leave.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he is entitled to a position as nearly as possible comparable in status and pay to that of his former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Penalty: Division 8 fine.

#### **Effect of paternity leave on employment**

15. Absence on paternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for the purpose of any other entitlement.

#### **Termination of employment**

16. (1) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with any relevant award or industrial agreement or, if no such award or agreement exists, by notice given in accordance with the regulations.

(2) An employer must not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

(3) An employer who terminates the employment of an employee in contravention of subsection (2) is guilty of an offence.

Penalty: Division 7 fine.

*Part IV—Adoption Leave*

**Interpretation**

17. In this Part, unless the contrary intention appears—

"adoption" includes the placement of a child with a person in anticipation of, or for the purposes of, adoption:

"child" means a child under the age of five years who is placed with an employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee who has previously lived with the employee for a continuous period of at least six months:

"government authority" means a person or agency prescribed as a government authority for the purposes of this definition:

"relative adoption" means the adoption of a child by a parent, a spouse of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

**Eligibility for leave**

18. (1) Subject to this schedule, an employee is entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks, as follows:

- (a) an unbroken period of up to three weeks at the time of the placement of the child;
- (b) an unbroken period of up to 49 weeks in order to be the primary care-giver of the child (to be known as "extended adoption leave").

(2) An entitlement to adoption leave under subsection (1) is subject to the following qualifications:

- (a) an employee is not entitled to any leave if he or she does not have at least 12 months of continuous service with his or her employer immediately preceding the date on which he or she desires to commence adoption leave;
- (b) extended adoption leave cannot be taken concurrently with adoption leave taken by the employee's spouse;
- (c) the entitlement to extended adoption leave is reduced by such period of extended adoption leave (if any) taken by the employee's spouse;
- (d) adoption leave cannot extend beyond the child's fifth birthday;

and

- (e) extended adoption leave cannot extend beyond the first anniversary of the initial placement of the child.



(3) Adoption leave is unpaid leave.

(4) An employee must, at the request of the employer, in respect of the conferral of adoption leave, produce to the employer within a reasonable time—

(a) a statement from a government authority confirming details of the date, or presumed date, of adoption;

(b) in the case of extended adoption leave, a statutory declaration which states—

(i) that the employee is seeking the leave to become the primary care-giver of an adopted child;

and

(ii) the particulars of any period of extended adoption leave sought or taken by his or her spouse;

and

(c) such other information prescribed by the regulations.

(5) Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with adoption leave, take any annual leave or long service leave (or any part of it) to which he or she is entitled.

(6) Paid sick leave or other paid absences (other than accrued annual leave or long service leave) are not available to an employee during his or her absence on adoption leave.

#### **Notice requirement**

19. (1) On receiving notice of approval for adoption purposes, an employee must notify the employer of the approval and within two months of the approval must further notify the employer of the period or periods of adoption leave the employee proposes to take.

(2) In the case of a relative adoption, the employee must so notify the employer on deciding to take a child into custody pending an application for adoption.

(3) An employee must, as soon as the employee is aware of the expected date of placement of a child for adoption purposes, but no later than 14 days before the expected date of placement, give notice in writing to the employer of that date, and of the date of commencement of any period of short adoption leave to be taken.

(4) An employee must, at least 10 weeks before the proposed date of commencing any extended adoption leave, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(5) An employee is not in breach of this section if his or her failure to comply is caused by—

(a) the requirement that the employee accept earlier or later placement of the child;

(b) the death of his or her spouse;

or

(c) other compelling circumstance.

**Variation and cancellation of leave**

20. (1) The following provisions apply in relation to the variation of adoption leave (but not so as to extend an entitlement beyond the limit set by section 18):

(a) extended adoption leave may be lengthened once by the employee giving the employer not less than 14 days notice in writing stating the period by which he or she requires the leave to be lengthened;

or

(b) the leave may be lengthened or shortened by agreement between the employer and the employee.

(2) The following provisions apply in relation to the cancellation of adoption leave:

(a) leave, if applied for but not commenced, is cancelled should the placement of the child not proceed;

(b) if, after the commencement of any adoption leave—

(i) the placement of the child ceases;

and

(ii) the employee gives the employer notice in writing stating that he or she desires to resume work,

the employer must allow the employee to resume work within four weeks of receipt of the notice;

or

(c) the leave may be cancelled by agreement between the employer and the employee.

**Special leave**

21. (1) An employee who has received approval to adopt a child who is overseas is entitled to such unpaid leave as is reasonably required by the employee to obtain custody of the child.

(2) An employee who is seeking to adopt a child is entitled to such unpaid leave not exceeding five days as is required by the employee to attend such interviews, work shops, court attendances or examinations as are necessary as part of the adoption procedure.

(3) The leave under this section is to be known as special adoption leave and does not affect any entitlement under section 18.

(4) Special adoption leave may be taken concurrently by an employee and his or her spouse.

(5) Where paid leave is available to the employee, the employer may require the employee to take such leave instead of special adoption leave.

**Return to work after adoption leave**

22. (1) An employee must confirm his or her intention to return to work by notice in writing to the employer given not less than four weeks before the end of a period of extended adoption leave.

(2) An employee, on returning to work after adoption leave, is entitled to the position which he or she held immediately before commencing adoption leave.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as possible comparable in status and pay to that of his or her former position.

(4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Penalty: Division 8 fine.

**Effect of adoption leave on employment**

23. Absence on adoption leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for the purpose of any other entitlement.

**Termination of employment**

24. (1) An employee on adoption leave may terminate his or her employment at any time during the period of leave by notice given in accordance with any relevant award or industrial agreement or, if no such award or agreement applies, by notice given in accordance with the regulations.

(2) An employer must not terminate the employment of an employee on the ground of his or her absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

(3) An employer who terminates the employment of an employee in contravention of subsection (2) is guilty of an offence.

Penalty: Division 7 fine.

*Part V—Part-Time Work***Interpretation**

25. In this Part, unless the contrary intention appears—

"former position" means the position held by an employee immediately before commencing leave or part-time employment under this schedule, whichever first occurs, or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly as possible comparable in status and pay to that of the position first-mentioned in this definition:

"part-time work" means work of a lesser number of hours than constitutes full-time work under the relevant award or agreement, but does not include casual or temporary work.

**Entitlement**

26. An employee may, with the agreement of his or her employer—

(a) in the case of a female employee—

- (i) work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable;
- (ii) work part-time in one or more periods at any time from the seventh week after she has given birth to a child until the child's second birthday;
- (iii) work part-time in one or more periods at any time from the date of the placement of a child with the employee for adoption until the second anniversary of that date;

(b) in the case of a male employee—

- (i) work part-time in one or more periods at any time after his spouse has given birth to a child until the child's second birthday;
- (ii) work part-time in one or more periods at any time from the date of the placement of a child with the employee for adoption until the second anniversary of that date.

**Effect of part-time work on employment**

27. Despite any award, industrial agreement or contract to the contrary, part-time work under this Part does not break the continuity of service of an employee.

**Annual leave—transitional arrangements**

28. (1) An employee working part-time under this Part is to be paid for and take any annual leave accrued in respect of a period of full-time employment, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time employment under this schedule.

(2) A full-time employee is to be paid for and take any annual leave accrued in respect of a period of part-time employment under this Part as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(3) By agreement between the employer and the employee, the period over which leave is taken under subsection (2) may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

**Sick leave—transitional arrangements**

29. (1) An employee working part-time under this Part is to have sick leave entitlements which are applicable to the work concerned (including any entitlement accrued in respect of previous full-time employment) converted into hours.

(2) When any such sick leave entitlement is taken, whether as a part-time employee or as a full-time employee, it is to be debited on the basis of the ordinary hours that the employee would have worked during the period of absence.

**Part-time work agreement**

30. (1) Before commencing part-time work under this Part the employer and employee must agree—

- (a) that the employee may work part-time;
- (b) on the hours to be worked by the employee, the days on which they will be worked and commencing times for the work;

and

- (c) on the classification applying to the work to be performed.

(2) The agreement may also stipulate the period of part-time employment.

(3) The terms of the agreement may be varied by consent.

(4) The terms of the agreement or any variation must be reduced to writing and retained by the employer.

(5) A copy of the agreement and any variation must be provided to the employee by the employer.

**Overtime**

31. An employer may request, but not require, an employee working part-time under this Part to work overtime.

**Nature of part-time work**

32. The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work otherwise performed under any relevant award, industrial agreement or contract.

**Pro rata entitlements**

33. Subject to the provisions of this Part and the matters agreed in the part-time work agreement, part-time work is to be in accordance with the provisions of any award, industrial agreement or contract applicable to the work concerned, which are to apply pro rata.

**Return to former position**

34. If the employee is currently employed by the employer on a full-time basis, the part-time work agreement may provide that the employee has a right to return to that full-time position.

**Termination of employment**

35. The employment of a part-time employee under this Part may be terminated in accordance with the provisions of this Part but must not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this Part or has enjoyed or proposes to enjoy any benefits arising under this Part.

Penalty: Division 7 fine.

**Amendment of the Employees Registry Offices Act 1915**

38. The *Employees Registry Offices Act 1915* is amended—

- (a) by striking out from section 2(1) the definition of "inspector" and substituting the following definition:

"inspector" means an inspector appointed under the *Industrial Relations Act (S.A.) 1972*, and includes the Chief Inspector of Factories;

and

- (b) by striking out from section 2(1) the definition of "association" and substituting the following definition:

"association" has the same meaning as in the *Industrial Relations Act (S.A.) 1972*.

**Amendment of the Long Service Leave Act 1987**

39. The *Long Service Leave Act 1987* is amended—

- (a) by striking out from section 3(1) the definition of "agreement" and substituting the following definition:

"agreement" means—

- (a) an industrial agreement within the meaning of the *Industrial Relations Act (S.A.) 1972*;

or

- (b) a certified agreement within the meaning of the *Industrial Relations Act 1988* of the Commonwealth;

- (b) by striking out from section 3(1) the definition of "award" and substituting the following definition:

"award" includes—

- (a) an award or order of the Industrial Commission;

- (b) an award or order of the Australian Industrial Relations Commission;

- (c) by striking out from section 3(1) the definition of "inspector" and substituting the following definition:

"inspector" means an inspector appointed under the *Industrial Relations Act (S.A.) 1972*;

- (d) by striking out from section 3(1) the definition of "registered association" and substituting the following definition:

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"registered association" means—

- (a) an association registered under Part IX of the *Industrial Relations Act (S.A.) 1972*;
  - (b) an organization registered under the *Industrial Relations Act 1988* of the Commonwealth;
- (e) by striking out from section 3(1) the definition of "related corporations" and substituting the following definition:

"related corporations" means corporations—

- (a) that are related to each other for the purposes of the *Corporations Law*;
  - or
  - (b) that have substantially the same directors or are under substantially the same management;
- (f) by striking out from section 13(5) "*The Industrial Conciliation and Arbitration Act, 1972*" and substituting "*The Industrial Relations Act (S.A.) 1972*";

and

- (g) by striking out paragraph (b) of section 16 and substituting the following paragraph:

(b) an award made under the *Industrial Relations Act 1988* of the Commonwealth.

**Revision of penalties**

40. The principal Act is further amended as indicated in the schedule.

## SCHEDULE

Provision amended	How amended
Section 88(8)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 154(2)	Strike out "division 8 fine" and substitute "division 7 fine"
Section 156(1)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 157(1)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 158(1)	Strike out "Division 9 fine" and substitute "Division 8 fine"
Section 159(1)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 159(3)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 159(4)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 159(5)	Strike out "Division 9 fine" and substitute "Division 8 fine"
Section 159(7)	Strike out "Division 10 fine" and substitute "Division 9 fine"
Section 160	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 161(2)	Strike out "Division 10 fine" and substitute "Division 9 fine"
Section 162(1)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 163(1)	Strike out "Division 9 fine" and substitute "Division 8 fine"
Section 164(1)	Strike out "Division 8 fine" and substitute "Division 7 fine"



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Provision amended	How amended
Section 164(2)	Strike out "Division 8 fine" and substitute "Division 7 fine"
Section 166(1)	Strike out "Division 8 fine" and substitute "Division 7 fine"

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

**ROMA MITCHELL** Governor